HUMAN TRAFFICKING ASSESSMENT TOOL REPORT FOR NEPAL

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Introduction

Trafficking in persons is a global phenomenon and one of the most prevalent crimes of the modern world. It takes a heavy toll of hundreds of thousands of victims annually, and indiscriminately affects stable democracies, countries in transition, and societies immersed in war. International organizations, governments, and non-governmental groups have recognized human trafficking as a contemporary form of slavery and – in certain circumstances – a crime against humanity.

The list of possible anti-human trafficking strategies that can come into play in the dynamics of rule of law promotion can be overwhelmingly long. They may consist of legislative reform, awareness raising, advocacy, capacity building, research, monitoring, impact litigation, or direct assistance to victims. They may be either holistic or narrowly tailored to accomplish specific objectives or address selected target groups, such as the general public, state authorities, victims, or perpetrators. The approach of the American Bar Association’s Rule of Law Initiative (ABA ROLI) to combating trafficking in persons involves advancing sustainable solutions through strategic mobilization of awareness and capacity building among government entities and civil society. The projects are often undertaken in partnership with local non-governmental and international organizations.

Collection of country-specific information creates a necessary foundation for identifying important elements of the reform process in the field of counter-trafficking. With this in mind, in 2005, the ABA’s Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, developed the Human Trafficking Assessment Tool (HTAT). The HTAT is designed to assess countries’ de jure and de facto compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), which is one of the most important international tools aimed at combating trafficking in persons. The primary purpose of the HTAT is to enable technical assistance providers, donors, and local stakeholders to design and implement more effective national and regional counter-trafficking strategies, to enhance countries’ compliance with the Trafficking Protocol, and to monitor progress in the fight against human trafficking.

The technical nature of the HTAT distinguishes this assessment tool from other independent assessments of a similar nature, such as the annual TRAFFICKING IN PERSONS REPORT published by the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, or the GLOBAL REPORT ON TRAFFICKING IN PERSONS produced by the United Nations Office on Drugs and Crime (UNODC). This comprehensive assessment measures to what extent specific legal norms and conditions present in the country comply with specific provisions of the Trafficking Protocol at a particular point in time. In addition, the HTAT’s in-depth analytic process is not intended to be a scientific, statistical survey. Instead, it is first and foremost a legal inquiry into the country’s anti-human trafficking regulatory framework and infrastructure. The analysis draws upon a diverse pool of information derived from the relevant legal provisions and secondary materials, interviews with key informants, and discussions with informal focus groups.

Methodology

The HTAT is a mechanism for analyzing domestic legislation, policies, and their implementation in light of the Trafficking Protocol. More specifically, the HTAT addresses such questions as whether the country’s legal system is sufficiently strong to combat trafficking effectively, and whether the government has committed appropriate resources and taken concrete steps to prevent and prosecute trafficking, as well as to protect the victims. The HTAT assesses a country’s compliance with each of the 13 substantive articles of the Trafficking Protocol. In addition, the HTAT incorporates essential provisions of the Convention on Transnational Organized Crime, which applies in conjunction with the Trafficking Protocol, and addresses
certain topics that are not covered by either of the two treaties, but are nevertheless necessary for a comprehensive analysis of anti-human trafficking reforms worldwide. Substantively, the HTAT follows one of the main concepts surrounding global counter-trafficking efforts, i.e. the “three Ps” paradigm (prevention, protection, and prosecution) enshrined in the preamble to the Trafficking Protocol. Consequently, it explores such issues as the definition of trafficking in persons, criminalization, jurisdiction, extradition, organized crime, obstruction of justice, corruption, witness protection, identification of victims, victim assistance, status of victims in receiving states, repatriation of victims, prevention programs, international cooperation, information exchange and training, border measures, and security and legitimacy of documents.

To enhance uniformity and detail in data collection, ABA ROLI developed the Assessor’s Guide to the Human Trafficking Assessment Tool, which serves as a resource guide on the Trafficking Protocol. It provides a helpful commentary on its provisions, clarifies terminology, and highlights success stories and best practices which can be adapted and replicated around the globe. In addition, the Assessor’s Guide offers flexible guidance on the areas of inquiry by incorporating a series of illustrative de jure and de facto questions that direct the process of gathering and reporting information. The questions are organized in accordance with the structure of the Trafficking Protocol and grouped into subsections corresponding to the various topics arising from the delineated international obligations.

The HTAT implementation process draws heavily on the tested and well-respected approach of other assessment tools created by ABA ROLI, such as the Judicial Reform Index (JRI), the Legal Profession Reform Index (LPRI), and the CEDAW Assessment Tool. First, the HTAT assessment team, led by an international attorney with anti-human trafficking expertise and supported by a local attorney, evaluates all relevant legal provisions and pertinent secondary materials, including statistics provided by reliable sources. This is followed by in-country interviews with approximately 40 key informants, i.e., anti-human trafficking experts, government officials, representatives of international and non-governmental organizations, lawyers, journalists, and other observers who have a unique insight into the country’s counter-trafficking regime.

The results of the de jure and de facto analysis are collected in a standardized format in an HTAT country report. Each report begins with a country background chapter exploring the legal and political context and anti-human trafficking institutional infrastructure, followed by an in-depth analysis section comprised of 13 chapters that survey implementation of each of the substantive articles of the Trafficking Protocol. The HTAT foregoes any attempt to provide aggregate scoring or ranking of countries’ anti-human trafficking reforms, as this could be counterproductive. Prior to publication, each report undergoes both a comprehensive internal review by ABA ROLI’s Research and Assessments Office in Washington, D.C. and an in-country peer review by key stakeholders, in order to ensure its accuracy, integrity, and maximum degree of quality control.

Social scientists might argue that some of the assessment criteria would best be ascertained through public opinion polls or more extensive interviews of local stakeholders. Sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI structured the HTAT implementation process in such a way that the inquiries derived from its methodology can be effectively addressed by interviewing a limited cross-section of anti-human trafficking experts and observers. Consequently, the HTAT can be rapidly implemented by a relatively small team of legal specialists who are familiar with the country and the region, and have expertise in anti-human trafficking issues.

The HTAT is designed to fulfill several functions. First, it demonstrates the country’s progress in combating trafficking in persons and identifies gaps in its counter-trafficking efforts, thus enabling prioritization of reforms by governments and anti-human trafficking stakeholders. Second, the

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HTAT findings provide vital information for ABA ROLI, other technical assistance providers, donors, and others charged with reforming relevant legislation and designing more effective anti-human trafficking strategies and programs. Third, the HTAT reports serve as a source of hard-to-find information on the structure, nature, and status of anti-human trafficking efforts in countries where the tool is implemented. Fourth, the HTAT results can help spearhead local grassroots advocacy initiatives to improve compliance with the Trafficking Protocol, as well as facilitate enhanced inter-agency collaboration and international cooperation in the fight against this global challenge. Finally, the HTAT enables monitoring of a country’s reform progress over time. Periodic implementations of the HTAT can identify a trend of improvement or remedial action on the part of the country, show areas where there has been backsliding in reforms, as well as illustrate which anti-human trafficking strategies have been successful, which have stalled, and which have had little or no impact.

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Assessment Team

The 2011 Nepal HTAT assessment team was led by Ms. Paulina Rudnicka, Senior Legal Analyst at ABA ROLI’s Research and Assessment office and Coordinator of the HTAT. Ms. Rudnicka implemented the project in close partnership with two renowned anti-human trafficking experts: Ms. Geeta Pathak Sangroula, Executive Director of the Kathmandu School of Law (KSL) and former Director of the Centre of Legal Research and Resource Development (CeLRRD), and Mr.
Kapil Aryal, Assistant Professor at KSL and Project Manager at CeLRRd. In addition, the assessment team included: Mr. James Lin, Nepal Country Director; Mr. Samir Ghimire, Senior Manager at ABA ROLI’s office in Nepal; Ms. Aruna Joshi, Program Officer at ABA ROLI’s office in Nepal; and Ms. Swechhya Sangroula, Candidate for LL.B. at KSL.

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The conclusions and analysis in the 2011 Nepal HTAT are based on core interviews with 60 stakeholders conducted in Nepal in July 2011 as well as relevant legal texts, secondary materials, and statistics that were analyzed at that time. While the assessment reviews the practices pertaining to trafficking in persons primarily on the national level, it also covers three districts selected due to their particular trafficking situations: Makwanpur, Morang, and Kanchanpur. Records of the relevant authorities and a confidential list of individuals interviewed are on file in the Washington, D.C. office of ABA ROLI. ABA ROLI is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project and to serve as peer reviewers for the preliminary draft of the report.
Executive Summary and Recommendations


Nepal has not ratified the UN Trafficking Protocol. However, the UN Trafficking Protocol is the only universal instrument which prescribes a comprehensive set of measures for the prevention, suppression, and punishment of all forms of trafficking in persons. The UN Trafficking Protocol reflects the international community’s commitment to eradicating human trafficking and provides an excellent basis for measuring countries’ de jure and de facto compliance with relevant international standards. The Government of Nepal has made a number of references to the UN Trafficking Protocol in the formulation of its anti-human trafficking policies and programs. Among others, the UN Trafficking Protocol is invoked in the National Plan of Action against Trafficking in Children and Women for Sexual and Labor Exploitation (NPA) and in the Trafficking in Persons (Especially Women and Children) in Nepal: National Report 2008-09.

While the HTAT reviews legislation, policies, and practices regarding trafficking in persons in Nepal on the national level, interviews were held in the following three districts selected due to their particular trafficking situations: Makwanpur (Central Development Region), Morang (Eastern Development Region), and Kanchanpur (Far-Western Development Region).

Scope and Nature of Trafficking in Persons in Nepal

The scope of human trafficking in Nepal is difficult to ascertain due to the lack of reliable statistical information, open and highly congested border with India, and the clandestine nature of the crime. Human trafficking in Nepal occurs both internally and transnationally and manifests itself through many hidden pockets, which have not been explored and addressed thoroughly. It is a highly complex, cross-cutting issue interlinked with poverty, unemployment, gender discrimination, social exclusion, globalization, internal displacement, and foreign migration. Yet, it is often simplified and addressed as a standalone matter rather than being mainstreamed into the country’s leading development plans and policies. The major forms of trafficking in persons in Nepal are associated with the following forms of exploitation: 1) sexual exploitation of Nepali women and girls abroad (particularly in India) and domestically (particularly within the hospitality and entertainment industries); 2) exploitation of Nepali migrant workers (particularly in the Gulf States and Malaysia); 3) exploitation of Nepali children in Indian circuses; 4) worst forms of child

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2 The HTAT assesses Nepal’s compliance with each of the 13 substantive articles of the UN Trafficking Protocol. In addition, the HTAT incorporates essential provisions of the Convention on Transnational Organized Crime, and addresses certain topics that are not covered by either of the two treaties, but are nevertheless necessary for a comprehensive analysis of anti-trafficking reforms in the country. To make the Executive Summary and Recommendations more concise and accessible, the issues covered by this report are grouped into seven categories: 1) Scope and Nature of Trafficking in Persons in Nepal; 2) Legal Framework; 3) Institutional Framework; 4) International Collaboration; 5) Prevention of Trafficking in Persons; 6) Protection; and 7) Prosecution.
labor within Nepal; 5) generational bonded labor and other forms of servitude; and 6) illicit organ transplantation.

Legal Framework

The HTAT Report for Nepal identifies a moderate level of compliance with pertinent international legal standards in terms of the national legal framework. Nepal established the crime of trafficking in persons in 1963 with the adoption of the *Muluki Ain* (General Code). In addition to human trafficking, the *Muluki Ain* criminalizes making another person *Kamara, Kamalari* (subservant), slave, or bonded laborer; the arranging of or causing of forced or child marriage; as well as many acts which tend to be committed within the trafficking context (e.g., kidnapping and rape). All forms of bonded labor are also prohibited under the Bonded Labor (Prohibition) Act of 2002. However, there is a general perception that the law applies only to *Kamaiyas*. As a result, other forms of bonded labor have not been reflected in government plans and policies. The Interim Constitution of 2007 guarantees basic human rights, including freedom from human trafficking, exploitation, forced labor, slavery, and servitude, and the right to constitutional remedy.

Nepal has promulgated a standalone anti-human trafficking law in the form of the Human Trafficking and Transportation (Control) Act of 2007 (HTTCA) and the Human Trafficking and Transportation (Control) Rules of 2008 (HTTCR). The HTTCA is gender-neutral, prohibits both internal and transnational trafficking in persons, and covers both sex and labor exploitation. The law is viewed by most local stakeholders as a strong and progressive piece of legislation. In practice, however, it contains many loopholes and is not effectively implemented. Among others, the HTTCA:

- Fails to address such issues as prevention of human trafficking, witness protection, repatriation of victims, immigration status of foreign victims in Nepal, international counter-human trafficking cooperation, and border measures.

- Does not envision either a compensation fund for human trafficking victims or the possibility to file a civil suit in human trafficking cases. Its compensation provision is flawed and unevenly applied across the country.

- Shifts the burden of proof on the accused, creating a confession-centric system of justice in violation of the internationally recognized rights to a fair trial and presumption of innocence until proven guilty.

- Imposes lower sanctions for labor trafficking than sex trafficking and does not envision the liability of legal persons.

The definition of trafficking in persons contained in the HTTCA partially complies with the UN Trafficking Protocol. Among others, it places undue emphasis on sex trafficking without mentioning labor exploitation, and does not explicitly reference “other forms of sexual exploitation,” “forced labor or services,” “practices similar to slavery,” and “servitude” as forms of exploitation. Furthermore, the law does not include a clause rendering the consent of a trafficking victim irrelevant if any of the means defined in the crime are utilized.

Lastly, a number of offences which are considered trafficking in persons under the UN Trafficking Protocol are covered in other legal acts which prescribe significantly lower penalties than the HTTCA and place the jurisdiction over the crimes in the hands of quasi-judicial bodies.

In 1998, the Government of Nepal developed its first National Plan of Action against Trafficking in Women and Children and their Sexual Exploitation, which was revised in 2001 and reissued as
the National Plan of Action against Trafficking in Children and Women for Sexual and Labor Exploitation (NPA). At the time of the assessment, the NPA was still in force but it was not effectively enforced. A new National Plan of Action against Trafficking in Persons 2011-2016, which is considered a step forward in comparison with the NPA, was awaiting endorsement of the Government.

Nepal has enacted a separate legislative measure, the Act Made to Amend and Consolidate Laws Relating to Foreign Employment (Foreign Employment Act) of 2007, to ensure that the foreign employment business is safe, systematic, and decent. The FEA, which is accompanied by the Foreign Employment Rules of 2008 and a Foreign Employment Policy of 2012, does not differentiate between the formal and informal sectors, such as domestic work. Domestic work is not covered by Nepal’s Labor Act of 1992. However, the Ministry of Labor and Transport Management (MoLTM) has issued a directive recognizing domestic work as a legitimate form of employment. The directive applies to four Gulf States which are common countries of destination for Nepali housemaids: Kuwait, the United Arab Emirates, Saudi Arabia, and Qatar. At the time of the assessment, the MoLTM was in the process of developing a 5-year National Plan of Action on Safe Migration. Notably, neither the HTTCA nor the FEA define trafficking in persons in relation to foreign employment migration. This has led to a critical lack of conceptual clarity among key justice system stakeholders in Nepal about the legal classification of cases involving exploitation of Nepali migrant workers.

Nepali laws governing the rights of the child, i.e., the Children’s Act of 1992, the Children’s Rules of 1995, the National Plan of Action for Children 2004/05 – 2014/15, the Child Labor (Prohibition and Regulation) Act of 2000, and the National Master Plan on Child Labor 2004 – 2014, prohibit acts that are considered the worst forms of child labor under international law. However, in contradiction to international treaties ratified by Nepal, the Child Labor Act defines a child as a person under 16, rather than 18 years of age. The National Master Plan on Child Labor 2004 – 2014 set out an ambitious goal of eliminating the worst forms of child labor by 2009 and all forms of child labor by 2014. At the time of the assessment, that goal remained unmet. The new National Master Plan on Elimination of Child Labor 2011-2020, adopted by the Government after interviews for the HTAT Report were finalized, adjusts this timetable: the worst forms of child labor are to be eradicated by 2016 and all forms of child labor are to be eliminated by 2020.

Recommendations

The HTAT Report for Nepal has identified several loopholes in Nepal’s anti-human trafficking legal framework. To address these gaps, the Government should:

- Ratify and promptly implement the UN Trafficking Protocol.
- Amend the HTTCA, including by: 1) inserting provisions related to the prevention and root causes of human trafficking, demand, liability of legal persons, victim and witness protection, repatriation of victims, immigration status of foreign victims in Nepal, international counter-trafficking cooperation, and border measures; 2) incorporating a clause rendering the consent of a trafficking victim irrelevant if any of the means defined in the crime are utilized; 3) developing a more victim-centric compensation mechanism (e.g., by creating a compensation fund for human trafficking victims); 4) placing the burden of proof on the prosecution; and 5) removing the provision prescribing mandatory detention of the defendant for the duration of the trial.
- Harmonize the jurisdiction over, and penalties for, human trafficking and related crimes envisioned by various legal acts.
- Amend and harmonize the legal definition of a child in accordance with international law.
• Extend the practical application of the Bonded Labor (Prohibition) Act to all forms of bonded labor.

• Define trafficking in persons in relation to foreign employment migration.

• Ratify Convention No. 189 Concerning Decent Work for Domestic Workers, adopted in 2011 by the International Labor Organization, and ensure the human rights of domestic workers under the law.

Institutional Framework

The focal agency responsible for formulating and implementing laws, plans, and policies pertaining to trafficking in persons is the Ministry of Women, Children and Social Welfare (MoWCSW), which oversees Women Development Offices in 75 districts. Despite its potential to play a leading role in Nepal’s counter-trafficking efforts, the MoWCSW suffers from a critical lack of resources and does not coordinate its anti-human trafficking activities with other institutions.

The Government of Nepal has formed the National and District Coordination Committees against Trafficking in Persons under the MoWCSW as well as broad-based, multisectoral National Task Force against Trafficking in Persons, District Task Forces in 26 districts, as well as Village and Municipality Task Forces. In practice, the Coordination Committees are not fully institutionalized or operational and the Task Forces are principally inactive.

Nepal’s National Human Rights Commission (NHRC) has also a role to play in combating trafficking in persons. However, its mandate is not fully defined and there is a lack of conceptual clarity about the actions it could undertake to assist with anti-human trafficking investigations and complement the responsibilities of the traditional institutions administering justice.

The Office of the Special Rapporteur on Trafficking, which operates within the structure of the NHRC, is tasked with monitoring the incidence of trafficking in persons in Nepal and publishing annual reports on the phenomenon. Similarly to the NHRC, the capacity of the Special Rapporteur to effectively influence Nepal’s counter-trafficking efforts is rather weak due to the lack of sufficient financial and human resources.

The MoLTM has a responsibility to curtail internal and transnational trafficking in persons for the purposes of labor exploitation. The MoLTM’s foreign employment-related functions are handled by the Department of Foreign Employment and the Foreign Employment Promotion Board. In addition, the GoN appoints Labor Attachés in countries which receive 5,000 or more Nepali migrant workers.

The Government of Nepal and all major political parties have expressed commitment to combating trafficking in persons in Nepal. While the governmental response to the phenomenon is slowly improving, it is still considered by most stakeholders as minimal. The acute lack of resources, insufficient collaboration among the line ministries and agencies, and lack of adequate expertise of some key officials are cited as the main factors impacting the Government’s capacity to suppress human trafficking in the country. Therefore, the Government is reported to be highly dependent on civil society in discharging its obligations related to the prevention of trafficking in persons and the rescue and rehabilitation of victims.

Nepal has an extensive non-governmental anti-human trafficking infrastructure, encompassing local civil society organizations (CSOs), intergovernmental organizations, international non-governmental organizations, international donors, technical assistance providers, the academia, and individual experts. Most CSOs belong to at least one of the three major national anti-human trafficking networks: the National Network against Girls Trafficking, the Human Rights and Anti-
 Trafficking Network, and the Alliance against Trafficking in Women and Children in Nepal. Furthermore, many local CSOs and human rights networks, focusing on such issues as safe migration and the rights of women, children, and the indigent, have incorporated the issue of trafficking in persons into their broader institutional objectives.

Most CSOs do not receive any assistance from the Government and must rely on private and international sources of funding. Furthermore, Nepal does not have a formal victim referral system or a well-developed database of institutions involved in combating trafficking in persons. Consequently, programmatic overlap and duplication of assistance efforts are quite common.

**Recommendations**

The HTAT Report for Nepal has identified a number of challenges surrounding the work of key governmental agencies responsible for designing and implementing anti-human trafficking laws and policies. To enhance its role in suppressing human trafficking in Nepal, the Government should:

- Strengthen the financial, operational, technical, and substantive capacity of the MoWCSW, the MoLT, the National and District Coordination Committees against Trafficking in Persons, and the Office of the Special Rapporteur on Trafficking.
- Define the role of the NHRC in anti-human trafficking investigations.
- Develop anti-human trafficking standard operating procedures (SOPs) for key governmental agencies.
- Create a national (human trafficking) victim referral system.
- Ensure the accountability of governmental officials and agents for: 1) not discharging their anti-human trafficking responsibilities; and 2) facilitating the commission of trafficking in persons, e.g., through the acts of corruption.
- Provide financial and technical support to, and engage in regular dialog with, nongovernmental organizations involved in anti-human trafficking work.

**International Collaboration**

The HTTCA fails to create a legal requirement for the Government to adopt policies or programs aimed at facilitating bilateral, cross-border, or multilateral cooperation and information exchange in matters related to trafficking in persons. First, Nepal does not have an institutionalized mechanism for mutual legal assistance in criminal matters or bilateral law enforcement cooperation. Second, formal extradition mechanisms are very seldom utilized to extradite alleged or convicted traffickers. Third, there is no written procedure or official timeframe for the repatriation of trafficking victims or the verification of travel and identity documents issued or purported to have been issued in the name of the Government of Nepal.

With this said, the Government is committed to strengthening trans-border cooperation in order to advance the anti-human trafficking agenda: Nepal is a party to the SAARC Convention on Trafficking in Women and Children, it has concluded four bilateral labor agreements with Qatar, Bahrain, South Korea, and UAE, and it has signed a Memorandum of Understanding regarding training of industrial workers with Japan. At the time of the assessment, the Government was in the process of negotiating the terms of bilateral labor agreements with Malaysia, Israel, and Lebanon as well as a mutual legal assistance agreement and a new extradition treaty with India, which will replace the highly ineffective India-Nepal Extradition Treaty of 1953. Furthermore, the
Government has a standalone legislation regulating the extradition procedure and is finalizing its first mutual legal assistance legislation. Notably, Nepali and Indian law enforcement officers collaborate with one another in an informal manner at the local level. At times, Nepal cooperates with other countries through the Interpol.

Recommendations

The HTAT Report for Nepal has determined that adequate mechanisms for bilateral, regional, and multinational cooperation aimed at combating trafficking in persons are either non-existent or non-functional. To facilitate international anti-human trafficking collaboration, the Government should:

- Conclude and effectively implement bilateral extradition, mutual legal assistance, and repatriation agreements, particularly with India.
- Conclude and effectively implement bilateral labor agreements with all countries that receive a specified number of Nepali migrant workers.
- Routinely exchange information and evidence in anti-human trafficking cases with other countries.

Prevention of Trafficking in Persons

Positive Developments

- Awareness raising, advocacy, social mobilization as well as policy, research, and institutional development are among the primary objectives of the NPA.
- The Supreme Court has issued a directive ordering the Government to regulate the operation of cabin restaurants, dance bars, and massage parlors, and released the Guidelines on Prevention of Sexual Harassment.
- The Child Labor Act has created a Child Labor Prevention Committee and Child Labor Prevention Fund. The law imposes a number of requirements on establishments which plan to employ children.
- Nepal observes the National Day against Human Trafficking and the International Migrants Day on an annual basis.
- Non-governmental organizations implement a variety of preventative measures in the form of public service announcements, radio programs, community meetings, street dramas, door-to-door and peer education, income generation projects, and residential trainings.
- The Government has made a high-level commitment to protect Nepali citizens working abroad from trafficking and exploitation. Correspondingly, the FEA contains a number of provisions aimed at ensuring that foreign employment is safe, managed well, and decent. There is also a growing number of governmental and non-governmental projects focusing on safe migration and foreign employment. For example, the Government has established Migration Resource (Information) Centers and started disseminating information regarding foreign employment and migration among the general public.
- In the past 10 – 15 years, the Government as well as various organizations and research institutions have undertaken a number of studies exploring various aspects of modern-
day slavery in Nepal. Among others, the NHRC publishes annual National Reports on Trafficking in Persons (Especially Women and Children) in Nepal.

- A computerized monitoring and tracking system for human trafficking cases has been developed for the Nepal Police.
- There is quite extensive coverage of trafficking in persons in the media.

**Challenges**

- There is a critical lack of conceptual clarity about human trafficking both among the general population and the justice system actors.
- The Supreme Court’s Guidelines on Prevention of Sexual Harassment do not receive much attention and are not respected in practice.
- The Government does not make sufficient effort to involve the media in the prevention of human trafficking. Governmental prevention programs are viewed as largely invisible and insufficient. Most of them are organized on a small scale by Women Development Officers, the NHRC, and the Special Rapporteur on Trafficking.
- Most non-governmental organizations which implement prevention campaigns are located in municipalities and do not have sufficient funds to travel to remote, high-risk locations.
- Informal migration sector is flourishing due to the high cost of documented labor migration, inaccessibility of services offered by the Government, lack of awareness, insufficient regulation protecting female migrants, and thousands of local, unlicensed brokers targeting the most vulnerable sectors of the society.
- The Government has not met its goal of eliminating the worst forms of child labor by 2009 set out in the National Master Plan on Child Labor 2004 – 2014. At the time of the assessment, there were no specific government programs or initiatives to combat child prostitution, child pornography, and other forms of child sexual exploitation.
- Neither sufficient funding nor a sound research methodology exist to collect reliable statistical information on the scope of trafficking in persons in Nepal or on the level of public awareness about the phenomenon. The NHRC’s National Reports on Trafficking in Persons (Especially Women and Children) in Nepal are criticized for insufficient quality and the lack of disaggregated data.
- The Government has not implemented any pinpointed legal reforms or programs that address the demand or structural determinants and root causes of trafficking in persons. The Government has also fell short of effectively linking human trafficking with the advancement of socio-economic rights and mainstreaming the anti-human trafficking efforts into its national development plans and agendas.
- With the exception of machine-readable passports, Nepali travel and identity documents are not secure and can be easily falsified.
- There are no specific provisions related to the revocation of visas of persons implicated in the commission of trafficking in persons.
**Recommendations**

To address the prevention-related challenges identified by the HTAT Report for Nepal, the Government should:

- Commit more financial and human resources to preventing trafficking in persons and eliminating the worst forms of child labor.
- Develop more robust national and local prevention campaigns in cooperation with civil society, the media, and the private sector.
- Legislate and enforce the Supreme Court’s Guidelines on Prevention of Sexual Harassment.
- Enforce legal provisions pertaining to the registration and operation of labor brokers, and penalize those brokers who do not comply.
- Offer orientation training to prospective migrants in all development regions and subsequently, in all districts.
- Mainstream the anti-human trafficking efforts into national development agendas.
- Enhance the security and control of identity and travel documents.
- Promote the registration of births, marriages, and other personal events.

**Protection**

**Positive Developments**

- The Government has made a commitment to develop and strengthen intervention mechanisms aimed at protecting trafficking victims and upholding their human rights.
- The HTTCA protects the trafficking victims’ privacy and provides for the establishment of rehabilitation centers and a rehabilitation fund.
- The HTTCA prescribes *in camera* court proceedings in human trafficking cases and guarantees the right of witnesses and persons who report the crime and/or testify in court to request police protection against retaliation.
- Under the HTTCA, a trafficking victim has the right to be represented by a separate legal professional during court hearings. Reportedly, an increasing number of trafficking victims in Nepal receive legal assistance from non-governmental organizations and bar associations.
- The Government has made a commitment to develop and strengthen the institutional capacity of legal groups and associations of lawyers whose work focuses on women’s and children’s rights.
• A victim of trafficking in persons is entitled to compensation upon conviction of the defendant. Judges routinely award compensation to trafficking victims.

• The Government has adopted a number of legislative and institutional measures to protect the rights of former bonded laborers and migrant workers who endure ill-treatment as a result of foreign employment.

• The Government has made a commitment to abolish child labor and implement programs aimed at protecting and rehabilitating child laborers.

• The HTTCA mandates the Government to manage the rescue of any Nepali citizen sold in a foreign country. The repatriation must be voluntary and can be covered by the rehabilitation fund.

• Nepali police forces and diplomatic missions provide assistance to non-governmental organizations which conduct rescue and repatriation operations for victims of human trafficking.

• Reportedly, the Government refrains from involuntary or arbitrary expulsion of foreigners who claim to be victims of human trafficking.

**Challenges**

• At the time of the assessment, a comprehensive, well-functioning witness protection mechanism for victims and witnesses of human trafficking was non-existent.

• The Government does not have an official victim identification mechanism, screening protocol, or withdrawal procedure. Most trafficking victims are identified and rescued by non-governmental organizations in an informal manner.

• Nepali law does not address the issue of non-criminalization of trafficking victims. Many victims are arrested and charged for indecent behavior under the Some Public Crime Act.

• With the exception of subsidizing seven rehabilitation centers, the Government’s actions aimed at protecting and assisting trafficking victims are minimal. The resources appropriated by the Government for the purposes of assistance to and protection of trafficking victims are scarce. The case management and referral services are weak and not standardized. Neither the National Quality of Care Policy nor a comprehensive operational manual for rehabilitation centers have been adopted. As a result, most essential services are provided to trafficking victims by non-governmental organizations and bar associations.

• Nepal suffers from acute lack of professional social workers capable of providing sophisticated and holistic services to trafficking victims.

• Victims of trafficking in persons encounter multiple barriers to their access to justice, including low legal awareness, high costs of legal proceedings, and ineffective protection from threats and intimidation.

• The trafficking victims’ right to privacy is not fully respected in practice, principally due to insufficient court infrastructure and irresponsible media reporting.

• The Government does not provide trafficking victims with any financial support or other allowances during criminal proceedings. Funding allocated for specialized anti-human trafficking legal aid programs is insufficient.
• Compensation amounts are almost never recovered from traffickers.

• Legislative and institutional measures aimed at protecting the rights of migrant workers and former bonded laborers are not adequately enforced due to the lack of resources and inter-agency coordination.

• The Government's response to the child labor phenomenon is inadequate. The governmental child protection system is not functioning well. The law envisions penalties for engaging children in the worst forms of child labor but does not mention compensation for damages.

• Nepal has neither entered into any regional or bilateral repatriation agreements nor adopted any legal provisions or plans governing the safe and orderly repatriation of trafficking victims. The Government relies almost entirely on non-governmental organizations to initiate, plan, and execute rescue operations. As a result, victims of trafficking in persons are repatriated to and from Nepal in an informal manner.

Recommendations

To address the protection-related challenges identified by the HTAT Report for Nepal, the Government should:

• Institute fully operational protocols for victim identification, screening, rescue, repatriation, as well as victim and witness protection.

• Refrain from arresting and criminalizing human trafficking victims.

• Enhance victims’ access to justice and essential services.

• Commit more financial resources to the protection of human trafficking victims and ensure that rehabilitation centers receive timely and sufficient governmental subsidies.

• Develop and adopt a comprehensive National Quality of Care Policy and an operational manual for rehabilitation centers.

• Invest in creating a cadre of professional social workers capable of providing holistic services to human trafficking victims, including children.

• Contemplate the creation of a victim compensation fund and/or the possibility to file a civil suit in human trafficking cases.

• Promote and enforce the rights of migrant workers, former bonded laborers, and child laborers.

Prosecution

Positive Developments

• Nepali laws prohibit and criminalize trafficking in persons and all forms of exploitation, including bonded labor, servitude, and worst forms of child labor.
The HTTCA creates territorial jurisdiction over the crime of human trafficking committed within Nepal and extraterritorial jurisdiction over crimes committed against Nepali citizens abroad.

Trafficking in persons is considered one of the gravest crimes in Nepal. Many offenders receive the maximum penalty prescribed by the law.

The Government has established the Central Investigation Bureau to investigate and prosecute organized criminal groups. There are plans to form a specialized human trafficking investigative unit within that Bureau.

Many non-governmental organizations offer anti-human trafficking trainings for law enforcement and justice sector officials.

Nepal has taken steps towards improving its anti-money laundering regime: it has adopted the Money Laundering Prevention Act, approved a National Strategy, and formed an inter-agency Coordination Committee and a Financial Information Unit within the Nepal Rastra Bank.

The Prevention of Corruption Act includes a broad definition of corruption, prescribes adequate penalties, and creates a National Vigilance Center.

**Challenges**

Nepal does not have a specialized counter-trafficking investigative or prosecutorial unit.

The Government has not developed a strategy or curriculum for training law enforcement and justice system officials on trafficking in persons.

Cross-border trafficking for the purpose of labor exploitation is often wrongfully charged under the FEA.

The Nepal Police do not have a universal protocol for interviewing victims of crimes, do not create an environment that is duly supportive for victims of trafficking in persons, and refuse to register human trafficking cases. As a result, trafficking victims are reluctant to report the crime to the police and the level of reporting remains low.

Investigation of human trafficking, particularly in cases involving transnational and/or organized crime, is viewed as ineffective, highly politicized, and prone to corruption.

Evidence in most human trafficking cases is circumstantial and weak.

The burden of proof in human trafficking cases lies on the defendant creating a confession-centric system of prosecution in violation of international law.

Conviction rates in human trafficking cases are lower than in other criminal cases.

Although confiscation of assets is routinely ordered by judges upon conviction in human trafficking cases, the majority of confiscation orders remain unenforced.

The laws of Nepal do not define an organized criminal group and do not envision separate or increased penalties for trafficking crimes committed in an organized manner. The Nepal Police are not well equipped to deal with organized crimes effectively.
• The multinational Financial Action Task Force continues to consider Nepal as a jurisdiction with strategic anti-money laundering deficiencies. The rate of anti-money laundering prosecutions remains low. Thus far, neither of the money laundering cases tried in Nepal has been related to trafficking in persons.

• Prosecution of corruption by the Commission for the Investigation of Abuse of Authority is rare. Corruption remains prevalent within the justice system which significantly affects the Government’s efforts to investigate and prosecute trafficking in persons.

• Obstruction of justice in Nepal is a commonplace. The penalty prescribed for obstruction of justice by the HTTCA is minimal and in practice, the offense remains unpunished.

Recommendations

To address the prosecution-related challenges identified by the HTAT Report for Nepal, the Government should:

• Conduct mandatory, multisectoral trainings on trafficking in persons for justice system actors, emphasizing the victim-centric approach to the investigation, prosecution, and adjudication of human trafficking as well as the similarities and differences between human trafficking and labor violations envisioned by the FEA.

• Create and adopt a universal protocol for interviewing human trafficking victims.

• Strengthen anti-human trafficking investigations, for example by introducing more innovative sources of evidence.

• Create a legal definition of an organized criminal group and increase penalties for human trafficking crimes committed in an organized manner.

• Establish a specialized counter-human trafficking investigative and/or prosecutorial unit.

• Investigate and prosecute obstruction of justice, corruption, and money laundering committed along with human trafficking.

• Ensure proper and timely enforcement of judgments.
Nepal Background

Nepal is a small country in Southern Asia, situated between the Republic of India [hereinafter India] and People’s Republic of China [hereinafter China]. With a population of approximately 29.8 million, Nepal is home to a vast array of multi-cultural, multi-lingual, multi-ethnic, and multi-religious communities. Caste, ethnicity, religion, and gender are the basic elements of the social mosaic of Nepal. The main ethnic groups include: Chhettri (15.5%), Brahman-Hill (12.5%), Magar (7%), Tharu (6.6%), Tamang (5.5%), Newar (5.4%), Muslim (4.2%), Kami (3.9%), and Yadav (3.9%). The literacy rate is 53.7% for those over 6 and 48.6% for those over 25. There is a large divide between literacy rates among adult males (62.7%) and adult females (34.9%). The literacy gap increases with age because many people do not complete their education.

Nepal is one of the least developed countries in the world, with approximately 25% of its population living below the poverty line. With a Gross Domestic Product [hereinafter GDP] per capita of USD 490, Nepal remains the poorest country in South Asia and the seventeenth poorest in the world. Nepal’s Human Development Index [hereinafter HDI] is 0.458, which gives the country a rank of 157 out of 187 countries with comparable data. Agriculture is the mainstay of the economy, accounting for 33% of Nepal’s GDP, employing 75% of the work force, and providing livelihood for three-fourths of the population. Major crops include rice, maize, wheat, potato, pulses, oilseed, sugarcane, tobacco, cotton, jute, tea, cardamom, ginger, and various fruits and vegetables. Industrial activity employs 7% of the labor force and involves tourism, the processing of agricultural products, and the manufacturing of carpets, textiles, cigarettes, cement, and brick. 18% of the labor force is employed in services. The unemployment rate in Nepal is debatable. The official rate is 2.1% but some sources estimate it to be much higher.

Under the Interim Constitution of 2007, Nepal is a unicameral, multi-party democracy. The President is a head of state. The executive power is exercised by the Council of Ministers

POPULATION & LITERACY IN THE REGIONS VISITED BY THE ASSESSMENT TEAM

<table>
<thead>
<tr>
<th>Population</th>
<th>Nepal 29.8 million</th>
<th>Eastern 5.3 million</th>
<th>Central 8 million</th>
<th>Far Western 2.7 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literacy Rate*</td>
<td>48.6%</td>
<td>57.2%</td>
<td>47.7%</td>
<td>54.1%</td>
</tr>
</tbody>
</table>

* People over 15 years old.


HDI is a a composite statistic used to rank countries by level of human development using such indicators as life expectancy, literacy, educational attainment, income, and standard of living. HDI is featured in the HUMAN DEVELOPMENT REPORT – an independent publication commissioned by UNDP.

Nepal uses the “relaxed” definition of unemployment in preference to the “strict” definition (those who are looking for work) outlined in international standards.
chaired by the Prime Minister. The President is elected by Nepal’s transitional legislative body – the Constituent Assembly – which was instituted under the Interim Constitution for the purpose of adopting a new Constitution of Nepal, meant to outline Nepal’s federal structure. At the time of the assessment, the Constituent Assembly exercised the powers of the Parliament.6

Currently, Nepal is divided into 75 administrative districts headed by Chief District Officers [hereinafter CDOs] who are responsible for maintaining law and order and coordinating activities of the local authorities with the relevant agencies of the GoN. The districts are grouped into five development regions (Eastern, Central, Western, Mid-Western, and Far-Western) in order to promote equal distribution of the nation’s resources and development activities. Each district is divided into grassroots administrative units, i.e., municipalities and Village Development Committees [hereinafter VDCs]. There are a total of 58 municipalities and 3,915 VDCs in Nepal.

The administration of justice is vested in the Supreme Court, 16 appellate courts, 75 district courts, and several specialized tribunals, such as the Labor Court and the Foreign Employment Tribunal. In addition, certain administrative officials have quasi-judicial powers. The vast majority of district courts have a single judge who has the authority to adjudicate both civil and criminal cases.

Scope and Nature of Trafficking in Persons in Nepal

The scope of human trafficking in Nepal is difficult to ascertain due to the lack of reliable statistical information, open and highly congested border with India, and the clandestine nature of the crime. Neither sufficient funding nor sound research methodologies exist to collect relevant data at the national and local levels.7 As a result, the crime is underreported or misreported and unconfirmed information is being replicated in various studies, which frustrates the ability of stakeholders to devise, fund, and implement counter-trafficking strategies. For example, Nepal has become internationally known as a prime source country in South Asia for trafficking girls into the sex industry. However, the extent of this phenomenon is unclear because of the lack of comprehensive data. Similarly, in 1998, the Ministry of Women, Children and Social Welfare [hereinafter MoWCSW] identified 26 districts that are particularly prone to trafficking in persons.8 Data gathering for the purpose of making this determination was not systematic and focused primarily on investigation and prosecution rates rather than on a set of well-developed indicators. The determinations are frequently invoked even though the dimensions and nature of trafficking in persons have changed significantly in recent years. For instance, the list of trafficking-prone districts includes Kathmandu, Makwanpur, and Morang but not Kanchanpur, although Kanchanpur is now widely considered as one of the emerging high-risk areas.

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6 On May 27, 2012, two weeks before this report was published, the Constituent Assembly was dissolved following the failure to promulgate a new constitution by a set deadline. The GoN announced new elections to be held on November 22, 2012.

7 The National Human Rights Commission [hereinafter NHRC] has roughly estimated that 5,210 women and children were trafficked or attempted to be trafficked in the FY 2009-10. Of them, 1609 were intercepted from different boarder points, 207 were rescued within the country from sexual and labor exploitation, 112 were repatriated from the Gulf States and India, and 365 were provided rehabilitation services. The estimate is based on service statistics provided by various governmental and non-governmental organizations. NHRC, TRAFFICKING IN PERSONS (ESPECIALLY WOMEN AND CHILDREN) IN NEPAL: NATIONAL REPORT 2009-10 at ii (2011) [hereinafter NATIONAL TIP REPORT 2011].

8 The districts identified as trafficking-prone are: Nuwakot, Dhading, Sindhupalchowk, Kailali, Kavrepalanchowk, Makawanpur, Gorkha, Banke, Sindhuli, Udayapur, Rasuwa, Nawalparasi, Jhapa, Ramechhap, Sarlahi, Mahottari, Dhanusa, Chitawan, Lalitpur, Kaski, Morang, Sunsari, Rupandehi, Parsa, Kathmandu, and Dang.
Nepal is viewed primarily as a source country for victims of trafficking in persons. In practice, human trafficking in Nepal occurs both internally and transnationally and manifests itself through many hidden pockets, which must be explored and addressed thoroughly. It is a highly complex, cross-cutting issue interlinked with poverty, unemployment, gender discrimination, social exclusion, globalization, internal displacement, and foreign migration. Yet, it is often simplified and addressed as a standalone matter rather than being mainstreamed into the country’s leading development plans and policies. In addition, trafficking in persons continues to be viewed primarily as a crime against law and order, rather than a crime against a person involving serious human rights violations. Consequently, victim-centric perspectives tend to be insufficiently reflected in anti-human trafficking policies and strategies.

Traditionally, trafficking in persons in Nepal was perceived as an issue exclusively related to female victims of sexual exploitation in Indian brothels. While this problem still exists and often overshadows other forms of exploitation, a significant paradigm shift in human trafficking patterns has occurred in recent years in the country. The modern trend of foreign labor migration has resulted in a rise in the exploitation of Nepali migrants abroad. These migrants, both female and male, endure physical, mental, and sexual abuse and have their freedoms and rights curtailed. Internal adult exploitation is declining as a result of the growing strength of trade unions, but adult bonded labor still persists. Patterns of rural-urban migration and the growth of the transportation, hospitality, and entertainment industries – including proliferation of cabin restaurants, dance bars, and massage parlors, which frequently serve as sex access points in Kathmandu and other urban areas – has resulted in a rise in child labor and exploitation. In addition, organ trafficking is becoming more and more prevalent.

