

Study on
DE JURE COMPLIANCE OF NEPALESE ANTI- TRAFFICKING
LEGAL MEASURES WITH INTERNATIONAL
LAWS AND STANDARDS



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Editor's Encapsulation

Context

INHURED International is pleased to bring out the research report titled “Study on *de jure* Compliance of Nepalese Anti- Trafficking Legal Measures with International Laws and Standards” is an attempt to demystify the legal dynamics associated with counter-trafficking approach. The study is the cursory assessment of all constitutional, legal and policy related provisions vis-à-vis trafficking in persons in Nepal’s context. Every effort has been put to demystify the existing Nepalese counter-trafficking legal provisions, and check and analyze the given provisions’ compliance with international laws and standards.

The general perception is that trafficking in persons (which in the most general of terms is understood to involve the transportation of persons by means of coercion or deception into exploitative or slavery-like conditions) is currently viewed as a serious problem by a wide range of different agencies, organizations and lobby groups. And yet different groups identify trafficking as a problem for very different reasons and often have very different political agendas with regard to the issue.

States have many different and often competing agendas concerning trafficking. However, from a governmental and intergovernmental perspective, trafficking has been framed as a crime control and prevention issue. It is linked to transnational organized crime through the Vienna process and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, and it is also linked to violations of immigration laws. Governments clearly have many important and legitimate concerns about transnational crime and about immigration.

Governments’ interest in trafficking is often grounded in concerns about irregular immigration and/or transnational organized crime, which are viewed as a threat to national security. Economic and social inequalities and internal political conflicts as well as natural calamities have led to the movement of persons within each country and across the borders. Globalization has encouraged the free mobility of capital, technology, experts and sex tourists. Human trafficking is a major push and pull factors of this phenomenon. Women and children are particularly vulnerable to trafficking for commercial gain.

Because the various groups that are involved in debates on trafficking view the issue through the lens of different legal, economic and political concerns and priorities, attempts to produce a precise definition of “trafficking in persons” and to identify appropriate policy responses to it have provoked, and continue to provoke, much controversy. There are two key strands to the “trafficking” debates: one concerns tensions between governments’ obligations to protect and promote human rights, and their desire to restrict irregular forms of migration (which is often regarded as a matter of state sovereignty); the other centers on conflicting views of the relationship between trafficking and prostitution.

In Nepal’s context, jeopardous cross-border movement has added further vulnerability in which women and children are the hardest-hit. However, blunt interception at the border and continued criminalization of trafficked persons is a violation of their fundamental human rights. Any move to combat trafficking must not interfere with women's right to mobility. Any laws, policies, conventions or agreements must not become an instrument to restrict or control the voluntary movement of men and women from one country to another. Issues of trafficking and migration must be separated. A distinction between the two can only be made if the elements and motives of trafficking are defined clearly.

Legal Perspective

The existing laws and policies in combatting trafficking needs to broaden the scope and notion of trafficking since new and unconventional triggering as well as magnetic factors are emerging in this field. Trafficking takes place for a range of ultimate purposes, not only for the purpose of sex trade. It is crucial to recognize that the main motive of the trafficker is to make undue profit through trade, however that profit may occur -whether from sale to brothels to adoption homes, forced marriage, circus, begging, bonded and forced labor, organ transplantation etc. The use to which the trafficked persons are put depends on the exploitative global trading, and the demand and supply trends as dictated by the market economy.

Counter-trafficking initiative goes beyond legalistic approach; it’s a major human rights component too. Human rights of trafficked persons such as the principle of non-discrimination; safety and fair treatment; access to justice; compensation, access to private actions and reparations are the issues of major concerns. Similarly, determination of resident status; health and other services; repatriation and reintegration; recovery; and state cooperation as prescribed by various international instruments have to be duly recognized. The accountability and the mandatory involvement

of the demand side in the process of rescue, remand, relief, repatriation and reintegration is another area to be reflected in the laws and policies which is a major gap to uphold the notion of natural justice.

The concern and interests of trafficked persons and the need to provide them support and security must take precedence over the citizenship concerns of the member states regarding their legal identity. Trafficked persons should be accorded standard minimum humanitarian treatment consistent with international human rights standards. The interests of trafficked persons and the need to provide them support and security must take precedence over the citizenship concerns of various States. Trafficked persons should be treated in accordance with international human rights standards.