**Major Forms of Trafficking in Persons in Nepal**

Cases of human trafficking in Nepal occur in many areas of the sex sector, in the entertainment, hospitality, brick kiln, and garment industries, in agricultural and domestic work, street begging, and transplantation of organs.

**Sexual Exploitation**

Various sources estimate that 5,000 – 15,000 women and girls are trafficked annually to India for the purposes of commercial sexual exploitation. See, e.g., NHRC, TRAFFICKING IN PERSONS (ESPECIALLY WOMEN AND CHILDREN) IN NEPAL: NATIONAL REPORT 2008-09 at 21 (2010) [hereinafter NATIONAL TIP REPORT 2010]; Rupa Rai, Trafficking on the Rise in Nepal, UCA\NEWS.COM, March 4, 2011. These women and girls often are victimized by debt bondage, rape, abuse, enslavement, intimidation, and deplorable work and living conditions. Indian men allegedly find Nepali women more attractive because they are “nicer, more beautiful, have lighter complexion, and more straightforward pricing system.” Reportedly, brothels with Nepali women and girls are more profitable.

Interviews revealed that there is also a growing trend of trafficking girls and women to the entertainment industry in China, including Tibet and Hong Kong, for sexual exploitation. Furthermore, media report many cases of Nepali women and girls being trafficked to South Africa as dancers and to South Korea through false marriages to South Korean men. Sex trafficking to Japan and the Gulf States is also being mentioned. Information on these emerging trafficking schemes is, however, very scarce.

Until the 1990s, sex work in Nepal was very informal: there were sex workers and family-owned brothels but there was no sex industry. Presently, the internal sex market is flourishing within the entertainment industry, particularly in large municipalities such as Kathmandu, Pokhara, and Biratnagar. One interviewee indicated that 5,000-7,000 people enter the internal sex industry per year and 65% of adult sex workers were brought into the industry as children. Victims of sexual
and labor exploitation are often moved from one establishment to another to avoid tracing and detection.

Two studies ordered by the Supreme Court and conducted by the GoN in 2008\(^9\) uncovered that there were nearly 1,200 massage parlors, dance bars, and cabin restaurants in Kathmandu alone, employing nearly 50,000 workers out of which 80% were women aged 12 to 30. Presently, over 50,000 women and girls work in such establishments around the country. Interviewees stated that approximately 50% of them suffer from some form of exploitation, including 9,000-15,000 of them who are underage. They are compelled to work long hours, often at night, in unhealthy and hazardous conditions; they endure verbal, physical, and mental abuse; they are forced to smoke, consume alcohol, and perform sexual acts with their clients; and they do not receive regular remuneration or benefits. Many restaurants are located close to guest houses, which serve as additional sex access points. Most of these establishments are noisy, congested, and lack access to fresh air, clean water, and adequate light. They do not have proper kitchens, dining halls, and arrangements for sanitation, smoke emission, and waste disposal. In addition, they are decorated in a provocative manner with pornographic images displayed on the walls of non-transparent cabins.

The GoN studies and research conducted by non-governmental organizations [hereinafter NGOs] also revealed that massage parlors, dance bars, and cabin restaurants operate in an arbitrary and unregulated manner. These establishments do not function under any specific law and there is no provision requiring their registration, monitoring, or inspection. Some have been registered as regular restaurants under the Industrial Enterprises Act; some have obtained licenses under the Local Self-Governance Act; some have been registered as resorts under the Tourism Act; and others have obtained no business permits at all. See Advocate Prakash Mani Sharma, et al. v. Government of Nepal, Supreme Court (Directive Order No. 2822, 2008) [hereinafter Sharma, et al. v. GoN]; see also ACTIONAID NEPAL, PLIGHT OF CABIN KEEPERS (2004); BHARAT RAJ PANTA, WOMEN EXPLOITATION IN THE DANCE AND CABIN RESTAURANTS (A CASE STUDY OF KATHMANDU CITY) (2004); TERRE DES HOMMES [hereinafter TDH], TRAFFICKING AND EXPLOITATION IN THE ENTERTAINMENT AND SEX INDUSTRIES IN NEPAL: A HANDBOOK FOR DECISION-MAKERS (2010). The Department of Cottage and Small Industries under the Ministry of Industry confirmed that these establishments are operating illegally. Interviewees stressed that these practices still exist despite the Supreme Court’s directive in 2008 ordering the GoN to regulate the industry. See Legal Context below.

The subject of the sex tourism industry in Nepal is unspoken. According to interviewees, most clients who engage in commercial sexual services in the country are Nepali nationals. However, studies indicate that Nepal is developing as a sex tourism destination for India and – to a lesser extent – for Bangladesh. TDH, TRAFFICKING AND EXPLOITATION IN THE ENTERTAINMENT AND SEX INDUSTRIES IN NEPAL 42 (2010).

**Foreign Labor Exploitation**

The fastest growing trend of human trafficking in Nepal is associated with foreign labor migration.

The GoN is highly dependent on remittances, which constitute the second largest contributor to the economy after agriculture. It is estimated that remittances flowing to Nepal through formal channels amount to 20-23% of the GDP. This figure does not include assets brought to Nepal through informal channels or profit from foreign goods sold in Nepal.

According to interviewees, approximately 2.3 million Nepali citizens leave the country each year (i.e., over 2,000 per day) to destinations other than India. In 2011 alone, about 354,000 documented migrant workers left the country. Only 2.8% of labor permits were awarded to

\(^9\) The studies were conducted by committees under the Joint Secretary of the MoWCSW and the CDO of Kathmandu.
women. Reportedly, 95% of female migrants are undocumented. Most of them are domestic workers. 75-95% of Nepali migrants work in the Gulf States (particularly Kuwait, the UAE, Saudi Arabia, and Qatar) and Malaysia. Other popular countries of destination include Israel, Japan, China (Hong Kong), and Lebanon. The main hubs for Nepali migrant workers include Dhanusa district headquartered in Janakpur, Mahottari district, and Pokhara in the Kaski district. See VERITÉ, LABOR BROKERS AND TRAFFICKING OF NEPALESE MIGRANT WORKERS (2012) [hereinafter VERITÉ REPORT]. Most Nepali labor migrants are employed in low and semi-skilled positions, e.g., as drivers and construction, garment, and domestic workers. Notably, many destination countries do not respect international labor standards and do not extend national labor protections to domestic work. In addition, the immigration sponsorship system (Kafala) and guest worker programs in many Middle Eastern countries, much like those elsewhere, tie workers’ immigration status to employers. Although the policy may be rational from a government standpoint, it results in employers wielding immense control over their employees and places workers at higher risk of exploitation or inhibits them from reporting abuses. For example, in Saudi Arabia, migrant workers must obtain consent from the employer to change jobs or get an exit visa to leave the country. In Kuwait, law enforcement officers arrest and deport migrant workers who have left their employment without permission, even if they had endured mistreatment or violence. See, e.g., HUMAN RIGHTS WATCH, RIGHTS ON THE LINE 2-3, 12-13 (2010).

In Nepal, labor brokers operate on three levels: recruiting (manpower) agencies, district or regional-level agents, and village or local agents. See VERITÉ REPORT. At the time of this assessment, there were approximately 799 licensed recruiting agencies, all in urban areas, organized under an umbrella organization: the Foreign Employment Association Nepal, which establishes industry standards, monitors practices, and conducts government and policy advocacy. There is only one licensed individual broker in Nepal, meaning all others operate illegally. Recruiting agencies have no interest in registering village-level agents because they work for many competing agencies. See VERITÉ REPORT. The licensees are overseen by the Department of Foreign Employment under the Ministry of Labor and Transport Management [hereinafter MoLTM]. Reportedly, certified outsourcing agencies are rarely implicated in trafficking in persons. In fact, some of them refuse to work with female migrants out of fear of being accused of human trafficking. This puts women who migrate for work in a position of vulnerability because they are compelled to rely on illegal agents.

The foreign employment business is dominated by local, unlicensed brokers who fuel irregular migration through India and augment the trafficking phenomenon. Many prospective migrants choose these informal channels because they are unaware of the legal requirements and/or the risks associated with foreign employment, because they are unable to afford the cost of the formal documentation process prescribed by the law, and because brokers, who are often members of the community, are more accessible than licensed recruiting agencies.

Interviewees estimated that 10% of migrant workers from Nepal experience exploitation abroad. Women, domestic workers, and undocumented migrants are particularly vulnerable, but documented female laborers and 1 out of 30-40 male laborers also find themselves in exploitative situations. According to the Nepal Migration Survey, published in 2009, 40% of migrant workers reported excessive work, 30% reported abuse, and 63% were not allowed to contact family. NATIONAL TIP REPORT 2011 at vii; see also NEPAL INSTITUTE OF DEVELOPMENT STUDIES [hereinafter NIDS], NEPAL MIGRATION SURVEY (2009).

Exploitation involves lack of regular and/or overtime pay, vacation, and holiday leave; physical, psychological, and sexual abuse; enslavement; employment in a different position than initially promised; withholding of passports; breach of contract; limited food supply; restrictions on contacting family or friends; and deplorable working conditions. These abuses are coupled with restrictions on the freedom to organize as well as a lack of security of tenure and grievance

In June 2012, shortly before this report was published, the assessment team learned that there were 12 licensed individual brokers in Nepal.
mechanisms in the countries of destination. Many migrants fall victim to debt bondage and are forced to repay the supposedly hefty fees their employers paid to the recruiting agencies before receiving any wages. Others are bound to repay loans obtained from money lenders to bear the onerous costs of recruitment. These loans have usually very high interest rates, reaching more than 30% annually, and tend to take the form of home or land equity loans. Consequently, migrant workers who are unable to repay their loans often loose their property upon return. It is also important to note that most employment contracts are written in English and little or no effort is made to explain the written terms to the workers. Furthermore, some brokers produce two contracts for the same worker to circumvent minimum wage requirements specified by the law. One contract is given to the worker and the other one to the Department of Foreign Employment for the purposes of labor certification. See Act Made to Amend and Consolidate Laws Relating to Foreign Employment (Foreign Employment Act) (adopted Sept. 5, 2007 by Legislature - Parliament) [hereinafter FEA] arts. 15 (h)-(g), 23; see also VERITÉ REPORT.

The nexus between foreign labor migration and trafficking in persons has not been fully recognized in Nepal, either in law or in practice, although studies exist that explore the links. See, e.g., NATIONAL TIP REPORT 2011 at 33-56. Therefore, migrant workers, particularly undocumented, face significant challenges with access to justice and essential services when they experience exploitation abroad.

**Bonded Labor and Servitude**

For centuries, millions of people in Nepal have been affected by generational bonded labor and other forms of servitude under such systems as *Kamaiya, Haliya, Bhude, Kamalari,* 11 *Haruwa-Charuwa, Baalighare (Khalo), Dom,* 12 *Pode, Badi,* and *Deuki.* Debt bondage is predominant in traditional agriculture and domestic work, but is also present in garment and brick kiln industries. The practice is particularly prevalent in the Far Western Region (including Kanchanpur), which has the highest concentration of big land holdings.

- The *Kamaiya* system was a form of descent slavery: generation after generation, *Kamaiyas* were enslaved, bought and sold, and forced to work for their creditors in deplorable conditions. Because they received a minimum or no wage, they were virtually unable to repay their debts, which were inevitably passed onto their children and grandchildren.

- The *Haliya* system was a less severe form of agricultural debt bondage. 13 The *Haliyas* could not be sold, they were allowed to leave the property of the creditor, and they usually received in-kind payments. They could also pursue other forms of employment in their free time. However, they had to make themselves available to work for the creditor upon request until their debt and incurred interest were fully repaid.

- The *Bhude* system, practiced in the district of Bajura, was similar to *Haliya;* however, the *Bhudes* received a small piece of land for their own use.

- The *Haruwa-Charuwa* system is a traditional agricultural practice similar to slavery. *Haruwas* are men and boys whose main job is to plough. The term *Charuwa* refers to boys and girls who work as herders. The *Haruwas* and *Charuwas* serve for, and are

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11 The *Kamalari* system (bonded girl child labor) is described in the section on Trafficking and Exploitation of Children.

12 Most *Haliya, Haruwa, Charuwa, Baalighare,* and *Dom* belong to *Dalit* communities.

13 Notably, most *Kamaiyas* were from the *Tharu* community whereas *Haliyas* belonged to the “untouchable” *Dalit* community. Although both groups were severely exploited, *Haliyas* endured higher levels of discrimination. For example, their entry to the landlord’s house was usually restricted and they were prohibited from performing in-house work.
highly dependent on, rich landlords across the eastern, central and western Terai districts.

- The **Baalighare (Khalo)** practice is found within the Dalit communities in the mid-western and far-western Nepal. It is an exploitative form of exchanging goods and services for other goods and services: the semi-skilled laborers offer door-to-door services and demonstrate loyalty to their patrons (Bista) for an entire year in order to accumulate seasonal crops as wages for their work. The **Baalighare** must meet their **Bista**'s demands and are unable to negotiate wages.

- Landless and compulsorily relegated to occupations that are viewed as inferior and polluting, the **Doms** are considered untouchable and comprise one of the most discriminated against groups of the Nepali society. They usually live and operate within a marked territory throughout the Terai belt, including Morang. Although they are involved in income-generating work, such as pig farming, basket waiving, cremation, and carcass disposal, their wages are minimal. If Doms refuse to perform their traditional duties, they often face mistreatment by the villagers and/or expulsion from the community. The **Pode** community in Kathmandu Valley resembles the **Doms** in the Terai. Podes clean garbage, drainage, and dirt in the city and are also considered untouchable.

- Adults and children who belong to the **Badi** community are also highly susceptible to exploitation. Badi people reside in the western part of Nepal, including Kanchanpur. They were traditionally known as entertainment providers. However, in the lack of opportunities, they became involved in prostitution, which led to social stigmatization, discrimination, and exclusion. Many Badi children are born out of wedlock, which limits their access to citizenship and reinforces their vulnerability to discrimination, trafficking, and abuse.

- The Far-Western region, including Kanchanpur, is also home to about 2000 **Deukis**. Traditionally, Deukis were prepubescent girls who were given to the temples by their families as offerings to the gods. They were uncared for and forced into prostitution. Men believed that fornicating with a Deuki would cleanse them of their sins and cure them of their illnesses. Although the practice was abolished several decades ago, the children of Deuki carry the stigma of their mothers and experience problems and abuses similar to that of the Badi.

In 1994, a local NGO, Backward Society Education [hereinafter BASE], conducted a survey in 5 districts affected by bonded labor, including Kanchanpur. The initial survey indicated that there were 3,500 Kamaiya families in Kanchanpur. Further studies revealed that this number was substantially higher, nearing 4,500 families. After completing the studies, BASE developed an outreach program for Kamaiyas, which focused on alternative forms of living and income generation. Along with other NGOs, BASE advocated for the institutionalization of the “Free Kamaiya Movement.” The campaign was extremely challenging because owners of Kamaiyas were very influential in terms of wealth, politics, caste, and power.

On July 17, 2000, after years of pressure from civil society, the GoN officially declared all Kamaiyas free, and in 2002, the Parliament adopted the Bonded Labor (Prohibition) Act (adopted April 20, 2002 by Parliament) [hereinafter BONDED LABOR ACT], which codifies the freedom of Kamaiyas and other bonded laborers. See Legal Context below. In September 2008, the GoN officially declared the Haliyas free according to the agreement with the Federation of National Haliya Liberation Society. Joint Press Release, NHRC, National Dalit Commission, National Women Commission, International Labour Organization [hereinafter ILO], Office of the UN High Commissioner for Human Rights [hereinafter OHCHR], End the Haliya System in Nepal Say the NHRC, NDC, NWC and UN (Sept. 6, 2011).
Freedom to Kamaiyas and Haliyas came with a high cost. Many of them were abruptly evicted and their belongings were confiscated by their former owners. Until the Bonded Labor Act was promulgated, the GoN did not provide any support to the freed Kamaiyas. This made Kamaiyas extremely vulnerable to human trafficking and exploitation. In fact, many of them returned to their creditors in search of shelter and food. Similarly, the failure to rehabilitate freed Haliyas forced them into another form of servitude under the Adhiya system.14

Although the traditional Kamaiya and Haliya systems have been formally eradicated, the western part of Nepal continues to be affected by bonded labor, particularly in the agricultural sector. The laborers are free to leave, cannot be bought and sold, and, in comparison to the past, have more bargaining power over salary and work conditions. Nevertheless, their persistent poverty and a lack of opportunities leave them and their children prone to exploitation.

Some interviewees observed that securing freedom for Kamaiyas has led to an escalation of child labor in the region. Many big, influential families offered former bonded laborers a piece of land, in-kind salary, and skills training for their children in exchange for child labor. To support their families, the children became full-time domestic servants and agricultural laborers without access to education. Experts noted, however, that this increase in child labor is technical in nature because many Kamaiya children worked as slaves before bonded labor was outlawed.

**Trafficicking and Exploitation of Children**

The incidence of child trafficking and exploitation in Nepal reached alarming proportions during the 1996-2006 conflict. Interviewees noted that the phenomenon has now stabilized, but it continues to be prevalent in both urban and rural areas.

In addition to thousands of Nepali girls exploited in Indian brothels, approximately 600-1,000 Nepali children work in Indian circuses at any point in time. See, e.g., NATIONAL TIP REPORT 2010 at 21. Other studies estimate that between 1,000 and 2,000 children are working in the circuses at any time. Ninety percent of them are girls and 10% are boys. Even though most Indian circuses operate under licenses which prohibit hiring performers under 18 years of age and India’s Juvenile Justice Act, as amended in April 2011, makes it illegal for children under the age of 18 to work and train in circuses, many circuses still recruit children who are, on average, 5-12 years old.15 The children live in appalling conditions, are forced to perform hazardous acrobatics, do not receive salaries, and are often physically and sexually abused.

Nepal has a large population of children who are economically active.16 Hundreds of thousands of children work as domestic servants, agricultural laborers, and truck drivers’ assistants; in garbage removal; in brick klin and embroidery industries; in small, hidden-away shops and factories; and in the entertainment and hospitality enterprises, such as hotels, tea shops, restaurants, and dance bars. Many of them are victims of trafficking and exploitation. Among the most vulnerable are street children; children from marginalized social groups, such as the Tharu community in the Mid-Western Region, who may be subjected to the practice of Kamalari17

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14 Reportedly, the Adhiya system is very similar to Haliya but even more exploitative.
15 Reportedly, the number of Nepali children working in Indian circuses has decreased since India’s Juvenile Justice Act was amended in April 2011. However, more precise statistical data does not exist.
16 According to the National Child Labor Survey undertaken in 2008, 2.1 million children (33.9%) of a total of 6.22 million children aged between 5 and 14 were economically active. CENTRAL BUREAU OF STATISTICS, REPORT ON THE NATIONAL LABOUR FORCE SURVEY 2008 at 133-134 (2009). A study conducted in 2010 in Biratnagar identified 2,781 child laborers in the municipality: 1,521 girls and 1,260 boys.
17 Kamalari are girls who are sold through middlemen to far off homes (as domestic workers) and enterprises after an initial payment is made to their parents. They end up in servitude. Many of them endure physical, mental, and sexual violence. The Supreme Court banned the Kamalari
(bonded girl child labor) due to continued family poverty; children of former Kamaiyas; and children who belong to the sexually exploited Badi community in the western part of Nepal. Approximately 60% of street children are sexually abused. Exploitation of children in foster homes and orphanages is also prevalent: some are forced to beg or are exploited through other means, for example, as a way to garner payments from their families or donations. Experts noted that one of the most recent phenomenons in Nepal is the exploitation of thousands of young children in the zari\textsuperscript{18} embroidery industry following the successful crackdown on zari sweatshops in India, which occurred due to NGO and public pressure. Reportedly, many of the zari manufacturing units have moved to Kathmandu Valley and other parts of Nepal. They are believed to be using both Nepali children and children trafficked from the Indian state Bihar.

Interviewees stated that eradicating these practices in Nepal is extremely difficult because child labor constitutes an indispensible source of income for many impoverished families. If all children were abruptly removed from the work force, many of them would end up on the street because their parents would be unable to provide for them. In addition, interviewees made an important point that not all child laborers are victims of trafficking and exploitation and not all occupations performed by children can be classified as “the worst forms of child labor.”\textsuperscript{19} At the same time, the sale of children for the purposes of exploitation is rarely registered as a crime or prosecuted.

Since the beginning of 2000s, Nepali children have become increasingly vulnerable to trafficking under the guise of adoption or guardianship and for the purposes of inter-country adoptions, a lucrative business opportunity for owners of child-care facilities. The phenomenon affects both legitimate and illegitimate orphans. Some orphanage managers put up children who are not orphans for adoption. According to interviewees, some orphanages manipulate poverty-stricken, homeless parents to sign documents relinquishing their parental rights even though these parents intend only that the orphanages provide temporary shelter and education to their children. The children become “paper orphans,” are quickly removed from their villages, and transferred to illegal orphanages where they are either enslaved as street beggars and laborers or are put up for adoption under the false pretense that they have been abandoned.

To alleviate the problem, the MoWCSW temporarily suspended inter-country adoptions from Nepal in 2007. While, in 2009, the self-imposed ban was lifted, in 2010, 11 countries, including the United States of America [hereinafter U.S.], Canada, France, Germany, Israel, Italy, and the United Kingdom, continued to proscribe adoptions based on abandonment in Nepal, the only legal basis upon which foreigners can adopt children in Nepal. The studies conducted by the governments of these countries found that documents used to prove the abandonment of children (e.g., birth certificates) were unreliable and frequently included changed or fabricated data. The governments also cited the uncooperativeness of the Nepal police and orphanage officials with consular officers’ efforts to confirm the eligibility of children for inter-country adoptions. The GoN has recently taken a number of steps to improve its adoption system. For example, the MoWCSW now has the sole authority both to match children with prospective parents and to process adoptions. Nevertheless, procedures for adoptions in Nepal remain inconsistent and undependable. See e.g., Press Release, U.S. Department of State, Joint Statement on system in 2006. However, the practice still prevails, particularly in the western part of Nepal. See UNICEF, \textit{Assessment of Child Protection Concerns of Children in the Terai Districts} 18 (2009).

\textsuperscript{18} Zari is a thread made of fine silver and gold or polyester wrapped by metallic yarn. It is commonly woven into silk and other fabrics used to manufacture traditional garments, such as saris.

\textsuperscript{19} In 2004, the GoN identified the following worst forms of child labor in Nepal: bonded labor, domestic work, work in the mining and carpet industries, and work as porters and rag-pickers. MOLTMT, \textit{National Master Plan on Child Labor} 11 (2004). The Child labor Act includes a list of occupations which are considered “risky” or “hazardous.” See Article 3 below. Reportedly, child and forced labor have been almost entirely eradicated in Nepal’s carpet factories because of the decline of the industry and enhanced inspections.
In addition to sexual exploitation, forced labor, and illicit adoptions, Nepali children are frequently subjected to early marriage. While the legal age for marriage is 20, or 18 with the consent of a guardian, many families consider 16-year old children as adults and believe that marriage at the age of 16 is permissible. Many boys and girls are forced to marry even at a much younger age. Studies indicate that 7% of Nepali girls are married by age 10 and 40% by age 15. UN POPULATION FUND, THE STATE OF WORLD POPULATION 2011 at 16 (2011). In the Mid- and Far-Western Regions of Nepal, 16% of children are married by age 15 and 60% by age 18. Summary Table of Key Indicators, in CENTRAL BUREAU OF STATISTICS & UNICEF, FINDINGS FROM THE MULTIPLE INDICATOR CLUSTER SURVEY 2010 IN THE MID- AND FAR-WESTERN REGIONS, NEPAL: PRELIMINARY REPORT (2011). Finally, research conducted in 2009 by CARE Nepal in Dhanusha, Mahottari, and Rupandehi revealed that 90% of lower-caste girls were married between the ages of 8 and 12 in these three districts. Financial Burden and Local Tradition Foster Child Marriage in Nepal, GLOBAL PRESS INSTITUTE, September 3, 2010. According to interviewees, the GoN does not prosecute those who aid or abet child marriage. The Child Workers in Nepal Concerned Centre [hereinafter CWIN] and other CSOs offer mediation services to concerned families when they identify cases of planned child marriages. However, mediation is not always successful, even if it takes place in the presence of a police officer.

Interviewees stressed that there is disagreement among local stakeholders about whether child marriage and the giving or selling of a child for the purposes of adoption are forms of trafficking in persons. Most agree that using illegal adoptions or marriages as a means to recruit children to Indian brothels or circuses constitutes human trafficking. Some stakeholders believe, however, that selling or giving a child to a “good family” does not fall within the definition of trafficking in persons.

During the decade-long conflict between the Maoists and the GoN, which ended with the Comprehensive Peace Agreement in 2006, over 10,000 children became victims of human trafficking for military purposes and served as child soldiers in the Maoist army. Thousands more became internally displaced due to the perils of war, leading to victimization through trafficking and exploitation. In January and February 2010, 3,000 former child soldiers living in seven cantonments across Nepal were discharged and re-entered civilian life. Approximately 500 of them were still under 18 years old at the time of the release. Each young person received NPR 10,000 (approximately USD 143) upon discharge and many of the former child soldiers entered rehabilitation programs implemented by the UN, the GoN, and various international and local NGOs, including CWIN. See, e.g., Nepal: UN Hails Release of All Child Soldiers by Maoists, UN NEWS CENTER, February 10, 2010; Sarah Crowe and Marty Logan, UNICEF Helping Former Child Soldiers in Nepal Develop Vital Life Skills, UNICEF MEDIA CENTER, February 19, 2010; Nepal Former Child Soldiers Freed, BBC NEWS, January 7, 2010. Interviewees underlined that the issue of child soldiers is not central to the transitional justice initiatives in Nepal. To date, there have been no criminal prosecutions for human rights abuses committed as a result of the conflict, although a few cases of abuse were advanced through the military courts at the time of conflict.

Organ Transplantation

The selling and illicit transplantation of organs, particularly to recipients in India, is a growing phenomenon in Nepal but remains neither well-researched nor adequately addressed by the GoN.

20 In this report, Nepali rupees (NPR) are converted to United States dollars (USD) at the average rate of conversion at the time when the HTAT interviews were conducted (USD 1.00 = NPR 70.06).
and civil society. There have been two notable efforts to collect quantitative data on kidney donors who have travelled to India: one performed by a sociologist Dr. Ganesh Gurung and one conducted in 2009 by a local NGO, Children Handicapped Helpless Integral Development Nepal [hereinafter CHHID-Nepal]. Both studies focused on Kavre which is widely cited as one of the most prone districts even though there is no systematic research analyzing the geographical distribution of donors. Media report that the practice is so common in several VDCs in Kavre that the area has become known as the “kidney bank.” See, e.g., Raw Deal for Kavre Kidney Victims, THE HIMALAYAN, October 14, 2010; Manoj Basnet, Kidney Trade Thriving in Kavre, EKANTIPUR.COM, March 31, 2010; Sunil Neupane, The Village of the Kidneys, NEPALI TIMES, June 10, 2011. While Dr. Gurung’s work resulted in a better understanding of the broker network and donors’ motivations, it did not generate reliable statistics. The CHHID-Nepal’s study indicated that there were nearly 300 victims of kidney extraction in Kavre. NATIONAL TIP REPORT 2010 at 35-36. However, the authenticity of this information has never been verified.

There is no consistent data on the cost to the recipients, broker fees, and remuneration for the donors. Various sources estimate that recipients pay anywhere from NPR 200,000 to 2 million (approximately USD 2,855 – 28,547), brokers withhold NPR 5,000 – 50,000 (approximately USD 71 – 714), while donors receive NPR 10,000 – 150,000 (approximately 143 – 2,141). See, e.g., NATIONAL TIP REPORT 2011 at 17-18. According to several interviewees, some economically deprived donors sell their kidneys for as little as NPR 2,000 (approximately USD 28), although this is not confirmed by any hard data. Traffickers, on the other hand, receive, at minimum, NPR 40,000 (approximately USD 571) for facilitating the removal of one organ. Some people have their kidneys removed without their consent and the surgeries are often performed in unhealthy conditions. In addition, poverty forces most donors to live and work in an environment conducive to the development of infections and other complications, including a failure or low functionality of the remaining kidney. As a result, many victims die or become severely disabled, particularly if they lack access to appropriate health care services.

Prosecution of organ trafficking cases is very rare. A number of interviewees invoked a prominent case of Dr. Amit Kumar, who was arrested in Nepal in 2008 and handed over to Indian authorities under the suspicion of running one of the largest illegal kidney transplant rackets in India in the city of Gurgaon outside New Delhi. See, e.g., Nepal Hands Kidney Racket Suspect Amit Kumar to India, REUTERS, February 10, 2008. Reportedly, one case of an illicit transplantation of a kidney has been filed in the Kanchanpur district court.

Overview of Morang, Makwanpur, and Kanchanpur

While this report reviews the legislation, policies, and practices regarding trafficking in persons on the national level, interviews were held in the following three districts due to their grave and particularized issues of human trafficking: Morang, Makwanpur, and Kanchanpur.

**Morang**

Morang is located in the southern Terai, or plains, of the Eastern Development Region, which is divided into 16 districts, 893 VDCs, 1 sub-metropolitan city, and 13 municipalities. Morang has a population of approximately 850,000 people and is both culturally and ethnically diverse. The predominant population group in Morang is Madhesi. The district headquarters are located in Biratnagar, which is the second largest city in Nepal after Kathmandu and a home to the Purbanchal University. Biratnagar is a sub-metropolitan city divided into 25 wards.

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21 The term Madhesi encompasses people belonging to different ethnic and non-ethnic communities who have the same origin and live in the Terai.
The vast majority of the district is rural, taken up by rice and jute cultivation. Although agriculture forms the basis of Morang’s economy, the district, which neighbors India, is also a major trade and transportation hub. Furthermore, it is a part of the eastern industrial corridor, spreading from Itahari in the neighboring Sunsari district to Biratnagar. The Itahari – Biratnagar corridor has about 500 small to big manufacturing industries.

Only about 35% of children in Morang have access to education, with boys being much more likely than girls to attend and remain in school. In the FY 2009-10, 136,484 out of approximately 400,000 children in Morang attended primary school. Merely 23,661 children attended secondary school.

While the vast majority of districts have only one judge and one government attorney, the Morang District Court has a civil and a criminal bench. The criminal court judge handles, on average, 4-5 cases per day. Most of the cases pertain to theft, smuggling, homicide, and rape. Unlike other districts, Morang has two government attorneys.

Morang is considered to be one of the most trafficking-prone districts in the country due to its location along the Indian border and a high level of economic and social inequalities. Some of the most pressing social issues affecting Morang are gender-based discrimination and harmful traditional practices, including domestic violence, alleged witchcraft, and the dowry system, which is widespread in the entire Terai region, especially among Madhesi people. The dowry practice is a common cause of violence against women and child marriage because the amount of the dowry depends on the age and education of the groom.

Morang is primarily a transit point for victims trafficked from other areas of the country to Indian brothels, circuses, and sweatshops and for undocumented migrant workers travelling to Malaysia and the Gulf States through India. Morang residents also become victims of transnational trafficking. However, traffickers usually move them through other districts to avoid detection by family and community members. The border area near Biratnagar is extremely congested due to a close proximity of a popular Indian market and a major train station. The border is regularly monitored by at least two organizations: Maiti Nepal and Women’s Rehabilitation Center [hereinafter WOREC]. Reportedly, approximately 169 human trafficking victims have been intercepted by the police and NGOs around this border crossing since 2001.

Internal trafficking in persons, particularly for the purposes of labor and sexual exploitation in local hotels, restaurants, and dance bars is also reported to be widespread. Entertainment establishments near highways and in the Roadshesh area of Biratnagar are particularly involved in commercial sexual exploitation. Revictimization also occurs due to recurrent police raids. Exploitation of domestic workers is also quite common.

**Makwanpur**

Makwanpur is a mostly hilly district headquartered in Hetauda and located in the Central Development Region. The region is divided into 19 districts, 1,199 VDCs, one metropolitan city (Kathmandu), two sub-metropolitan cities (Lalitpur, Birgunj), and 17 municipalities. Hetauda is a meeting point of two major national highways: the Tribhuvan Highway which connects Kathmandu with Birganj (a sub-metropolitan city in the Parsa District on the Nepal-India border), and the East-West Highway which stretches across the country and runs through Kathmandu. Birganj, located within a few hours’ drive from Hetauda, is one of the country’s busiest border crossings known as a gateway to Nepal. Approximately 61% of international trade flows through the city.

The Birgunj – Hetauda corridor, especially the Hetauda Industrial District, is the largest industrial area of Nepal housing many national and multi-national companies. Products manufactured in the district include garments, carpets, pashminas, handicrafts, herbal medicines, ornaments, leather
goods, hand-made paper, and processing of agro products for export to India. These industries are the main sources of employment for the people of Makwanpur.

Makwanpur has one district judge who presides over civil and criminal cases, and two government attorneys. In FY 2010-11, the district court registered 177 civil and 171 criminal cases. Most criminal cases pertain to drug smuggling, theft, homicide, and rape.

Makwanpur is an ethnically diverse district. About 50% of the inhabitants consist of the Tamang, which is one of the largest indigenous communities in Nepal, densely populated in the Central Development Region. Tamang people are considered one of the most marginalized, discriminated, exploited, and trafficking-prone ethnic groups in the country. They tend to have large families and many members carrying the same surname. Reportedly, many traffickers with the same name self-proclaim themselves as relatives and use family ties to gain the trust of the victims. Interestingly, however, survivors of trafficking and exploitation from the Tamang community face some of the lowest levels of stigma and discrimination in the country because of the particular cultural perspective of the Tamang.

With many transit points, low levels of literacy, and soaring incidence of discrimination, domestic abuse, and early marriage, Makwanpur is reputedly third in the rank of most trafficking-prone districts in Nepal. It is primarily a source district for victims who are trafficked to Indian brothels and circuses, to the Gulf States under the guise of foreign labor migration, and to other parts of the country (including Kathmandu) to work in brick kiln, garment, and entertainment industries. Trafficking within the district is also rampant, particularly in children from poor, remote villages. Many of them are brought to Hetauda and exploited in local hotels, restaurants, car shops, and domestic workers. One organization interviewed for the HTAT estimated that there are approximately 2,000 child laborers in Makwanpur, including 600 in Hetauda. In 2010, the same NGO supported victims in 41 cases of child labor exploitation, 14 cases of sexual abuse against children, and 5 cases of child marriage. In the FY 2010-11, a different NGO operating in Makwanpur supported victims in approximately 10 cases of child rape, 4 cases of trafficking to India, 1 case of labor trafficking to Bahrain, and 1 case of sex trafficking to Kathmandu.

Data on sex trafficking within Makwanpur is very limited because the district does not have many evident sex access points, such as dance bars, cabin restaurants, or massage parlors. In addition, cases of forced prostitution are reported very rarely to the police. Interviewees underlined, however, that commercial sexual exploitation is common in Makwanpur, predominantly in hotels in Hetauda and along the highways (e.g., in the village of Manahari along the East-West Highway). Reportedly, some of them have rooms specifically designed for the purposes of supplying sex services. There are no officially registered cases of organ trafficking in Makwanpur. However, one informant stated that selling organs is on the rise in the district.

**Kanchanpur**

Kanchanpur, headquartered in Mahendranagar, lies on the border with India in the outer Terai of the Far-Western Development Region. The Far-Western Region is divided into 9 districts, 6 municipalities, and 383 VDCs, some of which are extremely remote and hard to access. Kanchanpur is significantly underdeveloped, with limited access to basic services, very low literacy rates, lack of employment, and approximately 35% of people living beneath the poverty line. The main source of livelihood is agriculture; however, poor rural infrastructure, traditional agricultural practices, land fragmentation, and limited land holdings drastically limit production and markets. The acute lack of opportunities induces a large number of workers either to move to other parts of the country or to migrate to India in search of employment.

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22 Reportedly, 5-6 cases of domestic violence are reported to the Makwanpur police every day.
There are more than 12 points of entry to India in Kanchanpur. The border has almost no infrastructure and is commonly used by undocumented migrant workers and traffickers. India’s capital, New Delhi, and many Indian tourist destinations are a 5-6 hours’ drive away.

The district court in Kanchanpur consists of one judge, who presides, on average, over three criminal and/or civil cases per day. At the time of this assessment, there were 615 cases registered in the district court. The majority of criminal cases pertain to domestic violence, polygamy, homicide, rape, and trafficking in persons.

The Far-Western Region, including Kanchanpur, is plagued by widespread gender and caste-based discrimination, child labor, and a legacy of socio-economic exploitation, such as bonded labor. Kanchanpur has the highest suicide rate in the country in part attributable to the prevalence of domestic violence, polygamy, and harmful traditional practices, including early marriage and Chaupadi. The practice of Chaupadi forces roughly 50% of women to stay in animal sheds during child birth and menstruation, when they are considered polluted and untouchable. Most women in the region are confined to domestic work and farming, and must adhere to strict traditional norms when widowed. Government funds allocated for women’s development are scarce and often misused.

According to experts, Kanchanpur is an emerging high-risk trafficking district. In the past, trafficking in persons was much more rampant in the eastern part of Nepal. However, in recent years, many traffickers have changed their routes to the western part of the country because of a significantly higher concentration of anti-human trafficking efforts in the east. Kanchanpur is primarily a source and transit district for victims trafficked to India for the purposes of sexual exploitation and domestic work and for undocumented migrant workers travelling to the Gulf States. In addition, cases of trafficking to Indian circuses and selling of human organs have been documented. In fact, one case of an illicit transplantation of a kidney has been filed in the Kanchanpur district court.

Internal trafficking for the purposes of sexual and labor exploitation is also common. Although the general perception is that the system of bonded labor has been eliminated after the adoption of the Bonded Labor Act, debt bondage is still practiced in the Far-Western region, including Kanchanpur. Forced and bonded labor is used mostly in agriculture and the domestic work sector but also exists in transportation, brick kiln, and hospitality industries, including restaurants, tea shops, and hotels. In addition to Kamaiyas and Haliyas, the region is home to the Badi community and approximately 2,000 Deukis. Furthermore, child labor is prevalent with children of former bonded laborers being one of the most vulnerable social groups. Notably, most people, including parents of working children, do not view child labor as exploitation, even if very young children are involved. For many indigent families, child labor is the only source of income. Furthermore, many parents believe that eradicating domestic child labor will make their children more vulnerable to trafficking and sexual exploitation in India.

Legal Context

Nepal has its own distinctive legal system, which is largely an offshoot of the Hindu legal system. Between the 4th and 14th century AD, Nepal relied almost exclusively on highly ambiguous customary law derived from numerous Hindu religious scriptures. In the 14th century, King Jayasthiti Malla made a systematic attempt to unify and codify the laws of the country by introducing Manab Naya Sastra (Legal Rules for Human Justice). The first modern legal code, the Muluki Ain (General Code of Law of the Land), was adopted in 1854 in the time of King Surendra by Prime Minister Jung Bahadur Rana, who visited Europe and was influenced by the Napoleonic Code, although the Muluki Ain was comprised largely of Hindu religious dogmas. The first Constitutional Rule Act was promulgated in 1947, but it remained unenforced.
In 1951, the Rana regime was overthrown by a popular movement and Nepal began its transition to democracy and modernization of the legal system based, to a large extent, on common law traditions. In the 1950s and 1960s, three constitutional acts were adopted: the Interim Constitution of 1951, the 1959 Constitution of the Kingdom of Nepal, and the 1962 Constitution of Nepal. In addition, this period saw the inauguration of university-based legal education, the founding of the Nepal Bar Association [hereinafter NBA], and the establishment of a formal court system. In 1952, Nepal enacted the Apex Court Act and established the Supreme Court whose judgments serve as precedents. In 1961, the first Government Cases Act, which was later replaced by the Government Cases Act of 1992, instituted an adversarial system of criminal justice, which impacts how human trafficking crimes are prosecuted. In 1963, Nepal adopted a new Muluki Ain, which remains in force today with numerous amendments. Muluki Ain (adopted 1963 by King Mahendra Bir Bikram Shah Dev, as amended) [hereinafter MULUKI AIN]; see also CENTER FOR LEGAL RESEARCH AND RESOURCE DEVELOPMENT [hereinafter CeLRRd], ANALYSIS AND REFORM OF THE CRIMINAL JUSTICE SYSTEM IN NEPAL 4-5 (year); YUBARAJ SANGROULA, VIOLENCE AGAINST WOMEN: NEPAL’S SITUATION 7-9 (1998). Since the 1960s, two more constitutions have been promulgated: the 1990 Constitution of the Kingdom of Nepal and the 2007 Interim Constitution of Nepal (adopted Jan. 15, 2007 by House of Representatives, as amended) [hereinafter INTERIM CONST.]. At the time of this assessment, the GoN was in the process of drafting a new Constitution of Nepal and finalizing a packet of legislation pertaining to the criminal justice system: criminal code, criminal procedure code, and sentencing act. When adopted, the new statutes will replace the criminal law-oriented provisions of the Muluki Ain and modernize the criminal justice system.

The Constitution is the fundamental law of Nepal and any laws inconsistent with it can be declared void by the Supreme Court either ab initio or from the date of the decision. The power to file a related petition is vested in any citizen of Nepal. INTERIM CONST. arts. 1, 107.

International Law

The President, Prime Minister, and the Minister of Foreign Affairs [hereinafter MoFA] are authorized to conclude international treaties and agreements on behalf of the GoN. NEPAL TREATY ACT sec. 3 (adopted Nov. 11, 1990 by King Birendra Bir Bikram Shah Dev) [hereinafter NEPAL TREATY ACT]. The treaties and agreements that require ratification, accession, acceptance or approval must be subsequently ratified, acceded to, accepted, or approved by the Parliament. INTERIM CONST. art. 156; NEPAL TREATY ACT sec. 5. A duly executed treaty has supremacy over domestic legislation. Therefore, any law which is incompatible with such a treaty is void to the extent of inconsistency. NEPAL TREATY ACT secs. 6, 9. Although according to the Nepal Treaty Act, no implementing legislation is necessary, courts are hesitant to apply international law without any implementing legislation. Interviewees stressed that the Interim Constitution supersedes all international agreements and national laws.

Nepal ratified the UN Convention against Transnational Organized Crime (adopted Nov. 15, 2000 by U.N. G.A. Res. 55/25, annex I) [hereinafter CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME] on June 24, 2011. At the time of this assessment, the GoN was in the process of drafting the treaty’s implementing legislation. Nepal has not signed or acceded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted Nov. 15, 2000 by U.N. G.A. Res. 55/25, annex II) [hereinafter TRAFFICKING PROTOCOL]. Interviewees stated that, as of July 2011, there were no concrete actions being taken by the GoN to ratify the Trafficking Protocol. As the table below illustrates, Nepal has ratified many but not all international instruments related to trafficking in persons.
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<td>Convention on Preventing and Combating Trafficking in Women and Children for Prostitution ([adopted January 5, 2002 by South Asian Association for Regional Cooperation]) [hereinafter SAARC CONVENTION ON TRAFFICKING IN WOMEN AND CHILDREN]</td>
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<td>Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery ([adopted Sept. 7, 1956 by U.N. Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery])</td>
<td>Jan. 7, 1963</td>
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<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([adopted Dec. 10, 1984 by U.N. G.A. Res. 39/46])</td>
<td>May 14, 1991</td>
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<tr>
<td>Convention No. 29 Concerning Forced or Compulsory Labour ([adopted June 28, 1930 by ILO])</td>
<td>Jan. 3, 2002</td>
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<tr>
<td>Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries ([adopted June 22, 1970 by ILO])</td>
<td>Sept. 19, 1974</td>
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<tr>
<td>Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively ([adopted July 1, 1949 by ILO])</td>
<td>Nov. 11, 1996</td>
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</table>

On April 28, 2009, Nepal signed the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption ([adopted May 29, 1993 by Hague Conference on Private International Law]) but has not ratified it. In addition, Nepal has not acceded to the following international instruments:
• International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted Dec. 18, 1990 by U.N. G.A. Res. 45/158),
• Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted Nov. 7, 1962 by U.N. G.A. Res. 1763 (XVII)),
• Convention No. 189 Concerning Decent Work for Domestic Workers (adopted June 16, 2011 by ILO),
• ILO Convention No. 87 on Association and Protection of the Right to Organise (adopted July 8, 1948 by ILO),
• Convention Relating to the Status of Refugees (adopted July 28, 1951 by U.N. Conference on Plenipotentiaries on the Status of Refugees and Stateless Persons) [hereinafter REFUGEE CONVENTION], and

Anti-Human Trafficking Laws and Policies

The Interim Constitution guarantees basic human rights, including the rights to freedom, equality, and social justice; freedom from human trafficking, exploitation, forced labor, slavery, and servitude; and the right to constitutional remedy. It contains a prohibition on discrimination against women and a set of fundamental rights of the child, including the right to be free from any form of exploitation. It also prohibits the engagement of a child in hazardous work, in the army, police, or conflict. INTERIM CONST. arts. 13-32.

Nepal established the crime of trafficking in persons in 1963 with the adoption of the Muluki Ain. In addition to human trafficking, the Muluki Ain criminalizes making another person Kamara, Kamalari (sub-servant), slave, or bonded laborer; the arranging of or causing of forced or child marriage; as well as many acts which tend to be committed within the trafficking context (e.g., kidnapping and rape). MULUKI AIN Part 4, Chapter 11, No. 1-3. In addition, Muluki Ain covers domestic and inter-country adoptions. All forms of bonded labor and forced child labor are also prohibited under the Bonded Labor Act and Child Labor (Prohibition and Regulation Act) of 2000 (adopted June 21, 2000 by Parliament) [hereinafter CHILD LABOR ACT]. See Labor Laws and Children’s Rights below; see also Article 5 below.

In 1986, the Rashtriya Panchayat promulgated the Human Trafficking Control Act, which was subsequently replaced by the Human Trafficking and Transportation (Control) Act of 2007 (adopted July 24, 2007 by Legislature – Parliament) [hereinafter HTTCA]. As a special law, the HTTCA prevails on issues that are not addressed in the Muluki Ain as well as on issues that are regulated in both laws.

The HTTCA is gender-neutral and prohibits both internal and transnational trafficking in persons. Although many articles focus on trafficking for the purposes of sexual exploitation, the HTTCA covers other forms of exploitation, including forced labor. The two primary objectives of the HTTCA are to control the acts of trafficking in persons and to protect and rehabilitate the victims. Consequently, the HTTCA defines acts considered as human trafficking, contains a large number of provisions pertaining to the reporting, investigation, prosecution, adjudication, and punishment of the crime, and contains several provisions devoted to the rescue and rehabilitation of human trafficking victims. Among others, the HTTCA prescribes the establishment of a rehabilitation fund and rehabilitation centers. It also envisions the formation of National and District Committees to coordinate the anti-human trafficking efforts of the GoN and civil society.

The drafting of the HTTCA was driven by civil society and the law is viewed by most stakeholders as a strong and progressive piece of legislation. In practice, however, it contains many loopholes.

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23 The Rashtriya Panchayat was a legislative body under Nepal’s panchayat (“democracy at the grassroots”) system in existence between 1962 and 1990.
and is not effectively implemented. For example, it fails to address such vital issues as prevention of human trafficking, witness protection, repatriation of victims, immigration status of foreign victims in Nepal, international counter-trafficking cooperation, and border measures aimed at combating trafficking in persons. Furthermore, the provision of the HTTCA that governs compensation is not victims-centric and the law shifts the burden of proof on the accused, creating a confession-centric system of justice in violation of the internationally recognized rights to a fair trial and presumption of innocence until proven guilty. See, e.g., ICCPR art. 14. Lastly, the provisions prescribing sanctions for the commission of the crime are inconsistent.

In 2008, the GoN issued the Human Trafficking and Transportation (Control) Rules (adopted Aug. 9, 2008 by GoN) [hereinafter HTTCR]. The HTTCR define the membership, functions, and powers of the National and District Committees and contain provisions regarding the establishment and operation of the rehabilitation fund and centers.

In 1998, the GoN developed its first National Plan of Action against Trafficking in Women and Children and their Sexual Exploitation. The plan identified six thematic areas in need of intervention: 1) Policy, Research, and Institutional Development; 2) Legislation and Enforcement; 3) Awareness Creation, Advocacy, Networking and Social Mobilization; 4) Health and Education; 5) Income and Employment Generation; and 6) Rescue and Reintegration. In 2001, the document was revised and reissued as the National Plan of Action against Trafficking in Children and Women for Sexual and Labor Exploitation [hereinafter NPA]. The NPA identified two additional priority areas: 1) Trans-border, Regional and International Issues; and 2) Monitoring and Evaluation. As of July 2011, the NPA was still in force but it is not effectively enforced.

At the time of this assessment, the MoWCSW finalized a new National Plan of Action against Trafficking in Persons 2011-2016 and submitted it to the Cabinet of Ministers for endorsement. This new plan takes into account the current socio-political context of trafficking in persons and new trafficking patterns, such as those associated with foreign labor migration. The 2011-2016 plan is expected to: 1) be aligned with the HTTCA, HTTCR, the Trafficking Protocol, and the SAARC Convention; 2) cover five broad sectors, i.e., prevention, protection, prosecution, capacity building, and cooperation; 3) focus on prevention and mobilization of local resources and communities; 4) strengthen social protection mechanisms for vulnerable populations; 5) address demand that fosters exploitation as well as the linkages between violence against women (including domestic violence) and human trafficking; 6) increase the role and capacity of the National and District Committees; and 7) enhance trainings for the justice system actors and other stakeholders. The draft 2011-2016 plan has been developed through a consultative process and is considered a step forward in comparison with the NPA. Interviewees admitted, however, that the plan will be difficult to implement due to insufficient budgetary appropriations for the purposes of combating trafficking in persons.

In 2008, Prakash Mani Sharma and four other advocates filed a pro bono publico petition for a writ of mandamus with the Supreme Court to compel the GoN to protect the constitutionally guaranteed human rights of women working in cabin restaurants, dance bars, and massage parlors. The petitioners claimed that the entertainment establishments, which are virtually unregulated, have become a platform for trafficking and exploitation of girls and women. In particular, they sought an order to adopt and implement a law prescribing a mandatory registration and conditions of operating cabin restaurants, dance bars, and massage parlors. In addition, the petitioners requested the Supreme Court to issue interim guidelines against sexual harassment and exploitation of women. Stressing that it is the duty of the GoN to create laws and mechanisms aimed at ensuring the enjoyment of fundamental rights of people belonging to all social groups, the Supreme Court issued a directive ordering the GoN to regulate the industry. Sharma, et al. v. GoN, Supreme Court (Writ No. 2822, 2005). Furthermore, the Supreme Court released the Procedural Guidelines for the Prevention of Sexual Harassment against Working Women at Workplaces [hereinafter GUIDELINES ON PREVENTION OF SEXUAL HARASSMENT], which entered into force in December 2008. See Articles 5 and 9 below. To date, a law regulating the operation of cabin restaurants, dance bars, and massage parlors has not been adopted.
According to interviewees, the Supreme Court’s procedural guidelines are not respected in practice.

**Laws and Policies Related to Foreign Employment**

Nepal has enacted a separate legislative measure, the FEA, to ensure that the foreign employment business is safe, systematic, and decent. The FEA, along with the Foreign Employment Rules promulgated by the GoN in 2008: 1) reserves the right of the GoN to enter into bilateral labor agreements with foreign countries as well as regulate such matters as the countries allowed to accept Nepali migrant workers, the minimum remuneration, and the upper amount of service charges collected from the workers; 2) prohibits gender discrimination and sending minors for foreign employment; 3) bars recruiting agencies from engaging in foreign employment business without a license issued by the Department of Foreign Employment; 4) specifies the procedure for obtaining and renewing such a license as well as selecting the workers; 5) requires each migrant worker to undergo an orientation training prior to departure and enter into a contract with the employer and the recruiting agency; 6) creates the legal basis for the appointment of Labor Attachés and the establishment of the following bodies: Foreign Employment Welfare Fund, the Foreign Employment Promotion Board, and the Foreign Employment Tribunal; 7) sets out the punishments for violating the FEA; and 8) provides for the return of Nepali migrant workers who become “helpless” abroad.\(^ {24} \) FEA secs. 4, 7-8, 10-11, 27, 32, 38, 43-57, 64, 68, 75; see also FOREIGN EMPLOYMENT RULES (adopted 2008 by GoN) [hereinafter FOREIGN EMPLOYMENT RULES].

The FEA does not enumerate industries or occupations in which Nepali migrant workers may be employed, and it does not differentiate between the formal and informal sectors, such as domestic work. Domestic work is also not governed by the labor laws of many countries which host large numbers of Nepali migrant workers. Therefore, the MoLTM has recently issued a directive recognizing domestic work as a legitimate form of employment. The directive requests employers in Kuwait, the United Arab Emirates [hereinafter UAE], Saudi Arabia, and Qatar to follow special procedures prior to hiring a Nepali domestic worker. These include submitting documentation about their economic status to the Embassy of Nepal and obtaining the Embassy’s approval to hire a Nepali citizen. In addition, the directive prescribes the conditions of work, i.e., minimum wage, safety assurance, accommodation standards, and insurance. The directive, however, has no legal status in the destination countries. Furthermore, the criteria prescribed by the directive are inconsistent between countries and demonstrate a gap in policy formulation. For instance, the minimum income of an employer has been set for Qatar and Malaysia but not for the UAE or Saudi Arabia. Likewise, housemaids departing for Qatar must be above 30 years old; yet, no age limit has been fixed for the UAE or Saudi Arabia. Government Provision Unclear for Housemaids in Gulf Countries, THE HIMALAYAN TIMES, July 13, 2011.

In March 2012, the GoN promulgated a Foreign Employment Policy and the MoLTM was in the process of developing a 5-year National Plan of Action on Safe Migration.\(^ {25} \) Both documents were produced through a consultative process involving civil society and government agencies, including MoFA, MoWCSW, Ministry of Finance, and Department of Immigration. The documents contain provisions aimed at protecting migrant workers from exploitation. They follow a progressive rights-based approach but it is questionable whether they will be effectively implemented in practice. See Articles 6 and 9 below.

\(^ {24} \) In 2008, the Supreme Court issued a writ of mandamus ordering the GoN to implement the provision of the FEA effectively and to provide investment opportunities and social security to the returnees. In addition, the Supreme Court ordered the diplomatic and consular offices in the destination countries to cater to the needs of Nepali workers. Prakash Mani Sharma, et al. v. Government of Nepal, Supreme Court (Order No. 2065/9/1, 2008).

\(^ {25} \) The Foreign Employment Policy was promulgated after interviews for the HTAT Report for Nepal had been completed. Therefore, its provisions are not analyzed in this assessment.
Notably, neither the HTTCA nor the FEA define trafficking in persons in relation to foreign employment migration. This has led to a critical lack of conceptual clarity among key justice system stakeholders in Nepal about the legal classification of cases involving exploitation of Nepali migrant workers. See Articles 3 and 5 below.

**Labor Laws**


The Labor Act is not applicable to either small enterprises that hire less than 10 workers or employees or to the informal sector, such as domestic work. LABOR ACT sec. 2 (b). Importantly, however, self-employees and workers employed in small enterprises may form trade union associations when they are 500 in number. TRADE UNION ACT sec. 4 (adopted 1992 by Parliament, as amended) [hereinafter TRADE UNION ACT]. The provision applies to domestic workers and agricultural laborers, who endure high levels of exploitation in Nepal. The constitutional right to organize, i.e., form unions and associations, is relatively well-respected in Nepal. Trade union associations, such as the Federation of Agricultural Workers, Nepal (which has unionized former bonded laborers), the Independent Tea Plantation Workers Union of Nepal, the Nepal Independence Domestic Workers Union (NIDWU), and Active Domestic Workers Network, are recognized by the GoN. INTERIM CONST. art. 13 (2) (d). Several of such organizations have formed the Domestic Workers Network to raise a collective voice for the protection of the rights of domestic workers.

Under the Labor Act, the GoN has established a tripartite Minimum Remuneration Fixation Committee. LABOR ACT sec. 21. At the time of the assessment, the minimum wage for unskilled workers in non-agricultural enterprises employing at least 10 workers was NPR 6,200 per month (approximately USD 88). Separate minimum wage rates are established for semi-skilled, skilled, and highly skilled workers in enterprises, as well as for agricultural laborers and civil servants. Domestic workers are excluded from the minimum wage protections. See ILO, TRAVAIL, at http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=HT&p_sc_id=1&p_year=2011&p_structure=1&p_countries=NP.

The Bonded Labor Act prohibits debt bondage, prescribes penalties for employing bonded laborers, and provides for the rehabilitation of former Kamaiyas. Among others, the act has created the legal basis for the establishment of the Freed Bonded Laborer Rehabilitation and Monitoring Committees in several districts and the Freed Bonded Laborer Fund administered by a specially appointed Welfare Officer. The Bonded Labor Act is applicable to all forms of bonded labor, including Haruwa, Charuwa, and Haliya. BONDED LABOR ACT art. 2 (b). However, there is a general perception that the law applies only to Kamaiyas. This partially stems from the fact that the law was published under a misleading title: Kamaiya Labor (Prohibition) Act. As a result, other forms of bonded labor have not been reflected in government plans and policies. Therefore, some experts believe that more specific legislation is needed to address the rights and needs of, for example, Haliyas. The Haliya Prohibition Act has been drafted but not adopted by the legislature.
Children's Rights

The rights of the child are governed by the Interim Constitution, the Children's Act of 1992, the Children's Rules of 1995, the National Plan of Action for Children 2004/05 – 2014/15, the Child Labor Act of 2000, and the National Master Plan on Child Labor 2004 – 2014 [hereinafter NATIONAL MASTER PLAN ON CHILD LABOR]. The Child Labor Act prohibits and prescribes sanctions for forced child labor, the employment of a child who has not reached the age of 14, and engaging a child in hazardous work. In addition, the act regulates the hiring and conditions of work for children between 14 and 16 years of age. In contradiction to international treaties ratified by Nepal, such as the CRC and the Worst Forms of Child Labor Convention, the Child Labor Act defines a child as a person under 16 years of age. CHILD LABOR ACT secs. 2-14. With a view to discharge Nepal’s international obligations under the Worst Forms of Child Labor Convention, the National Master Plan on Child Labor has set out an ambitious goal of eliminating the worst forms of child labor by 2009 and all forms of child labor by 2014.

In 2004, the Kathmandu School of Law [hereinafter KSL] and the Friends of Needy Children [hereinafter FNC] commenced public interest litigation in the Supreme Court challenging the practice of Kamalari. In its benchmark decision issued in 2006, the Supreme Court ruled that it is the legal and constitutional duty as well as the international commitment of the GoN to protect the rights of the child in line with the domestic legislation and the CRC. Accordingly, the Supreme Court instructed the GoN to frame laws and programs to eradicate child slavery. FNC and KSL, et al. v. Council of Ministers, et al., Supreme Court (Decision No. 7705, 2006). The Court’s judgment required the GoN to allocate significant funding for the rehabilitation and empowerment of bonded child laborers and the GoN allocates funds to these issues every year. Nevertheless, the practice of Kamalari still persists.

Governmental Anti-HumanTrafficking Infrastructure

MoWCSW and Women Development Officers

The focal agency responsible for formulating and implementing laws, plans, and policies pertaining to trafficking in persons, including the NPA, is the MoWCSW. Established immediately after the Fourth World Conference on Women which took place in 1995 in Beijing, China, the MoWCSW plans, develops, and coordinates all activities related to women, children, and social welfare in the country. Among others, the MoWCSW oversees the Department of Women Development, the Women Development Offices [hereinafter WDOs] in 75 districts, and multiple child protection bodies: the Central Child Welfare Board (CCWB), the Central Child Welfare Committee (CCWC), and 75 District Child Welfare Committees (DCWB) chaired by the CDOs. In addition, in 2006, the MoWCSW inaugurated the National Center for Children at Risk (NCCR), which works to curb and respond to the incidents of missing, abducted, and trafficked children. The Center was set up as a joint initiative of the MoWCSW, Central Child Welfare Committee, Nepal Police, and various international organizations. It maintains a toll-free number to report missing children and those in need of protection and supports family reunification.

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26 At the time the HTAT Report for Nepal was being finalized, a new National Master Plan on Elimination of Child Labor 2011-2020 was awaiting approval of the National Planning Commission. Under the new plan, the GoN’s goal is to eliminate the worst forms of child labor by 2016 and eliminate all forms of child labor by 2020.

27 The National Master Plan on Child Labor sets forth the following considerations pertaining to the minimum age of employment: 1) 14 years for light work in a fixed time setting; 2) 16 years for other employment not involving physical or mental hazards; and 3) 18 years for work requiring special care to avoid physical or mental hazards. The Plan considers involving children in physically or mentally hazardous situation and/ or in the illegal forms of employment as the “worst forms of child labor.”
Lastly, the MoWCSW processes inter-country adoptions through its Inter-Country Adoption Committee and monitors the implementation of international instruments relating to human trafficking. Despite its potential to play a leading role in Nepal's counter-trafficking efforts, the MoWCSW is viewed by many as one of the weakest governmental agencies in Nepal because of a lack of resources. It does not coordinate its anti-human trafficking activities with other institutions.28

The WDOs throughout the country are significantly overburdened. For example, the WDOs in Makwanpur, Morang, and Kanchanpur have approximately 13-15 staff members in each district, an acutely insufficient annual budget of about NPR 50,000 (approximately USD 714), and a mandate over four large development sectors: women, children, senior citizens, and the differently abled. The WDOs are members or secretaries of multiple district-level committees, including the District Coordination Committees against Trafficking in Persons [hereinafter District Coordination Committees], and are in charge of planning, implementing, and coordinating numerous empowerment, capacity building, social mobilization, information sharing, and outreach activities in VDCs and municipalities. They form women’s groups and cooperatives, implement skills training and income generation programs, raise public awareness on gender-based violence, reproductive health, and trafficking in persons, and provide mediation services for victims of domestic violence. For example, in FY 2010-11, the WDO in Makwanpur helped settle 95 domestic violence cases. Due to budgetary constraints, the WDOs in the districts visited by the assessment team do not implement any stand-alone programs for victims of human trafficking. The issue is mainstreamed into more general activities targeting women and children.

Coordination Committees and Task Forces

Pursuant to the HTTCA and HTTCR, the GoN has formed the National and District Coordination Committees against Trafficking in Persons under the MoWCSW. HTTCA sec. 23. The National Coordination Committee against Trafficking in Persons [hereinafter National Coordination Committee] consists of the representatives of the following bodies: MoWCSW, MoLTM, Ministry of Home Affairs [hereinafter MoHA], MoFA, Office of the Attorney General [hereinafter OAG], and Nepal Police. In addition, the National Coordination Committee includes three women nominees with anti-human trafficking expertise and two female victims of trafficking in persons. HTTCR Rule No. 3. Some of the primary functions of the National Coordination Committee include: 1) formulating and executing anti-human trafficking policies, plans, and programs; 2) rescuing and repatriating trafficking victims; 3) coordinating and monitoring the work of the District Coordination Committees; and 4) maintaining national-level statistics about human trafficking. HTTCR Rule No. 4.

Each of the 75 District Coordination Committees is chaired by the CDO and consists of the WDO, district government attorney, Chief of District Police, three women nominees with anti-human trafficking expertise in the district, and a representative from the Federation of Nepali Journalists. HTTCR Rule No. 6. The District Coordination Committees are responsible for: 1) forming and operating anti-human trafficking committees at the local level; 2) raising public awareness about human trafficking; 3) inspecting rehabilitation centers; 4) enhancing multisectoral cooperation aimed at combating trafficking in persons; 5) rescuing trafficking victims within the district and obtaining documents that confirm their identity; and 6) maintaining district-level statistics about human trafficking. HTTCR Rule No. 7. The National and District Coordination Committees are coordination bodies and do not have intervention powers. All of them include representatives of civil society, such as staff members of Maiti Nepal, WOREC, ABC Nepal, and other prominent anti-human trafficking NGOs.

28 One expert observed that MoWCSW is a welfare institution and should have never been selected as a focal institution to address trafficking in persons. According to the expert, the power to formulate and implement anti-human trafficking policies and strategies should have been vested in the Ministry of Home Affairs which is a pertinent institution in Nepal to deal with crimes.
In practice, the National and District Coordination Committees are neither fully institutionalized nor operational. The National Committee meets four times a year and occasionally holds emergency meetings. However, it lacks the necessary resources, its own secretariat, clearly defined powers, and political commitment of the member agencies. The institutional committee members frequently delegate their subordinates to attend the meetings and many of the participants are not aware of their roles and responsibilities. The meetings are not well-planned, efficient or streamlined and any decision-making is often deferred. In a number of meetings preceding this assessment, the National Committee was focused on the development of the new NPA. Once the new NPA is adopted, the National Committee plans to conduct related trainings and workshops for the District Committees.

Pursuant to the 1998 National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation, the GoN formed a broad-based, multisectoral National Task Force against Trafficking in Persons, which is placed under the National Coordination Committee; District Task Forces in 26 trafficking-prone districts; as well as VDC and Municipality Task Forces. See MoWCSW, ILO & INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, NATIONAL PLAN OF ACTION AGAINST TRAFFICKING IN CHILDREN AND THEIR COMMERCIAL SEXUAL EXPLOITATION 6, 14 (1998); NPA at 8. According to interviewees, the task forces are principally inactive.

**NHRC, Special Rapporteur on Trafficking, and National Women Commission**

The NHRC of Nepal is an independent and autonomous institution established in 2000 and incorporated as a constitutional body under the Interim Constitution in 2007. INTERIM CONST. art. 131. It is headquartered in Kathmandu and has four regional offices: in Biratnagar (Morang), Pokhara (Kaski), Nepalgunj (Banke), and Dhangadhi (Kailali). Its primary function is to protect and promote human rights, including the rights of victims of human trafficking. Among others, the NHRC raises public awareness about human rights and conducts investigations and inquiries into violations of human rights upon a petition or complaint presented by the victim or a person acting on his or her behalf. If the NHRC determines that a suspect is responsible for the alleged human rights violation, it refers the case to an institution empowered to take a legal action against the offender (e.g., the police). HUMAN RIGHTS COMMISSION ACT secs. 9-13 (adopted Jan. 8, 1997 by Parliament, as amended) [hereinafter HUMAN RIGHTS COMMISSION ACT]; see also Article 5 below.

The NHRC can also submit non-binding recommendations to the GoN. Its responsibilities complement those of the traditional institutions administering justice, including the OAG, the courts, and other executive, quasi-judicial, and judicial bodies. See NHRC: An Introduction, at http://nhrcnepal.org/.

The Office of the Special Rapporteur on Trafficking was established on the basis of a Memorandum of Understanding [hereinafter MOU] signed in 2002 by the NHRC and the MoWCSW. The Special Rapporteur on Trafficking was appointed in January 2003 and operates within the structure of the NHRC. His or her primary responsibilities include: 1) monitoring the incidence of trafficking in persons in Nepal; 2) coordinating national and international efforts aimed at combating human trafficking (e.g., by liaising with his or her counterparts in South Asia); 3) collecting comprehensive data and publishing annual reports on trafficking in persons in Nepal; and 4) generating high-level commitment to improving the human rights situation of trafficking victims. PADMA MATHEMA, NHRC – COMBATING TRAFFICKING IN WOMEN AND CHILDREN 3 (2009). The latest annual report on trafficking in persons was published in 2010. See NATIONAL TIP REPORT 2010. At the time of this assessment, the Office of the Special Rapporteur on Trafficking was in the process of finalizing the report covering the FY 2009-10. The newest National TIP Report was published in November 2011 when this assessment was being drafted.

Interviewees stated that the NHRC’s mandate is not fully defined and there is a lack of conceptual clarity about the role of the NHRC in combating trafficking in persons. Some noted that the NHRC is a highly politicized body and this politicization affects the civil society’s ability to cooperate with its officers. The NHRC rarely receives individual complaints alleging human rights violations related to trafficking in persons and thus far, the NHRC’s official recommendations to
the government have not been focused specifically on human trafficking. Similarly, the capacity of the Special Rapporteur on Trafficking to effectively influence Nepal’s counter-trafficking efforts is rather weak due to the lack of sufficient financial and human resources. The Office of the Special Rapporteur on Trafficking has merely one full-time officer and two program assistants. See Article 5 below. The staff lacks appropriate training to effectively investigate and monitor human trafficking cases. See also Article 5 below.

In 2002, the GoN established the National Women Commission charged with promoting and protecting the rights of women in Nepal and eliminating all forms of gender-based discrimination and violence. Since the enactment of the National Women Commission Act in 2007, the National Women Commission is a statutory body. Similar to the NHRC, the National Women Commission can receive and investigate individual complaints alleging violations of women’s rights. The vast majority of cases pertain to domestic violence and economic exploitation of women. While the National Women Commission addresses many root causes of trafficking in persons, it is not viewed as one of the key actors in Nepal’s counter-trafficking efforts. Experts noted that the institution remains in very low profile.

MoLTM and Foreign Employment Agencies

The MoLTM has a significant role to play in combating internal and transnational trafficking in persons for the purposes of labor exploitation. The MoLTM has an extensive mandate encompassing, among others: 1) ending unemployment and developing a productive employment system; 2) alleviating child labor; 3) ensuring occupational health and safety; and 4) promoting and ensuring the safety of foreign labor migration. Yet, its budget is very limited, not exceeding 0.13-0.16% of the national budget.

Pursuant to the FEA, the MoLTM’s foreign employment-related functions are handled by the Department of Foreign Employment while the promotional and welfare functions are handled by the Foreign Employment Promotion Board. The Department of Foreign Employment is charged with: 1) issuing, renewing, and cancelling foreign employment business licenses; 2) issuing labor permits to workers who intend to obtain foreign employment through a recruiting agency or on a personal basis; 3) issuing licenses to institutions offering orientation training to prospective migrants; 4) monitoring recruiting agencies and orientation institutions; 5) reviewing complaints from the workers and investigating alleged violations of the FEA; and 6) imposing punishment for the commission of selected offences related to foreign employment. Notably, in the FY 2010-11, the Department of Foreign Employment created a committee to study the phenomenon of undocumented labor migration. However, the committee is not fully functional yet.

The Foreign Employment Promotion Board has the duty to promote foreign employment business and to protect the rights and interests of Nepali migrant workers and entrepreneurs. Among others, the Foreign Employment Promotion Board: 1) formulates and approves orientation training standards and curricula; 2) oversees the Foreign Employment Welfare Fund; 3) conducts studies of the international labor market; 4) analyzes domestic legislation related to foreign employment; 5) makes related recommendations to the GoN; and 6) raises public awareness about foreign employment through public service announcements [hereinafter PSAs], newspaper advertisements, posters, leaflets, and community meetings in VDCs and municipalities. The outreach activities are supported by the Ministry of Local Development.

In addition, the GoN is obliged to appoint Labor Attachés in countries which receive 5,000 or more Nepali migrant workers. The Labor Attachés have both welfare and consular functions. They are authorized to: 1) ensure the rights and interests of Nepali workers; 2) provide the GoN with information on the conditions of labor and employment; 3) assist in the resolution of disputes between workers, employers, and outsourcing agencies; 4) manage the rescue and repatriation of Nepali workers who become “helpless;” and 5) undertake steps to conclude bilateral labor agreements. FEA sec. 68. At the time of the assessment, Nepal had four male Labor Attachés (in Malaysia, Qatar, South Korea, and Saudi Arabia) and two female Labor Attachés (in the UEA
Nepal plans to appoint four additional Labor Attacheés in the following countries and territories: Hong Kong, Israel, Japan, and Oman. Interviewees noted that the effectiveness of Labor Attacheés is hampered by red tape, disconnect between the MoLTM and the MoFA, limited recourses, and the lack of awareness about their existence among migrant workers.

Governmental infrastructure for the investigation, prosecution, and adjudication of human trafficking cases is discussed in Articles 1 and 5 below.

**Civil Society and International Organizations**

Nepal has an extensive non-governmental anti-human trafficking infrastructure, encompassing local CSOs, intergovernmental organizations [hereinafter IGOs], international non-governmental organizations [hereinafter INGOs], international donors, technical assistance providers, the academia, and individual experts. Very recently, two CSOs received international recognition for their counter-trafficking efforts. In 2010, Anuradha Koirala, the founder of Maiti Nepal, was presented with the CNN Hero of the Year Award. Subsequently, her work was documented in the CNN Freedom Project’s film, “Nepal’s Stolen Children.” In 2011, Charimaya Tamang, a trafficking survivor and founder of Shakti Samuha, received the 2011 Hero Acting to End Modern-Day Slavery Award from the U.S. Department of State.

**CSOs and Anti-Human Trafficking Networks**

There are a number of local CSOs whose work is devoted exclusively to suppressing trafficking in persons and rescuing and rehabilitating the victims. Most of them belong to at least one of the three major national anti-human trafficking networks: the National Network against Girls Trafficking [hereinafter NNGAT] established in 1990, the Human Rights and Anti-Trafficking Network (13 member organizations), and the Alliance against Trafficking in Women and Children in Nepal [hereinafter AATWIN] established in 1997 (26 member organizations). There is also an Inter-Agency Coordinating Group on Trafficking in Persons (IACG), currently co-chaired by Planète Enfants and the Asia Foundation. The networks and coordinating groups have been formed to raise collective voice against human trafficking, lobby the GoN to adopt and execute adequate anti-human trafficking policies and programs, enhance multisectoral collaboration and information sharing, distribute workload, eliminate overlap in programming, create referral mechanisms, and implement holistic approaches to eradicating trafficking in persons. Some of the most prominent anti-human trafficking CSOs include: Shakti Samuha, Maiti Nepal, ABC Nepal, Esther Benjamins Memorial Foundation [hereinafter EBMF], and Change Nepal. There are also many less-resourced, grassroot organizations which make significant contributions to the fight against trafficking in persons in Nepal.

- **Shakti Samuha** is the first organization in Nepal established and run by survivors of trafficking in persons. Formed in 1996, Shakti Samuha focuses on empowering trafficking survivors through holistic social protection, rehabilitation, and reintegration programs. The organization is headquartered in Kathmandu and works in 9 districts, including Makwanpur.

- **Maiti Nepal** is a non-profit, secular organization founded in 1993 to combat exploitation, violence, and trafficking of children and women through comprehensive prevention and rehabilitation programs promoting education, empowerment, health, and social inclusion. Maiti Nepal has a central office in Kathmandu, 3 regional offices in Kakarvitta, Bharatpur, and Bhairawa in the Eastern, Central and Western development regions respectively, as well as 3 prevention homes, 8 transit homes, 2 rehabilitation homes, and 2 hospices around the country, including Makwanpur, Morang, and Kanchanpur. Among others, Maiti Nepal identifies and intercepts trafficking victims through its border monitoring program, conducts rescue operations, provides victims with shelter and essential
services, and implements Initiative Hope which offers medical treatment to victims infected with HIV.

- Formed in 1987 and officially registered in 2007, **ABC Nepal** is a non-profit human rights organization focusing on combating trafficking of women and children for the purpose of sexual exploitation. ABC Nepal runs education and awareness programs in trafficking-prone communities; provides skills training and creates savings and credit cooperatives for women; runs three transit and rehabilitation homes for victims of trafficking, domestic violence, and sexual abuse; provides formal and non-formal education for girls and women; and offers basic medical services in its field clinics and transit homes. In addition, ABC Nepal's staff and/or volunteers are present in 18 districts, including Makwanpur and Morang.

- **EBMF**, which is the counterpart NGO to the Esther Benjamins Trust (an INGO registered in the United Kingdom), specializes in rescuing Nepali children who have been trafficked to Indian circuses, but also rescues children exploited in other contexts. In addition to operating the Child Rescue Agency, the EBMF provides full-time residential care, education, and training to the rescued children in its two centers located in Kathmandu and Hetauda (Makwanpur). The EBMF was founded in 2006.

- **Change Nepal** specializes in literacy and awareness programs for victims of trafficking in persons. The organization offers non-formal education, counseling services, vocational and skill training for alternative livelihoods, assistance for victims who plan to become entrepreneurs, and medical support, including referrals to health clinics. Change Nepal has a drop-in care center and a learning center.

Many local CSOs and human rights networks, focusing on such issues as safe migration and the rights of women, children, and the indigent, have incorporated the issue of trafficking in persons into their broader institutional objectives. Some of these organizations include: CeLRRd, **Legal Aid and Consultation Center** [hereinafter LACC], WOREC, **Forum for Women, Law & Development** [hereinafter FWLD], Forum for Protection of People’s Rights, Nepal [hereinafter PPR Nepal], **Family Planning Association of Nepal** [hereinafter FPAN], CWIN, **Saathi**, BASE, National Network for Safe Migration, POURAKHI-Nepal, Pravasi Nepali Coordination Committee, **Foreign Nepali Worker Rescue Centre**, NDIS, **Sancharika Samuha**, and Biswas Nepal.

- **CeLRRd** is one of the leading law-oriented NGOs in Nepal. It was founded in 1998 to foster human rights culture, rule of law, good-governance, and access to justice through advocacy and trainings to various actors involved in the administration of justice. CeLRRd aims to achieve its objectives through research, resource development, community mobilization and mediation, building legal awareness, and providing **pro bono** legal aid services. “Anti-Human Trafficking and Gender Justice” is one of the CeLRRd’s thematic areas. With the central office in Kathmandu, the organization covers all five development regions (30 districts) through 4 regional and 12 district offices. CeLRRd has presence in all districts covered by this report. Its Victim Legal Aid Program is implemented in six districts encompassing Kanchanpur. The organization frequently cooperates with the **KSL** and its Legal Aid Clinic.

- **LACC** is an independent non-governmental legal resource organization established in 1987 to promote women's access to justice. Among others, LACC offers free legal aid (counseling, mediation, paralegal services, and court representation) to victims of gender-based violence, trafficking in persons, and child abuse. In addition, LACC runs a Women’s Rights Helpline and implements media campaigns on human trafficking and domestic violence. LACC has offices in Kathmandu, Makwanpur, Kanchanpur, and three other locations.
• **WOREC** was created in 1991, and it is one of the leading national organizations that addresses the issues of violence against women, safe migration, human trafficking, economic, social and cultural rights of women, as well as protection and recognition of women human rights defenders. WOREC implements its community-based programs in 9 districts, including Lalitpur (central office), Kathmandu, and Morang. Its Morang program covers 1 municipality and 35 VDCs.

• **FWLD** is an autonomous, non-profit NGO established in 1995 to protect and promote human rights and eliminate all forms of discrimination. FWLD uses domestic and international law as well as public interest litigation as key instruments to ensure the rights of women, children, minorities, and all other marginalized populations, including survivors of trafficking in persons. FWLD is based in Kathmandu.

• **PPR Nepal** was established in 2002 to advocate and work in the area of human rights and access to justice. The organization is run by lawyers, human rights activists, health professionals, peace workers, and sociologists. Its anti-human trafficking program, implemented in Kathmandu, Makwanpur and Kavrepalanchowk, offers victim-centered trainings to lawyers, judges, police, and prosecutors; provides legal aid and counseling services to the victims; conducts awareness raising activities; and strives to create a more supportive environment in which trafficking victims can reintegrate.

• **FPAN** has been active since 1959, and it is a leading national NGO providing sexual and reproductive health information and services for the poor, marginalized, and vulnerable people in 42 districts, including Kathmandu, Makwanpur, Morang, and Kanchanpur. Recognizing close linkages between human trafficking and sexual and reproductive health, FPAN considers victims of trafficking in persons as one of its key target populations. Many trafficking survivors serve as FPAN's peer educators and community counselors.

• **CWIN** was established in 1987, and it is a pioneer organization in promoting children's rights in Nepal. Its main areas of concern include child labor, street children, child marriage, bonded labor, trafficking in children, juvenile justice, and commercial-sexual exploitation of children. CWIN operates a toll-free Child Helpline along with the ambulance service, emergency shelter, as well as medical, counseling, and legal services in Kathmandu, Biratnagar (Morang), Pokhara (Kaski), Hetauda (Makwanpur), and Nepalgunj (Banke). It also coordinates rescue and repatriation operations with the Child Helpline in India and implements missing children and youth empowerment programs. CWIN works across the country focusing on 37 districts, including all districts covered by this report.

• **Saathi** is an NGO founded in 1992 to address contemporary challenges faced by Nepali women. Saathi's objective is to work towards eliminating violence and injustice against women and children and to provide support to the survivors. Among others, Saathi implements an Indo-Nepal Cross-Border Anti-Trafficking Program in the western districts, such as Kanchanpur. The program coordinates documentation, protection, rescue, care and support, awareness raising, advocacy, networking, and prevention activities to protect the rights of trafficking women and children. It also consists of safe migration counseling and information dissemination to potential women and girl migrants. Furthermore, Saathi has undertaken a program to provide services for girl children trafficked internally for the purposes of sexual exploitation. Lastly, Saathi has two care facilities for trafficking survivors in Banke and Kanchanpur. It also has offices in Lalitpur and Kapilvastu.

• **BASE** is a membership-based organization that started in 1985 as a grassroots social movement devoted to fighting against bonded labor, slavery, discrimination, exploitation, illiteracy, and poverty of the Tharu people and other marginalized groups. BASE has played a significant role in the Free Kamaiya Movement and the elimination of child labor.
within 8 districts of the Far-Western and Mid-Western development regions of Nepal, including Kanchanpur. Currently, BASE implements social mobilization & community development programs under the slogan "Education First." In Kanchanpur, it focuses on eradicating child labor and ensuring permanent settlement for and empowerment of former bonded laborers.

- **National Network for Safe Migration** was formed in 2003 to respond to the modern phenomenon of foreign labor migration and to protect the rights and interests of Nepali migrant workers. The Network was officially registered in 2006 and it currently encompasses 12 organizations, including NDIS, PPR Nepal, POURAKHI-Nepal, Civic Concern Nepal, FWLD, WOREC, Nepal Association of Foreign Employment Agencies (NAFEA), Sancharika Samuha, and Youth Action Nepal (YOAC).

- **POURAKHI-Nepal** is an organization of returnee women migrant workers. It was established in 2003 to ensure safe migration and the rights of women migrant workers in the entire process of foreign employment. POURAKHI conducts training of trainers and pre-departure sensitizing trainings on safe migration and raises public awareness through the national radio program, aired by Radio Nepal, which reaches thousands of young people planning to migrate. It also provides post-return counseling and legal services to victims of exploitation. The organization has its main office in Kathmandu, regional branch offices in Dharan and Pokhara, and programs in three additional districts, including Makwanpur.

- **Pravasi Nepali Coordination Committee (PNCC)** is a nonprofit and membership-based organization formed by migrant workers, especially from the Gulf States. The organization works to ensure the rights of migrant and domestic workers through counselling, advocacy, lobbying, and empowerment initiatives.

- **Foreign Nepali Worker Rescue Centre** is an NGO that assists workers who have been exploited abroad.

- **NIDS** is a non-governmental research organization established in 1998. The institute undertakes innovative research with a mission to develop an integrated and sustainable socio-economic development model suitable for Nepal. Among others, NIDS studies migration patterns and linkages between remittances and gender, livelihood, and development; pursues safe migration lobbying and policy advocacy; and offers orientation to potential migrants.

- **Sancharika Samuha** is a forum of women communicators established in 1996 to promote gender-sensitive media, to enhance the capacity of various media outlets to advance gender equality, and to encourage journalists to write in-depth articles covering such subjects as gender-based violence and human trafficking.

- **Biswa Nepal** advocates against exploitation and violence faced by women restaurant workers, and strives to create a dignified work environment for women in the restaurant industry.

**International Organizations**

In addition to national and local entities, many international organizations, donor agencies, and technical assistance providers have supported Nepal’s counter-trafficking efforts. They include OHCHR,\(^{29}\) UN Women, UN Children’s Fund [hereinafter UNICEF], International Organization for

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\(^{29}\) The OHCHR-Nepal ceased all new substantive work as of Dec. 8, 2011. While the OHCHR-Nepal never had a standalone anti-human trafficking program, it provided input on trafficking in
UN Women-Nepal (the UN Entity for Gender Equality and the Empowerment of Women) enhances the capacity of government officials, justice sector actors, and local CSOs to combat gender-based violence, including human trafficking. It also facilitates the National Network on Safe Migration, works with the MoLTM on policy issues affecting women, and implements awareness raising, community mobilization, and income generation projects for female returnee migrant workers.

UNICEF works with the GoN to develop appropriate legislation and policies for children. Its Child Protection Program aims to strengthen the capacity of the GoN and civil society to protect children against violence, exploitation and abuse, and seeks to support the building of protective systems covering all types of child rights violations.

IOM-Nepal provides technical assistance to the GoN, particularly the MoLTM, in the area of labor migration management. Among others, the IOM has helped establish Migration Resource (Information) Centers under the Foreign Employment Promotion Board. The centers provide potential labor migrants with information on their rights, the process, risks and dangers of migration, the laws of destination countries, and useful contacts. In addition, the IOM reviews and offers recommendations on policies and legislation related to labor migration and provides economic rehabilitation to returned trafficking victims in cooperation with the GoN and the private sector. The IOM is also engaged in a project “Post Trafficking in Nepal” which investigates livelihood opportunities for survivors of trafficking in persons. The research project is conducted in collaboration with Shakti Samuha and the New Castle University in the United Kingdom. Nepal joined IOM in 2006.

The primary objective of the ILO’s Decent Work Country Program for Nepal is promotion of decent and productive employment opportunities for Nepali men and women. Some of the ILO’s thematic areas include: implementation of international labor standards, child labor, employment promotion, equality and discrimination, labor migration, and informal economy. Nepal joined the ILO in 1966.