Protection in the Entire Cycle

On prevention front, enactment of human rights-friendly national anti-trafficking legislation and policies, adoption of comprehensive plan of action and development of bilateral or multilateral agreement are some of the vital moves. Additionally, information sharing between the agencies, public information campaign, attempts to target more vulnerable groups, coordination among authorities, law enforcement authorities will help reduce the incidences of trafficking. On prosecution front, national law specially criminalizing traffickers are essential to the prosecution of trafficking racketeers. Training to law enforcement officials, reform in judiciary in favor of survivors are important steps. Ratification of relevant human rights instrument are crucial to fight against trafficking. On protection side, availability of rescue measures, support system to stranded survivors, availability of appropriate shelters for survivors comprised of rehabilitation and reintegration services including counseling, medical legal and vocational assistance are considered as the basic benchmarks. Similarly, witness protection program is essential to protect witness or victim from the traffickers. Reintegration of survivors at home or in other communities as well as facilitating survivor's access to reparation and assistance for physical and mental health should constitute an uncompromisable element for protection.

Conclusion

The research suggests that there is an immense need to develop appropriate legal strategies aimed at preventing trafficking by addressing the demand of cheap labor and existence of slavery-like practices in demand sides as a root cause of trafficking. Provisions for mandatory free legal and other assistance to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers as well as arrangement

of legal alternatives to trafficked persons to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families is vital. Given the lapses on effective implementation of existing legal and policy measure, it is important to ensure effective identification, investigation, prosecution and adjudication of trafficking, including its component acts and related conduct without impunity, whether committed by governmental or by non-state actors.

The other equally significant factor is to recognize that demand sector is also equally accountable in the offence of trafficking; therefore, penalties for these offences from the demand side should reflect the gravity of the crimes involved. Freezing and confiscating the assets of individuals, in appropriate cases, of the culprit involved in trafficking, including the trafficked labor market and to the extent possible compensate the victims of trafficking from the property confiscated could be an important move forward to combat trafficking.

Regulating through law the unabated use of new information technologies, including the internet, for purposes of sex trade, child pornography, pedophilia, trafficking in children and women as sex tourism and brides contributes to deter the crime. Additionally, criminalizing trafficking in women and children, in all its forms and condemning and penalizing all those offenders involved, including intermediaries, buyers and persons in authority found guilty of maintaining unholy alliance with the traffickers paves the way for better protection of vulnerable individuals. Since trafficking is an international crime, adoption of international, regional, sub-regional and bilateral agreements as to ensure vital information sharing and facilitate the prosecution of offenders, irrespective of location and introduction of legislation incorporating extraterritorial provisions to facilitate the prosecution of traffickers who may be abroad, as well as clear extradition procedures for trafficking-related offences is also the demand of the day!

Finally, we are grateful to our Canada-based resource partner Development and Peace which generously supported to carry out this research. We are thankful to researchers for their immensely important work. Our special thanks goes to other experts and contributors who shared their pearls of wisdom with us during the course of this research and also provided expertise that greatly assisted the research and also moderated the content and in that line improved the manuscript significantly. We hope that the research will serve as a milestone in understanding the intricacies of legal approach to counter trafficking approach from national to regional to international settings.

Shreejana Pokhrel
Executive Director

Table of Acronyms and Abbreviation

| | |
|----------|--|
| CEDAW | Convention on Elimination of All Forms of Discrimination against Women |
| CRC | Convention on Rights of the Child |
| DOFE | Department of Foreign Employment |
| FEA | Foreign Employment Act |
| FEBP | Foreign Employment Protection Board |
| GoN | Government of Nepal |
| HTTC-A/R | Human Trafficking and Transportation Control-Act/Rules |
| IOM | International Organization of Migration |
| MCOF | Migration Crisis Operational Framework |
| MWCSW | Ministry of Women Children and Social Welfare |
| NCCHT | National Committee for Controlling Human Trafficking |
| NGOs | Non-Governmental Organizations |
| NHRC | National Human Rights Commission |
| OHCHR | Office of the High Commissioner for Human Rights |
| SAARC | South Asian Association for Regional Cooperation |
| TIP | Trafficking in Persons |

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Chapter One

INTRODUCTION

1.1 Background

Nepal is a country of source, transit, and destination for trafficking in persons (TIP).¹ The decade-long internal armed conflict and the recent devastating earthquake of 2015 has contributed to uproot many more women, children, and youths from their place of destitute and expose them to threats of trafficking. A large number of people have migrated to India, Malaysia, and Persian Gulf countries under compulsion to work as farm laborers and industrial workers and the trend continues.² The major forms of TIP in Nepal are associated with sexual exploitation of Nepali women and girls abroad, in domestic context-particularly within the hospitality and entertainment sectors, exploitation of children in Indian circuses, exploitation of Nepali migrant workers in gulf countries, and illegal organ transplantation among others.³

Nepal as a country uncovered to human trafficking, has different legal frameworks, policies, and institutional mechanisms in place. However, these frameworks are coupled with different challenges. Further, trafficking as a criminal act that violates the rule of law, threatens national jurisdictions and international laws and eventually creating spillover

1 Department of State, '2016 Trafficking in Persons Report', United States of America, June 2016, p.281, available at: <http://www.state.gov/documents/organization/258881.pdf> p.281.