In 2010, USAID partnered with the Asia Foundation to implement a 6.8 million-dollar, 5 year-long Combating Trafficking in Persons [hereinafter CTIP] Program in Nepal. The CTIP Program is designed to prevent trafficking of persons, protect the victims, and prosecute the perpetrators in six trafficking-prone districts of Nepal, i.e.: Kathmandu, Makawanpur, Rupandehi, Sindhupalchowk, Banke, and Palanchok. The Asia Foundation plans to expand the program to Kanchanpur, which is one of the emerging high-risk areas. The program envisions: 1) facilitating multisectoral collaboration; 2) strengthening protection services for trafficking survivors (e.g., by developing standard operating procedures [hereinafter SOPs] for rehabilitation centers); 3) building the capacity of the judiciary and law enforcement agencies to effectively enforce legal measures and increase prosecution (e.g., through trainings and development of SOPs for investigators, persons to the national policy and decision-makers. In addition, the OHCHR-Nepal’s Far Western Region Office implemented a project for the emancipation and rehabilitation of Haliyas in Dadeldhura, the district where most of them live. The project focused on monitoring, advocacy and capacity development of local CSOs, including Haliya associations, and coordination with donors.
prosecutors, and adjudicators); and 4) raising awareness about human trafficking and foreign labor migration among vulnerable populations. The CTIP Program’s sub-grantees include World Education and 11 local partners, e.g., CeLRRD, Saathi, and LACC. The Asia Foundation has also received financial support from J/TIP. The grant was used to develop a computerized tracking system for human trafficking cases in partnership with KSL and the Nepal Police.

- ABA ROLI’s office in Nepal is implementing a J/TIP-funded program aimed at decreasing the incidence of trafficking in persons, improving the effectiveness of human trafficking investigations, fostering cooperation between the police and government attorneys, and providing institutional support to the OAG. Among others, the program 1) supported the Nepal Police in human trafficking investigations by developing counter-trafficking course modules and training handbooks for the National Police Academy and the WCSD; 2) organized specialized trainings for the police and prosecutors, including a pilot seminar on less commonly tapped sources of evidence in human trafficking cases; 3) held a series of multisectoral stakeholder coordination meetings; 4) developed Anti-Human Trafficking SOPs for the NHRC to increase its officers’ investigative skills; 5) worked to raise the quality of the NHRC’s reporting on human trafficking; and 6) raised awareness about human trafficking among vulnerable populations.

- World Education’s Nepal Anti-Human Trafficking Project works in close cooperation with concerned government agencies and CSOs to systematically address root causes of trafficking in the sex industry and exploitative child labor, focusing on poverty and children’s access to education. It also strives to enhance the capacity of the most affected communities to engage in prevention efforts. The project builds on two other major initiatives that World Education is implementing in Nepal: the CTIP Project and the New Path, New Steps anti-child labor project funded by the U.S. Department of Labor. Kathmandu Valley and Makwanpur are among several distinct geographic and social environments where World Education’s work is carried out. Thus far, 136,000 children have benefitted from the World Education’s programming in Nepal.

- TDH in Nepal provides direct assistance to children in distress (including child victims of trafficking and armed conflict) and promotes children’s rights. TDH has been implementing anti-human trafficking programs in Nepal since 2004. The projects focus on such issues as safe repatriation of trafficking victims from India, development of minimum standards on the protection of trafficking victims, establishment of shelter homes, educating children of sex workers, and preventing trafficking and exploitation of children. In 2010, TDH published a handbook for decision-makers: “Trafficking and Exploitation in the Entertainment and Sex Industries in Nepal.”

- Tiny Hands International is a Christian, non-profit organization based in the U.S. dedicated to eradicating poverty and ending injustice, including human trafficking. Its Nepal mission operates anywhere from 12 – 16 border monitoring stations at a time aimed at preventing traffickers from transporting girls and women to India. In addition, Tiny Hands has five safe homes for intercepted victims (e.g., in Kanchanpur) as well as a Women’s Empowerment Center in Kathmandu.

- Plan International has been working in Nepal since 1978, helping poor children to access their rights to health, education, economic security, and protection. One of Plan’s six core areas is Child Protection and Participation. Under this area, the organization strives to eliminate childhood marriage, child labor, and human trafficking, while supporting children affected by conflict and ensuring juvenile justice. Plan International has a country office in Lalitpur and program units in six districts, including Makwanpur and Morang.
• **Free the Slaves** has been implementing anti-slavery programs in Nepal since 2007. In cooperation with four local partners, the organization works to end slavery in over 120 rural communities; strengthens and unites women and girls in Kathmandu’s entertainment industry; helps the GoN improve its actions against slavery; and trains staff of large development projects implementing anti-poverty initiatives in communities particularly prone to human trafficking.

• **Nepal GoodWeave Foundation**, established in 1995, works through its certification program to end child labor in the carpet industry and to offer educational opportunities to children in Nepal’s weaving communities.

**Inter-Ministerial and Multisectoral Collaboration**

The GoN and all major political parties have expressed commitment to combating trafficking in persons in Nepal. While the governmental response to the phenomenon is slowly improving, it is still considered by most stakeholders as minimal. The acute lack of resources, insufficient collaboration among the line ministries and agencies, and lack of adequate expertise of some key officials are cited as the main factors impacting the GoN’s capacity to suppress human trafficking in the country. In particular, there is very little coordination between the MoWCSW, the National Committee, and other key agencies, including the Office of the Special Rapporteur on Trafficking, the MoLTM, the MoFA, the OAG, and the Gender-Based Violence Unit within the Prime Minister’s Office. All these agencies work vertically within their own mandates. There is also almost no coordination at the local level. The District Committees are neither active nor powerful enough to bring all the key stakeholders in VDCs and municipalities together. Interviewees in Makwanpur, Morang, and Kanchanpur confirmed that the respective District Committees do not meet regularly and are not effective. One of the main challenges is that many local officials who serve on the District Committees are frequently transferred between districts, which impacts the spirit of teamwork. One informant in Morang stated that involving the police in the District Committee is particularly challenging. Interviewees underlined that the governmental response to trafficking in persons should be more holistic and should involve deeper collaboration with civil society, international organizations, donors, the private sector, and the media.

The GoN is reported to be highly dependent on civil society in discharging its obligations related to the prevention of trafficking in persons and the rescue and rehabilitation of victims. Interviewees noted that many local CSOs have been successful in establishing positive relations with various governmental agencies. Nevertheless, the vast majority of CSOs do not receive any financial or technical assistance from the GoN. They rely on private and international sources of funding. Rare examples of multisectoral collaboration include CWIN’s Child Helpline: the helpline is supported by the GoN, the Nepal Telecommunication Corporation (Nepal Telecom), and the media, which publish free PSAs about missing children. In addition, the GoN subsidizes seven rehabilitation centers run by NGOs. Most governmental subsidies come in late and in the form of reimbursements rather than upfront payments.

Nepal does not have a formal victim referral system or a well-developed database of institutions involved in combating trafficking in persons. Consequently, programmatic overlap and duplication of assistance efforts, particularly trainings, are not uncommon. Furthermore, most CSOs and service providers are centralized around municipalities and many remote, rural areas remain neglected.

The level of cooperation among local CSOs is uneven. On the one hand, most organizations compete for funding and public recognition, which impacts their willingness to collaborate. On the other hand, however, the formation of national and local anti-human trafficking networks indicates that CSOs recognize the value of working in tandem with each other.
The assessment team uncovered a high level of cooperation among CSOs and the District Bar Association in Makwanpur, both in terms of referrals and coordination of rescue operations. Many organizations, including CeLRRd, FPAN, and EBMF are united within the Human Rights and Anti-Trafficking Network. In addition, CeLRRd has established a number of local anti-human trafficking task forces and, in some VDCs, these task forces are very active. In Morang, the grassroots environment is much more competitive, even though a number of organizations working in the district, including Maiti Nepal, WOREC, CWIN, ABC Nepal, Morang Bar Association, CeLRRd, and Tiny Hands International, belong to AATWIN chaired by INSEC, which has an Eastern Regional Office in Biratnagar. In Kanchanpur, collaboration among CSOs is not as evident as in Makwanpur, but it is gradually improving thanks to the Women Human Rights Defender Network, which is headquartered in Kathmandu and has an office in Mahendranagar. Most women’s rights and anti-human trafficking organizations that operate in Kanchanpur belong to the network, including LACC, Saathi, and Tiny Hands International. Furthermore, Saathi has established a multisectoral Monitoring and Support Committee in the district to assess the effectiveness of counter-trafficking programming. The committee is comprised of 10 members representing the District Bar Association, NGOs, the media, and other institutions. The committee meets twice a month to design programs and discuss progress. Saathi has also conducted a mapping study to explore existing resources, services, efforts, and challenges related to trafficking in persons in Kanchanpur. The study identified 29 organizations working in the area of women’s rights in the district. Reportedly, Mahendranagar has a sufficient number of anti-human trafficking information and counseling centers; however, access to services in VDCs is practically non-existent.
Nepal HTAT 2011 Analysis

Article 1: Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Conclusion:

The HTTCA provides for both territorial and extraterritorial jurisdiction over trafficking in persons. The crime is prosecuted by government attorneys in the courts of general jurisdiction. The Extradition Act makes extradition conditional upon the existence of a treaty. Formal extradition mechanisms are very seldom utilized to extradite alleged or convicted traffickers. However, the governments of Nepal and India occasionally extradite suspects and offenders in an informal, ad hoc manner. Nepal does not have a comprehensive witness protection mechanism. The HTTCA incorporates some witness protection measures but in practice, protection of trafficking victims and witnesses during criminal proceedings is ineffective. The laws of Nepal do not define an organized criminal group and do not envision separate or increased penalties for trafficking crimes committed in an organized manner. Nepal has taken steps towards improving its anti-money laundering regime: it has adopted the Money Laundering Prevention Act, approved a National Strategy, and formed an inter-agency Coordination Committee and a Financial Information Unit within the Nepal Rastra Bank. Despite these efforts, the Financial Action Task Force continues to consider Nepal as a jurisdiction with strategic anti-money laundering deficiencies. The rate of anti-money laundering prosecutions remains low. Thus far, neither of the money laundering cases tried in Nepal has been related to trafficking in persons. The Prevention of Corruption Act includes a broad definition of corruption, prescribes adequate penalties, and creates a National Vigilance Center. However, prosecution of corruption by the Commission for the Investigation of Abuse of Authority is rare and the crime remains prevalent. Obstruction of justice in Nepal is also a commonplace. The penalty prescribed for obstruction of justice by the HTTCA is minimal and in practice, the offense remains unpunished.

Implementation Analysis:

Article 1 indicates that the Trafficking Protocol is to be interpreted together with the provisions of the Convention against Transnational Organized Crime. Some pertinent provisions from the Convention against Transnational Organized Crime are those addressing jurisdiction (art. 15), extradition (art. 16), witness protection (art. 24), participation in an organized criminal group (art. 5), money laundering (art. 6), corruption (arts. 8-9), and obstruction of justice (art. 23).

Jurisdiction

Pursuant to the Convention against Transnational Organized Crime and the HTTCA, trafficking in persons is considered a serious crime, punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 2 (b); HTTCA sec. 15. Under the Convention, Nepal may assert jurisdiction over transnational
organized crime of trafficking in persons committed within its territory (territorial jurisdiction) and outside its territory (extraterritorial jurisdiction). Territorial jurisdiction can be asserted if the offense is committed in Nepal’s territory, or on board of a vessel that is flying a Nepali flag, or in an aircraft that is registered under Nepali laws at the time the offense is committed. Nepal can exercise extraterritorial jurisdiction if the offense is committed against a Nepali national (“passive personality” principle), or by a Nepali national or a stateless person who has his or her habitual residence in Nepal (“active nationality” principle). Nepal can also assert jurisdiction in order to protect its interests if a trafficking offense involving an organized criminal group is committed outside its territory with the aim of perpetrating a serious crime within its territory. Lastly, Nepal can exercise jurisdiction for laundering proceeds of a crime committed outside its territory, or attempting to do so, with a view to launder proceeds of a crime within its territory. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 15 (1), (2) (a)-(b), (c) (i-ii).

The HTTCA creates territorial jurisdiction over the crime of human trafficking committed within Nepal and extraterritorial jurisdiction over crimes committed against Nepali citizens abroad. HTTCA sec. 1 (3).

Human trafficking cases are investigated by the Nepal Police and prosecuted by government attorneys in the courts of general jurisdiction (district courts, appellate courts, and the Supreme Court) in accordance with the Government Cases Act. HTTCA sec. 28. The Nepal Police functions under the MoHA while district and appellate government attorneys report to the Attorney General. There are no specialized counter-trafficking investigative or prosecutorial units. However, the GoN plans to establish an anti-human trafficking unit within its elite Central Investigation Bureau under the Nepal Police. The Nepal Police has formed the Women and Children Service Directorate [hereinafter WCSD] in Kathmandu as well as Women and Children Service Centers [hereinafter WCSC] in the districts. The WCSD and WCSCs are charged with controlling and preventing crimes against women and children, although they face several obstacles in fulfilling this mandate. See Article 5 below.

Cases under the FEA are state cases handled by the Department of Foreign Employment and a three-member Foreign Employment Tribunal. The Department of Foreign Employment has quasi-judicial authority. Its decisions can be appealed to the GoN, while the judgments of the Foreign Employment Tribunal can be appealed to the Supreme Court. Offences punishable by the FEA are tried in accordance with the Summary Procedures Act. FEA secs. 63-66. Thus far, the Foreign Employment Tribunal has heard approximately 250 cases. Both the Department of Foreign Employment and the Foreign Employment Tribunal are located in Kathmandu and do not have regional branches. Therefore, they are highly inaccessible by the majority of migrant workers.

Disputes under the Labor Act and Child Labor Act are handled by the Labor Office under the MoLTM and the Labor Court. LABOR ACT secs. 59-60, 72-74; CHILD LABOR ACT secs. 20-22. Jurisdiction over the offences under the Bonded Labor Act is vested in the CDOs. Decisions issued by the CDO may be appealed to the Appellate Court.

In the late 1990s, a coalition of NGOs succeeded in advocating for the establishment of a special court in Kathmandu with sole jurisdiction over human trafficking offences. The special court was created in 2000 to professionalize and expedite the adjudication of human trafficking cases by using judges and lawyers who were highly knowledgeable about the phenomenon and related legislation. In practice, the existence of the special court isolated the legal venues where cases of trafficking in persons could be brought forward and resulted in fewer prosecutions. All parties involved in each case had to travel to Kathmandu to appear before the court which proved to be both costly and hazardous, given that the country was immersed in a nationwide conflict at time. The difficulties provided an additional incentive for victims to accept perpetrators’ bribes. The special court proved to be a failure and was shut down approximately two years later. The jurisdiction over human trafficking crimes went back to the courts of general jurisdiction.
Issues pertaining to the investigation and prosecution of human trafficking offences are discussed in detail in Article 5 below.

**Extradition**

The extradition procedure in Nepal is regulated by the Extradition Act, which makes extradition conditional upon the existence of a bilateral treaty or a ratified multilateral convention. **Extradition Act sec. 2 (adopted Aug. 31, 1988 by King Birendra Bir Bikram Shah Dev, as amended)** [hereinafter **EXTRADITION ACT**]. International treaties which may be used by the GoN to accomplish extradition in cases pertaining to trafficking in persons include: 1) Convention against Transnational Organized Crime; 2) SAARC Convention on Trafficking in Women and Children; and 3) Treaty of Extradition between the Government of India and the Government of Nepal (**signed** Oct. 2, 1953) [hereinafter **INDIA-NEPAL EXTRADITION TREATY**]. Nepal has not concluded extradition treaties with any other country.

The Convention against Transnational Organized Crime requires that the offense for which extradition proceedings are sought be punishable under the domestic law of both the requesting State Party and the requested State Party. **CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME** art. 16. The SAARC Convention on Trafficking in Women and Children explicitly states that human trafficking is an extraditable offence. If Nepal does not extradite the alleged trafficker, the case must be prosecuted in accordance with the Nepali laws. **SAARC CONVENTION ON TRAFFICKING IN WOMEN AND CHILDREN** art. VII.

The GoN entered into a bilateral extradition treaty with the Government of India in 1953. The treaty does not overtly classify trafficking in persons as an extraditable offence. However, offences for which extradition is to be granted include such closely related crimes as grievous hurt, rape, abduction, kidnapping, and forgery. **INDIA-NEPAL EXTRADITION TREATY** arts. I-III. Extradition cannot take place if the alleged offender is under trial in the requested country or if she or he has been acquitted of or punished for the same crime in the requested country. The expenses of apprehension, detention, or surrender of the offender must be borne by the country making the requisition. **INDIA-NEPAL EXTRADITION TREATY** arts. VI, X.

The Extradition Act prescribes the following procedure for extraditing the accused or offenders from Nepal:

1. The government of a foreign country submits a written request for extradition or punishment of the accused or offender residing in Nepal through its Diplomatic Mission in Kathmandu or the Diplomatic Mission of Nepal present on its territory. If this is not possible or appropriate, the request may be submitted directly to the GoN. The request must be accompanied by all the relevant evidence and identifying information.

2. The GoN orders the designated court to investigate the matter.

3. The court issues an arrest warrant, collects evidence, and determines if the offence is of extraditable nature.

4. If the court determines that the accused or offender should be extradited or punished, it orders that he or she be put in custody and submits a corresponding report to the GoN.

5. The GoN issues an order specifying where the extradition is to take place and who is to receive the extradited accused or offender.

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31 The SAARC Convention on Trafficking in Women and Children covers only cases related to the exploitation of prostitution.
Extradition of Nepali citizens to other countries and extradition of political offenders are prohibited. **Extradition Act** secs. 3 - 16. The GoN may submit a request to the government of a foreign country to extradite or punish a person who has committed an offence within the territory of Nepal. **Extradition Act** sec. 17.

In practice, the India-Nepal Extradition Treaty is obsolete and ineffective, in part, because of its procedural complexity. It has been formally invoked only in three cases not related to trafficking in persons, although interviewees stated that occasionally the governments of Nepal and India extradite suspects and offenders in an informal, *ad hoc* manner. For instance, Dr. Amit Kumar, a famous Indian perpetrator of organ trafficking caught in Nepal was extradited to India in this manner under suspicion of running one of the largest illegal kidney transplant schemes in the region. Following the handover, the Supreme Court issued an order compelling the GoN to develop a comprehensive law on extradition and follow formal extradition procedures. *Madhav Kumar Basnet et al. v. Office of the Prime Minister et al.*, Supreme Court (Writ No. 2064-WO-0803, 2009).

The governments of Nepal and India are currently in the process of negotiating the terms of a new extradition treaty. At the time of this assessment, the draft of the new treaty was reportedly initialed by the MoHA. However, it remained confidential because its ratification is a highly politicized issue. This relates in part to discussions for expanding its application to third-party nationals.

Experts emphasized that establishment of a functioning extradition mechanism between Nepal and India is imperative to bring perpetrators of human trafficking to justice because many of them flee across the border to avoid capture, arrest and prosecution.

**Witness Protection**

The Convention against Transnational Organized Crime requires its State Parties to take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offenses covered by the convention and, as appropriate, for their relatives and other persons close to them. **Convention Against Transnational Organized Crime** art. 24 (1).

In adopting the NPA, the GoN made a commitment to introduce a witness protection plan applicable in human trafficking cases. **NPA** at 16. At the time of the assessment, a comprehensive witness protection mechanism was non-existent. However, the GoN has incorporated a few related provisions into the HTTCA.

Under the HTTCA, a witness and a person who reports the crime and/or testifies in court may request protection against retaliation at the nearest police station. The available security measures include: 1) police escort to and from the courtroom; 2) placement in a rehabilitation center; and 3) temporary police protection. **HTTCA** sec. 26. Court proceedings in human trafficking cases must be conducted *in camera*. Accordingly, only parties, their attorneys, and non-parties permitted by the judge can enter the courtroom. **HTTCA** sec. 27.

In practice, protection of trafficking victims and witnesses during criminal proceedings is either non-existent or ineffective due to the lack of sufficient regulation and resources, absence of coordination between involved actors, and the lack of clarity as to the applicable standards. Interviewees in Morang, Makwanpur, and Kanchanpur stated that courts do not have adequate infrastructure to fully ensure the privacy and security of victims and witnesses. There is only one criminal bench in each of the district courts and there are usually multiple cases tried during the day. Out of the three districts, only the court in Makwanpur has a separate waiting room for those who have special safety concerns.
In addition, where regulations exist as aforementioned, they are not implemented in an effective manner. For instance, the provision prescribing in camera court proceedings in human trafficking cases is not always enforced, although a blanket application is also questionable by international fair trial standards. In addition, police do not notify victims and witnesses about their right to protection and most victims and witnesses are also not aware of this right. There also prevails a general mistrust of the police due to the perceptions and existence of corruption. This has led to a situation where the victims and witnesses neither know that they can request protection or trust the police to provide it. For example, there has been no case of a trafficking victim requesting police protection in Makwanpur. As a result, the safety and integrity of witnesses are seriously jeopardized, which impacts the effective prosecution of human trafficking cases. Many victims or witnesses are either afraid to appear in court, or provide detailed testimonies, or become hostile after being bribed, threatened, intimidated, coerced, or otherwise influenced by the perpetrators, their criminal networks, and sometimes their defense attorneys.

Reportedly, the new criminal procedure code, which is currently being finalized in Nepal, will address witness protection, although the extent by which it will do so is unclear. Furthermore, the Nepal Law Commission has prepared draft Witness Protection and Victim Protection Acts that are undergoing internal substantive review. This is not the first time that the GoN has attempted to ratify bills on victim and witness protection. Prior draft laws were submitted to the Parliament on this issue in 1997 and 2005 but failed to be ratified. The Supreme Court has initiated a working group tasked with drafting witness protection guidelines and issued three relevant guidelines and directives: 1) a directive on maintaining the privacy of parties to some special cases (2007); 2) a procedural guideline to the concerned agencies to maintain the privacy of victims of crimes (2007); and 3) a procedural guideline for the protection of women and children who are victims or witnesses of crimes (2008). The Supreme Court has also directed the GoN to enact a related law, issued a binding guideline delineating procedures for maintaining the confidentiality of victims of crimes, and underlined the need for standardization of in camera proceedings and their effective implementation. Sapana Pradhan Malla v. GoN, Supreme Court (Writ No. 3561, 2006). Other institutions, such as the National Judicial Academy and UN Women, are working to develop SOPs on witness and victim confidentiality. See also Article 6 below.

**Participation in an Organized Criminal Group**

When criminalizing human trafficking, Nepal should take into consideration the criminalization of participation in an organized criminal group, as set forth in the Convention against Transnational Organized Crime. Convention against Transnational Organized Crime art. 5.

The laws of Nepal do not define an organized criminal group and do not envision separate or increased penalties for trafficking crimes committed in an organized manner. However, the Muluki Ain extends the term of imprisonment by 2 years for the crimes of kidnapping or abduction committed by two or more persons. Muluki Ain, Part 4, Chapter 8A (No. 7). A standalone legislation on organized crime is currently in the drafting stage. Reportedly, the new law will give extensive investigation powers to the police and government attorneys.

In Nepal, trafficking in persons is typically committed by individuals, family groups, community members, and loosely connected criminal networks. In some cases, human trafficking is a family occupation: husbands, parents, and relatives propel their wives, daughters, and nieces to engage in commercial sex abroad and the women are supposed to send their earnings back to the village. It is usually not perpetrated by highly organized and disciplined crime syndicates with sophisticated structures that exist in Nepal, although the involvement of these syndicates in human trafficking is increasing.

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32 At the time the HTAT Report for Nepal was being finalized, the Witness Protection Act was under the review of the Ministry of Law and Justice.
In general, the police are not well equipped to deal with organized crimes effectively. With that said, the GoN recently established the Central Investigation Bureau, which has a pool of elite investigators, whose principal mandate is to investigate and prosecute organized criminal groups. The GoN is planning to form a specialized human trafficking investigative unit within the Central Investigation Bureau. See Article 5 below.

Money Laundering

Because traffickers often resort to money laundering to conceal illicit profits stemming from the trafficking crime, it is imperative that Nepal prosecute laundering of proceeds of crime in conjunction with trafficking in persons. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 6.

In 2008, Nepal adopted the Money Laundering Prevention Act, which is applicable throughout Nepal and to any individual who remits, transfers, or sends illicit assets from Nepal to another country and from another country to Nepal. Illicit assets consist of moveable, immovable, tangible, or intangible property obtained by committing one of the offences specified in the law including, but not limited to, human trafficking, kidnapping, abduction, murder, theft, and forgery. MONEY LAUNDERING PREVENTION ACT secs. 1, 2 (b), (l), 4 (adopted Jan. 1, 2008 by Legislature-Parliament) [hereinafter MONEY LAUNDERING PREVENTION ACT]. Money laundering is punishable by a fine equal to the amount involved in the offence and/or 1-4 years in prison. The sentence is increased by 10% if the crime is committed by an office bearer, chief or staff of a bank, financial institution or non-financial institution, or a public servant. Id. sec. 30. The power to investigate money laundering offences is vested in the Asset Laundering Prevention Department which has recently been formed under the Ministry of Finance. Id. sec. 11. Cases of money laundering are prosecuted by government attorneys in the Special Court in Kathmandu. As of July 2011, there were approximately 20 money laundering cases pending trial in Nepal. Convictions were achieved in two cases. Neither of them was related to trafficking in persons.

In order to prevent and suppress money laundering, the GoN has formed an inter-agency Coordination Committee and a Financial Information Unit [hereinafter FIU] within the Nepal Rastra Bank (Central Bank of Nepal). The FIU is a central, national agency responsible for receiving, processing, analyzing, and disseminating financial information and intelligence on suspected money laundering and terrorist financing activities to the Asset Laundering Prevention Department, other relevant law enforcement agencies, and foreign FIUs. Id. secs. 8-10. Each government entity, bank, financial institution, and non-financial institution is obliged to supply the FIU with information about any transaction exceeding the limit prescribed by the Rastra Bank (i.e., NPR 500,000 – 1 million dependably on the type of transaction) and any transaction that looks suspicious. Id. sec. 7; FIU, NEPAL RASTRA BANK, ANTI-MONEY LAUNDERING DIRECTIVES TO BANKS AND FINANCIAL INSTITUTIONS 2-3 (2009).

Nepal is not a member of the Financial Action Task Force [hereinafter FATF] but it belongs to its close affiliate, the Asia/Pacific Group on Money Laundering [hereinafter APG].33 Nepal has been identified by the FATF as a jurisdiction with strategic anti-money laundering deficiencies. In February 2010, the GoN made a high-level political commitment to work with the FATF and APG to address the shortcomings. Since June 2011, Nepal has taken steps towards improving its anti-money laundering regime, including by approving a related National Strategy. However, strategic deficiencies still remain and the FATF has warned Nepal that it would tag it as a high-risk country.

33 The FATF is an inter-governmental body whose purpose is to develop policies aimed at combating money laundering and terrorist financing. The FATF monitors members' progress in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. The organization was formed by the G-7 Summit held in Paris, France in 1989. All APG members have committed to effectively implement the FATF's international standards.
if more concrete steps are not taken by February 2012. Among others, FATF suggested that Nepal: 1) adequately criminalize money laundering; 2) implement satisfactory procedures for the confiscation of funds related to money laundering; and 3) enact and implement appropriate mutual legal assistance legislation. See FATF, IMPROVING GLOBAL AML/CFT COMPLIANCE: ONGOING PROCESS (2011); Nepal Instructed to Fulfill AML Commitments by Feb. 2012, REPUBLICA, Nov. 5, 2011; Anil Giri, Nepal Endorses UN’s Terrorism Financing and Organized Crime Conventions, THE GLOBAL HERALD, June 26, 2011.

Corruption

The Convention against Transnational Organized Crime requires its State Parties to criminalize corruption. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 8. Nepal ratified the UN Convention against Corruption in 2011 and also has a number of related acts, including the Prevention of Corruption Act (2002), the Right to Information Act (2007), and the Good Governance Act (2008).

The Prevention of Corruption Act includes a broad definition of corruption in line with the Convention against Transnational Organized Crime, which requires that both the offering by a person and the acceptance by a public official are covered by the offence. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 8. Among others, a charge of corruption can be entered if:

- A public servant or a person expecting to become a public servant accepts or agrees to accept a graft while carrying out his or her official functions;
- A person other than a public servant accepts or agrees to accept a graft with the intention of convincing a public servant to perform or forbear to perform a function assigned to his or her office or position;
- A person gives a graft to a public servant;
- A public servant causes a revenue leakage;
- A public servant prepares false documents or wrongly translates documents with mala fide intention of causing loss to the GoN or a public institution;
- A person compels another person to commit any offence punishable by the Prevention of Corruption Act by exerting any type of illegal pressure.

PREVENTION OF CORRUPTION ACT secs. 3-24 (adopted June 17, 2002 by Parliament) [hereinafter PREVENTION OF CORRUPTION ACT]. A graft is defined as cash, goods, or any type of gain or benefit, including a bribe. Id. sec. 2 (b).

Penalties for corruption include fines, confiscation of grafts, and imprisonment. The sanction depends on the type of the crime and its gravity. The longest term of imprisonment, i.e. 8 – 10 years, is envisioned for public servants who accept grafts in the amount exceeding NPR 1 million (approximately USD 14,273). Id. sec. 3 (1) (i). An additional 3-year imprisonment term is added if an offence of corruption is committed by a person holding an office in a constitutional organ or body or if the offender serves as a head, general manager, or an officer of an equivalent rank in a public institution. Id. sec. 24.

The crime of corruption under the Prevention of Corruption Act is investigated and prosecuted by the Commission for the Investigation of Abuse of Authority [hereinafter CIAA]. The CIAA is an independent, constitutional body whose mission is to ensure good governance by taking punitive and preventative actions against corruption. Id. secs. 2 (g), 25; INTERIM CONST. arts. 119-121; see also CIAA, Mission Statement, at http://www.ciaa.gov.np. The CIAA’s Commissioners are appointed by Nepal’s Constitutional Council. In the past three years, however, the CIAA has

34 At its February 2012 meeting, FATF refrained from tagging Nepal as a high-risk country considering the country’s political transition. See, e.g., Safe, for Now, NEPALI TIMES, Feb. 18, 2012.
functioned without a single Commissioner appointed to it because of the political nature and maneuvering that has accompanied the recommendation of any appointments. This has crippled the ability of the CIAA to undertake any effective actions. Jurisdiction over the crime of corruption lies with the Special Court located in Kathmandu. Its judgments may be appealed to the Supreme Court. COMMISSION FOR THE INVESTIGATION OF ABUSE OF AUTHORITY ACT sec. 34 (adopted Nov. 20, 1991 by Parliament); SPECIAL COURT ACT sec. 3 (adopted June 19, 2002 by Parliament). The Special Court hears approximately 50-60 corruption cases per year.

In 2002, the GoN founded a National Vigilance Center under the direct supervision and control of the Prime Minister of Nepal. The National Vigilance Center is charged with monitoring public bodies and government institutions and with controlling corruption-oriented acts through preventative measures, such as raising people's awareness against corruption. PREVENTION OF CORRUPTION ACT secs. 37-38; National Vigilance Center, Introduction, at http://www.nvc.gov.np/eng/introduction.php.

The Interim Constitution, along with the Right to Information Act, guarantee the right of every citizen to demand or receive information on any matter of public interest, unless the data is classified according to the law. INTERIM CONST. art. 27; RIGHT TO INFORMATION ACT sec. 3 (adopted July 21, 2007 by Legislature – Parliament) [hereinafter RIGHT TO INFORMATION ACT]. The right to information, which establishes the legal basis for openness, transparency, and accountability of the government, includes the right to study or observe any written document or material in the possession of a public body, to obtain a verified copy of such a document, and to visit or observe a place where any action of public importance takes place. RIGHT TO INFORMATION ACT sec. 2 (e). Public bodies are obliged to make citizens' access to information simple and easy by appointing an Information Officer or setting up an Information Section charged with disseminating public information and responding to requests for information. Id. secs. 4, 6-7. The requested information must be supplied within 15 days or within 24 hours in life-threatening circumstances. Id. sec. 7. If information is not received within the prescribed amount of time, the requesting person may file a complaint with the chief of the concerned body. The chief’s decision may be appealed to the National Information Commission, which is an independent body charged with protecting and promoting the right to information. Id. secs. 9-11. Interviewees noted that the Right to Information Act is robust but highly unutilized because both citizens and obliged government agencies are unaware of its existence. In the face of this lack of knowledge or understanding, government officials often do not exercise a policy of transparency. Government agencies also lack staff, such as information officers, who are competent to implement the government’s obligations under the Right to Information Act. In addition, no monitoring mechanism exists.

In spite of the legislative and institution-building efforts, corruption in Nepal is perceived to be significant and remains prevalent in the forms of commission payment, bribe, nepotism, favoritism, immoral acts, bureaucratic wrongdoing, political excesses, contractual irregularity, smuggling, trafficking, ill-intentioned gifts, damage to public and private properties, and dereliction of duty. In 2011, Transparency International ranked Nepal 154 out of 183 countries, with a score of 2.2 out of 10 (on a scale from 0, highly corrupt, to 10, highly clean), in its Corruption Perceptions Index [hereinafter CPI]. Nepal is listed by Transparency International in the category of countries with “rampant corruption.” TRANSPARENCY INTERNATIONAL, CORRUPTION IN NEPAL (2010); TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2011, at http://cpi.transparency.org/cpi2011/results/#CountryResults. According to CPI, no progress has been made in fighting corruption in recent years. Between 2007 and 2011, Nepal's CPI score has fluctuated between 2.2 – 2.7. As discussed above, the enforcement of the Prevention of Corruption Act is weak under the CIAA and the National Vigilance Center, which only has a monitoring and public awareness role. To date, there have been no prosecutions of government officials for their complicity in human trafficking.

Reputedly, government and justice sector officials are often complicit and facilitate trafficking in persons. Many venues – including dance bars, cabin restaurants, and massage parlors – are
reportedly co-owned by police and army officials. Some public officials are also implicated in the preparation of false documents to facilitate illicit adoptions, child labor, and human trafficking under the guise of foreign labor migration. Furthermore, it is a widely held belief that there is considerable corruption among the judiciary. These factors precipitate an environment where trafficking in persons can flourish unabated. For instance, police officials often refuse to register human trafficking cases due to corruption, although other reasons related to the strictures of the criminal procedure laws also exist. In addition, the police use the Some Public (Crime and Punishment) Act of 1970 (adopted 1970 by King Mahendra Bir Bikram Shah Dev, as amended) [hereinafter SOME PUBLIC CRIME ACT] to raid entertainment establishments which serve as sex access points in order to extort bribes from proprietors. See Article 5 below. In turn, judges are said to reduce punishments or issue “partial conviction” judgments when bribed.

Corruption is also flourishing at the open and largely unregulated border with India, which has become a safe haven for people engaged in human trafficking and other illegal and informal trade. Trafficking in persons and illegal trading activities are also becoming more and more prevalent across the northern border with China. Low-cost Chinese goods are frequently smuggled into Nepal and then India; similarly, contraband items are smuggled into China from Nepal. TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2009 at 278-279 (2009).

**Obstruction of Justice**

The Convention against Transnational Organized Crime requires its State Parties to criminalize obstruction of justice in relation to the commission of offences covered by the Convention. The Convention defines obstruction of justice as: 1) the use of physical force, threats or intimidation, or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in criminal proceedings; and 2) the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME art. 23. Under the HTTCA, obstructing an investigation of an offence of human trafficking is punishable by a fine of up to NPR 10,000 (approximately USD 143). HTTCA sec. 24.

Obstruction of justice is common in proceedings related to trafficking in persons. Traffickers and their criminal networks frequently bribe, threaten, intimidate, and exert undue influence upon victims and witnesses who are scheduled to testify. Interviewees noted that perpetrators pay large sums of money to their victims to thwart criminal proceedings. Victims often accept these bribes because they stand little chance of receiving compensation through the criminal proceedings. Furthermore, the execution of any compensation judgment awarded to them is either unsuccessful or takes several years. As a result of the above, many victims and witnesses turn hostile in court. Reportedly, the use of physical force or intimidation against judges and law enforcement officers is rare. To date, there have been no serious attacks against government attorneys in Nepal. Similar, interviewees did not invoke any examples of serious physical attacks against trafficking victims or witnesses.

Obstruction of justice in proceedings related to trafficking in persons remains unpunished. First, obstruction of justice is not defined in the HTTCA or under any other Nepali laws. Second, government attorneys are overburdened and have limited resources. Therefore, they do not prioritize prosecuting obstruction to justice offences because they are difficult to prove and the penalty for these crimes is small. According to interviewees, the related HTTCA provision has never been invoked in the courts of Makwanpur, Morang, and Kanchanpur.
Article 2: Statement of Purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Conclusion:

Nepal has established foundational counter-trafficking legislative and institutional measures and continues to make progress in combating trafficking in persons. However, due to the acute lack of resources and sufficient coordination, the GoN is highly dependant on civil society, international organizations, and donors in discharging its anti-human trafficking obligations.

Implementation Analysis:

Nepal has established basic legislative and institutional measures to prevent trafficking in persons, prosecute the traffickers, and protect the victims. The GoN is also in the incipient stages of developing formal mechanisms for bilateral cooperation and mutual legal assistance in criminal matters, particularly with India. Furthermore, the GoN has begun to address the nexus between trafficking in persons and the rapidly expanding phenomenon of foreign labor migration. However, due to the lack of resources, the GoN is reported to be highly dependent on civil society, international organizations, and donors in discharging its counter-trafficking obligations, particularly in the areas of prevention and protection. Interviewees identified the following list of priorities and objectives to raise the effectiveness of Nepal’s counter-trafficking efforts:

- Recognize trafficking in persons as a pressing national issue and increase funding;
- Mainstream counter-trafficking efforts into the national development programs and ensure their sustainability;
- Incorporate a human rights perspective into counter-trafficking initiatives undertaken by the GoN and civil society;
- Invest in anti-human trafficking research and strategizing activities;
- Assess the scope of the phenomenon and explore its hidden pockets;
- Assess the impact of foreign assistance and conduct a financial analysis of anti-human trafficking projects to ensure their cost-effectiveness;
- Incorporate modern technological advances into anti-human trafficking programs;
- Improve legislation and ensure enforcement of existing laws at the local level;
- Devise and implement effective prevention strategies;
- Discourage the demand that fosters all forms of exploitation of persons;
- Enhance victims’ access to justice and essential services;
- Provide effective protection to trafficking victims and witnesses;
- Ensure human rights-based treatment of trafficking victims by the GoN and CSOs;
- Implement stigma and discrimination reduction strategies;
- Assume responsibility for rescuing and rehabilitating trafficking survivors;
- Implement victim-centered programming aimed at their socio-economic empowerment, rehabilitation, and reintegration;
- Ensure the balance of victims’ rights with those of the accused in criminal proceedings;
- Improve multisectoral and international cooperation; and
• Ensure the GoN’s accountability for discharging its international human rights obligations.

Prevention of trafficking in persons is explored in detail in Article 9, prosecution in Articles 3 and 5, protection and assistance to victims in Articles 6-8, and international cooperation in Articles 8, 10, and 11. Matters pertaining to jurisdiction and extradition that are essential to the prosecution of trafficking crimes are covered by Article 1 above.
Article 3: Use of Terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Conclusion:

The definition of trafficking in persons contained in the HTTCA partially complies with Article 3 of the Trafficking Protocol. While all the suspect activities are covered and the list of means is not exhaustive, the law does not explicitly reference “other forms of sexual exploitation,” “forced labor or services,” “practices similar to slavery,” and “servitude” as forms of exploitation. Furthermore, the law makes an unusual distinction between the crimes of human trafficking and human transportation and does not include a clause rendering the consent of a trafficking victim irrelevant if any of the means defined in the crime are utilized. Similarly, the HTTCA fails to incorporate a clause according to which the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation is considered trafficking in persons even if the act does not involve any of the illicit means set forth in the Trafficking Protocol. Nepal does not have a uniform legal definition of a child. However, the HTTCA defines a child as a person who has not reached the age of 18, which is compatible with international law. The laws of Nepal do not define such terms as “prostitution,” “engagement in prostitution,” “immoral profession,” “risky occupation,” or “hazardous work,” which are present in various provisions related to human trafficking, child labor, and bonded labor. In practice, there is a critical lack of conceptual clarity among key justice system stakeholders in Nepal as to what trafficking in persons is, particularly in relation to the phenomenon of foreign labor migration.

Implementation Analysis:

Article 3 of the Trafficking Protocol provides a comprehensive definition of trafficking in persons and outlines minimum elements that need to be included when criminalizing such conduct within domestic legislation, i.e., the acts, the means, and the purpose, which is always exploitation.

The Interim Constitution guarantees the right of every person to be free from exploitation, trafficking, slavery, servitude, and forced labor. INTERIM CONSTITUT. arts. 22 (3), 28. The crime of trafficking in persons was established in Nepal with the adoption of the 1963 Muluki Ain. The amended version of the Muluki Ain defines human trafficking as:
• Luring and taking another person outside the territory of Nepal with the intention to sell him or her;
• Separating a minor below the age of 16 or a person over 16 years old who is mentally incapacitated from his or her guardian without the consent of the guardian;
• Making another person Kamara, Kamalari (sub-servant), slave, or bonded laborer.

MULUKI AIN Part 4, Chapter 11, No. 1-3.

In 1986, Nepal promulgated the Human Trafficking Control Act, which was subsequently replaced by the HTTCA. As a special law, the HTTCA prevails over the Muluki Ain, unless the general code addresses issues not covered by the HTTCA.

Acts and Purpose

The HTTCA does not clearly define the elements of the crime and makes an unusual distinction between the crimes of human trafficking and human transportation, which is presented in the table below. Interviewees stressed that in practice, the offence of human transportation is interpreted by the justice system actors as a form of trafficking in persons and not as human smuggling. The distinction is made to emphasize the element of movement present in the act of human transportation and to adjust the penalties.35

<table>
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<tr>
<th>DEFINITION OF HUMAN TRAFFICKING AND HUMAN TRANSPORTATION</th>
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<tr>
<td><strong>Human Trafficking</strong></td>
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<tr>
<td>• Selling or buying a person for any purpose;</td>
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<td>• Forcing someone into prostitution (with or</td>
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<td>without financial benefit);</td>
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<td>• Removing a human organ except in situations</td>
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<td>determined by the law;</td>
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<td>• Engaging in prostitution.</td>
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Source: HTTCA sec. 4.

The law defines exploitation as an act of keeping a human being as a slave or bonded laborer, or removing a human organ except in situations determined by the law. HTTCA sec. 2 (e). Bonded labor means labor or service to be rendered for a creditor without or for a nominal wage in order to pay back the debt or interest incurred by the debtor, his or her family or ascendant, or by a person who has given a guarantee for the credit on behalf of the bonded laborer. BONDED LABOR ACT sec. 2. The term “human organ” includes a tissue of a human body. HUMAN BODY ORGAN

35 Unless otherwise stated, the terms “trafficking in persons” and “human trafficking” used interchangeably throughout this report encompass both “human trafficking” and “human transportation” under the HTTCA.
The definition of trafficking in persons contained in the HTTCA partially complies with Article 3 of the Trafficking Protocol. While all the suspect activities are covered and the list of means is not exhaustive, the law does not explicitly reference “other forms of sexual exploitation,” “forced labor or services,” “practices similar to slavery,” and “servitude” as forms of exploitation. Furthermore, neither the HTTCA nor the Muluki Ain define the terms “prostitution” and “engaging in prostitution,” which might be interpreted as an attempt to criminalize people who render sexual services to others, with or without their will. HTTCA sec. 4; TRAFFICKING PROTOCOL art. 3.