2 To elucidate, in 2013/2014, total 284,392 migrant workers annual outflow has been recorded to the Gulf Cooperation Council Countries (GCC), among the number of registered migrants, 74% of the migrants are unskilled, dominantly working in agriculture, labor, and cleaning sectors. See: International Labour Organization, 'Labour Market Trend Analysis and Labour Migration from South Asia to Gulf Cooperation Council Countries, India and Malaysia', p. 7-9, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_377416.pdf.

3 American Bar Association, 'Human Trafficking Assessment Tool Report for Nepal', July 2011, p.11 available at http://www.americanbar.org/content/dam/aba/directories/roli/nepal/nepal_human_trafficking_assessment_report_2011.authcheckdam.pdf.

effects. These effects may be acute in countries responding to civil unrest, natural disasters, or post conflict situations.⁴ In such challenging situation, the law enforcement agencies, and all the relevant stakeholders, have to consider counter trafficking measures at the same level of priority as other responses implemented to assist and protect crisis affected populations.⁵ In this connection, it has been witnessed in different parts of the world of how natural disasters, conflict, and political turmoil further weakens existing protection and prevention measures, and Nepal is no exception to this. In April 2016, National Human Rights Commission (NHRC) published a report on the post-quake trafficking scenario in Nepal. The report reflects data of 1,233 women and children missing in first three months of April Earthquake 2015.⁶ Likewise, Nepal Police rescued 161 children from different border points between Nepal and India.⁷

Henceforth, in the given context, this research attempts in understanding Nepal's domestic *de jure* compliance (in context to the report, *de jure* meaning by law and state of affairs that is officially sanctioned or is in accordance with law) with international standards and practices of anti-trafficking laws and policies with an aim to check and analyze compliance of Nepalese anti- trafficking legal framework, policies, and provisions with the international laws, standards and practices and provide necessary recommendations.

3Ps Approach to Address Human Trafficking

The 3Ps approach meaning protection, prevention and prosecution, is global approach to counter trafficking which has been enshrined under the United Nations Protocol to Prevent, Suppress and Punish Trafficking

4 United Nations Office on Drugs and Crime, '*An Introduction to Human Trafficking, Vulnerabilities, Impact and Action*', United Nations New York, 2008, available at https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf.

5 International Organization of Migration, '*Responding to Human Trafficking and Exploitative in Times of Crisis*', 2016, p.1, available at https://www.iom.int/sites/default/files/press_release/file/CT_in_Crisis_FINAL.pdf.

6 The Kathmandu Post, '*16, 500 Nepalese Trafficked in Last Two Year, NHRC*,' April 26, 2016, available at <http://kathmandupost.ekantipur.com/news/2016-04-26/16500-nepalis-trafficked-in-last-two-years-nhrc.html>.

7 Ibid

in Persons, Especially Women and Children, Supplementing the United Nations Conventions against Transnational Organized Crime (herein after stated as UN Trafficking Protocol 2000.)⁸ This approach has been followed as a fundamental framework by countries in different parts of the world. One hundred and seventeen states are signatories; one hundred and sixty nine states are parties under the Convention and have been using 3Ps approach in their efforts of counter trafficking.⁹ Though Nepal is not the State Party to UN Trafficking Protocol 2000, however as a State party to the widely ratified treaties, relevant international conventions, and existing domestic legal frameworks and policies, Nepal has an obligation to ensure prevention, protection of the victims, and survivors of the trafficking, and effectively prosecute such inhumane crime which is also fulfilling obligation of the international treaties and conventions.

The 3Ps approach aims in building comprehensive counter-trafficking policies. It encourages and provide room for multi stakeholders for partnerships.¹⁰ Different international legal instruments, domestic laws provide framework and strategies for the 3Ps. Hence 3Ps has been taken as the basis for *de jure* compliance analysis in the given report as well.