According to interviewees, the HTTCA provision criminalizing engagement in prostitution is only applied to clients. With that said, sex workers and people employed in the entertainment industry establishments are routinely arrested during police raids and prosecuted under the Some Public Crime Act. Reportedly, the enforcement of this law is highly influenced by politics and corruption. Interviewees shared disparate views of the worthwhileness of criminalizing consensual commercial sex as a means to prevent trafficking in persons. They added, nevertheless, that all forms of sexual exploitation, including the use of children in prostitution and other sexual practices, should always be criminalized.

In practice, there is a critical lack of conceptual clarity among key justice system stakeholders in Nepal as to what trafficking in persons is, particularly in relation to the phenomenon of foreign labor migration. One judge interviewed for the assessment explicitly stated that all cases related to foreign employment fall under the jurisdiction of the Foreign Employment Tribunal. Experts stressed that classifying foreign employment cases that involve the elements of human trafficking under the FEA leads to injustice because the FEA prescribes significantly lower penalties than the HTTCA. In addition, addressing trafficking in person under the FEA leads to a fundamental misrepresentation of the victim’s experience and accordingly deprives the victim of support and protections proffered under both domestic and international laws. Furthermore, travelling to the Foreign Employment Tribunal in Kathmandu is a major barrier to access to justice for the vast majority of victims.

Means

In Nepal, human trafficking for the purposes of sexual and labor exploitation occurs both transnationally and internally. Regardless of the nature of the crime, physical force, intoxication, abduction, and kidnapping are rarely employed in trafficking operations. Most perpetrators use fraud, deception, debt bondage, and abuse of the position of vulnerability to traffic their victims. Others resort to fake marriages and illicit adoptions. One interviewee succinctly stated that traffickers are very mobile: they travel to locations where vulnerability is at its highest and leave before the victims’ families realize that they have been deceived. In addition, many traffickers are members of the victims’ extended families and use family ties and community connections to gain the victims’ trust. Finally, traffickers frequently use modern technology, such as internet and mobile phones, in pursuing their victims, which makes them extremely difficult to trace and detect.

 Trafficking victims, especially those who are impoverished and illiterate, are usually lured by illegal labor brokers with the promise of a good job, skills training, and education. In some instances, victims pay large sums of money to agents to cover the costs of transportation and fraudulent travel documents. In other instances, the costs are covered by the employers in the form of a loan, which places the victims in the situation of debt bondage. As mentioned in Nepal Background above, loans obtained by migrant workers to cover recruitment costs have usually very high interest rates.

In the case of child trafficking, many parents become complicit in the crime, either because of a lack of awareness or because of extreme poverty, lack of opportunities, and desperation. Some parents willingly sign employment contracts and send their children to work in hotels, restaurants,
and Indian circuses, even if the children’s very young age makes them ineligible to work under the law. Traffickers often use these illegal contracts to threaten the parents with prosecution for aiding and abetting the crime if they choose to report it to the police. At times, parents are tricked or coerced into signing documents relinquishing their parental rights. In situations like this, traffickers claim to have become the children’s guardians. Interviewees stated that traffickers commonly force children to recruit other children by gaining their trust and friendship. In addition, traffickers use children because they believe that they are unlikely to be prosecuted.

Transnational trafficking for the purposes of labor exploitation usually starts as smuggling of undocumented migrant workers to India or through India to other destinations, such as Malaysia and the Gulf States. It needs to be noted, however, that a number of documented migrant workers who travel abroad through formal channels also become victims of trafficking and exploitation in the countries of transit or destination. If they complain or attempt to abscond, traffickers move them from one employer to another to avoid detection.

Consent

The HTTCA does not include a clause rendering the consent of a trafficking victim irrelevant if any of the means defined in the crime are utilized. Interviewees stated that, in principle, a victim’s consent is irrelevant because the law imposes strict liability to anyone who commits an act of human trafficking. See HTTCA sec. 3. In addition, the burden of proof in human trafficking cases lies with the defendant. Therefore, the victim is never required to prove that she or he did not consent to the intended exploitation. HTTCA sec. 9; see also Article 5 below. In practice, however, the consent of a trafficking victim is commonly used as a defense strategy. This often complicates criminal proceedings, particularly if the defendant is the victim’s relative, acquaintance, or spouse, when the case is largely based on circumstantial evidence, or when it involves children whose parents signed illicit contracts with the traffickers.

Children

Nepal does not have a uniform legal definition of a child. Under the Children’s Act and the Child Labor Act, a child is a person under the age of 16. CHILDREN’S ACT sec. 2 (a) (adopted May 20, 1992 by Parliament) [hereinafter CHILDREN’S ACT]; CHILD LABOR ACT sec. 2 (a). The FEA prohibits sending a child under the age of 18 for foreign employment. FEA sec. 7. Correspondingly, the HTTCA defines a child as a person who has not reached the age of 18, which is compatible with international law. HTTCA sec. 2 (d); TRAFFICKING PROTOCOL art. 3 (d); CRC art. 1; WORST FORMS OF CHILD LABOR CONVENTION art. 2. However, the HTTCA fails to incorporate a clause according to which the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation would be considered trafficking in persons even if this does not involve any of the illicit means set forth in the Trafficking Protocol or the HTTCA. HTTCA sec. 4 (2); TRAFFICKING PROTOCOL art. 3 (c). The Child Labor Act involves a similar oversight. It prohibits the engagement of a child in work against his or her will but it contains the following, non-exhaustive list of the means by which such an act can occur: threat, coercion, pleasing, gratifying or misrepresenting the child, or causing greediness or fear. CHILD LABOR ACT sec. 4. In needs to be noted, however, that the Child Labor Act imposes a blanket prohibition on engaging any child below 14 years of age in work and engaging any person below 16 years of age in a “risky occupation.” CHILD LABOR ACT sec. 3; see also Article 5 below. Furthermore, the Children’s Act prohibits the involvement of a child in an “immoral profession,” such as child pornography. CHILDREN’S ACT sec. 16. The term “immoral profession” is not defined.

The above-mentioned gaps are partially filled by the Muluki Ain, which includes separating a minor below the age of 16 from his or her guardian without the guardian’s consent in its definition of human trafficking, regardless of the illicit means employed. This also applies to a person over 16 years old who is mentally incapacitated. Muluki Ain Part 4, Chapter 11, No. 1-3. Nonetheless, the Muluki Ain does not cover situations where the parents or guardians have consented, which – as mentioned above – is a common occurrence.
One of the many challenges that thwart the enforcement of the Child Labor Act is that the law does not apply to the informal sector, such as domestic work, and does not clearly define the term “risky occupation” or “hazardous work.” Instead, it lists occupations that are considered “risky.” Furthermore, children are often instructed to lie about their age and formal age determination is problematic because many children do not possess birth certificates.

Lastly, Nepali laws fail to protect children between 16 and 18 years of age from sexual exploitation.

36 The list of risky occupations includes, among others, work in: 1) the tourism and entertainment industries (e.g., in hotels, motels, casinos, restaurants, bars, pubs, and resorts); 2) public transportation; 3) construction industry; 4) factories manufacturing such products as, for example, cigarettes, carpets, leather, soap, pesticides, rubber, and plastic; 5) facilities producing energy; and 6) certain services, such as cold storage, laboratory, or slaughtering house. CHILD LABOR ACT, Schedule.
Article 4: Scope of Application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Conclusion:

The laws of Nepal address all forms of trafficking in persons: internal, transnational, and committed with or without the involvement of an organized criminal group.

Implementation Analysis:

In Nepal, trafficking in persons occurs both internally and transnationally, with and without the involvement of organized criminal groups. The HTTCA addresses all forms of trafficking in persons and sets out measures for the prosecution of traffickers and protection of victims. Although the law does not establish measures for the prevention of trafficking in persons, such measures are prescribed by the NPA. See Articles 5-9 below.

The HTTCA creates territorial jurisdiction over the crimes of human trafficking committed within Nepal and extraterritorial jurisdiction over crimes committed against Nepali citizens abroad. HTTCA sec. 1 (3). The laws of Nepal do not define an organized criminal group and do not envision separate or increased penalties for trafficking crimes committed in an organized manner. Standalone legislation on organized crime is currently in the drafting stage. See Article 1 above.
Article 5: Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
   
   (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
   
   (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
   
   (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

Conclusion

Trafficking in persons is considered one of the gravest crimes in Nepal. The HTTCA imposes strict liability to any individual who commits human trafficking; criminalizes such acts as attempting, plotting, provoking, and abetting the offence; and prescribes adequate penalties for most acts that fall under the definition of human trafficking. Many offenders receive the maximum penalty prescribed by the law. However, the law imposes lower sanctions for labor trafficking than sex trafficking and does not envision the liability of legal persons. In addition, a number of offences that are considered trafficking in persons under the Trafficking Protocol are also covered in other legal acts, such as Bonded Labor Act, Children’s Act, and Child Labor Act. These laws prescribe significantly lower penalties than the HTTCA and place the jurisdiction over the crimes in the hands of quasi-judicial bodies. Furthermore, cross-border trafficking for the purpose of labor exploitation is often wrongfully charged under the FEA. Neither the Nepal Police nor the prosecutorial service has a specialized unit devoted to the investigation and prosecution of trafficking in persons. In practice, investigation and prosecution rates remain low and the criminal proceedings are saturated with challenges. The burden of proof in human trafficking cases lies on the defendant creating a confession-centric system of prosecution in violation of international law. Conviction rates in human trafficking cases are lower than in other criminal cases. Although confiscation of assets is routinely ordered by judges upon conviction, the majority of confiscation orders remain unenforced.

Implementation Analysis:

Establishment of Criminal Offences and Sanctions

As stated in Article 3 above, Nepal established the crime of trafficking in persons in 1963. The crime is currently covered both in the Muluki Ain and the HTTCA. The latter imposes strict liability to any individual who commits a crime of human trafficking, and criminalizes such acts as attempting, plotting, provoking, and abetting the stated offences. HTTCA secs. 3, 15 (1) (h); MULUKI AIN Chapter 11 No. 1-3. The law does not envision the liability of legal persons (e.g., business enterprises) that are implicated in the commission of human trafficking. In addition to human trafficking, the Nepali law criminalizes many acts that tend to be committed within the trafficking context, including:

- Kidnapping, abducting, or taking hostage of another person with the intention to: 1) sell or enslave him or her; 2) deploy him or her to forced labor; 3) compel or cause him or her to work; and 4) engage him or her in prostitution. MULUKI AIN, Part 4, Chapter 8A (No. 3).
• Keeping or employing anyone as a bonded laborer. **Bonded Labor Act** sec. 4.

• Engaging a child under 14 years of age in any work; engaging a child under 16 years of age in a “risky occupation” or in any work against his or her will; and sending a child under 18 years of age for foreign employment. **Child Labor Act** secs. 3-4; **FEA** sec. 7.

• Operating an activity related to organ transplantation for the purposes of selling or purchasing human organs. **Human Body Organ Transplantation Act** sec. 13.

• Homicide, rape, sexual harassment, pimping, pandering, assault, battery, and document forgery. **Muluki Ain**, Part 4, Chapters 1, 9-10, 13 (No. 1, 5), 14.

• Corruption. **Prevention of Corruption Act** secs. 3-24.

• Money laundering, including acquiring, holding, possessing, or utilizing assets by committing certain offences, such as, e.g., human trafficking, kidnapping, abduction, murder, forgery of documents, and corruption. **Money Laundering Prevention Act** secs. 3-4.

Furthermore, the law prohibits the use of child soldiers and imposes numerous sanctions on brokers and recruiting agencies that facilitate foreign employment of Nepali workers in violation of the FEA. See **Interim Const.** art. 22 (5); **FEA** secs. 10, 43-44, 46, 55.

### SANCTIONS

<table>
<thead>
<tr>
<th>Act</th>
<th>Imprisonment</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human Trafficking</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Selling or buying a human being</td>
<td>20 years</td>
<td>200,000</td>
</tr>
<tr>
<td>Forced prostitution</td>
<td>10 – 15 years</td>
<td>50,000 – 100,000</td>
</tr>
<tr>
<td>Illicit removal of human organ</td>
<td>10 years</td>
<td>200,000 – 500,000</td>
</tr>
<tr>
<td>Engagement in prostitution</td>
<td>1 – 3 months</td>
<td>2,000 – 5,000</td>
</tr>
<tr>
<td><strong>Human Transportation for the Purpose of Buying, Selling, and Engaging in Prostitution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taking an adult out of the country</td>
<td>10 – 15 years</td>
<td>50,000 – 100,000</td>
</tr>
<tr>
<td>Taking a child out of the country</td>
<td>15 – 20 years</td>
<td>100,000 – 200,000</td>
</tr>
<tr>
<td>Taking an adult from one place to another within the country</td>
<td>10 years</td>
<td>50,000 – 100,000</td>
</tr>
<tr>
<td>Taking a child from one place to another within the country</td>
<td>10 – 12 years</td>
<td>100,000</td>
</tr>
<tr>
<td><strong>Human Transportation for the Purpose of Exploitation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taking a person out of the country</td>
<td>2 – 5 years</td>
<td>-</td>
</tr>
<tr>
<td>Taking a person from one place to another within the country</td>
<td>1 – 2 years</td>
<td>-</td>
</tr>
</tbody>
</table>

**Lesser Offences Related to Human Trafficking and Transportation**

<table>
<thead>
<tr>
<th>Attempting, conspiring, provoking, or abetting human trafficking or human transportation</th>
<th>Half of the punishment envisioned for the stated offence</th>
</tr>
</thead>
</table>

**Bonded Labor**

| Employing a bonded labor                                                                   | 15,000 – 25,000 | 214 – 357 |
| Employing a person without paying wages or with lower wages than the minimum rate          | 1,000 – 3,000    | 14 – 43   |
### Child Labor

<table>
<thead>
<tr>
<th>Offence Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engaging a child under 14 years of age in any work</td>
<td>Up to 3 months</td>
</tr>
<tr>
<td>Engaging a child under 16 years of age in a risky occupation or in any work against his or her will</td>
<td>Up to 1 year</td>
</tr>
<tr>
<td>Engaging a child under 16 years of age in an &quot;immoral profession&quot; (e.g., child pornography)</td>
<td>Up to 1 year</td>
</tr>
<tr>
<td>Engaging a child under 16 years of age in the sale, distribution, or smuggling of intoxicating substances, narcotic drugs, or any other drugs</td>
<td>Up to 5 years (in addition to other penalties)</td>
</tr>
</tbody>
</table>

### Offences Related to Foreign Employment

<table>
<thead>
<tr>
<th>Offence Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating a foreign employment business without a license</td>
<td>3 – 7 years</td>
</tr>
<tr>
<td>Sending a worker abroad under false assurances</td>
<td>3 – 7 years</td>
</tr>
<tr>
<td>Sending a worker abroad by a licensee without obtaining a permission from the Department of Foreign Employment</td>
<td>3 – 5 years</td>
</tr>
<tr>
<td>Sending a child under 18 years of age for foreign employment</td>
<td>3 – 7 years</td>
</tr>
<tr>
<td>Sending a worker to a country not opened by the GoN</td>
<td>3 – 5 years</td>
</tr>
<tr>
<td>Breaching the terms of the contract by engaging an employee in work involving lower remuneration or worse working conditions, work of different nature, or work for a different employer</td>
<td>-</td>
</tr>
</tbody>
</table>

Sources: HTTCA sec. 15 (1); BONDED LABOR ACT sec. 16 (1), (3); CHILD LABOR ACT sec. 19 (1)-(2); CHILDREN’S ACT secs. 16, 53; FEA secs. 10, 43-44, 46, 55.

As the table above illustrates, most of the sanctions established by Nepali laws fulfill the threshold set for trafficking in persons to constitute a serious crime as defined in the Convention against Transnational Organized Crime, i.e. punishable by a maximum deprivation of liberty of at least 4 years or more. **Convention against Transnational Organized Crime** art. 2 (b). In fact, the mandatory penalty of 20 years in prison, which is envisioned for selling or buying a human being, constitutes the maximum sanction under the Nepali law and is viewed as an equivalent of life imprisonment. HTTCA sec. 15 (1); MULUKI AIN, Part 2, Chapter 2 (No. 6).

The HTTCA increases the penalty when aggravating factors are present, e.g., when the offence is committed by a public official, against a person under the offender’s protection or guardianship, against the offender’s relative, and if the same offender commits the crime repeatedly.\(^\text{37}\) HTTCA sec. 15 (3)-(5).

\(^{37}\) Several interviewees pointed out that some of the provisions prescribing sanctions for the commission of human trafficking when aggravating factors are present are inconsistent with the general principles of the Nepali criminal justice system. For example, if a perpetrator involved in buying or selling a person holds a public office, he or she is liable for 25% additional punishment on top of the mandatory 20 years in prison, which is the maximum penalty under Muluki Ain.
Interviewees confirmed that trafficking in persons is considered one of the gravest offences in Nepal and many perpetrators receive the maximum penalty prescribed by the law.

It also needs to be noted that the penalties for bonded labor and human transportation for the purpose of exploitation are significantly lower than the sanctions envisioned for other acts that fall within the internationally accepted definition of trafficking in persons. See TRAFFICKING PROTOCOL art. 3. In fact, employing a bonded laborer does not carry any term of imprisonment as a punitive measure. BONDED LABOR ACT sec. 16.

Lastly, the regulation of penalties for the worst forms of child labor is inconsistent. Under the HTTCA, the penalties for the crime of transportation of a child for the purpose of prostitution or exploitation are higher than for transportation of an adult. HTTCA sec. 15 (e). Furthermore, if a case involves trafficking or transportation of a child, the judge does not have the discretion to reduce the penalty even if the offender pleaded guilty, cooperated with the authorities, and had committed the offence for the first time. HTTCA sec. 21. Yet, under the Children’s Act and Child Labor Act, the penalties for forced child labor and sexual exploitation of children are considerably lower and do not exceed one year in prison. CHILD LABOR ACT sec. 19.

Specialized Units

Neither the Nepal Police nor the prosecutorial service has a specialized unit devoted to the investigation and prosecution of trafficking in persons. According to interviewees, the government plans to establish a specialized human trafficking investigative unit within the Central Investigation Bureau, which is a subordinate body of the Nepal Police. Reportedly, the Central Investigation Bureau has a pool of elite investigators who are well equipped to handle organized crime. Currently, the Bureau focuses primarily on financial crimes.

In order to control and prevent crimes against women and children, including trafficking in persons, gender-based violence, rape, sexual abuse, and polygamy, the Nepal Police has established the WCSD headquartered in Kathmandu as well as WCSCs, commonly referred to as women cells, in the districts. Their mandate is to: 1) protect the rights and interests of women and children; 2) proactively control and prevent crimes against women and children; 3) investigate and document crimes against women and children; 4) analyze trends based on those cases; and 5) formulate necessary strategies and programs to prevent the crimes. In practice, they function only to provide a safe and conducive environment for women and children to access the justice system. The WCSD and WCSCs also offer trainings to law enforcement officers, raise public awareness, and report on related crimes. In addition, the WCSCs counsel female and child victims of crimes when they arrive at the police stations for the first time. However, the WCSC officers do not have the authority to file first information reports [hereinafter FIRs] and reportedly operate in a significant disconnect with the case registration units. Therefore, they are rarely able to act on behalf of the victims after the counseling sessions. According to

According to interviewees, most judges do not impose penalties that surpass the maximum term of imprisonment. Nevertheless, the related provisions are confusing to the justice system actors. One interviewee invoked a case against a police officer Keshavnath Nepal who was sentenced by the district court of Baitadi for 27 years in prison and a fine of NPR 270,000 (approximately USD 3,728) for selling his wife. The case was referred to the OAG for review. In 2008, in the Jyoti Paudel case, the Supreme Court issued a directive to the MoWCSW to conduct a study on the feasibility of female police officers, government attorneys, and judges conducting the investigation, representation, prosecution, and adjudication of cases involving violence against women. The study found that this would be very hard to implement. When the HTAT Report for Nepal was being finalized, ABA ROLI learned that the 2012 OAG Action Plan for 2012-17 explicitly calls for the establishment of a specialized prosecutorial unit to deal with trafficking in persons. The central WCSC was established in 1996 at the Nepal Police headquarters. In 2008, the central WCSC was upgraded to WCSD.
interviewees, the profile of WCSCs is rather low. Although there is no formal rule regarding the gender or rank of WCSD and WCSC officers, the WCSCs are usually staffed with 4-6 female and, to a large extent, junior officers.

Investigation, Prosecution, and Adjudication of Human Trafficking Cases

FIR. An investigation for trafficking in persons can be initiated through a criminal complaint filed either by a victim or a third party. Anyone who knows that the offence is being, has been, or may be committed should report it to the nearest police station. HTTCA sec. 5 (1); GOVERNMENT CASES ACT sec. 3. If the person reporting the crime is a victim, the police must take his or her statement immediately. HTTCA sec. 6 (1). If the victim or other informant puts a written request to remain unnamed, the police are obliged to maintain his or her confidentiality. HTTCA sec. 5 (2).

Upon arrival at the police station, female and child victims receive counseling from the WCSC and are subsequently referred to the case registration unit charged with taking the victims’ statements and filing the FIRs in Diary No. 10 (Nepal’s crime registration book). Reportedly, there is not much interaction between the WCSC and police officers who register cases. Therefore, the victim must present his or her claims at least twice before the case file is officially opened. The Nepal Police does not have a universal protocol for interviewing victims of crimes. However, certain districts, for example Kanchanpur, have created uniform victim statement taking guidelines. The interview protocol used in Kanchanpur has a sequenced set of questions aimed at extracting 27 essential points that must be recorded in the victim’s statement. The protocol is not specific to cases of trafficking in persons or cases reported by female or child victims. Victims can be accompanied to the police station by a person of their choice, e.g., a lawyer, NGO representative, parent, or guardian.

Trafficking victims are frequently reluctant to report the crime to the police and the level of reporting remains low. One survivor interviewed for the report stated that she decided not report the crime to the police because she was not physically or sexually abused, even though she endured months of exploitation as a domestic worker in Saudi Arabia. Along with this fundamental misunderstanding of the crime of human trafficking and various forms of exploitation, experts and service providers gave the following reasons for low reporting rates: 1) lack of legal awareness; 2) undue influence by the perpetrators who often threaten, intimidate, harass, or bribe victims to remain silent; 3) trauma and psychological suffering; 4) fear of humiliation, stigma, and discrimination; 5) police bias, incompetence, and insensitivity to women’s and children’s issues; 6) lengthy and cumbersome court proceedings; and 7) high cost of access to justice coupled with distrust toward justice institutions, lack of financial support from the GoN, and very low likelihood of receiving compensation upon conclusion of the legal proceedings. See also Article 6 below. Even in the case of child victims many parents and guardians refuse to report the crime. For some parents, child labor is the only source of income. Others lack the understanding of the coercive, hazardous, and exploitative conditions imposed upon their children. In addition, some parents fear arrest and prosecution after having been deceived to sign an illegal contract with a broker offering their child education and a well paid job in Nepal or abroad. One interviewee pointed out that it is simply much safer and cost-effective for a victim to settle the case outside of the courtroom.

The majority of interviewees noted that the male-dominated Nepal Police do not create an environment that is duly supportive for victims of trafficking in persons, particularly women and children, in seeking justice. Police stations are usually crowded, intimidating, and — similar to courts — lack the proper infrastructure to ensure and protect the victims’ privacy and confidentiality. The crime of human trafficking is usually highly traumatizing. The reproduction of fear and intimidation at police stations is extremely harmful and restrictive to victims. The police forces also suffer from corruption and politics, recurrent transfers of officers between districts, acute lack of financial and human resources, overload of cases, and inadequate training, especially at the local level.
Although police officers are legally obliged to treat women and children with full respect and due politeness, gender bias and insensitivity within the Nepal Police are reportedly commonplace. **POLICE ACT** sec. 15 (k) *(adopted Oct. 16, 1955 by the King, as amended)* [hereinafter **POLICE ACT**]. In addition, the police do not view trafficking in persons and gender-based violence as major law enforcement priorities and often act under undue influence from criminal networks and perpetrators, particularly if they are wealthy, powerful, well-connected, and have political ties. Furthermore, the police do not want to investigate human trafficking crimes because of the difficulty of finding evidence and the relatively low rate of convictions. This might impact the evaluation of their work and their potential for promotion.

As a result of the above, the police frequently refuse to register an FIR and commence investigation immediately after the crime is reported, even if a victim has legal representation. Many legal aid providers stated that they had to make numerous trips to the police station to have the FIR filed in human trafficking cases. This is very problematic because it gives the suspects time to abscond and destroy the evidence. Interviewees also emphasized that retraumatization by the police occurs. Police officers ask trafficking victims many unnecessary and humiliating questions, accuse them of lying, influence them to change their statements, and sometimes return them to the traffickers under a false pretense that the traffickers are the victims’ legal guardians. Some interviewees stated that, at times, the police personnel unlawfully act as mediators between the victims and suspects to avoid trial and criminal sanctions; assist the perpetrators in generating fake evidence or producing fake witnesses; alter crime reports; and wrongfully record human trafficking cases as violations of the FEA. On a positive note, certain prominent NGOs and INGOs have succeeded in establishing a constructive relationship with the police, based on mutual trust and cooperation. This can be viewed as a sign that with proper training and outreach, an attitudinal change within the police force is achievable.

If the police refuse to register the FIR, the victim or another informer may lodge a complaint with the upper level Police Office or the CDO. **GOVERNMENT CASES ACT** sec. 3 (5). If the complaint is unsuccessful, the interviewee may file a petition for a writ of mandamus with the Supreme Court. **INTERIM CONST.** art. 107. There is also a possibility to present a petition or complaint to the NHRC. **HUMAN RIGHTS COMMISSION ACT** sec. 9 (2). Interviewees noted, however, that in practice these kinds of complaints are unheard of.

### Certification of Victims.

Immediately after the FIR is filed, the trafficking victim must be taken to the nearest district court to certify his or her statement. Upon certification by the district judge, the court can use the victim’s statement as evidence even if the victim does not appear in court during trial. **HTTCA** sec. 6. Non-appearance of a victim in court cannot be used as evidence against him or her and cannot be interpreted as obstruction of justice. The procedure is unique to human trafficking cases.

In practice, many if not most trafficking victims make court appearances because victim testimony increases the chances of conviction. Furthermore, many judges believe that the defendant has the right to cross-examine the victim in court. If a victim (or another person who has reported the crime) gives a contradictory statement, he or she might be charged with perjury, which carries the penalty of 3 months to 1 year in prison. **HTTCA** sec. 15. Interviewees noted that some prosecutors deliberately do not call victims to testify if they suspect that they may turn hostile in court.

### Arrest and Investigation.

Every police officer has a duty to trace offenders, arrest them, and cause them to be punished according to the law. **POLICE ACT** sec. 15 (e)-(d). After the FIR is filed, the police are required to send a preliminary report about the crime to the concerned government attorney and commence the investigation and collection of evidence without a delay. Although the Nepali criminal justice system does not envision joint investigations by the police and public prosecutors, the government attorneys have the authority to instruct the police on investigation issues **GOVERNMENT CASES ACT** secs. 6-7. This rule is, however, unenforceable in practice. If there is a reason to believe that a suspect in a human trafficking case will abscond or
that the evidence will disappear or be destroyed unless an immediate action is taken, a police officer in the rank of sub-inspector or higher may carry out the following activities at any time: 1) enter, investigate, or seize a house, land, place or vehicle; 2) break or open windows or doors; 3) arrest or investigate a suspect without a warrant; and 4) seize and gather all evidence. HTTCA sec. 7. The investigation officer must take the suspect's statement in the presence of the government attorney. GOVERNMENT CASES ACT sec. 9. The suspect may not be detained for more than 24 hours. However, if the investigation cannot be completed within 24 hours, the court may issue a pre-trial detention order for a maximum of 25 days. Id. sec. 15. After completion of the investigation, the police file must be forwarded to the government attorney who makes a decision whether to press charges. The government attorney must file the charge sheet with the district court before the expiry of the remand, i.e., within 25 days from the date of the arrest. Id. secs. 17-18. The investigative role of the police with respect to the accused ends when the charge sheet against him or her is filed with the court. The police may, however, conduct a separate investigation regarding the same case if a new suspect is identified. Once filed with the court, the charge sheet cannot be amended. There is no statute of limitations in human trafficking cases.

In practice, the investigation process is highly politicized and prone to corruption. The police are not proactive in searching for the suspects and evidence, and the prosecutors usually do not instruct them on how to conduct the investigation. Although cooperation between the police and government attorneys is becoming more and more productive, many police officers do not easily accept prosecutorial guidelines. In addition, in approximately 70% of human trafficking cases, the police file is forwarded to the government attorney at the last moment, i.e., a day before or on the day the remand is scheduled to expire. This prevents the government attorney from referring the case file back to the police with instructions for further investigation. In addition, the government attorney has insufficient time to prepare a scrupulous charge sheet. As a result, charge sheets are often filed haphazardly. The law does not contain a provision compelling the government attorney to communicate with the victim prior to the trial.

Many interviewees questioned the effectiveness of the investigation process and the quality of collected evidence, particularly in cases involving transnational and/or organized crime. Reportedly, the Nepal Police is neither well-equipped nor skilled to handle them properly. As a result, the evidence is circumstantial and weak in most human trafficking cases. It consists primarily of the FIR, certified victim statement, and witness testimony. Occasionally, documentary evidence is also produced in the form of bus or train tickets, Indian currency, travel documents (authentic or forged), statements written by the Indian police, documents and reports supplied by Indian and Nepali organizations which rescue and assist victims, and medical records. Forensic science (e.g., fingerprinting or DNA profiling) and other sophisticated sources of evidence (e.g., undercover agents) are almost never utilized.

Interviewees emphasized that in the lack of relevant, material, objective, and competent evidence, cases of trafficking in persons are very difficult to substantiate. One interviewee suggested that three conditions must be met to significantly improve investigation and prosecution of human trafficking: 1) Nepal must augment international cooperation in criminal matters, for example by expanding collaboration with Interpol and entering into bilateral mutual legal assistance treaties, particularly with India; 2) criminal justice institutions must be modernized and digitalized; and 3) law enforcement officers and NGOs, especially those facilitating rescue operations, must undergo vigorous trainings on victim interviewing and evidence gathering techniques in human trafficking cases. The trainings should emphasize such relatively simple techniques as, for example: 1) collecting items that might have been touched by the perpetrators for fingerprinting; 2) obtaining notarized statements from the police and direct service providers in the country of destination; and 3) concentrating on facts rather than emotions while taking victims' statements. In addition, more effort needs to be made to sensitize migrants about the importance of retaining their travel documents, including – whenever possible – tickets and boarding passes. The GoN, in partnership with NGOs, donors, and technical assistance providers, has undertaken several steps to enhance the investigation and subsequent prosecution of human trafficking and
other crimes. For example, the OAG and the Inspector General of the Nepal Police have expressed commitment to improving collaboration among the criminal justice institutions, e.g., by installing a computerized database connecting the police, government attorneys, and courts. The OAG has included two specific references to trafficking in persons in its 33-page long instructive prosecutorial guidelines, enhanced trainings for government attorneys, and began supplying their offices with modern technological equipment and internet. The OAG is also encouraging a close cooperation of government attorneys with NGOs.

In 2008, the Daywalka Foundation drafted SOPs for Human Trafficking Offences for the National Judicial Academy. At the time of the assessment, the Asia Foundation was in the incipient stages of developing three SOPs on trafficking in persons: one for investigators, one for prosecutors and adjudicators, and one for rehabilitation centers. In 2010, ABA ROLI, in partnership with the KSL, conducted a pilot seminar on identifying innovative sources of evidence in human trafficking cases for 20 senior police investigators, public prosecutors, and court registrars. In addition, ABA ROLI has partnered with a local NGO, the FWLD, to assemble a top-tier human trafficking working group consisting of senior police officers and prosecutors. The working group has developed a course module on trafficking investigations for the National Police Academy and a companion, practitioner-oriented handbook. Lastly, ABA ROLI has facilitated a number of anti-human trafficking multi-stakeholder meetings to enhance community-wide collaboration in the investigation and prosecution of human traffickers.

**Prosecution and Adjudication.** The GoN is the plaintiff in all cases of trafficking in persons. HTTCA sec. 28. The power to prosecute human trafficking is vested in the government attorney who commences the proceedings by filing a charge sheet against the defendant in the district court. GOVERNMENT CASES ACT secs. 17-18. The charge sheet may include a clause accusing the suspect of committing a crime involving moral turpitude. HTTCA sec. 22. A person who has been convicted of a criminal offence involving moral turpitude cannot, for example, become a member of the Constituent Assembly. INTERIM CONST. art. 65 (c). In practice, the moral turpitude clause is almost never entered by government attorneys, which precludes judges from making that determination. Some interviewees expressed the view that trafficking in persons should be considered a crime involving moral turpitude *ipso facto*.

The HTTCA envisions mandatory detention of the defendant for the duration of the trial. HTTCA sec. 8. However, the relevant provision has been found unconstitutional and void by the Supreme Court. *Kamalesh Dwivedi v. Government of Nepal*, Supreme Court (2009). Therefore, trafficking in persons is a bailable offence even though the HTTCA has not been amended and many attorneys as well as criminal justice actors remain unaware of the ruling. Reportedly, the judgment was sent to the OAG for implementation at the local level. In practice, most defendants in human trafficking cases remain in judicial custody. One interviewee stated that bail is granted only to 10% of defendants.

Unlike in the vast majority of criminal cases, the burden of proof in human trafficking cases lies with the defendant who must prove that he or she did not commit the crime. HTTCA sec. 9; EVIDENCE ACT sec. 25 (adopted Oct. 21, 1974 by King Birendra Bir Bikram Shahdev, as amended) [hereinafter EVIDENCE ACT]. Interviewees expressed mixed opinions about this provision. Some unconditionally agreed that shifting the burden of proof on the defendant violates the internationally recognized rights to a fair trial and presumption of innocence until proven guilty. See, e.g., ICCPR art. 14. They pointed out that the provision has created a problem of confession-centric prosecution, where investigators and prosecutors heavily rely on confession, are allegedly less willing to collate other, more objective evidence, and falsely

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41 The project is implemented as a part of the five-year “Combating Trafficking in Persons” [hereinafter CTIP] program funded by USAID.

42 The seminar was led by a human trafficking expert, Dr. Yubaraj Sangroula. Dr. Sangroula is the Founder and Executive Director of KSL. Between February and September 2011, Dr. Sangroula served as the Attorney General of Nepal.
interpret admission of a fact as admission of guilt. This increases the probability of wrongful conviction and sends an erroneous message to the police that there is no need to rigorously investigate human trafficking cases. One interviewed court employee explicitly stated that it is primarily the duty of the accused and not the GoN to collect evidence in trafficking cases. Nevertheless, many interviewees claimed that even though the provision may be troublesome it serves the public purpose because it helps to raise the prosecution and conviction rates. Experts stated that there are at least few judges in Nepal who do not blindly apply the burden of proof provision. They recognize that the law does not relieve them from the obligation to ensure that the rights of the accused and the rights of the victims be well-balanced in all criminal cases. The Supreme Court has ruled that placing the burden of proof on the accused does not contradict the right of the defendant against self-incrimination and the right to remain silent. Neelam Poudel, et al. v. Prime Minister and Office of the Council of Ministers, Supreme Court (Decision No. 8473, 2011); see also Chandra Bahadur Nepali, et al. v. Secretariat, Council of Ministers, Supreme Court (Decision No. 4968, 1995). In practice, the most common defense argument is an alibi. Sometimes, the defendants argue that the victim has consented. See Article 3 above.

Although a trafficker can be charged with and convicted for multiple offences, in practice other crimes are rarely tacked on if a charge of human trafficking is filed. Interviewees claimed that trafficking in persons is considered one of the gravest crimes and usually carries the maximum penalty. Therefore, if a person were convicted of, for example, buying a human being and rape, the human trafficking charge would prevail over the rape charge because under the Nepali law human trafficking is a more serious offence. Furthermore, prison sentences cannot be combined and no one can be imprisoned for more than 20 years. This justification, however, does not account for situations where there is not enough evidence to substantiate the trafficking claim but there is sufficient evidence to prove, for example, rape.

In practice, prosecution and adjudication of trafficking in persons in Nepal is saturated with challenges. In addition to the lack of sufficient evidence, delays in court proceedings, and the common occurrence of obstruction of justice, the prosecutorial service and the judiciary suffer from the shortage of human, financial, and technological resources. Interviewees observed that each judge hears, on average, 3-4 cases per day. Each government attorney handles, on average, over 1,000 criminal cases per year. This creates a significant imbalance of power in the courtroom because defense attorneys handle fewer cases, earn higher salaries, and have better access to modern equipment and internet. Furthermore, judges lack sufficient understanding of the human trafficking phenomenon and the distinct challenges involved in human trafficking cases, such as trauma endured by the victims and cross-border evidence. Experts noted that a victim-centric approach to trying human trafficking cases has yet to be accomplished.

Interviews revealed significant confusion among criminal justice actors, including government attorneys and judges, about the differences between the crime of human trafficking and offences stipulated under the FEA. Many stakeholders continue to associate trafficking in persons with prostitution and sexual exploitation in India. As a result, acts of cross-border trafficking for the purpose of labor exploitation are often wrongfully charged under the FEA which prescribes significantly lower penalties (three to seven years in prison) than the HTTCA. Another troublesome phenomenon identified by the interviewees is the trend of “partial convictions.” Reportedly, in the lack of sufficient evidence, sometimes charges are converted from “commission of a crime” to “attempt,” which leads to what is commonly referred to by the criminal justice practitioners as “partial conviction.” As stated earlier, other factors such as corruption also

43 One interviewee stated that due to the volume of cases heard by the judges, some of them are not present in the courtroom during witness testimony and cross-examination. They are substituted by court clerks and their presence is reflected by the chairs they usually sit on.
44 At the time of the assessment, the OAG was in the process of negotiating the doubling of the number of prosecutors in each district. In addition, the OAG was sending teams of six lawyers to various districts to assist the government attorneys in the courtroom.
lead to “partial convictions.” Furthermore, a number of fabricated trafficking cases reach the courtrooms throughout Nepal. The majority of false accusations stem from common rivalries and domestic disputes. For example, it is not unusual for the parents of a bride to accuse their son-in-law of human trafficking if the couple eloped in India without obtaining their consent. Lastly, victims and witnesses are neither effectively protected against retaliation nor reimbursed for travel expenses, which leads to delays because of their non-appearance. Allegedly, some defense attorneys cover the transportation costs of the prosecution witnesses to “win them over.” Problems with the timely delivery of notices to appear in court are also reported.

Experts suggested that massive awareness raising, trainings and a significant investment of resources are needed to rectify the above-stated problems.

Although the adoption of the HTTCA in 2007 created a momentum in Nepal’s counter-trafficking efforts and the number of human trafficking prosecutions was on the raise, the most recent prosecution rates remain low. In the FY 2009-10, only 299 human trafficking cases were prosecuted at the district level, i.e., on average, less than 4 cases per district. Reportedly, in the FY 2010-11, only about 201 FIRs were filed in human trafficking cases.\textsuperscript{45} While interviewees perceived conviction rates (approximately 59% in district courts) to be relatively high, in practice they are lower than the national average of 71% for other crimes.

\begin{table}[h!]
\centering
\begin{tabular}{|l|c|c|c|}
\hline
\textbf{Number of Cases} & \textbf{District Government Attorneys} & \textbf{Appellate Government Attorneys} & \textbf{OAG} \\
\hline
Conviction & 71 & 38 & 9 \\
Acquittal & 47 & 50 & 15 \\
Other & 1 & 1 & 0 \\
Sub Judice & 180 & 66 & 39 \\
Total & 299 & 155 & 63 \\
\hline
\end{tabular}
\caption{HUMAN TRAFFICKING PROSECUTIONS IN THE FY 2009-10}
\end{table}

The nationwide statistics were confirmed by key interviewees in the districts visited by the assessment team. For example, the police in Kanchanpur registered merely 5 cases in FY 2008-09 and 4 cases, respectively, in FY 2009-10 and 2010-11.

As the table below illustrates, the scope of human trafficking prosecutions in Makwanpur and Morang is equally low. Most court cases in Morang and Kanchanpur involve trafficking of women and girls to India for the purposes of sexual exploitation, presumably because both districts lie along the border. Human trafficking cases filed in the district court of Makwanpur are much more diverse. In the FY 2010-11, the court registered one case involving labor exploitation in Qatar, one case of child trafficking to an Indian circus, one case of internal child trafficking from Kathmandu to Makwanpur, one case of internal sex trafficking from Makwanpur to Kathmandu, and one case of a man accused of entering into 10 marriages and selling his wives in India.

\textsuperscript{45} In December 2011, when the HTAT report was being finalized, there were 78 human trafficking cases pending in the Supreme Court. 19 human trafficking cases were pending in the district court of Kathmandu. At the same time, the OAG was handling 50 human trafficking cases.
HUMAN TRAFFICKING CASES REGISTERED IN THE DISTRICT COURTS OF MAKWANPUR AND MORANG IN THE FY 2010-11

<table>
<thead>
<tr>
<th></th>
<th>Makwanpur</th>
<th>Morang</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Registered</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Conviction</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Acquittal</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sub Judice</td>
<td>2</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: Interviews with key stakeholders.

Reportedly, the vast majority of judgments in human trafficking cases are appealed, either by the defendants or by the government attorneys. Decisions of the districts courts are usually upheld by the courts of appeal. In the FY 2010-11, 78 human trafficking cases reached the Supreme Court.

**Confiscation and Seizure of Assets.** The Interim Constitution protects the right to property and limits the confiscation of possessions to situations where it serves a public purpose, e.g., when the property has been acquired in an illicit manner. **INTERIM** Const. art. 19. Under the HTTCA, the GoN is required to seize any movable and immovable property acquired as a result of trafficking in persons. The GoN must also seize any house, land, or vehicle that anyone used or provided for the purpose of committing human trafficking. HTTCA sec. 18.

In the last few years judges have been routinely ordering the confiscation of assets upon conviction in human trafficking cases. However, the property of perpetrators is extremely difficult to trace and most confiscation decisions remain unenforced. Interviewees noted that defendants often engage in an illegal transfer of their property and assets. In most cases, the police do not follow up with investigation.

**Enforcement of Judgments.** Final judgments in cases involving trafficking in persons are enforced by an execution official of the concerned district court in collaboration with the district judge, the CDO, and the Nepal Police. The enforcement of judgments is coordinated throughout Nepal by the Judgment Execution Directorate under the Supreme Court. In general, the enforcement of judgments in Nepal is not satisfactory due to the lack of coordination among different state organs at the central and local levels. At the time of the assessment, over 100,000 court verdicts were not implemented, including a total of 80,000 years of prison sentences and NPR 4 billion (approximately USD 57,093,919) in fines issued against thousands of convicts. Kathmandu and Kanchanpur were among the top 10 districts which have the highest levels of accumulated unenforced judgments. **Government Must Prioritize Execution of Judgments,** **REPUBLICA,** July 15, 2011; **Judgment Execution: Apex Court’s Anti-impunity Drive in 10 ‘Notorious’ Districts,** THE KATHMANDU POST, March 22, 2011.

According to interviewees, most prison sentences in human trafficking cases are implemented because the majority of defendants remain in judicial custody for the duration of the trial and have fewer opportunities to abscond. However, fines, compensation, and assets are almost never recovered.

The judiciary has launched a pilot program aimed at improving the judgment enforcement system in 10 districts. The project is supported by UNDP’s “Enhancing Access to Justice” program under which the Judgment Execution Directorate is expected to produce an action plan and recommendations on related judicial reforms. **Judgment Execution: Apex Court’s Anti-impunity Drive in 10 ‘Notorious’ Districts,** THE KATHMANDU POST, March 22, 2011.

**Procedures in Cases Related to Trafficking in Persons**

**Exploitation of Women in the Entertainment Industry.** Pursuant to the procedural guidelines issued by the Supreme Court, a victim of sexual harassment, sexual exploitation, and indecent
behavior committed by a proprietor or a service user of a cabin restaurant, dance bar, or massage parlor may lodge a complaint with the District Monitoring and Action Committee or the nearest police station. The complaint may be also filed by a person who has a fear of becoming a victim of any of the stated acts or any other person who has information about such acts. **GUIDELINES ON PREVENTION OF SEXUAL HARASSMENT** arts. 13-15. In addition to investigating the individual complaints, the District Monitoring and Action Committee may conduct unannounced inspections of the entertainment establishments. If the Committee determines that a violation has been committed, it may issue a warning or a directive to the proprietor. If the proprietor does not comply with the directive, the District Monitoring and Action Committee must order the closure of the business. *Id.* arts. 13-15. The District Monitoring and Action Committees comprise of the CDOs, Chiefs of the District Police Offices, and WDOs. *Id.* art. 15.

The procedural guidelines are insufficient to ensure effective access to justice for victims of sexual harassment and exploitation in the entertainment industry. First, the guidelines are purely regulatory and do not envision any criminal sanctions for individual perpetrators. Second, there is no indication that the guidelines are enforced in practice. Although charges against the offenders could be brought under the HTTCA, the Child Labor Act, the *Muluki Ain*, or the Public Offense Act, in practice, it is often the victims who are arrested and pursued for indecent behavior. See Article 6 below. In spite of the Supreme Court’s order, a law regulating the operation of cabin restaurants, dance bars, and massage parlors has not been adopted yet.

**Bonded Labor.** If anyone violates the Bonded Labor Act, the victim or a member of his or her family, union, institution or an official of a local body may lodge a written or verbal complaint with the CDO. The CDO’s decision may be appealed to the Court of Appeals within 35 days of the decision. **BONDED LABOR ACT** secs. 15, 17-18.

**Child Labor.** In the case of a violation of the Child Labor Act, a complaint may be filed with the Labor Office under the MoLTM. The complaint must be lodged within one year of the commission of the violation by the following persons or institutions: an employee inspecting the workplace, a policeman, a concerned child or his or her parent or guardian, a VDC or municipality, a trade union, or an organization working to advance the rights and interests of children. If the Labor Office determines that a penalty should be imposed, the case must be referred to the Labor Court for sentencing. The verdict may be appealed to the Appellate Court. **CHILD LABOR ACT** secs. 20-22.

According to interviewees, the complaint procedure under the Child Labor Act is not utilized in practice. Labor Officers lack the commitment to children’s issues and do not cooperate with CSOs to rescue exploited children and bring those responsible to justice. Reportedly, investigators and prosecutors do not link child labor exploitation to the sale of children and cases of child labor trafficking are not being filed in Nepali courts. Consequently, there is a high degree of impunity in regard to child labor exploitation. Some organizations offer mediation services between parents and employers when a case of child labor exploitation is detected. Whenever possible, mediation meetings are conducted in the presence of a Labor Officer. The employer is asked to release the child and provide him or her with compensation which is fixed in a written agreement.

**Offences under the FEA.** Offences committed in contravention of the FEA are investigated by the Department of Foreign Employment and a Complaint Investigation Committee created pursuant to the Guidelines Regarding the Investigation of Undocumented Workers, issued in 2010 by the MoLTM. The investigation officer has the same powers as the police, including the power to arrest a suspect. Cases under the FEA are adjudicated by the Foreign Employment Tribunal whose judgments may be appealed to the Supreme Court. The investigation officer must obtain consent from the government attorney before filing it in the court. **FEA** secs. 61-67.

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46 Most human trafficking cases deal with sexual exploitation in India.
Thus far, the Foreign Employment Tribunal has heard approximately 250 cases. It is unclear how many of the concluded cases involved the elements of human trafficking. As mentioned in Article 1 above, the Foreign Employment Tribunal is located in Kathmandu and is highly inaccessible by the majority of migrant workers.

**Investigative Role of the NHRC**

The NHRC has the power to conduct investigations and inquiries into violations of human rights upon a petition or complaint presented by the victim or a person acting on his or her behalf. **HUMAN RIGHTS COMMISSION ACT** secs. 9-13. In practice, victims of trafficking in persons rarely use the NHRC’s complaint procedure to seek remedies for the violations of their human rights. In the first 6 months of 2011, the NHRC received merely four petitions from trafficking victims. Between 2007 and July 2011, the total number of petitions in trafficking cases did not exceed 26. All the cases were transnational. Reportedly, the NHRC does not launch any formal inquiries into the cases of trafficking in persons due to the lack of human and financial resources. Instead, the cases are referred to the police and NGOs by the NHRC’s Protection and Monitoring Division. Interviewees in Morang stated that the police usually register cases referred by the NHRC. Therefore, at times, NGOs and legal aid providers ask the NHRC for assistance in filing FIRs.

Experts believe that the NHRC should play a greater role in ensuring access to justice for victims of human trafficking. Under the HTTCA, the investigation, prosecution, and adjudication of trafficking in persons is primarily focused on crime control and it does not sufficiently address the needs of the victims. Therefore, the NHRC of Nepal, similarly to the NHRC of India, should play a complementary role in prosecuting trafficking cases, e.g., through joint investigations and much closer cooperation with the police and government attorneys. According to interviewees, however, this is a very rare practice.

In order to define the NHRC’s ambiguous anti-human trafficking mandate, ABA ROLI, in cooperation with its local partners, has developed a draft SOPs to govern NHRC personnel in carrying out their investigations, inquiries, and monitoring functions related to human trafficking. ABA ROLI also sought, through a series of meetings and planning efforts, to improve the NHRC’s human trafficking data collection and internal caseload management capacities. In 2010, the SOPs were reviewed in two training workshops for mixed groups of NHRC personnel, police officers, and prosecutors. The KSL Professor Geeta Pathak Sangroula, who conducted the workshops, observed that whenever concurrent jurisdiction exists between the police and the NHRC, the two bodies should not interfere with one another or duplicate efforts. However, it remains unsettled whether a joint police-NHRC investigation can be undertaken, to what extent the NHRC may monitor a human trafficking investigation by the police, and to what extent the NHRC should share trafficking information it has gathered with law enforcement officers.

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47 The project was led by the KSL Professors Geeta Pathak Sangroula and Kapil Aryal in close collaboration with the NHRC’s Investigation Division and the Special Rapporteur on Trafficking.

48 The SOPs document consists of four chapters. The first chapter covers the human trafficking context in Nepal, briefly describes the current practice of trafficking investigations by the police and NHRC, explains the objectives of the SOPs, and sets out some general guidelines for the user. Chapter two addresses the conceptual framework, emphasizes that users must consider human trafficking as a violation of a “bundle of human rights,” and highlights the survivor's access to justice and essential services. Chapter three outlines key provisions from existing international, regional, and national instruments to combat human trafficking, and addresses the investigation and inquiry jurisdiction of the NHRC. Chapter four covers the procedural role (including monitoring) of the NHRC to protect and promote the human rights of trafficking victims and witnesses throughout the criminal process. The draft SOPs were well received by the Special Rapporteur on Trafficking, Padma Mathema. However, the document was not officially endorsed by the NHRC before the conclusion of this study.
Article 6: Assistance to and Protection of Victims of Trafficking in Persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
   
   (a) Information on relevant court and administrative proceedings;

   (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

   (a) Appropriate housing;

   (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

   (c) Medical, psychological and material assistance; and

   (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.
Conclusion

The HTTCA contains a relatively narrow definition of a trafficking victim. The GoN does not have an official victim identification mechanism, screening protocol, or withdrawal procedure. Consequently, most trafficking victims are identified and rescued by NGOs. The HTTCA does not address the issue of non-criminalization of trafficking victims and many of them are arrested and charged for indecent behavior under the Some Public Crime Act. The HTTCA provides for the establishment of rehabilitation centers and a rehabilitation fund. With the exception of subsidizing seven rehabilitation centers, the GoN's actions aimed at protecting and assisting trafficking victims are minimal. Most essential services, including shelter, food, counseling, medical care, and legal assistance are provided to trafficking victims by NGOs and bar associations. Although the HTTCA protects the trafficking victims’ confidentiality, the right to privacy is not fully respected in practice, principally due to insufficient court infrastructure and irresponsible media reporting. Victims of trafficking in persons encounter multiple barriers to their access to justice, including low legal awareness, high costs of legal proceedings, and ineffective protection from threats and intimidation. The victim compensation mechanism is flawed and unevenly applied across the country. The GoN has adopted a number of legislative and institutional measures to protect the rights of child laborers, former bonded laborers, and migrant workers. However, the related provisions are not adequately enforced.

Implementation Analysis:

Under the Nepali law, a trafficking victim is a person who is sold, transported, or put into prostitution. HTTCA sec. 2 (c). Interviewees noted that the definition is not broad enough. It does not account for the fact that human trafficking affects not only individuals who suffer from exploitation but also their spouses, children, and parents. In addition, the definition places undue emphasis on sex trafficking without mentioning labor exploitation. This is particularly troublesome in relation to bonded laborers and Nepali migrant workers who find themselves in exploitative situations upon reaching their countries of destination.

Identifying Individuals as Trafficking Victims

Although the Trafficking Protocol does not directly obligate State Parties to adopt a legal definition of a trafficking victim or devise victim identification procedures, properly defining and identifying trafficked individuals is essential to ensuring that they receive adequate assistance and protection.

Nepal does not have an official or uniform victim identification mechanism, screening protocol, or withdrawal procedure. In addition, it is uncommon for the police to conduct progressive investigation of human trafficking cases or initiate rescue operations. The WCSD has conducted trainings on identification of victims for the Nepal Police but these trainings are deemed insufficient. Reportedly, there are plans to incorporate an identification protocol into SOPs on rehabilitation centers, which are to be developed by the Asia Foundation under the CTIP program. Currently, however, the majority of human trafficking victims are identified by NGOs.

NGOs identify trafficking victims in one of the following ways: 1) rescue operations; 2) border monitoring and interception programs; 3) health screenings; 4) door to door education and screening; and 5) referrals from other organizations or police officers who are unable to make this determination on their own. Occasionally, victims are referred to NGOs by rickshaw drivers who are asked to transport them across the Indian border.

A number of organizations, including Maiti Nepal, WOREC, ABC Nepal, and Tiny Hands International, operate small border check posts and/or mobile border monitoring units along the Indo-Nepal border. The units usually consist of two female surveillance officers who are often
survivors of trafficking in persons. They are tasked with distributing informational pamphlets about safe migration and human trafficking, identifying suspicious behavior, screening and intercepting victims with the assistance of the police, and providing referrals. They also serve as a deterrent to trafficking operations. Reportedly, the rescue teams are very successful in securing the cooperation of Nepali and Indian police officers patrolling the border.

Identification of victims is extremely challenging. The surveillance officers rely both on experience and instinct while making a decision to stop and question migrants crossing the border. Migrants are asked to present identification documents and, at times, marriage certificates because many traffickers claim that the victims are their wives. When necessary, the officers call the suspected victim’s family, particularly in the case of minors. Many victims are reluctant to tell the truth because they are instructed by the traffickers what to say in case they are intercepted. Some victims do not even realize that they are being trafficked. Once a victim is identified, he or she is taken to the nearest police station and to a shelter or a transit home.

By way of example, Maiti Nepal implements a border monitoring program in 8 out of 20 districts lying on the border with India. In 2010, the organization intercepted a total of 1,563 suspected victims of trafficking, including 80 in Morang and 129 in Kanchanpur. MAITI NEPAL, ANNUAL REPORT 2010 at 4, 14, 21-22 (2010). In Morang, the program has been operational for 13 years. Surveillance officers monitor both sides of the border and a nearby train station with a daily direct train service to New Delhi. Tiny Hands International operates anywhere from 12 – 16 border monitoring stations at a time.

Border monitoring programs are a valuable method of detecting and intercepting victims of trafficking in persons. However, a number of interviewees expressed concern that the lack of uniform and clear identification criteria leads to frequent misidentification, interruption of the migration flow, and violation of migrants’ right to free movement.

Many NGOs, such as Maiti Nepal, EBMF, Foreign Nepali Worker Rescue Centre, CWIN, TDH, and Shakti Samuha conduct rescue operations in Nepal and India in coordination with Indian NGOs, Indian police, and diplomatic missions of both countries. Some organizations, for example Saathi, Change Nepal, Children and Women Empower Society (CWES), and Biswas Nepal specialize in indentifying internally trafficked girls in the sex industry. Most rescue operations take place on the basis of missing person reports to the police or other governmental or civil society bodies and independent investigations conducted by Indian and Nepali NGOs. See Article 8 below.

Lastly, certain NGOs, such as FPAN, specialize in identifying victims of human trafficking through health and door-to-door screenings. FPAN has recognized that trafficking in persons and gender-based violence are closely interlinked with sexual and reproductive health. Reportedly, close to 100% of trafficking victims suffer from sexually transmitted infections, including HIV (35%), and many have serious health problems due to repeated abortions. Therefore, FPAN has developed a protocol for interviewing and counseling suspected trafficking victims. The protocol is used by doctors and nurses employed in FPAN’s clinics.

FPAN is also implementing a five year-long door-to-door victim identification and peer education program in Makwanpur. The program is coordinated by a community counselor who forms groups of trafficking survivors and trains them to serve as peer educators. In addition, the community counselor assesses the needs of trafficking survivors, makes service recommendations, and identifies microcredit programs, scholarship schemes, and skills trainings for them. Since its inception in 2009, the program has identified approximately 130 trafficking victims. Notably, the program provides a source of income to survivors who work as peer educators and empowers them to make a difference in their communities.
**Non-Criminalization**

While the Trafficking Protocol does not specifically address the non-criminalization of victims for otherwise illegal conduct committed within the context of trafficking in persons, the state responsibility to protect victims includes taking measures to ensure that trafficked individuals are not wrongfully treated like criminals.

The GoN has acknowledged the need to uphold victims’ rights and protect them from criminalization. NPA at 16. Nevertheless, the Nepali law does not specifically address the issue of protecting trafficking survivors from criminal charges that would otherwise stem from such illegal acts as, e.g., using forged documents.

In practice, many victims of human trafficking and exploitation suffer from revictimization by the police who perform “showcase” raids on entertainment establishments and arrest the employees, including children, under the Some Public Crime Act. The workers, including children, are often handcuffed, transported to the police stations, and placed in detention. Some are subsequently charged with a public crime, such as undue behavior, participating in an obscene show, or using obscene speech, word or gesture in a public place. **SOME PUBLIC CRIME ACT sec. 2.** Some are returned to traffickers, who claim to be their legal guardians. Public offences are under the quasi-judicial jurisdiction of the CDOs. They are punishable by a fine of up to NPR 10,000 (approximately USD 143). Public offenders may also be placed in custody for a period not exceeding 35 days. In addition, a penalty of imprisonment for a period not exceeding 2 years may be imposed by the appellate court. *Id.* secs. 5-6. Criminal sanctions cannot be imposed on children under the age of 10. Furthermore, children cannot be handcuffed, subjected to solitary confinement, or placed in custody with adults. **CHILDREN’S ACT art. 11; see also CHILD RIGHTS NGO REPORT at 22.** Reputedly, these juvenile justice provisions are not respected in practice when raids on entertainment establishments are performed.

**Rehabilitation and Reintegration in Society**

Some of the many dire consequences of trafficking in persons in Nepal include indebtedness and lack of livelihood and serious health problems resulting from physical abuse, damaging psychological and emotional trauma, sexually transmitted infections, repeated abortions, alcoholism, and drug use.

Furthermore, many survivors of human trafficking face rejection by their families as well as severe forms of stigma and discrimination in their communities, particularly if they were trafficked for sex and/or have contracted HIV or became pregnant as a result of sexual exploitation.49 Fearing ostracism and violence, many choose not to return to their villages, which makes them highly vulnerable to being re-trafficked unless they receive proper counseling and find sustainable, non-exploitative sources of income. Lastly, survivors of human trafficking have difficulties with obtaining their citizenship certificates, particularly if they were trafficked at a very young age, if they do not remember their family name and address, if they do not possess birth certificates, and if they are dishonored by their parents and relatives. See **Article 12 below.** Yet, access to citizenship is essential for the returnees to secure livelihoods, travel, and rejoin the mainstream society. See, e.g., Post Trafficking in Nepal: Sexuality and Citizenship in Livelihood Strategies, at http://www.posttraffickingnepal.co.uk.

The GoN has recognized that victims of trafficking in persons require professional rehabilitation and reintegration support. The GoN has also acknowledged that the best interest of the child should be always at the forefront of all rescue and reintegration programs. By adopting the NPA, the GoN has committed to develop and strengthen intervention mechanisms aimed at protecting

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49 Reportedly, it was much easier to reintegrate trafficking survivors in the past because they were viewed as sources of income for their families and communities. Presently, fear and negative social attitudes are dominant, particularly in the case of victims of sex trafficking.
victims of human trafficking. Among others, the GoN has pledged to: 1) develop a National Quality of Care Policy; 2) create a referral system of NGOs and social welfare institutions equipped to provide immediate counseling for victims; and 3) provide victims with rehabilitation and reintegration services. NPA at 23-32.

The law requires the District Committees to establish necessary rehabilitation centers for victims of human trafficking. HTTCA sec. 13; HTTCR Rule No. 11 (a); NPA at 31. With the GoN’s permission, rehabilitation centers can also be found and managed by private institutions and NGOs. The GoN can, but is not required to, provide economic support and other aid to such centers. HTTCA sec. 13 (2)-(3); HTTCR Rules No. 11 (2)-(6), 12-13. All rehabilitation centers in the country must have sufficient infrastructure and the ability to provide or arrange for: 1) physical and psychological health services; 2) social rehabilitation and family reunification assistance; 3) education, skills training, and information about the employment market; and 4) legal counseling. The centers should also assist victims with finding employment opportunities. HTTCR Rules No. 13, 15. Victims should not be kept in rehabilitation centers for more than 6 months. Children should receive alternative care or be transferred to special shelters. HTTCR Rule No. 16 (3). The GoN is obliged to promulgate an operational manual for the rehabilitation centers. Lastly, the National Committee and District Committees are required to inspect each center at least twice per year. HTTCR Rules No. 13 (2), 14; NPA at 32.

The GoN has created a rehabilitation fund for the purposes of managing the rehabilitation centers. The fund is administered by the National and District Committees and can be financed by the GoN, private donors, as well as national and international organizations. In addition, half of the payments received as fines for the commission of human trafficking offences must be allocated to the fund. HTTCA sec. 14; HTTCR Rule No. 17. The fund can be used to support rescue operations but cannot be utilized as a source of compensation for victims.

In practice, the GoN does not have any capacity to provide long-term rehabilitation services to trafficking victims, even at the time of investigation and court proceedings. First, the resources appropriated by the GoN for the purposes of assistance to and protection of trafficking victims are scarce. For example, the District Committee in Kanchanpur receives merely NPR 20,000 (approximately USD 285) per year to fight human trafficking in the district; NPR 14,000 (approximately USD 2000) is allocated to the rehabilitation fund and the remaining NPR 6,000 (approximately USD 86) covers the expenses accrued by the District Committee. Reportedly, the GoN subsidizes seven rehabilitation centers, including one shelter operated by ABC Nepal in Kathmandu. Subsidized shelters have difficulties with managing their finances because they rarely receive timely payments from the GoN. No rehabilitation centers are run exclusively by the GoN and the existing rehabilitation centers do not undergo regular inspections.50 Second, the existing case management and referral services are weak and not standardized. Third, neither the National Quality of Care Policy nor a comprehensive operational manual for rehabilitation centers have been adopted.51 Notably, however, two NGOs, Saathi and Shakti Samuha, manage their rehabilitation centers in accordance with a comprehensive operations manual which was

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50 Interviewees agreed that rehabilitation centers should be operated by private institutions and NGOs, rather than the GoN. The GoN should, however, provide them with adequate financial and technical support.

51 At the beginning of 2012, when the HTAT Report for Nepal was being finalized, the GoN approved National Minimum Standard for Victims/Survivors of Trafficking in Persons, drafted with the assistance of the Asia Foundation under the CTIP program. The document contains SOPs which call the GoN to expand the capacity of rehabilitation centers, subsidize at least 15 safe houses in 15 districts, and increase the amount of money allocated to the rehabilitation fund. The SOPs are applicable to all shelters, not only to those subsidized by the GoN. The National Committee plans to offer related trainings for rehabilitation center managers. Some experts noted that the document is adequate in terms of regulatory standards but weak in terms of operational standards for the care, protection and support of residents of residential care facilities. Reportedly, the operational standards do not meet international quality expectations.
developed through an INGO Planète Enfants and revised by TDH. The manual is based on international minimum standards of care.

Lastly, Nepal suffers from acute lack of professional social workers capable of providing sophisticated and holistic services to trafficking victims. One interviewee suggested that the GoN should produce a technical guide for social workers on rehabilitation and reintegration of trafficking victims.

According to many interviewees, the GoN has effectively evaded its responsibility to provide assistance to trafficking victims by passing it on to CSOs, IGOs, and international donors. See also Nepal Background above.

### SERVICES PROVIDED TO TRAFFICKING VICTIMS BY NGOs: EXAMPLES AND BEST PRACTICES

<table>
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<th>Organization</th>
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| ABC Nepal    | • 3 shelters, including a rehabilitation center in Kathmandu and a transit home for 12-16 children in Morang.  
• Basic medical services.  
• Skills training and income generation projects.  
• Establishment of savings and credit cooperatives for women who have been trafficked or are vulnerable to trafficking. |
| CWIN         | • Toll-free Child Helpline, ambulance services, emergency shelters, as well as medical, counseling, and legal services in 5 districts, including Kathmandu, Morang, and Makwanpur.  
• Family identification, assessment, and reunification. |
| EBMF         | • Full-time residential care, education, scholarship support, and training for rescued children in two centers located in Kathmandu and Makwanpur. |
| FPAN         | • Holistic health services, including psycho-social counseling, safe child birth and abortion, as well as screening and treatment of HIV/AIDS and other sexually transmitted infections. |
| Maiti Nepal  | • 8 transit homes located, among others, in Morang and Kanchanpur.  
• 2 rehabilitation centers: in Kathmandu and Sunsari.  
• 2 hospices: in Kathmandu and Jhapa.  
• Health clinic for trafficking victims suffering from HIV/AIDS in Kathmandu (Project Hope).  
• Crisis counseling and establishment of self-help groups.  
• Family identification, assessment, and reunification.  
• Skills training and income generation projects. |
| Saathi       | • 2 care facilities: in Kanchanpur and Banke.  
• Rehabilitation services for victims of internal sex trafficking, including outreach and drop-in centers. |
| Shakti Samuha| • Holistic social protection, rehabilitation, and reintegration programs.  
• Emergency shelter in Pokhara for 15 girls under 18 years of age from high-risk groups.  
• Family identification, assessment, and reunification. |

52 Saathi plans to implement an income generation program for survivors of human trafficking (particularly foreign labor exploitation) in Kanchanpur under the CTIP program. Four local economy and microfinance experts will be offered an anti-human trafficking training of trainers in Kathmandu. The experts will subsequently provide training to 24 additional experts in Kanchanpur, creating a cadre of local trainers tasked with supplying adequate information about finances and income generation to trafficking survivors in their communities. The project will also offer skills and business management training to 20 survivors.
• Income generation projects realized in cooperation with the IOM.
• Post-Trafficking in Nepal: a project on livelihood strategies for survivors of human trafficking implemented in cooperation with the IOM and New Castle University.

Tiny Hands International  • Care facilities, including a rehabilitation center in Kathmandu and 2 safe houses in Kanchanpur: one for 10-12 adult women and one for 9 children.

WOREC  • Shelters and safe houses located, among others, in Morang.
• Vocational training.
• Psycho-social counseling for victims and their families incorporating stigma and discrimination-reduction strategies.

Privacy, Confidentiality, and Physical Safety

The right to privacy of any person, his or her home, property, document, data, and correspondence is guaranteed by the Interim Constitution. INTERIM CONST. art. 28. The right to privacy is also underlined in the directive on maintaining the privacy of parties to some special cases issued by the Supreme Court in 2007.53 Sapana Pradhan Malla v. Government of Nepal, Supreme Court (Order No. 3561, 2007). In addition, the Supreme Court has issued two guidelines: 1) a procedural guideline to the concerned agencies to maintain the privacy of victims of crimes (2007); and 2) a procedural guideline for the protection of women and children who are victims or witnesses of crimes (2008). Other institutions, such as the National Judicial Academy and UN Women, are working to develop SOPs on witness and victim confidentiality. See Article 1 above.

Pursuant to the HTTCA, a trafficking victim or any other person reporting a human trafficking crime to the police may file a written request to remain unnamed. If such a request is entered, the FIR must be registered under a pseudonym. The real name may be disclosed only for the purposes of investigation, prosecution, and administration of justice. A victim, an interviewee, and a witness may also apply for protection against retaliation. HTTCA secs. 5 (2), 26; HTTCR Rule No. 9; see also Article 1 above. Furthermore, a victim whose statement is certified by a district judge is not required to testify in court. HTTCA sec. 6 (3); see also Article 5 above. Court proceedings in human trafficking cases must be conducted in camera. HTTCA sec. 27; NPA at 17; see also Article 1 above. Publishing or broadcasting the victim’s real name, photograph, or any information detrimental to his or her character without consent is prohibited under the penalty of NPR 10,000 – 25,000 (approximately USD 143 – 357). HTTCA sec. 25. Notably, several NGOs that address internal sex trafficking have worked together to develop a common confidentiality policy to be used while working with child victims.

The Code of Journalistic Ethics requires journalists to respect the right to privacy and prohibits such acts as publishing, broadcasting or distributing news, photographs, and sounds in a way that exposes victims of crimes to further suffering. Publishing, broadcasting, and disseminating the names, addresses, and identities of victims of sexual crimes are also prohibited. CODE OF JOURNALISTIC ETHICS arts. 3 (6), 4 (6)-(7) (adopted 2003 by Press Council Nepal, as amended in 2008).

In practice, protection of trafficking victims and witnesses during criminal proceedings is either non-existent or ineffective due to the lack of sufficient regulation, resources, understanding and coordination. Interviewees in Morang, Makwanpur, and Kanchanpur stated that courts do not have adequate infrastructure to fully ensure the privacy and security of victims and witnesses. There is only one criminal bench in each of the courts and there are usually multiple cases tried during the day. Out of the three districts, only the court in Makwanpur has a separate waiting room for those who have special safety concerns. In addition, the provision prescribing in camera

53 The Supreme Court’s directive on the protection of the right to privacy prescribed the establishment of a committee tasked with drafting relevant legislation.
court proceedings in human trafficking cases is not always enforced. Finally, police protection is available only upon request and most victims and witnesses are not aware of this option. There also prevails a general mistrust of the police due to the perceptions and existence of corruption. This has led to a situation where the victims and witnesses neither know that they can request protection or trust the police to provide it. For example, there has been no case of a trafficking victim requesting police protection in Makwanpur. As a result, the safety and integrity of victims are seriously jeopardized, which impacts the effective prosecution of human trafficking cases. Many victims or witnesses are either afraid to provide detailed testimonies or become hostile after being bribed, threatened, intimidated, coerced or otherwise influenced by the perpetrators, their criminal networks, and sometimes their defense attorneys.

In practice, respect for the privacy and security of trafficking victims in Nepal is low. It is unclear who has the duty to inform victims about their legal rights during criminal proceedings. Both police stations and courts are crowded and lack the adequate infrastructure to ensure the victims’ privacy effectively. In addition, serious privacy infringements occur in the course of rescue operations and police raids on entertainment establishments. Victims, including children, are frequently filmed and photographed and the unedited footage is subsequently published in various media outlets engaged in an unhealthy competition for news breaking stories. Reportedly, some NGOs, particularly those striving for publicity and funding, are involved or complicit in this violation of victims’ privacy. At times, they tell the rescued victims how to pose.

**Assistance in Court**

A victim of trafficking in persons has the right to be represented by a separate legal professional during court hearings. HTTCA sec. 10. A victim who is unable to understand the language used during criminal proceedings may request the District Committee to appoint a translator or interpreter for her or him. The translator or interpreter must be appointed with the permission of the court. Each District Committee is required to develop and maintain a list of qualified translators and interpreters. HTTCA sec. 11, HTTCR Rule No. 10. The GoN has made a commitment to develop and strengthen the institutional capacity of legal groups and associations of lawyers whose work focuses on women’s and children’s rights. NPA at 16.

Victims of trafficking in persons encounter multiple barriers in their access to justice, including, but not limited to: 1) illiteracy, lack of legal awareness, and serious psycho-social problems; 2) threats and intimidation by the perpetrators and their criminal networks; 3) ignorance, insensitivity, uncooperativeness, and corruption among the justice system actors; and 4) high cost of accessing forums administering justice. The GoN does not provide trafficking victims with any financial support or other allowances during criminal proceedings. These personal, institutional, and financial barriers discourage many victims from pursuing justice, particularly if they do not have access to legal assistance and representation.

Provision of legal aid for the indigent is a relatively new concept in Nepal. It was initiated on a small scale two decades ago by the NBA. Currently, legal aid in Nepal is provided on multiple levels: 1) by the GoN under the Legal Aid Act; 2) by a court appointed lawyer; 3) by NGOs and paralegal committees; and 4) by pro bono pleaders, advocates, and senior advocates.

The GoN provides legal aid to the indigent through the Central Legal Aid Committee and District Legal Aid Committees. The respective committees form panels of public legal aid lawyers from among the members of the NBA. LEGAL AID ACT secs. 2-3, 5-7 (adopted Dec. 22, 1997 by Parliament, as amended) [hereinafter LEGAL AID ACT]. The NBA, established in 1956, is a voluntary organization of practicing lawyers and the central institution of the Nepal Bar. The Nepal Bar is administered by the Nepal Bar Council headed by the Attorney General. In addition to the NBA, the Bar consists of the Supreme Court Bar Association, Appellate Court Bar Associations, and District Court Bar Associations. Each bar association has a legal aid committee and a women’s center charged with providing legal aid to poor women, including victims of crimes, in civil and criminal cases. Women’s centers are underfunded and often rely on
outside grants. Women’s centers in certain districts, for example in Morang, refuse to represent defendants in human trafficking cases.

Interviewees noted that an increasing number of trafficking victims in Nepal receive legal assistance and representation; nevertheless, in spite of progress, the majority of victims still lack access to legal aid. Legal aid is usually provided by NGOs, such as CeLRRd, LACC, Maiti Nepal, Shakti Samuha, the Forum for Protection of Peoples Rights, Nepal [hereinafter PPR], and by local bar associations. Victims’ advocates assist government attorneys in building their cases against the defendants and appear before the court to make statements. In addition to legal advisors, many trafficking victims are accompanied in court by NGO representatives. The OAG encourages government attorneys to cooperate with NGOs and in most cases such collaboration produces positive results.

Interviewees emphasized that funding allocated for specialized anti-human trafficking legal aid programs is insufficient. Consequently, lawyers who represent trafficking victims are overloaded, underpaid, and unable to meet the needs of all victims, particularly in the remote areas of the country. In addition, there are no legal provisions protecting them from potential threats and harassment by the defendants.

In Morang, legal aid to trafficking victims is provided primarily by advocates hired on needs basis by Maiti Nepal, one legal officer employed by WOREC, and five lawyers who work as volunteers for ABC Nepal. Legal assistance to trafficking victims is also offered by the Advocacy Forum and women’s centers within the District and Appellate Bar Associations.

In Makwanpur, legal aid is available to victims of human trafficking through LACC, Maiti Nepal, EBMF, PPR, FWLD, and FPAN. In April 2011, LACC established a roving legal clinic to deal with human trafficking cases in the district. Currently, the clinic covers six VDCs. Every month, the clinic, comprising of a lawyer, a psycho-social counselor, and a health care worker travels to each of the VDCs to provide treatment, counseling, and referral to trafficking victims as well raise people’s awareness about the crime and related laws. LACC has some capacity to write complaints on behalf of the victims, prepare their cases, and represent them in court. However, the organization employs only one full-time lawyer. Therefore, many cases are referred to PPR and FWLD with which LACC has formal agreements.

Kanchanpur suffers from acute lack of legal aid services. LACC, CeLRRd, and the District Bar Association are the only organizations equipped to provide effective legal assistance to trafficking victims. Similarly to its branch office in Makwanpur, LACC operates a mobile anti-human trafficking legal clinic in Kanchanpur. Thus far, the clinic has helped to register 4 FIRs, settle one case out of court, and file 4 cases in the district court. Two cases resulted in convictions. The two remaining cases are still pending.

Compensation

A victim of trafficking in persons is entitled to compensation upon conviction of the defendant. The amount of compensation should not be lower than half of the fine imposed upon the offender as a punishment. HTTCA sec. 17. The law does not envision either a compensation fund for trafficking victims or the possibility to file a civil suit in human trafficking cases. Therefore, a criminal trial is the only legal recourse available to trafficking victims.

The compensation mechanism under the HTTCA is highly criticized by key stakeholders in Nepal. Interviews revealed that the compensation provision is flawed and unevenly interpreted by lawyers and judges across the country. Some believe that civil liability must be clearly distinguished from criminal liability. Therefore, compensation must be added on top of the fine determined by the judge. Others claim that the amount of the fine must be split in half with 50% of the payment going to the victim and 50% of the payment going to the GoN. In the first scenario, the total financial liability of the offender is increased by 50%. In the second scenario,
the offender is only required to pay the amount of the fine. In either scenario half of the payment obtained by the GoN must be allocated to the rehabilitation fund. HTTCA sec. 14 (2) (c). Notably, the amount of compensation depends on the amount of the fine imposed by the judge who has a certain level of discretion unless the defendant is convicted of selling or buying a human being. See HTTCA sec. 15 (1). Furthermore, the intertwined punishment and compensation scheme is perceived as a source of revenue for the GoN. Many interviewees expressed a view that the GoN and not the offenders should be responsible for compensating victims of human trafficking. They suggested that a victim compensation fund be created and added that all payments received as fines in human trafficking cases should be allocated to that fund.

Although judges routinely award compensation to trafficking victims, the enforcement of judgments in Nepal is not satisfactory and, as mentioned in Article 5 above, fines and compensation amounts are almost never recovered from the culprits. What is more, a person who holds a legal entitlement to compensation must file a request with an execution official of the court to have it enforced when the conviction judgment becomes final.\textsuperscript{54}

Interviewees noted that a trafficking victim or a government attorney may ask the judge to request an official assessment of the property of the accused from the District Land Revenue Office. One judge expressed an opinion that such an assessment should be routinely attached to the charge sheets. In practice, property assessments are almost never requested. Consequently, defendants often engage in an illegal transfer of their property and assets and claim not to have any property upon conviction. In most cases, the police do not follow up with investigation.

Because the compensation provision is rarely enforced, many trafficking victims choose to settle their cases outside of the courtroom, particularly if they do not have legal representation.

\textbf{Protection of Migrant Workers}

As mentioned in Nepal Background above, it is estimated that 10-40\% of Nepali workers, particularly women and undocumented migrants, experience some form of exploitation abroad, including excessive work and abuse. There are also social costs of foreign labor migration. The process affects family structures, creating a transnational marriage phenomenon and compelling many parents to leave their children, including infants, for extended periods of time. One interviewee emphasized that foreign employment must be regulated from a human rights-based perspective and looked at as a development issue.

The GoN has adopted a number of legislative and institutional measures to protect the rights of its citizens who endure ill-treatment as a result of foreign employment. The FEA obligates recruiting agencies, Nepali diplomatic missions, and Labor Attachés, to coordinate rescue and repatriation of Nepali workers who became “helpless” in the course of foreign employment. FEA secs. 68 (c), 75; see also Article 9 below. The duty to provide legal assistance and social protection to Nepali migrant workers lies with the Foreign Employment Promotion Board. Among others, the Board is required to establish safe homes for female migrant workers, develop strategies and action plans on social security of migrant workers, and create a Foreign Employment Welfare Fund. FEA secs. 29, 32, 38. The fund can be used to repatriate workers who become mutilated or “helpless” and to compensate and provide financial assistance to the returnees and their families. FEA sec. 33.

While the legal framework is relatively sound, the related provisions are not fully implemented. The foreign employment business is allowed to be carried out in 108 countries. Yet, Nepal has

\textsuperscript{54} A study conducted in 2009 by UNIFEM and People Forum revealed that only 12\% of migrant workers who have won a case in the Foreign Employment Tribunal submit an application to have their compensation order enforced. UNIFEM & PEOPLE FORUM, WOMEN AND SAFE FOREIGN EMPLOYMENT: STUDY REPORT 1-4 (2009).
diplomatic missions in merely 28 countries, Labor Attachés in 6 countries (in Saudi Arabia, Qatar, Kuwait, the UAE, South Korea, and Malaysia), and safe houses in 4 countries (Saudi Arabia, Qatar, the UAE, and Kuwait). See FEA sec. 3. Safe houses are temporary shelters that can accommodate approximately 25 persons at a time for a period not exceeding 3 – 4 months. Funding for the safe houses located abroad is channeled through the respective diplomatic missions. At the time of the assessment, the GoN was in the process of creating a safe house in Kathmandu and developing SOPs for safe houses in collaboration with the IOM and UN Women.

Assistance to migrant workers who have been trafficked and exploited is also provided by NGOs. For instance, POURAKHI operates a safe house and implements reintegration programs for female migrant workers. Victims receive emergency shelter, counseling, legal aid, safe migration information, and referral to other needed services. In addition, NIDS provides reintegration training while Migration Resource Centers offer legal assistance with the support of the Nepal Bar Association.

Interviewees noted that the Foreign Employment Welfare Fund has limited resources and that the compensatory processes are not well-managed. Therefore, most migrant workers are unable to benefit from it. Reportedly, Nepali citizens employed abroad may turn to the relevant diplomatic missions for legal assistance in filing civil law suits in their countries of destination. This practice is, however, not common. One expert noted that some victims are forced to sign papers stating that they would not seek compensation either in the country of employment or in Nepal. Signed under duress, these documents do not have a legal standing. However, they make migrant workers believe that they are unable to pursue their cases.

**Protection of Child Laborers and “Paper Orphans”**

Legal provisions on the protection of and assistance to victims of worst forms of child labor are scarce. The Child Labor Act authorizes Labor Officers to inspect establishments which employ child laborers. If the inspector identifies a child employed in contravention with the law, he or she must be immediately returned to a parent or a guardian. If a child does not have a parent or a guardian, he or she must be placed in a child welfare house or another institution taking care of children. Child Labor Act secs. 15-16. The law envisions penalties for engaging children in the worst forms of child labor but does not mention compensation for damages.

The GoN has made a commitment to abolish child labor and implement programs aimed at rehabilitating child laborers by: 1) providing counseling and health care; 2) offering opportunities for development (i.e., education, vocational training, and apprenticeships); 3) creating an enabling environment for family reintegration; and 4) expanding child corrective homes, drop-in centers, and specialized rehabilitation centers in all districts and most heavily affected areas. National Master Plan on Child Labor 16, 21, 26, 32, Action Matrix 4, 6, 8-9 (2004). In practice, the GoN’s response to the child labor phenomenon is inadequate and the governmental child protection system is not functioning well. The GoN does not have a system to track cases of child labor exploitation and respond to the phenomenon in a proactive, dynamic manner. Id. at 22.

As mentioned in Nepal background above, the GoN has recently taken some steps to improve its adoption procedures. Nevertheless, many children continue to be targeted by child traffickers associated with illegal orphanages, particularly in Kathmandu Valley. As a result of an inadequately regulated and monitored adoption system, the trafficked children become “paper orphans.” They receive little attention from the GoN. There are, however, NGOs which specialize in rescuing these children and reuniting them with their home communities. For example, Next Generation Nepal forms search and reunification teams which return children trafficked to Kathmandu to their families in remote regions of Nepal. During the process of reunification, the children receive temporary care and education in transitional homes. Next Generation Nepal was founded by Conor Grennan, author of “Little Princes: One Man’s Promise
to Bring Home the Lost Children of Nepal.” Other organizations that address the problem of “paper orphans” in Nepal include TDH and UNICEF.

Protection of Bonded Laborers

The Interim Constitution requires the GoN to provide socio-economic security and land to economically and socially backward classes, including bonded laborers and Haruwa-Charuwa. In addition, the Interim Constitution mandates the GoN to: 1) pursue the policy of affirmative action for bonded laborers and other marginalized groups (e.g., women, Dalit, Madhesi, indigenous and/or landless people); 2) determine the number of bonded laborers; and 3) provide bonded laborers with education and basic land required for their settlement. INTERIM CONSTITUTION arts. 33 (i), 35 (14)-(15).

Some of the primary objectives of the Bonded Labor Act are to rehabilitate freed bonded laborers and uplift their livelihoods in line with the principles of social justice. The law banned bonded labor, released former bonded laborers from the obligation to pay back the bonded debt, and mandated the GoN to facilitate their settlement, employment, and income generation. BONDED LABOR ACT preamble, secs. 3-5, 14. Pursuant to the law, the GoN appointed a Welfare Officer, established Bonded Laborer Fund, founded Rehabilitation and Monitoring Committees in affected districts, and issued land certificates to a number of former Kamaiyas. Id. secs. 8-12. In addition, the GoN formed groups of former bonded laborers and provided them with microloans, skills training, and irrigation services.

Interviews revealed that the GoN’s efforts to rehabilitate bonded laborers have been flawed and insufficient, particularly in the area of land distribution and reintegration. At the time of the assessment, approximately 200 former Kamaiya families were still waiting to receive their land certificates in Kanchanpur alone. The distributed land lots were very small. In addition, many of them were located far from urban centers and close to riverbanks, which made the new settlements unsafe, prone to flooding, and not suitable for agricultural cultivation. In fact, 265 out of 4,256 former Kamaiya families who received land certificates in Kanchanpur have already lost their land due to flooding.

In the lack of employment and income generation opportunities, most former Kamaiyas and their children continue to be highly susceptible to trafficking and exploitation. To a large extent, their welfare depends on NGOs which provide rehabilitation and reintegration services. For example, BASE, in conjunction with the ILO, has implemented a 3-year program “New Morning – New Beginning” in Kanchanpur. The program focused on educating children of former bonded laborers and preparing them for school admission. Interviewees pointed out, however, that the sustainability of such programs is a major challenge and without outside help, many children drop out of school at percentages higher than for children in Nepal generally. One interviewee suggested that the GoN should establish a permanent welfare program for the children of former Kamaiyas.
Article 7: Status of Victims of Trafficking in Persons in Receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Conclusion

Nepal’s immigration and anti-human trafficking laws do not contain any provisions related to the immigration status of foreign victims of trafficking in persons. Therefore, victims are not entitled to a special immigration status and they do not receive special protection or assistance from the GoN. They may, however, apply for the same types of visas available to all other foreigners. Reportedly, the GoN refrains from involuntary or arbitrary expulsion of foreigners who explicitly claim to be victims of human trafficking.

Implementation Analysis:

Immigration Status

A foreigner, i.e., a person who does not possess Nepali citizenship, is not entitled to enter into and stay in Nepal without holding a passport and a visa. The power to grant a visa to any foreigner is vested in the GoN. The GoN may, on the basis of reciprocity, allow a citizen of any friendly country to enter into Nepal without a visa. IMMIGRATION ACT secs. 2-3 (1) [adopted Nov. 2, 1992 by Parliament, as amended] [hereinafter IMMIGRATION ACT]; IMMIGRATION RULES Rule No. 3 (adopted June 6, 1994 by GoN, as amended) [hereinafter IMMIGRATION RULES]. The law envisions nine visa categories: diplomatic, official, tourist, non-tourist, study, business, transit, non-residential, and residential. Dependably on the type of the visa, the power to issue a permit to enter into and stay in Nepal is vested in the following authorities: the MoFA, the Immigration Office, an Immigration Officer, the Department of Immigration, the Director General of the Department of Immigration, and the Nepali embassy or permanent diplomatic mission situated abroad. IMMIGRATION ACT sec. 2; IMMIGRATION RULES Rules No. 4-12.

Nepal’s immigration and anti-human trafficking laws and policies do not contain any provisions related to the immigration status of foreign victims of trafficking in persons. Interviewees stated that Nepal is predominantly a source country for trafficking victims and trafficking of foreigners into Nepal is extremely rare. Therefore, the GoN is completely unprepared to deal with foreign victims of human trafficking. Foreign victims are not entitled to a special immigration status and do not receive special protection or assistance from the GoN. They may, however, apply for the same types of visas as all other foreigners. They are also permitted to report the crime to the police and participate in related court cases. However, the authorities are not obliged to let trafficking victims remain in Nepal while their legal proceedings are pending but they may do so.

The GoN may prohibit a foreigner’s departure from Nepal if it determines that the departure would be detrimental to the national interest. IMMIGRATION ACT sec. 14 (2). However, it is unclear if this provision can be used by the GoN to compel a human trafficking victim or witness to remain in Nepal, for example for the purpose of testifying in court.

55 The Department of Immigration is an agency of the MoHA. The Immigration Office is a bureau within the Department of Immigration. Immigration Officers serve under the Department of Immigration and the Immigration Office.
The Director General of the Department of Immigration may expel a foreigner who has committed an immigration offence and disqualify him or her from reentering Nepal. A foreigner against whom a deportation order has been issued must remain in a place specified by the Department of Immigration until his or her departure. He or she must also cover all deportation expenses. IMMIGRATION ACT secs. 8-9; IMMIGRATION RULES Rule No. 44. The Department of Immigration does not have a protocol for identifying victims of trafficking in persons. Reportedly, however, the GoN refrains from involuntary or arbitrary expulsion of foreigners who claim to be victims of human trafficking.

**Humanitarian Stay and Principle of Non-Refoulement**

International law prohibits States from expelling or returning ("refouler") individuals to the frontiers of territories where they would be in danger of torture or where their lives of freedoms would be threatened on the account of race, religion, nationality, membership in a particular social group, or political opinion. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT [hereinafter CAT] art. 3; CONVENTION RELATING TO THE STATUS OF REFUGEES [hereinafter REFUGEES CONVENTION] art. 33 (1). The Trafficking Protocol preserves the principle of non-refoulement in its Article 14 (1), which indicates that nothing in the Trafficking Protocol is to affect the rights and obligations delineated in the Refugee Convention and the Protocol Relating to the Status of Refugees, including the principle of non-refoulement.

Nepal has ratified CAT but is not a signatory to the Trafficking Protocol, the Refugee Convention, or the Refugee Protocol. In addition, Nepal does not have its own domestic refugee legislation or asylum granting procedures. With that said, the GoN cooperates closely with the United Nations High Commissioner for Refugees [hereinafter UNHCR] which provides international protection and assistance to all refugees in the country and works to prevent and reduce statelessness. As of January 2011, UNHCR’s “population of concern” in Nepal reached 891,319 people, including 89,808 refugees and 800,000 stateless persons, i.e., persons who lack citizenship certificates in Nepal. See 2011 UNHCR Country Operations Profile - Nepal, "population of concern" in Nepal of concerned persons. See: 2011 UNHCR Country Operations Profile - Nepal, at: http://www.unhcr.org/pages/49e487856.html.

According to some interviewees, the GoN allows foreign victims of trafficking in persons to remain in Nepal on humanitarian grounds and refers them to UNHCR if it suspects that their lives or freedoms would be threatened if expelled or returned to the countries of origin. However, these are ad hoc procedures and they are not substantiated in Nepali laws. In the lack of relevant screening mechanisms, it is unlikely that the principle of non-refoulement is always respected in practice.
Article 8: Repatriation of Victims of Trafficking in Persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

| Conclusion: |

The HTTCA mandates the GoN to manage the rescue of any Nepali citizen sold in a foreign country. The repatriation must be voluntary. In practice, the GoN has neither entered into any regional or bilateral repatriation agreements nor adopted any legal provisions or plans governing the safe and orderly repatriation of trafficking victims. Reportedly, the GoN relies almost entirely on NGOs to initiate, plan, and execute rescue operations. As a result, victims of trafficking in persons are repatriated to and from Nepal in an informal manner.

Implementation Analysis:

The right to leave or return to Nepal is not explicitly written into the domestic legislation. However, Nepal is a State Party to the ICCPR, which guarantees everyone the right to leave any country and prescribes that no one can be arbitrarily deprived of the right to enter his or her own country. ICCPR art. 12.

The GoN is obliged to manage the rescue of any Nepali citizen sold in a foreign country. HTTCA sec. 12. The responsibility for rescuing trafficking victims and bringing them back to Nepal is vested in the National Committee. The repatriation must be voluntary, i.e., performed with the consent of the victim, and can be covered by the rehabilitation fund. HTTCR Rules No. 4 (c), 17 (3). The rescue and repatriation of trafficking victims to Nepal is one of the core objectives of the NPA. The NPA emphasizes that rescuing and repatriating trafficking victims requires extensive networking and proper coordination between a number of actors, including the governments,
police, courts, and NGOs of the sending and receiving countries. In adopting the NPA, the GoN has committed to developing, strengthening, and increasing resources for the relevant actions, such as, for example: 1) setting up a mechanism to track missing women, children, and their families; and 2) forming networks of enforcement agencies, NGOs, and other actors to identify and rescue trafficking victims. NPA at 29-30.

Nepal has neither entered into any regional or bilateral repatriation agreements nor adopted any legal provisions, plans, or SOPs governing the safety and protection of trafficking victims, including children, during the repatriation process. Similarly, there are no provisions or protocols covering such issues as: 1) repatriation procedures and timeframe; 2) duty of the GoN to verify the nationality of victims being repatriated; and 3) obligation of the Nepali diplomatic missions to provide trafficking victims with the necessary documentation to return to Nepal without undue or unreasonable delay.

The duty to arrange the return of a Nepali citizen who became “helpless” during the course of foreign employment because of the disparity between his or her working conditions and the terms of the contract lies with the concerned recruiting agency. Recruiting agencies conduct rescue operations in coordination with the Nepali diplomatic missions and Labor Attachés, pursuant to an order issued by the MoLTM. FEA secs. 68 (c), 75. According to interviewees, “helpless” workers do not bear any financial responsibility for their repatriation to Nepal. The costs must be covered by the recruiting agency and, when this is not possible, by the foreign employment welfare fund. FEA secs. 32-33. One expert noted, however, that the receipt of assistance from the welfare fund depends on whether the worker deposited a fee to the fund prior to his or her departure.

Neither the FEA nor the Foreign Employment Rules define the term “helpless” in the context of repatriation of Nepali migrant workers. It is not uncommon that the state of “helplessness” is a result of exploitation and trafficking in persons, even in the case of documented workers.

In practice, the GoN does not treat the repatriation of trafficking victims as a priority and relies almost entirely on NGOs to initiate, plan, and execute rescue operations. As a result, victims of trafficking in persons are repatriated to and from Nepal in a largely informal manner. Most interviewees stressed the urgent need to institutionalize and formalize the repatriation process in order to ensure its utmost security, efficiency, and cost-effectiveness.

There are a number of organizations based in Nepal that work with their partners in India, and – to a much lesser extent – in other countries to bring trafficking victims back home. For example, in 2009, TDH, in partnership with Shakti Samuha (a Nepali NGO) and Sanlaap (an Indian NGO), initiated a 3-year program “The Protection and Quality of Care Anti-Trafficking Action.” In addition to standard-setting, the program aims at repatriating 90 Nepali girls and women, all victims of trafficking and exploitation, from India. The program has developed “Safe and Voluntary Repatriation Protocol,” “Continuity of Care Procedures,” and “Procedures for Safety and Personal Protection: Transportation during Repatriation and In-Country.” TDH, NEPAL AND HER CHILDREN 7 (2010). In March 2010, after 12 months of continuous pressure, the project received its first release and repatriation orders for two minor trafficking victims rescued from exploitation in Kolkata. The victims were transported to the Nepali border via train by Shakti Samuha staff members and an escort from the Nepal Consulate. Press Release, TDH, India/Nepal - The First Repatriation and a Landmark Judgment (March 25, 2010). In 2010 alone, the program repatriated approximately 17 minors from Kolkata and Mumbai and conducted 42 home assessments throughout Nepal. TDH, NEPAL AND HER CHILDREN 7 (2010).

57 Unless otherwise stated, a manpower agency is a licensed institution which carries foreign employment business under the FEA. See FEA secs. 2 (g), 11.
58 The documents developed through the Protection and Quality of Care Anti-trafficking Action program are informal and have not been adopted by the GoN.
Other organizations that are actively involved in rescuing and repatriating trafficking victims include Maiti Nepal, EBMF, CWIN, and WOREC. By way of example, in 2010, Maiti Nepal rescued and repatriated 64 trafficking victims from India, Saudi Arabia, and Kuwait. MAITI NEPAL, ANNUAL REPORT 2010 at 4 (2010). In 2011, WOREC helped rescue and repatriate 13 women from Morang who faced labor exploitation in Malaysia. In FY 2010, CWIN, which runs a free emergency vehicle service and Child Helpline (toll-free hotline) in Kathmandu, Makwanpur, Banke, Kaski (Pokhara), and Morang, rescued 68 boys and 10 girls from exploitative situations. 74 children were reunited with their families and 4 children were placed in orphanages. The EBMF specializes in, but does not work exclusively on, rescuing Nepali children who have been trafficked to Indian circuses and forced to work as performers. Since 2004, rescue operations conducted by the EBMF’s Child Rescue Agency have led to approximately 700 children being freed and returned to Nepal. See EBMF, Rescue of Vulnerable Children from India, at http://www.ebtrust.org.uk/what-we-do/rescue_agency.php.

Most NGOs conduct rescue and repatriation operations in coordination with the Nepali and Indian police forces and diplomatic missions. Reportedly, the police on both sides of the border are quite cooperative in terms of providing security to the victims and rescue teams, who often lack specialized rescue training. Most rescue operations are initiated on the basis of: 1) missing persons reports sent to the NGOs by victims’ family members; 2) information received from Nepali or Indian NGOs; and 3) stories reported by the media. In addition, some organizations, e.g., the EBMF, conduct field visits to India to identify victims of trafficking in persons. Once a victim is removed from the exploitative situation, she or he is escorted to the Nepali border. Many organizations use public transportation (trains and buses) because Nepali rescue vehicles are not allowed to enter India. For security reasons, some organizations use camouflaged vehicles that look like ambulances to receive and transport the survivors from the border area.

Interviewees emphasized that in the case of child victims additional procedural steps should be taken prior to the repatriation. For example, if the operation is conducted in India, the rescue team should notify the local Child Welfare Committee. If a parent is present and able to prove the child’s identity, the Child Welfare Committee may allow for his or her immediate return to Nepal. Otherwise, the child is placed in one of the Indian Juvenile Justice Homes until the rescuing organization furnishes a proof that the child is of Nepali origin. To do so, the NGO must conduct a home assessment, i.e., identify and locate the child’s family and/or birth certificate. This process is very complicated because many children are trafficked at a very young age and do not remember their surnames and addresses. In addition, many births in Nepal remain unregistered. Upon successful completion of the home assessment, the NGO must send a report to the Indian court which determines if the child can be released. If the release and repatriation order is issued by the court, the child is escorted by the Indian authorities to the Nepali border where he or she is received by a Nepali NGO. See Paavan Mathema, Take me Home, NEPALI TIMES, August 27, 2010. Once the child crosses the border, she or he should be placed in a shelter and taken to the nearest police station or CDO office. According to interviewees, it is imperative that the rescuing organization prepare a quality care plan for the returnee, taking into account the best interest of the child. If an organization suspects that a particular child may face stigma, discrimination or violence upon return to his or her family and community, alternative forms of care should be contemplated.

Interviewees admitted that rescue and repatriation operations are very risky, even if the police are present. Staff members of organizations that conduct rescue operations are frequently threatened and intimidated, both by the traffickers and their powerful networks and, at times, by the parents of exploited children whose hazardous work is the only source of income for the impoverished family.

Experts estimate that it costs more than NPR 100,000 (approximately USD 1,427) to repatriate one trafficking victim, even from India. Government Indifferent to Trafficking, KATHMANDU POST, August 23, 2010. Even though the GoN has created the rehabilitation fund which can be used to finance rescue operations, the budget allocated for this purpose is scarce and not well managed.
For example, in 2009, Makwanpur became the first district in Nepal to create a special emergency rescue fund for victims of trafficking in persons under the local WDO. The GoN allotted merely NPR 300,000 (approximately USD 4,282) to the fund. It is unclear what the procedure to utilize the fund is given that the GoN does not initiate rescue operations. Therefore, the fund remains untouched and NGOs must use their own sources of funding. One interviewee suggested that NGOs should contribute to the emergency fund and manage it as a multi-donor basket fund for coordinated rescue operations.

Under international law, Nepal is required to establish modalities for the repatriation of foreign victims of trafficking in persons to their countries of origin. SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution art. IX. However, no such provisions have been promulgated in the domestic legislation. There are also no formal mechanisms for the verification of the nationality or permanent residence of persons being repatriated. In practice, the Department of Immigration verifies the nationality and obtains travel documents for undocumented migrants through the diplomatic missions of the receiving countries. Even though the process is informal, interviewees did not report any concerns associated with the verification procedures. As mentioned in Article 7 above, the GoN does not finance the repatriation of foreigners to their countries of origin, even if they are victims of trafficking in persons. The costs must be covered either by the concerned person or his or her government. Foreign nationals who need additional assistance with their return to their countries of origin are handed over to the respective embassies or consulates.

Requests for verification of nationality coming to Nepal from other countries are channeled through the MoFA. Nepal’s diplomatic missions abroad also have an important role to play in regard to confirming the identity of Nepali nationals. See Article 13 below.
Article 9: Prevention of Trafficking in Persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
   (a) To prevent and combat trafficking in persons; and
   (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavor to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article, shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Conclusion:

The HTTCA does not address prevention and root causes of trafficking in persons, but awareness raising, advocacy, networking, and social mobilization are among the primary objectives of the NPA. With the exception of the annual observance of the National Day against Human Trafficking and a growing number of projects focusing on safe migration and foreign employment, the GoN’s prevention programs are viewed as largely invisible and insufficient. Most of them are organized on a small scale by WDOs, the NHRC, and the Special Rapporteur on Trafficking. A variety of preventative measures are implemented by NGOs, INGOs, and IGOs in the form of PSAs, radio programs, community meetings, street dramas, door-to-door peer education, income generation projects, and residential trainings. However, most organizations are located in municipalities and do not have sufficient funds to travel to remote, high-risk locations. As a result, there is a critical lack of conceptual clarity about human trafficking both among the general population and the justice system actors. Neither sufficient funding nor a sound research methodology exist to collect reliable statistical information on the scope of trafficking in persons in Nepal. The NHRC publishes annual “National Reports on Trafficking in Persons (Especially Women and Children) in Nepal.” While the reports are informative, they are criticized for insufficient quality and the lack of disaggregated data. The majority of information on human trafficking reaches the general public through the national and local media. Media coverage of the phenomenon is quite extensive but marred with misconceptions and inaccuracies. According to interviewees, the GoN has failed to effectively incorporate trafficking in persons into its national development plans and agendas.

Implementation Analysis:

Neither the HTTCA nor HTTCR address prevention and root causes of trafficking in persons in Nepal. The issue of demand that fosters all forms of exploitation is also overlooked in national
legislation, with the exception of a provision criminalizing the engagement in prostitution.\textsuperscript{59} HTTCA sec. 4 (d).

**Awareness Raising, Mass Media Campaigns, and Social Mobilization**

Awareness creation, advocacy, networking, and social mobilization are among the primary objectives of the NPA. In adopting the NPA, the GoN made a commitment to carry out large-scale public awareness campaigns, implement informational programs targeting vulnerable groups and communities, train adult, youth, and child community mobilizers, and build the capacity of schools, NGOs, clubs, and community groups to disseminate information about trafficking in persons. NPA at 7, 19.

There is a perception among many anti-human trafficking activists and donors that awareness about human trafficking is very low in Nepal, particularly among illiterate people in remote villages which do not have access to mass media. In practice, however, a reliable, comprehensive Knowledge, Attitudes, and Practices (KAP) study of human trafficking awareness has never been conducted in Nepal. Some experts claim that trafficking in persons has been in the limelight in Nepal for many years and general awareness about the phenomenon is, in fact, quite solid. Experts agree, however, there is a critical lack of conceptual clarity about human trafficking and its long-term implications. In particular, people’s knowledge about trafficking in persons is marred by a major misconception that it affects only women and girls trafficked to Indian brothels. Additionally, many impoverished people have difficulty internalizing information about human trafficking: it is often a state of despair rather than lack of awareness that pushes them in the hands of traffickers.

Interviewees stated that with the exception of the National Day against Human Trafficking, the GoN’s prevention campaigns are neither frequent nor visible. Most of them are organized on a small scale by WDOs. For example, the WDO in Morang is in the process of implementing an anti-human trafficking program focusing on door-to-door education, monitoring, and surveillance at the VDC level. The WDO in Kanchanpur is conducting social mobilization campaigns which concentrate on capacity building of women’s cooperatives. There are currently eight registered women’s cooperatives in Kanchanpur. Each cooperative consists of nine ward committees and assembles approximately 400 women. Every month the WDO trains women involved in the cooperatives on such issues as income generation, business management, microcredit, and economic opportunities. In addition, the WDO assists women cooperatives in organizing awareness raising programs on gender-based violence and human trafficking. These programs usually take a form of community meetings and street performances. A few years ago, the WDO in Kanchanpur implemented an income generation and rehabilitation program for the Badi community. Experts noted that sustainability of programs implemented by WDOs is low because of insufficient budget.

Some outreach activities have been also performed by the NHRC and the Special Rapporteur on Trafficking. For example, two years ago the NHRC produced anti-human trafficking PSAs that were broadcasted on the national radio and television. The NHRC has also developed related pamphlets. Presently, neither of these products is being distributed due to a lack of resources.

The National Day against Human Trafficking has been observed annually since September 5, 2007 when the Council of Ministers decided to mark the one year anniversary of the ratification of the SAARC Convention against Human Trafficking. The events and campaigns associated with the National Day against Human Trafficking are organized by a celebration committee chaired by the MoWCSW. The events attract a lot of publicity and generate a lot of interest in the subject. However, most of them take place in Kathmandu and do not reach many high-risk areas. On the

\textsuperscript{59} Criminalization of commercial sex acts among consenting adults is a highly debatable issue. Many stakeholders do not view the criminalization of prostitution as an effective deterrent to trafficking in persons.
occasion of the first National Day against Human Trafficking, the NNAGT created a poster: “Envisioning New Nepal: Creating a Society Free of Human Trafficking.” The poster, which was signed by the representatives of major political parties, continues to be used by CSOs in anti-human trafficking advocacy campaigns.

Although the coverage of trafficking in persons in the media is quite extensive, the GoN does not make sufficient effort to involve the media in the prevention of human trafficking. Reportedly, no major prevention campaigns involving the media have been conducted in Nepal. Because the role of the media in combatting trafficking in persons has not been defined, investigative journalists take their own initiative to report on the issue. Interviewees noted that street performances, community meetings and small radio stations, which are mushrooming across the country, are the most effective and affordable media for distributing information about human trafficking. According to interviewees, media campaigns should be conducted at the regional and local levels.

As the table below illustrates, local NGOs implement a variety of prevention programs at the national and local levels. It needs to be noted, however, that most NGOs are located in municipalities and do not have sufficient funds to travel to remote, high-risk locations.

**PREVENTION PROGRAMS IMPLEMENTED BY NGOs: EXAMPLES AND BEST PRACTICES**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Services</th>
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| ABC Nepal    | • Awareness raising campaigns at the VDC-level: door-to-door campaigns, radio programs, and street dramas.  
              • Trainings for vulnerable girls in the 8-10th grade. |
| CeLRRd       | • Formation of paralegal committees and community mediation committees in VDCs (e.g., in Morang). These committees are equipped to raise legal awareness about human trafficking among religious and political leaders as well as general population in schools, children’s clubs, and community meetings.  
              • Community surveillance program against trafficking in persons in Morang.  
              • Trainings for justice system actors. |
| CWIN         | • Awareness raising campaigns in schools, child clubs, and village meetings; distribution of informational brochures, calendars, and stickers (e.g., in Morang and Makwanpur). |
| EBMF         | • Awareness raising in schools (e.g., in Makwanpur). |
| FPAN         | • Awareness raising through radio programs, community meetings, street dramas, pamphlets, door-to-door visits by peer educators, and trainings for government officials (e.g., in Makwanpur). |
| LACC         | • Community awareness raising campaigns, civic education programs, and biannual outreach meetings for 40-50 women at the VDC-level; formation of paralegal committees (e.g., in Kanchanpur).  
              • Nationwide weekly radio program *Wakalat* (Advocacy) transmitting information on human trafficking since July 2009.  
              • Sensitization of judicial and quasi-judicial bodies and the police. |
| Maiti Nepal  | • Awareness raising through street dramas, rallies, posters, pamphlets, songs, as well as radio and television PSAs (e.g., in Makwanpur).  
              • Three prevention homes in Makwanpur, Nuwakot, and Nawalparasi. The prevention homes convene 3 to 6-month-long residential trainings for up to 25 at-risk girls at a time. The participants are trained and empowered to become social activists and conduct awareness campaigns in their communities.  
              • Provision of micro-credit as well as vocational and income-generating trainings to vulnerable women.  
              • Establishment of community safety nets. |
Shakti Samuha  • Dissemination of anti-human trafficking information through youth groups comprising of vulnerable boys and girls between 12 and 18 years of age in 9 districts, including Kathmandu and Makwanpur.

Tiny Hands International  • Prevention programs, such as street dramas, at the local level (e.g., in Kanchanpur).

WOREC  • Awareness raising in partnership with women’s federations, smaller women’s groups, and child’s clubs; toll-free hotline service; advocacy and lobbying through meetings with political party leaders and local governmental officials (e.g. in Morang).

**Prevention of Sexual Exploitation in the Entertainment Industry**

In 2008, the Supreme Court issued a directive ordering the GoN to regulate the operation of cabin restaurants, dance bars, and massage parlors, and released the Guidelines on Prevention of Sexual Harassment. *Sharma, et al. v. GoN*; see also Nepal Background and Article 5 above. The required legislation has not been adopted yet. Therefore, the guidelines constitute the only legal document that endeavors to prevent sexual exploitation of the thousands of girls and women in the entertainment industry. The guidelines define the terms “sexual harassment” and “sexual exploitation;” order a mandatory registration of cabin restaurants, dance bars, and massage parlors with the District Administration Office; prescribe the terms and conditions of operating the businesses; set forth the functions and duties of proprietors and service users; prohibit sexual harassment, sexual exploitation, and indecent behavior causing harm to working women; and delineate a complaint procedure. GUILINES ON PREVENTION OF SEXUAL HARASSMENT arts. 2 (e), 3, 5-6, 8-14. As mentioned above, the guidelines do not receive much attention and are not respected in practice.

**Prevention of Child Exploitation**

In order to deter the exploitation of child labor, the Child Labor Act has created a Child Labor Prevention Committee and Child Labor Prevention Fund. CHILD LABOR ACT secs. 23-24. Furthermore, the law has imposed a number of requirements on establishments that plan to employ children. Among others, such establishments must obtain an approval from the concerned Labor Office and the child’s parent or guardian. In addition, the child must undergo a medical examination to assess his or her capability to work. Id. secs. 6-14.

Interviewees emphasized that preventing and eradicating child labor is a daunting task because many families who live below the level of absolute poverty are compelled to engage their children in earning their livelihood and meeting their very basic needs. According to the GoN and NGOs, in situations like this, denying work opportunity to children may produce adverse affects. Therefore, prevention activities should focus on: 1) raising parents’ and employers’ awareness about human trafficking, exploitation, the worst forms of child labor, and legal requirements for hiring children; and 2) generating decent economic opportunities for the parents. NATIONAL MASTER PLAN ON CHILD LABOR at 5-6.

At the time of the assessment, there were no specific government programs or initiatives to combat child prostitution, child pornography, and other forms of child sexual exploitation. See CRC SUB-COMMITTEE, HUMAN RIGHTS TREATY MONITORING COORDINATION COMMITTEE, OPTIONAL PROTOCOL TO THE CONVENTION OF THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY: CHILD RIGHTS NGO REPORT 11 (2011) [hereinafter CHILD RIGHTS NGO REPORT].

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60 The women’s federations consist of 18 female members: 2 from each of the 9 wards in each VDC. WOREC provides trainings for the women’s federations and every month holds meetings at the ward level.
Safe Migration Programs

A rapidly expanding trend of human trafficking in Nepal is associated with foreign labor migration and a growing flow of undocumented migrants through the Indo–Nepal border. The GoN has made a high-level commitment to protect Nepali citizens working abroad from trafficking and exploitation. The FEA contains a number of provisions aimed at ensuring that foreign employment is safe, managed well, and decent.

The Foreign Employment Promotion Board is required to broadcast and publish awareness programs on foreign employment through radio, television, and newspapers in a regular manner. FOREIGN EMPLOYMENT RULES Rule No. 29 (b). Foreign employment business may be carried out only by licensed recruiting agencies and only in countries specified by the GoN. FEA secs. 3, 10. Gender discrimination in selecting workers as well as sending children for foreign employment are prohibited. Id. secs. 7-8. Recruiting agencies are required to advertise positions in a daily newspaper of national circulation and submit lists of selected workers, along with supporting documentation, to the Department of Foreign Employment. The Department of Foreign Employment must review the documents and affix labor permission stickers onto the workers’ passports. Id. secs. 16-17, 19. Individuals who wish to obtain foreign employment on a personal basis must also receive permission from the Department of Foreign Employment. Id. sec. 21. Recruiting agencies are prohibited from taking the workers’ passports abroad to obtain their visas without a permit from the Department of Foreign Employment. Id. sec. 18. Workers selected for foreign employment must undergo a mandatory pre-departure orientation and leave Nepal through the Labor Desk at the Tribhuvan International Airport in Kathmandu Valley. Using a foreign airport, e.g. in India, is allowed only upon approval of the Department of Foreign Employment. Prior to crossing the border with India or China, a migrant worker must register his or her departure with the immigration office of the departure point. Id. secs. 22, 28, 73.

Notably, the GoN is authorized to prescribe additional protections for women, Dalits, indigenous nationalities, people from remote areas, and other underprivileged groups in line with the principle of equity. Id. sec. 9. For example, the GoN has fixed a quota requiring recruiting agencies to select 10% of workers from among women and other underserved groups mentioned above. The GoN has also committed to creating a care center as well as scholarship and health care schemes for children of women migrant workers. In practice, the quota is not respected. In fact, only 5% of women are believed to migrate through formal foreign employment channels.

Thus far, the GoN has licensed nearly 800 recruiting agencies and selected 108 countries in which foreign employment can be carried out. The pre-departure orientation costs NPR 700 (approximately USD 10) and is conducted in Kathmandu with the support of the IOM. Reportedly, female migrant workers are reimbursed by the GoN and the orientation covers the issues of human trafficking and exploitation. The GoN has also established Migration Resource (Information) Centers, also with the assistance of the IOM. Furthermore, the MoLTM has started disseminating information regarding foreign employment and migration in collaboration with the Ministry of Local Development.

61 In 1998, the GoN banned Nepali women from obtaining employment in the Middle East after the case of Kani Sherpa became public. Kani Sherpa was a Nepali citizen who committed suicide after being mentally and physically abused by her employers in Kuwait. Nepalese Recount Hazards of Foreign Household Work, TRUSTLAW, Sept. 2, 2011. In 2003, the ban was partially lifted and women were allowed to obtain employment abroad but only in the formal sector, which excluded domestic work. In 2010, the Department of Foreign Employment began issuing permits allowing Nepali migrant workers to obtain employment in an informal sector based on the recommendations provided by Nepali missions in Saudi Arabia, Kuwait, Qatar, and the UAE. Many interviewees noted that the ban was not only discriminatory but also contributed to the increase of undocumented migration.
Despite the efforts, the informal migration sector is flourishing due to the high cost of documented labor migration, inaccessibility of services offered by the GoN, lack of awareness, insufficient regulation protecting female migrants, and thousands of local, unlicensed brokers targeting the most vulnerable sectors of the society.

To remedy the situation, a number of IGOs and NGOs have developed safe migration programs, some of which have been implemented in collaboration with the GoN. For example, since 2000, Nepal has been observing the International Migrants Day on December 18th. In 2010, the MoLTM, in collaboration with civil society, issued a national declaration and organized a number of awareness raising activities to commemorate the occasion. Furthermore, in 2002, the MoLTM partnered with UNIFEM (now UN Women) to implement the Empowering Women Migrant Workers of Nepal program aimed at developing gender sensitive policies, legislation, and institutional mechanisms to promote and protect the rights of female migrant workers. Among other actions, the program created a Steering Committee within the MoLTM, organized the National Consultation on Empowering Women Migrant Workers of Nepal, and initiated a consultative process to amend the FEA. UN Women has also supported the MoLTM and the Foreign Employment Promotion Board in: 1) conducting several sensitization programs on safe migration in almost all districts of Nepal; 2) initiating a study on "Remittances in Sustainable Livelihood;" and 3) creating a database which generates a disaggregated data on Nepali workers employed in foreign labor markets. There are plans to connect the database with the Department of Immigration. **MoLTM & UN Women, Empowering Women Migrant Workers of Nepal: Informational Leaflet** (2010). In addition, in February 2011, UN Women completed a pilot income generation project for returnees. The project trained 1,500 migrant workers on such issues as livelihood schemes, alternative forms of employment, enterprise development, and investing remittances in income generating activities in Nepal. Reportedly, the Foreign Employment Promotion Board is interested in replicating and expanding the program.

Other organizations that promote safe labor migration through awareness raising, lobbying, and policy advocacy include the National Network for Safe Migration, NIDS, POURAKHI, WOREC, Maiti Nepal, Saathi, and the Human Rights and Anti-Trafficking Network. Their efforts have resulted in a number of legislative amendments and the sensitization of thousands of migrant workers on the risks associated with foreign migration. For example:

- **POURAKHI** has successfully advocated for the removal of discriminatory laws against women migrant workers. In addition, POURAKHI organizes regular sensitization programs, prepares and disseminates information, education, and communication materials, and airs a weekly radio program addressing the needs of both potential and returnee migrant workers.

- **WOREC** implements safe migration programs in seven districts. In Morang, WOREC provided safe migration information and counseling to 1,007 potential migrants in 2010 alone. WOREC also formed a Returnee Migrant Workers Group in Morang. The returnees serve as peer educators and identify cases of exploitation in their villages and communities. In addition, WOREC successfully advocated for the establishment of district-level advisory committees on safe migration. **See WOREC Nepal, Annual Report 2010** at 27 (2011).

- **WOREC and Maiti Nepal** facilitate peer education and provide information on safe migration targeting, among others, women and girls who cross the Indo-Nepal border and people who file applications for citizenship cards at the district administration offices.

- In Kanchanpur, Saathi forms, facilitates, and trains men’s groups at the VDC level. The organization also publishes posters and calendars on safe migration.
In Makwanpur, the Human Rights and Anti-Human Trafficking Network has disseminated informational materials on migration and trafficking in persons in 43 VDCs. In addition, the Network has provided training of trainers to two representatives from selected VDC who are tasked with forming village committees comprising of 11-13 members and training them on various human rights, women’s rights, migration, and human trafficking issues. The committees are then responsible for educating the villagers about migration and related matters. The Human Rights and Anti-Human Trafficking Network has also formed surveillance groups in each VDC. The surveillance groups monitor instances of migration, trafficking, and exploitation; identify victims; organize village meetings; provide referral services, crisis support, and vocational training for returnees and vulnerable populations; and sometimes offer in-kind support (e.g., goats for farmers or supplies for beauty parlors). On average, 15-16 potential and returnee migrants identified by the surveillance groups benefit from the project each year.

Lastly, most of the above-mentioned NGOs convene workshops, sensitization meetings, orientations, rallies, and street performances to raise the awareness of governmental officials, journalists, and the general public about timely legal and socio-economic aspects of foreign labor migration.

Interviewees identified awareness raising, registration of labor brokers, and mobilization of both returnees and Nepali citizens working abroad as priority areas in the fight against trafficking in persons for the purposes of labor exploitation abroad.

Research

In the past 10 – 15 years, the GoN as well as various organizations and research institutions, including CeLRRD, KSL, ASMITA (Women’s Publishing House, Media and Resource Organization), Sancharika Samuha (Forum of Women Communicators), AATWIN, TDH, Social Science Baha, and ILO have undertaken a number of studies exploring various aspects of modern-day slavery in Nepal. Some of the studies are listed below. However, neither sufficient funding nor sound research methodologies exist to collect reliable statistical information on the magnitude of both internal and transnational trafficking in persons in Nepal. As a result, unconfirmed information is being replicated in various reports, which frustrates the ability of stakeholders to devise, fund, and implement counter-trafficking strategies. In addition, many research studies remain underutilized instead of being used to design result-driven programming.

"Policy, Research, and Institutional Development” is one of eight priority areas identified by the NPA. The NPA requires the GoN to: 1) strengthen its research capacity and use research in programming and policy development; 2) establish and maintain a reliable and up-to-date national database on trafficking in persons, disaggregated by gender; 3) collect data on trafficking victims and those vulnerable to human trafficking; 4) conduct contextual, action-oriented studies on trafficking in persons, labor market, child-related legislative policies, pockets of vulnerability, and trafficking prone areas; 5) identify sustainable, community-based anti-human trafficking solutions; and 6) develop ties with research institutes and donors. NPA at 13-14.

In practice, the MoWCSW is contemplating the development of an integrated data system on human trafficking and preliminary meetings devoted to this matter have already taken place. In addition, the Asia Foundation and KSL, in collaboration with Nepal Police, have developed a computerized monitoring and tracking system for human trafficking cases to be used by the Nepal Police. This computerized tracking system consists of password-protected software installed on the Nepal Police's server. It facilitates investigators in identifying trafficking offenders and their involvement in other human trafficking cases or other criminal offences. The system also provides statistical data on the number of human trafficking cases reported at police stations around the country. The cases are automatically uploaded to the system from the Nepal Police's daily crime and incident recording data. However, the system remains underutilized due to the lack of sufficient training. The Asia Foundation is also setting up an overall caseload
management and monitoring system for the NHRC. The system will not be limited to cases of human trafficking.

Since the FY 2005-06, the NHRC has published three annual “National Reports on Trafficking in Persons (Especially Women and Children) in Nepal.” The report writing teams are chaired by the Special Rapporteur on Trafficking. The national reports cover a variety of issues, including the dimensions of trafficking in persons, the nexus between human trafficking and foreign labor migration, and the implementation of anti-human trafficking laws and policies. The report covering FY 2008-09 was published in 2010. At the time of the assessment, the NHRC was in the process of finalizing the report covering FY 2009-10. The report was published in November 2011 when this assessment was being drafted. Information for the report is gathered through interviews, multisectoral consultation meetings, questionnaires, and secondary materials collected from civil society and government agencies. While the reports are informative, they are criticized for their insufficient quality, conceptual and methodological deficits, lack of comprehensive contextual analysis and disaggregated data, and a failure to fully incorporate a human rights perspective.\(^{62}\)

It is important to note that the majority of information on human trafficking reaches the general public through the national and local media. Accordingly, the manner in which the media covers the phenomenon has a great impact on public opinion and – to some extent – on governmental policies. According to interviewees, investigative journalism is not well developed in Nepal. Aside from the school leaving exam certification, there are no minimum qualifications that journalists must meet. Many of them are not skilled in conducting thorough fact-finding or corroborating data. Reportedly, there are many “mission journalists” who collaborate very closely with selected organizations or institutions and take their opinions as facts instead of producing objective, well-researched stories. This leads to many inaccuracies and misconceptions about trafficking in persons and other human rights-related matters. Notably, the GoN is increasingly sensitive about the role of the media in combating human trafficking. In fact, representatives of the Federation of Nepali Journalists are members of the District Committees. HTTCR Rule No. 6 (1) (e). Furthermore, many journalists receive trainings on human rights and other issues of social importance from the Nepal Press Institute, NGOs, IGOs, and INGOs.

Since 2001, the GoN’s efforts to combat trafficking in persons have been assessed in the “Trafficking in Persons Report” published by the U.S. Department State. The report places each country in one of three tiers, with Tier 1 being the highest ranking. In 2011, Nepal was placed in Tier 2. The U.S. Government concluded that the GoN does not fully comply with the minimum standards for the elimination of trafficking in persons; however, it is making significant efforts to do so, despite limited resources. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 2011 at 270 (2011). Nepal is also featured in the “Global Report on Trafficking in Persons” published in 2009 by the UN Office on Drugs and Crime (UNODC).

**MAJOR STUDIES ON TRAFFICKING IN PERSONS IN NEPAL CONDUCTED BY NGOs, INGOs, AND IGOs BETWEEN 2000 AND 2011**

<table>
<thead>
<tr>
<th>Author</th>
<th>Title</th>
<th>Year</th>
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<tbody>
<tr>
<td>Centre for the Study of Labour and Mobility, Social</td>
<td>Trafficking and Forced Labour in Nepal: A Review of the Literature</td>
<td>2011</td>
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</tbody>
</table>

\(^{62}\) The heavy reliance on aggregated information stems partially from the unwillingness of front-line NGOs to release individual case data. The problem with NHRC receiving only aggregated data is the difficulty in determining whether specific case information is duplicative with other sources. Some organizations, including ABA ROLI, have sought to assist the NHRC in compiling more accurate, up-to-date, and comprehensive statistics. Thus far, however, the NHRC has not prioritized this issue.
<table>
<thead>
<tr>
<th>Organization/Media</th>
<th>Title</th>
<th>Year</th>
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<tbody>
<tr>
<td>Amnesty International</td>
<td>Exploitation and Forced Labour of Nepalese Migrant Workers</td>
<td>2011</td>
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<tr>
<td>Children-Women In Social Service and Human Rights</td>
<td>Status of Child Domestic Workers in Kathmandu</td>
<td>2010</td>
</tr>
<tr>
<td>Shakti Samuha</td>
<td>A Study on the Condition of Slavery Among Women and Girls Employed in the Restaurants and Massage Parlours of Kathmandu Valley</td>
<td>2008</td>
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<tr>
<td>KSL &amp; TDH</td>
<td>Regional Study for the Harmonization of Anti-Trafficking Legal Framework in Nepal, India and Bangladesh with International Standards</td>
<td>2007</td>
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<tr>
<td>Asha-Nepal</td>
<td>A Sense of Direction: The Trafficking of Women and Children from Nepal</td>
<td>2006</td>
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<tr>
<td>ASMITA</td>
<td>Writing against Trafficking</td>
<td>2006</td>
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<tr>
<td>TDH</td>
<td>Summary of Findings: A Study of Trafficked Nepalese Girls and Women in Mumbai and Kolkata, India</td>
<td>2005</td>
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<tr>
<td>FWLD &amp; UNIFEM</td>
<td>Effectiveness of Existing Laws and Institutional Mechanism to Combat Trafficking in Women and Children in Nepal</td>
<td>2005</td>
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<tr>
<td>Youth Action Nepal</td>
<td>Migration of Nepali Youth for Foreign Employment</td>
<td>2005</td>
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<td>ActionAid Nepal</td>
<td>Plight of Cabin Keepers</td>
<td>2004</td>
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<tr>
<td>Beyond Trafficking</td>
<td>Best Practices on Rehabilitation and Reintegration of Trafficked Women and Girls</td>
<td>2004</td>
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<tr>
<td>Institute for Integrated Development Studies &amp; UN Development Fund for Women</td>
<td>Status and Dimension of Trafficking Within Nepalese Context</td>
<td>2004</td>
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<tr>
<td>TDH</td>
<td>Kids as Commodities? Child Trafficking and What to Do About It</td>
<td>2004</td>
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<tr>
<td>TDH</td>
<td>Child Trafficking in Nepal</td>
<td>2003</td>
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<tr>
<td>CeLRRd</td>
<td>Analysis of Laws and Policies on Labor Migration and Trafficking</td>
<td>2002</td>
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<tr>
<td>ILO</td>
<td>Nepal – Trafficking in Girls with Special Reference to Prostitution: A Rapid Assessment</td>
<td>2001</td>
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Root Causes, Social Determinants, and Demand

Human trafficking in Nepal is a highly complex, cross-cutting phenomenon interlinked with poverty, unemployment, discrimination, globalization, internal displacement, and foreign migration. As the table below illustrates, the root causes and structural determinants of trafficking in persons can be divided into five categories: economic, educational, socio-political, legal, and geographical.

<table>
<thead>
<tr>
<th>ROOT CAUSES AND SOCIAL DETERMINANTS OF HUMAN TRAFFICKING IN NEPAL</th>
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<tbody>
<tr>
<td><strong>Economic</strong></td>
</tr>
<tr>
<td>• Persistent poverty</td>
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<tr>
<td>• Unemployment</td>
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<tr>
<td>• Unequal access to employment and credit</td>
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<tr>
<td>• Lack of income generation opportunities</td>
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<tr>
<td>• Child labor</td>
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<tr>
<td>• High profitability of the human trafficking business</td>
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<tr>
<td>• Weak welfare and child protection system</td>
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<tr>
<td>• Heavy reliance on traditional forms of agricultural production</td>
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<tr>
<td><strong>Educational</strong></td>
</tr>
<tr>
<td>• Illiteracy</td>
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<tr>
<td>• Unequal access to education</td>
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<tr>
<td>• Soaring school dropout rates caused, e.g., by child labor</td>
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<tr>
<td>• Lack of legal awareness</td>
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<tr>
<td><strong>Socio-political</strong></td>
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<tr>
<td>• Unstable government</td>
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<tr>
<td>• Flourishing corruption and complicity of government officials</td>
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<tr>
<td>• Demand for sex services and cheap or free labor force</td>
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<tr>
<td>• Caste, gender, and ethnic discrimination</td>
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<tr>
<td>• Stigmatization and discrimination against trafficking survivors leading to revictimization</td>
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<tr>
<td>• Patriarchal system of society, including subjugation of women and their economic dependence on men</td>
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<tr>
<td>• Prevalence of violence against women and harmful traditional practices</td>
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<tr>
<td>• High level of family dysfunction (including domestic violence, alcoholism, and child marriage)</td>
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<tr>
<td>• Globalization and technological advancements</td>
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<tr>
<td>• Desire to lead a better, more sophisticated life leading to enhanced social status migration</td>
</tr>
<tr>
<td>• Peer pressure to migrate to urban areas or abroad</td>
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<tr>
<td>• Internal displacement due to the Maoist insurgency and natural disasters</td>
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<tr>
<td><strong>Legal</strong></td>
</tr>
<tr>
<td>• Unsatisfactory enforcement of international labor standards and anti-human trafficking laws</td>
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<tr>
<td>• Lack of corporate accountability for trafficking in persons</td>
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<tr>
<td>• Lack of effective victim and witness protection program</td>
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<tr>
<td>• High level of impunity for human trafficking and interrelated crimes, such as corruption, money laundering, and obstruction of justice</td>
</tr>
<tr>
<td>• Lack of effective legal mechanisms aimed at controlling traffickers, exploiters, and their organizations by cutting into their revenues, raising their operating costs, and consequently removing the financial incentives to commit the crime</td>
</tr>
<tr>
<td>• Insufficient regulation and oversight of industries with a high incidence of trafficking and exploitation (e.g., the entertainment industry)</td>
</tr>
<tr>
<td><strong>Geographical</strong></td>
</tr>
<tr>
<td>• Open and largely unregulated border with India</td>
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Nearly every interviewee invoked extreme poverty and unemployment as primary root causes of trafficking in persons in the country. Nepal is one of the least developed countries in the world, with a large portion of its population living below the poverty line and more than 35% of the population living below the minimum level of dietary energy consumption. Poverty alleviation has been the prime development agenda in Nepal since 1956 when the country started planned development. Since 1996, Nepal witnessed an impressive record of poverty reduction. However, structural problems within the economy, such as inequitable access to resources and shortfalls in good governance, continue to thwart development. Achieving progress in reducing hunger and unemployment is particularly challenging. UNDP, MDG NEEDS ASSESSMENT 2010 at 5-6, 8, 13.

Development plans and policies of Nepal are formulated by the National Planning Commission, chaired by the Prime Minister, under the directives of the National Development Council. Currently, the country operates under the Three Year [Development] Plan 2010/11 – 2012/13, which is a continuation of the Three-Year Interim Plan 2007/08 – 2009/10. The long-term vision of the Plan is to transform Nepal from the group of the least developed countries to the group of developing countries as a “Prosperous, Peaceful and Just Nepal” in the next two decades. Nepal is a signatory to the UN Millennium Declaration and has made a commitment to achieving the Millennium Development Goals by 2015 with particular emphasis on such targets as creating dignified and gainful employment opportunities, reducing economic inequalities, eliminating social exclusion, ensuring regional balances, improving standard of living, and reducing poverty level from 25% to 21% of population living below the poverty line. See generally NATIONAL PLANNING COMMISSION, THREE YEAR PLAN APPROACH PAPER 2010/11 – 2012/13 (2010) [hereinafter THREE YEAR PLAN]; see also Poverty Alleviation Fund, Nepal, at http://www.pafnepal.org.np. In developing the Three Year Plan, the GoN acknowledged that progress is needed in eradicating human trafficking and violence against women. Id. at 12, 168.

Many interviewees, particularly in Kanchanpur, emphasized a strong nexus between widespread gender-based discrimination and violence and increased vulnerability of women and girls to trafficking in persons. Over the last decade, Nepal has made progress in reducing gender-based discrimination and empowering women. UNDP, MDG NEEDS ASSESSMENT 2010 at 29. The 2006 Gender Equality Act amended 17 laws, including the Muluki Ain, removing approximately 85 discriminatory provisions entrenched in the legal system. The Interim Constitution prohibits discrimination on grounds of religion, race, caste, tribe, sex, origin, language or political opinion, and authorizes affirmative action for the protection, empowerment, and advancement of women, Dalits, indigenous peoples (Adibasi, Janajati), Madhesi, farmers, workers, economically, socially or culturally disadvantaged classes, children, the elderly, and the disabled. In addition, the Interim Constitution sets forth the rights of women and the right to social justice and inclusion. INTERIM CONST. arts. 13, 20-21. Since the Ninth [Development] Plan (1997 – 2002), gender mainstreaming, women’s empowerment, and social inclusion have received prime importance in the national agenda. The 2004 National Plan of Action on Gender Equality and Women’s Empowerment has been implemented and in 2010, the GoN produced a National Plan of Action against Gender Violence. Year 2010 was officially marked as the “Year against Gender-Based Violence.” UNDP, MDG NEEDS ASSESSMENT 2010 at 32; THREE YEAR PLAN at 166-172. The Supreme Court has explicitly stated that it is the state responsibility to eradicate all forms of torture and exploitation against women, including trafficking in persons. Sapana Pradhan Malla v. HMG, Supreme Court (2005). The MoWCSW has devised a “zero tolerance policy” on violence against women. Lastly, the GoN has adopted the Domestic Violence (Offence and Punishment) Act and is in the process of developing specific laws addressing such issues as sexual harassment and harmful tradition practices.

Despite the efforts, women and girls continue to be severely disadvantaged. Disparities exist in education, employment, and participation in social and political life. Millions of women suffer from domestic and sexual violence and harmful traditional practices, such as child, forced, and
arranged marriages, dowry system, Chaupadi,63 and polygamy. In addition, hundreds of low-caste women are accused of witchcraft and subsequently tortured and ostracized from their families and communities.64 The situation of women varies in different regions and highly depends on their caste, ethnicity, and religion. Women who belong to the Dalit caste are particularly vulnerable. Dalits are traditionally regarded as untouchable and are usually segregated from the mainstream society. Women’s rights are also heavily restricted in the Muslim and Madhesi communities.

In addition to gender-based discrimination, interviewees mentioned high level of family dysfunction as one of the leading precipitating or activating causes of human trafficking in Nepal. Studies indicate that social phenomena such as domestic violence, alcoholism, child marriage, separation from family, and even presence of step-mothers and step-fathers greatly increase people’s vulnerability to trafficking in persons, especially in the lack of adequate social protection mechanisms.

Pervasive illiteracy and uneven access to education are also among commonly invoked social determinants of human trafficking in Nepal. Interviewees stressed, however, that human trafficking and exploitation affects not only people who are illiterate or unaware about the risks associated with foreign and rural-to-urban migration. In fact, young, well-educated, and skilled laborers are high in demand among traffickers who use internet and mobile technology to lure them with promises of sophisticated life abroad.

The Interim Constitution guarantees every citizen the right to free education up to the secondary level. INTERIM CONST. art. 17. Reportedly, Nepal has made significant efforts to re-strengthen and increase enrolment in primary-level education, provide various incentive schemes to children, hold school enrolment campaigns, and revise the curriculum. UNDP, MDG NEEDS ASSESSMENT 2010 at 21. The Three Year Plan focuses on providing opportunities for literacy and continuous education to all Nepali citizens, with particular attention to women and people from poor communities, by linking literacy with a way of life and by establishing inter-linkages between skills and work. THREE YEAR PLAN at 123. In addition, the GoN has developed the School Sector Reform Plan (SSRP) 2009–2015 with pinpointed interventions for underserved groups and communities. UNDP, MDG NEEDS ASSESSMENT 2010 at 21. Still, the literacy rate for those over 15 is 48.6% and some major problems persist, such as the inability to develop adequate school infrastructure, retain girls and children from deprived communities at school, and provide higher education opportunities to all. THREE YEAR PLAN at 122. In many parts of the country the literacy gap increases with age because people do not complete their education.

Prevalent corruption and complicity of government officials were also frequently cited by interviewees in discussions about factors contributing to trafficking in persons in Nepal. One interviewee reported that, in some districts, CDOs are implicated in selling citizenship papers to underage girls so that they can obtain employment in the entertainment industry or travel for work abroad. See Articles 1 and 5 above.

63 In 2004, the practice of Chaupadi was challenged in the Supreme Court which declared it as a discriminatory traditional practice violating women’s human rights. The Supreme Court ordered the GoN to ban and eradicate the practice. The Council of Ministers has proclaimed Chaupadi as one of the worst form of abuses against women. The MoWCSW, with the support of Save the Children, is in the process of implementing a 3-year pilot project aimed at eliminating Chaupadi in practice.

64 In 2004, the customary malpractice of accusing women of witchcraft was challenged in the Supreme Court. The Supreme Court ruled that the practice is a severe crime against women’s welfare and ordered the GoN to declare it illegal. Reshma Thapa v. Council of Ministers, Supreme Court (2004). Presently, condemning a person as a witch or banishing him or her from the place of residence is punishable by imprisonment ranging from 3 months to 2 years and/or a fine of Rs 5,000 – 25,000. MULUKI AIN, Part 4, Chapter 19 (No. 10B).
The GoN has recognized that poverty, lack of employment opportunities, illiteracy, and gender gap in education are among the main factors responsible for the increased incidence of trafficking in persons in Nepal. In adopting the NPA, the GoN has committed to promoting sustainable income and employment generation activities, engage private sector in unemployment reduction, organize vocational, entrepreneurial, and management trainings, increase school enrollment, enforce free and compulsory primary education, and integrate social awareness into the school curriculum. NPA at 25-28.

According to interviewees, the GoN has not implemented any pinpointed legal reforms or programs that address the demand or structural determinants and root causes of trafficking in persons. The GoN has also fallen short of effectively linking human trafficking with the advancement of socio-economic rights and mainstreaming the anti-human trafficking efforts into its development agenda. Reportedly, the new NPA will incorporate provisions aimed at reducing the demand for sexual and labor exploitation. For example, the GoN will be required to devise educational campaigns for owners and managers of entertainment establishments.
Article 10: Information Exchange and Training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
   
   (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
   
   (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
   
   (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Conclusion:

The HTTCA does not create a legal requirement for the GoN to cooperate with other countries on matters related to trafficking in persons. However, Nepal is a party to the SAARC Convention on Trafficking in Women and Children which requires its Member States to grant to each other the widest measure of mutual legal assistance. Nepal has not entered into any bilateral treaties devoted to such issues as trafficking in persons, mutual legal assistance in criminal matters, or safe and orderly repatriation of foreign nationals. Nepal is a party to the 1953 India-Nepal Extradition Treaty; however, the treaty is not utilized in practice. Nepal has concluded four bilateral labor agreements with Qatar, Bahrain, South Korea, and UAE, an MOU regarding industrial workers with Japan, and an agreement with South Korea to participate in the employment permit system (EPS). At the time of the assessment, the GoN was in the process of finalizing mutual legal assistance legislation and negotiating the terms of several bilateral agreements: a new extradition treaty and a mutual legal assistance agreement with India as well as labor agreements with Malaysia, Israel, and Lebanon. At times, the GoN cooperates with other countries through the Interpol. In addition, Nepali and Indian law enforcement officers collaborate with one another in an informal manner at the local level. The HTTCA does not incorporate any provisions on the development of anti-human trafficking trainings for public officials and justice system actors. Nevertheless, there is reportedly an overload of anti-human trafficking trainings and workshops offered to public officials by IGOs, INGOs, NGOs, and bar associations. The trainings are not conducted in a systematic, uniform, and coordinated manner and many of them have limited impact.
Implementation Analysis:

International Cooperation and Information Exchange

The HTTCA fails to create a legal requirement for the GoN to adopt policies or programs aimed at facilitating bilateral or multilateral cooperation and information exchange in matters related to trafficking in persons. However, the GoN has officially stated that bilateral and regional initiatives are crucial in the fight against trafficking in persons. Accordingly, the GoN has committed to strengthening trans-border cooperation, initiating bilateral talks in order to develop an anti-human trafficking agenda, participating in related regional meetings, institutionalizing regular interactions related to human trafficking with other countries, and amending the extradition treaty with India to explicitly include trafficking in persons. NPA at 33-34.

Nepal is a party to the SAARC Convention on Trafficking in Women and Children that was adopted to promote regional cooperation in eradicating trafficking in persons. **SAARC Convention on Trafficking in Women and Children** art. VI. The Convention mandates its Member States to grant to each other the widest measure of mutual legal assistance with respect to the investigation, prosecution, and adjudication of human trafficking cases. State Parties are also authorized to create bilateral mechanisms to effectively implement the treaty provisions. In addition, Member States are required to exchange, on a regular basis, information about agencies, institutions, and individuals who are involved in trafficking in the region and to identify methods and routes used by the traffickers through land, water, or air. Data furnished to other countries should include the offenders’ fingerprints, photographs, methods of operation, police records, and records of conviction. *Id.* arts. II, VIII (4)-(5). Furthermore, Nepal participates in the South Asia Forum for Ending Violence against Children (SAF). At the time of the assessment, the GoN was in the process of finalizing mutual legal assistance legislation.

Pursuant to the FEA, the GoN may enter into bilateral labor agreements with countries where Nepali citizens have or may obtain foreign employment. **FEA** sec. 4. To date, Nepal has concluded four bilateral labor agreements with Qatar, Bahrain, South Korea, and UAE and an MOU regarding training of industrial workers with Japan, which established ties between the GoN and the Japan International Training Cooperation Organization (JITCO).65 The agreements cover minimum standards of employment of Nepali citizens in the respective countries. Nepal has also signed an MOU with South Korea to participate in the Korean employment permit system (EPS) for migrant workers. Nepal has not entered into any bilateral treaties or MOUs devoted to such issues as trafficking in persons, mutual legal assistance in criminal matters, or safe and orderly repatriation of foreign nationals. Nepal is a party to the 1953 India-Nepal Extradition Treaty; however, the treaty is obsolete, ineffective, and not utilized in practice. See Article 1 above. At the time of the assessment, the GoN was in the process of negotiating the terms of bilateral labor agreements with Malaysia, Israel, and Lebanon as well as a new extradition treaty and a mutual legal assistance agreement with India. The treaties have not been ratified yet and the drafts are confidential. Reportedly, the agreement pertaining to mutual legal assistance incorporates specific provisions on trafficking in persons.

Nepal preserves friendly and peaceful relations as well as close economic ties with both of its neighbors, as demonstrated by the India-Nepal Peace and Friendship Treaty of 1950 and the Sino-Nepali Treaty of Peace and Friendship of 1960. Nepal exchanges regular high-level visits with India and China, which include annual meetings between Indian and Nepali Ministries of Home Affairs. In addition, CDOs and representatives of the Nepal Police and Armed Police from the border districts convey quarterly joint meetings with their counterparts in India. The meetings are devoted to cross-border security; however, they rarely focus on trafficking in persons. Every

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65 The Japan International Training Cooperation Organization supports the transfer of Japanese skills to developing countries through the schemes of training named Technical Intern Training Program. See JITCO at http://www.jitco.or.jp/english/.
ten years the GoN and the Government of China conduct joint inspections of the Nepal-China border facilitated by the Joint Inspection Committee.

Nepal does not have an institutionalized mechanism for mutual legal assistance in criminal matters or bilateral law enforcement cooperation. Therefore, evidence gathering and information sharing in transnational cases of trafficking in persons is extremely complicated. With that said, Nepal, India, and China belong to Interpol, which is the largest international police organization encompassing 190 Member States. Among others, Interpol provides its members a platform for cooperation as well as high-tech infrastructure and operational support in combatting modern-day crime. Nepali and Indian police forces deployed to the border regions share a common understanding that information sharing and mutual assistance are necessary to combat transnational crime. Although there is no binding agreement mandating both countries to exchange data and evidence, Nepali and Indian law enforcement officers collaborate with one another in an informal manner at the local level. The *ad hoc* collaboration involves information sharing, handing over individuals suspected of trafficking in persons, and rescuing and repatriating trafficking victims in partnership with civil society organizations.

**Restrictions**

Article 10(3) of the Trafficking Protocol indicates that when governments cooperate and exchange information with one another in order to pursue traffickers and identify victims, the country providing the information may limit the manner in which such information is used. These limitations are aimed at protecting the privacy and identity of trafficking victims.

Presently, Nepali legislation does not explicitly address the possibility of placing restrictions upon the exchange of data and information related to trafficking in persons.

**Training**

Under the SAARC Convention on Trafficking in Women and Children, the GoN is obliged to: 1) provide sufficient training to the respective authorities to enable them to effectively conduct inquiries, investigations, and prosecution of trafficking in persons; 2) sensitize law enforcement agencies and the judiciary about human trafficking and its root causes. SAARC CONVENTION ON TRAFFICKING IN WOMEN AND CHILDREN art. VIII.

The HTTCA and HTTCR do not incorporate any provisions on the design, implementation, and evaluation of anti-human trafficking trainings for public officials and justice system actors. The importance of relevant trainings is, however, emphasized in the NPA which calls upon the GoN to: 1) strengthen its training capacity at all levels by developing ties with training institutes, universities, donors, technical assistance providers, NGOs, and IGOs; 2) provide international and national training opportunities and study tours to MoWCSW officials; 3) devise and implement rights-based, child-friendly, and gender-sensitive trainings for the judicial personnel and the police, including Armed Police deployed to the border; and 4) organize legal awareness raising and sensitizing seminars and workshops for the parliamentarians, lawyers, teachers, counselors, social workers, local authorities, and the media. NPA at 13, 15, 17, 19-20, 34.

In practice, the GoN has not developed a strategy or curriculum for training public officials on trafficking in persons. With that said, some institutions, for example the National Judicial Academy, WDOs, and the WCSD, have mainstreamed trafficking in persons into its educational programs related, for example, to gender-based violence. In addition, there is reportedly an overload of anti-human trafficking trainings and workshops offered to public officials, including justice system actors, by IGOs, INGOs, NGOs, and bar associations. Although trainings are essential, many of them are not conducted in a systematic, uniform, and coordinated manner, which limits their impact. According to interviewees, training efforts of various organizations are often duplicated and the course materials are not always adjusted to the needs of a particular audience. Interviewees suggested that general, introductory seminars on trafficking in persons...
should be substituted with detailed, comprehensive, skills-oriented, and interactive courses unveiling practical applications of domestic and international laws. Educating judges, prosecutors, and the police on such issues as evidence gathering, victim compensation, and application of the HTTCA in relation to the FEA, Child Labor Act, and Bonded Labor Act is of paramount importance.
**Article 11: Border Measures**

1. **Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.**

2. **Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.**

3. **Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.**

4. **Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.**

5. **Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.**

6. **Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.**

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**Conclusion:**

In contrast to the Nepal – China boundary, the border between Nepal and India is open, allowing for the free movement of people and goods. The duty to guard the border is vested in the Armed Police. The HTTCA does not prescribe any border measures aimed at combating trafficking in persons. Border security is discussed at high-level meetings between Nepal and India and Nepal and China, and in other official communications between the respective governments. However, cross-border cooperation in relation to trafficking in persons is neither institutionalized nor treated as a priority. The Immigration Rules create an obligation of transportation carriers to ascertain that all passengers are in the possession of required travel documents. However, it is unclear if any transportation carrier implicated in trafficking in persons has ever been sanctioned pursuant to the stated provisions. A foreigner who has been punished for trafficking in persons is subject to deportation and cannot reenter Nepal for 3 years. There are no specific provisions related to the revocation of visas of persons implicated in the commission of human trafficking.

**Implementation Analysis:**

**Border Controls**

Nepal is landlocked between China in the north and India in the south, west, and east. Both borders are distinctive in terms of terrain and infrastructure. The Nepal-China boundary is as old as the history of the two countries. It measures 1,415 km, runs through the high altitudes of the Himalayas, and is almost entirely uninhabited. The Nepal-India border is 1,850 km long and extends through the mountains in the east, through the Terai in the south, and along the Mahakali River in the west. Its demarcation and delimitation took place after the Anglo-Nepal War of 1814-
Pursuant to the India-Nepal Peace and Friendship Treaty of 1950, there is an open border between the two South Asian neighbors. The treaty has established a close strategic relationship between India and Nepal, allowing for the free movement of people and goods. By signing the treaty, the countries agreed to grant, on a reciprocal basis, to the nationals of one country in the territory of the other the same privileges on matters of residence, ownership of property, participation in trade and commerce, and movement. *India-Nepal Peace and Friendship Treaty* arts. 6-7.

Many of the Indo-Nepal border regions have very vibrant transnational communities, particularly along the Terai where numerous market towns emerged in the 20th century. Many of these market towns have turned into major trade routes between India and Nepal. In 1991, the two countries entered into the Indo-Nepal Treaty of Trade to promote, facilitate, expand, and diversify trade and to cooperate with each other to prevent infringement of the laws related to foreign exchange and foreign trade. Both countries preserved their right to introduce and maintain restrictions aimed at protecting public morals and human life. *Indo-Nepal Treaty of Trade* arts. I, VIII-IX.

There are 22 agreed trade routes with transit and customs posts along the Nepal-India border (including Biratnagar – Jogbani and Mahendranagar – Banbasa) and 6 official immigration points for the entry and exit of nationals from the third countries (including Gaddachauki, Mahendranagar). There is one official immigration point along the Nepal-China border in Kodari, Sindhupalchowk, which is an important trading center between Nepal and Tibet. The Tribhuvan International Airport in Kathmandu is the only immigration point for foreign nationals coming by air. Entering and departing from other places is treated as a violation of the Immigration Act and the Regulation.

The duty to guard the border is vested in the Department of Border Security within the Armed Police under the MoHA. The Armed Police is a paramilitary force charged with maintaining law and order, containing insurgencies, combating terrorism, controlling of trans-border crimes, and safeguarding the sovereignty of the nation. The Department of Border Security has 21 border security offices, 48 permanent and 25 temporary border out posts, 10 custom security patrols, 2 temporary border security bases, and 1 mobile flying squad. These units perform such tasks as observation of border areas, maintenance of border pillars, controlling and recording trans-border crime, and collaborating with local administration and other security agencies. *Armed Police, Armed Police Day: Special Publication 28* (2011). There is also an Immigration and Border Administration Section under the MoHA’s Law and Order Division.

Neither the HTTCA nor HTTCR prescribe border measures aimed at combating trafficking in persons. As mentioned in Article 9 above, the FEA requires workers selected for foreign employment to depart through the Tribhuvan International Airport in Kathmandu Valley. Using a foreign airport, e.g. in India, is allowed only upon approval of the Department of Foreign Employment. Prior to crossing the border with India or China, a migrant worker must register his or her departure with the immigration office of the departure point. *FEA* secs. 22, 28, 73.

The GoN has recognized that the unrestricted movement across the Indo-Nepal border is one of the contributing factors to the phenomenon of human trafficking. In adopting the NPA, the GoN made a commitment to: 1) establish screening posts in major towns and receiving destinations at the border; 2) organize cross-border workshops to develop an agenda for counter-trafficking activities; and 3) sensitize border patrols and customs officials on human trafficking. *NPA* at 34. The GoN admitted, however, that tighter control of the border posts would require a large amount of resources and manpower which is not feasible due to the lack of resources. *NPA* at 33. Notably, some stakeholders argue that enhancing border controls or establishing a border
crossing record system would violate the right to freedom of movement guaranteed under the India-Nepal Peace and Friendship Treaty.

A number of armed police officers deployed to the border have participated in anti-human trafficking trainings offered by IGOs and NGOs. For example, in April 2010, Maiti Nepal trained 49 armed police personnel on their roles in combating human trafficking at the Indo-Nepal border. In addition, the Armed Police have achieved a relatively high level of cooperation with NGOs implementing border surveillance and interception programs. See Article 6 above. Otherwise, the Armed Police are not well equipped to identify and curtail human trafficking operations at the border. In fact, the Indo-Nepal border is extremely porous and crossing it in an irregular manner is very easy. People are stopped and requested to present identification documents only if they are suspected to be engaged in an illegal activity. Transnational crimes are, however, extremely difficult to detect given the high volume of cross-border movement. One interviewee suggested that the GoN should allocate special funding to WDOs to organize multisectoral cross-border meetings and activities aimed at eradicating human trafficking. To date, however, such initiatives have not been undertaken.

Even though there is a growing trend of trafficking girls and women to the entertainment industry in China, including Tibet and Hong Kong, there are no pinpointed activities or action plans aimed at intercepting the victims and perpetrators along the Nepal-China border. With that said, the border is closed and closely monitored, particularly by the Chinese patrol forces, in an effort to curtail the exodus of Tibetan refugees.\(^6\)\(^6\) Reportedly, border controls along the Nepal-China border have become increasingly tighter since the 2008 Tibetan uprising in Lhasa.

Border security and control measures are discussed at the annual high-level ministerial meetings between Nepal and India and Nepal and China, and in other official communications between the respective governments. However, cross-border cooperation in relation to trafficking in persons is neither institutionalized nor treated as a priority.

**Commercial Carriers**

The legal responsibilities of transportation carriers that play a role in cross-border movement of people are set forth in the Immigration Rules. Each individual and organization carrying Nepali and/or foreign passengers to or from Nepal is required to submit a manifesto of passengers and crew members to the Immigration Office prior to arrival or departure. Commercial carriers are prohibited from transporting foreigners who do not hold valid passports, who have been deported, or who have been prohibited from entering Nepal. The responsibility for returning a passenger who is not allowed to enter Nepal lies with the respective transportation carrier. Transportation carries are also responsible for handing over passengers who have been deported or denied entry by foreign states to the Immigration Office. These obligations extend to Nepali and foreign transportation companies, pilots operating aircrafts, and drivers of vehicles crossing the Nepali border. **Immigration Rules** Rules No. 2 (f), 42. Violations are punishable by a fine of up to NPR 50,000 (approximately USD 714). The fines are imposed by the Director General, i.e., the head of the Immigration Department. **Immigration Act** sec.10.

It is unclear if any transportation carrier implicated in trafficking in persons has ever been sanctioned pursuant to the above-stated provisions. Interviews revealed a high level of confusion among key stakeholders about the role of the Department of Immigration in ensuring that commercial carriers discharge their obligations under the Immigration Act and Rules. A number of interviewees mistakenly assumed that this function belongs to the Department of Customs under the Ministry of Finance.

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\(^6\) The Nepal-China border is one of the few escape routes for fleeing Tibetans. According to UNHCR, each year, approximately 1,000 Tibetans transit to India through Nepal. See UNHCR, 2011 UNHCR country operations profile – Nepal, \(af\) http://www.unhcr.org/pages/49e487856.html.
Denial of Entry and Visa Revocation

There are no specific provisions related to the revocation of visas of persons implicated in the commission of trafficking in persons. However, the GoN has the power to deny a foreigner’s entry or stay in Nepal if it may be detrimental to the national interest. IMMIGRATION ACT sec. 14. A foreigner who has been punished for trafficking in persons is subject to deportation and cannot reenter Nepal for 3 years. DEPARTMENT OF IMMIGRATION, MoHA, THE IMMIGRATION MANUAL 151-152 (2008).
Article 12: Security and Control of Documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Conclusion:

State and local authorities in Nepal issue the following identity and travel documents: personal events certificates, citizenship certificates, passports, visas, and drivers licenses. With the exception of machine-readable passports, Nepali travel and identity documents are not secure and can be easily falsified. Reportedly, the use of fraudulent documents in Nepal is common. Both document forgery and using or causing someone to use a fake passport or visa constitute criminal offences and are punishable by imprisonment and/or fines.

Implementation Analysis:

The quality, integrity, security, and control of travel and identity documents is of paramount importance in Nepal due to the very large migration flows between Nepal and India and the growing phenomenon of foreign labor migration. State and local authorities in Nepal are authorized to issue the following identity and travel documents: personal events registration certificates, citizenship certificates, passports, refugee travel documents, visas, and driver’s licenses.

Personal events, such as birth, marriage, divorce, migration, and death should be registered at the Office of the Local Registrar in a VDC or municipality within 35 days of the occurrence of the event.\(^{67}\) **BIRTH, DEATH, AND OTHER PERSONAL EVENTS (REGISTRATION) ACT sec. 4 (adopted Oct. 20, 1976 by King Birendra Bir Bikram Shah Dev, as amended).** In spite of birth registration drives and awareness raising campaigns conducted by the GoN and civil society, personal event registration rates in Nepal are very low. Reportedly, 70-80% of births are registered in municipalities and VDCs located close to larger towns. However, no more than 40-50% of births are registered in remote, rural areas. Interviewees underlined the importance of birth registration in combating human trafficking and worst forms of child labor; preserving children’s rights to education, inheritance, and the highest attainable standard of health; and obtaining such essential documents as citizenship certificates and passports. Interviewees added that the lack of birth certificates compels many people to seek counterfeited identity and travel documents and hampers the efforts to confirm the identity of survivors, particularly if they were trafficked at a very young age.

Citizenship certificates are issued by CDOs. They are available to persons who are at least 16 years old and who can prove that that they are citizens of Nepal by descent or birth. Depending on the type of citizenship, the application for the citizenship certificate may require: 1) a recommendation from the concerned VDC or municipality certifying the place of birth, relationship, and permanent residence in Nepal; 2) a Nepali citizenship certificate of descendants of relatives; and/or 3) a land or house ownership certificate, a document certifying land title, or a proof that the applicant’s (or his or her mother’s or father’s) name is listed in the voters’ list.

\(^{67}\) A central registry of personal events is kept by the Population and Vital Registration Management Section under the Ministry of Local Development.
Nepali passports are issued by the Department of Passport under the MoFA. In 2010, the MoFA entered into a contract with a French company, Oberthur Technologies, for security printing and personalization of machine-readable passports services. The contract prescribes detailed technical specifications for the production of Nepali passports, including the digitalization of application forms, data entry validation, high quality personalization of the passport book in conformity with the International Civil Aviation Organization [hereinafter ICAO] Doc. 9303, Part 1, Vol. 1, durability measured by a minimum of 10 year lifespan, as well as complex and sophisticated security design. See generally CONTRACT BETWEEN THE GOVERNMENT OF NEPAL AND OBERTHUR TECHNOLOGIES, SECURITY PRINTING, SUPPLY AND DELIVERY, INSTALLATION OF EQUIPMENT, AND PERSONALIZATION OF MACHINE READABLE PASSPORTS (signed August 27, 2010, Contract No. MoFA 02/066/67). Oberthur Technologies is a world leader in the field of secure technologies. In 2003, the company received an Interpol award for the most secure passport in the world. OBERTHUR TECHNOLOGIES, ACTIVITY REPORT 2010 at 1, 13 (2010). Reportedly, the introduction of machine-readable passports has negatively impacted labor brokers because these passports require a minimum of 45 days to process as opposed to a week, which used to be the case. See VERITÉ REPORT.

Nepali visas are issued by the Director General of the Department of Immigration under the MoHA. See Article 7 above. They are not machine-readable. Indian citizens can enter and remain in Nepal carrying a passport or any other official identification document with a photograph, i.e., a driving license, identity card, ration card, voter identity card, registration certificate, or temporary identity card issued by the Indian Embassy. Nationals from the third countries are required to have a valid passport and a visa.

Using or causing someone to use a fake passport or visa is punishable by a fine not exceeding NPR 50,000 (approximately USD 714) and/or imprisonment for up to 5 years. The same penalty applies if someone causes a foreigner who does not hold a valid passport or visa to enter into, stay in, or depart from Nepal. IMMIGRATION ACT secs. 5, 10. The authority to examine and take into possession documents related to the entry, stay, or departure of a foreigner is vested in an immigration officer or an employee designated by the Director General of the Department of Immigration. Id. sec. 6.

The offense of document forgery committed with an intent or motive to take a person’s life is punishable by life imprisonment (i.e., 20 years in prison) and confiscation of the offender’s entire property. If the homicide has not taken place, the term of imprisonment is reduced to 10 years. If document forgery is committed in relation to any crime punishable by life imprisonment (e.g., selling or buying a human being), the penalty for forgery is 10 years in prison. MULUKI AIN, Part 4, Chapter 1; HTTCA sec. 15 (1) (a).

Except for the machine-readable passports, most identification and travel documents issued by Nepali authorities are not secure and can be easily falsified. Forging a machine-readable passport is more complicated but it does take place in practice. Interviewees noted that counterfeiting documents is a prevalent crime in Nepal, frequently committed by organized criminal groups. As mentioned in Article 6 above, some CDOs are reportedly implicated in issuing citizenship papers to underage boys and girls so they can obtain employment in the entertainment industry or travel for work abroad. Children are also being issued fake age

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68 In the past Nepali passports used to be issued by CDOs and they were not machine readable.

69 ICAO Technical Advisory Group on Machine-Readable Travel Documents (TAG MRTD) is responsible for the development of specifications for travel documents with the goal of global interoperability. ICAO Doc. 9303, Part 1, Vol. 1 sets forth the specifications for a machine readable passport (MRP), characterized by a visual inspection zone and a machine readable zone (MRZ) containing essential identification and document details.
certificates from the VDC offices. See, e.g., VERITÉ REPORT. As mentioned in the Nepal Background above, fake documents are also used to facilitate illicit adoptions. According to interviewees, prosecutions for document forgery are fairly common.
Article 13: Legitimacy and Validity of Documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

**Conclusion**

There is no written procedure or official timeframe for the verification of travel and identity documents issued or purported to have been issued in the name of the GoN. Official requests for verification of documents are usually channeled through the Nepali diplomatic missions. In practice, the verification process is extremely complicated, particularly in the lack of a birth or marriage certificate.

**Implementation Analysis:**

Under the SAARC Convention on Trafficking in Women and Children, Nepal is obliged to provide other countries with legal assistance, including information, documents, and records, with respect to legal proceedings pertaining to trafficking in persons. **SAARC CONVENTION ON TRAFFICKING IN WOMEN AND CHILDREN art. VI (1) (b).**

There is no written procedure for the verification of travel and identity documents issued or purported to have been issued in the name of the GoN. Official requests for verification of documents are usually channeled through the Nepali diplomatic missions to the MoFA and subsequently to the MoHA. The MoHA forwards each request to the respective CDO who submits it to the concerned VDC or a municipality.

In practice, the verification process is extremely complicated, particularly in the lack of a birth or marriage certificate. In some instances local authorities rely on the assistance of NGO or INGOs in conducting necessary home assessments and family tracing.

The law does not set a timeframe for the verification procedure. Typically, the verification is completed within 3-4 months but the process may take longer if home assessment must be completed in remote and difficult to access areas.
**List of Acronyms**

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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ABA ROLI</td>
<td>American Bar Association Rule of Law Initiative</td>
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<td>APG</td>
<td>Asia/Pacific Group on Money Laundering</td>
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<td>BASE</td>
<td>Backward Society Education</td>
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<tr>
<td>CeLRRd</td>
<td>Center for Legal Research and Resource Development</td>
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<td>CDO</td>
<td>Chief District Officer</td>
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<td>CPI</td>
<td>Corruption Perceptions Index</td>
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<td>CSO</td>
<td>Civil Society Organization</td>
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<td>CWIN</td>
<td>Child Workers in Nepal Concerned Centre</td>
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<td>EBMF</td>
<td>Esther Benjamins Memorial Foundation</td>
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<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>FEA</td>
<td>Foreign Employment Act</td>
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<td>FIU</td>
<td>Financial Information Unit</td>
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<td>FNC</td>
<td>Friends of Needy Children</td>
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<td>FPAN</td>
<td>Family Planning Association of Nepal</td>
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<td>FWLD</td>
<td>Forum for Women, Law &amp; Development</td>
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<td>FY</td>
<td>Fiscal Year</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GEFONT</td>
<td>General Federation of Nepali Trade Unions</td>
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<td>GoN</td>
<td>Government of Nepal</td>
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<td>HDI</td>
<td>Human Development Index</td>
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<td>HTAT</td>
<td>Human Trafficking Assessment Tool</td>
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<td>HTTCA</td>
<td>Human Trafficking and Transportation (Control) Act of 2007</td>
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<td>HTTCTR</td>
<td>Human Trafficking and Transportation (Control) Rules of 2008</td>
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<td>ICAO</td>
<td>International Civil Aviation Organization</td>
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<td>IGO</td>
<td>Intergovernmental Organization</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>INGO</td>
<td>International Non-governmental Organization</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>J/TIP</td>
<td>U.S. Department of State - Office to Monitor and Combat Trafficking in Persons</td>
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<td>KSL</td>
<td>Kathmandu School of Law</td>
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<td>LACC</td>
<td>Legal Aid and Consultation Center</td>
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<td>MDG</td>
<td>Millennium Development Goal</td>
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<td>MoFA</td>
<td>Ministry of Foreign Affairs</td>
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<td>MoHA</td>
<td>Ministry of Home Affairs</td>
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<td>MoLTM</td>
<td>Ministry of Labor and Transport Management</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>MoWCSW</td>
<td>Ministry of Women, Children and Social Welfare</td>
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<td>NBA</td>
<td>Nepal Bar Association</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>NHRC</td>
<td>National Human Rights Commission</td>
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<td>NIDS</td>
<td>Nepal Institute of Development Studies</td>
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<td>NNGAT</td>
<td>National Network against Girls Trafficking</td>
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<td>NLSS</td>
<td>Nepal Living Standard Survey</td>
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<td>NPA</td>
<td>National Plan of Action</td>
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<td>NPR</td>
<td>Nepali Rupee</td>
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<td>OAG</td>
<td>Office of the Attorney General</td>
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<td>OHCHR</td>
<td>Office of the UN High Commissioner for Human Rights</td>
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<td>TDH</td>
<td>Terre des Hommes</td>
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<td>UAE</td>
<td>United Arab Emirates</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNDP</td>
<td>U.N. Development Programme</td>
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<td>UNHCR</td>
<td>U.N. High Commissioner for Refugees</td>
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<tr>
<td>UNICEF</td>
<td>U.N. Children’s Fund</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>UNODC</td>
<td>U.N. Office of Drugs and Crime</td>
</tr>
<tr>
<td>U.S.</td>
<td>United States of America</td>
</tr>
<tr>
<td>USAID</td>
<td>U.S. Agency for International Development</td>
</tr>
<tr>
<td>USD</td>
<td>U.S. Dollar</td>
</tr>
<tr>
<td>VDC</td>
<td>Village Development Committee</td>
</tr>
<tr>
<td>WCSD</td>
<td>Women and Children Service Directorate</td>
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<td>WCSC</td>
<td>Women and Children Service Center</td>
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<td>WDO</td>
<td>Women Development Office</td>
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</tbody>
</table>
List of Pertinent Laws, Polices, and Ratified Treaties

Interim Constitution of Nepal (2007)\(^7\)

**Administration of Justice and Crime Control**

- Convention against Transnational Organized Crime (2011)
- Muluki Ain (General Code) (1963)
- Administration of Justice Act (1991)
- Government Cases Act (1992)
- Summary Procedures Act (1972)
- Supreme Court Act (1991)
- Special Court Act (2002)
- Evidence Act (1974)
- Police Act (1955)
- Armed Police Act (2001)
- Extradition Act (1988)
- Convention against Corruption (2011)
- Commission for the Investigation of Abuse of Authority Act (1991)
- Money Laundering Prevention Act (2008)
- International Convention for the Suppression of the Financing of Terrorism (2011)
- Directive on Maintaining the Privacy of Parties to Some Special Cases (Supreme Court, 2007)
- Procedural Guideline to the Concerned Agencies to Maintain the Privacy of Victims of Crimes (Supreme Court, 2007)
- Procedural Guideline for the Protection of Women and Children who are Victims or Witnesses of Crimes (Supreme Court, 2008)

** Trafficking in Persons**

- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1963)
- Human Trafficking and Transportation (Control) Act (2007)
- Human Trafficking and Transportation (Control) Rules (2008)
- National Plan of Action against Trafficking in Children and Women (2001)
- Procedural Guidelines for the Prevention of Sexual Harassment against Working Women at Workplaces (Supreme Court, 2008)

**Labor Laws & Policies**

- ILO Convention No. 29 Concerning Forced or Compulsory Labour (2002)
- ILO Convention No. 105 Concerning the Abolition of Forced Labour (2007)

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\(^7\) Year of adoption of a domestic act, ratification of an international treat, or issuance of a judgment.
• ILO Convention No. 138 Concerning Minimum Age for Admission to Employment (1997)
• ILO Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1974)
• ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1996)
• Labour Act (1992)
• Labour Rules (1993)
• Labour and Employment Policy (2005)
• Foreign Employment Act (2007)
• Foreign Employment Rules (2008)
• Guidelines on the Investigation and Prosecution of the Offences Related to Foreign Employment (MoLTM, 2010)
• Bonded Labour (Prohibition) Act (2002)
• Trade Union Act (1992)
• Trade Union Rules (1993)
• Tea Plantation Workers Rules (1993)

Children’s Rights

• Convention on the Rights of the Child (1990)
• Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (2007)
• ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (2002)
• Children's Act (1992)
• Children's Rules (1995)
• National Plan of Action for Children 2004/05 – 2014/15
• Child Labour (Prohibition and Regulation) Act (2000)
• National Master Plan on Child Labor 2004 – 2014
• National Master Plan on Elimination of Child Labor 2011 – 2020
• Birth, Death and Other Personal Event (1976)

Human and Women’s Rights

• International Covenant on Civil and Political Rights (1991)
• International Covenant on Economic, Social and Cultural Rights (1991)
• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1991)
• Gender Equality Act (2006)
• Domestic Violence (Offence and Punishment) Act (2009)
• Human Rights Commission Act (1997)
• National Women Commission Act (2007)

Other

• Nepal Treaties Act (1990)
• Human Body Organ Transplantation Act (1998)
• Legal Aid Act (1997)
• Immigration Act (1992)
• Immigration Rules (1994)
• Nepal Citizenship Act (2006)
• Nepal Citizenship Rules (2006)
• Some Public (Crime and Punishment) Act (1970)
• Right to Information Act (2007)
• Right to Information Rules (2009)
• Good Governance Act (2008)