1.2 Rationale

Nepal is a country of source, transit, and destination for trafficking. Incidences of trafficking have further proliferated in the post-earthquake setting. The post-earthquake rapid assessment conducted by INHURED International in five of the earthquake-affected districts demonstrated a woeful situation of the families that have resulted in erosion of economic and social fabric. Loss of one or both parents/guardians, destruction of homes and schools and even death of teachers have resulted severe constraint for children to lead a normal life. INHURED in its report has

8 United Nations General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.refworld.org/docid/4720706c0.html>.

9 Sylwia Gawronska, 'The Global Approach to Addressing Trafficking in persons and Key Challenge', (Enhancing a Victim-Centered Approach, Jeju, Republic of Korea), June 2016.

10 Ibid

also reflected the dire wish of families wanting to send their children to a safer place while the parents would engage in relief and reconstruction work.

Different media also reported incidences of massive displacement of people induced by the April 25, 2015 earthquake and its multiple aftershocks.¹¹ As stated by NHRC's report on the post-quake trafficking scenario in Nepal, 1,233 women and children went missing in the first three months of April Earthquake 2015.¹² Likewise, Nepal Police, as mentioned above rescued 161 children from different border points and or en route between Nepal and India.¹³

In such context, it is likely for traffickers to gain an easy access to the population who are in vulnerable condition. As stated by United Nations Special Rapporteur Ms. Maria Grazia Gramma, during times of crisis, Government usually do not consider human trafficking to be direct consequence of crisis that impedes prevention, protection, and prosecution strategies against trafficking. Hence, this report has attempted to examine and analyze *de jure* compliance of the human made and natural disaster specific Nepalese anti-trafficking legal framework and polices with international standards and practices.

1.3 Objective

This study aims to check and analyze compliance of Nepalese anti-trafficking legal framework, policies, and provisions with the international laws, standards and practices and provide necessary recommendations.

11 British Broadcasting Corporation, '*Nepal earthquake: Death toll rises above 3,000*' April 2015, available at <http://www.bbc.com/news/world-asia-32475030>.

12 n(4)

13 Ibid.

1.4 Methods of Study

The research is a doctrinal study. Hence, primary and secondary sources and laws relevant to objective of the research scope have been studied and analyzed. Relevant international laws and practices are identified and national laws and policies are compared thereto.

1.5 Limitations of the Study

The research is a doctrinal study. Hence separate empirical study has not been conducted to check implementation status of the analyzed legal provisions and frameworks. However, available statistics and findings of INHURED's different assessments and other relevant studies have been incorporated. The study attempts to understand *de jure* compliance of existing national legal framework and policies with international standards.

Nepal is not party to the major international framework against human trafficking i.e. UN Trafficking Protocol 2000 and hence its provisions are not legally binding on Nepal in the direct manner. However, considering the universal acceptance of the Protocols' provisions, its provisions are referred for the compliance check. International standards analyzed in this study are limited to relevant United Nations conventions prescribing protection, prevention, and prosecution strategies against human trafficking, United Nations counter trafficking guidelines, and different international organizational counter trafficking toolkits and mechanisms among others.

CHAPTER-TWO

HUMAN TRAFFICKING AND DIFFERENT DIMENSIONS

2.1 Safer Migration and Human Trafficking

Unsafe and forced migration exposes people to greater risk for forced labor or slavery like practices and trafficking-in persons constitutes a major problem. Nonetheless, the compulsion to migrate for economic security, demand for cheap labor in the developed countries and the increasing unemployment rate in Nepal have been a push factor for unsafe and forced migration.

Safe migration on the other hand, often is taken as an approach that facilitates in countering irregular migration. However, it has been argued that safe migration is related to but not synonymous of legal migration. 'Safe migration' programs, however, go beyond this to usually include four elements: the legal status of migrants, progressive awareness raising, trust building (brokers vs. social networks vs. licensed recruitment firms), and institutional support mechanisms in the migration process (such as hotline phone numbers for migrants).¹ Anti-trafficking laws if incorporate these elements will not only prevent trafficking but will also contribute to creating environment of safer migration ensuring sustainability of protection.

Hence, *de jure* prevention strategies against trafficking could comprise programs of community outreach, skills development programs for vulnerable groups, community resiliency programs among others to compliment safer migration legal frameworks.

2.2 Natural Disaster Induced Trafficking Incidences in Nepal

Natural disasters like earthquake, landslide, flood, drought brings economic distress and hardship. Losses of livelihood, property force people to seek other alternative that eventually lead to increased vulnerability of the

1 Sverre Mollan, 'Safe Migration as an Emerging Anti-Trafficking Agenda?', available at <https://www.opendemocracy.net/beyondslavery/sverre-molland/safe-migration-as-emerging-antitrafficking-agenda>

women and children to trafficking.² Their frantic needs often draw them closer to the traffickers. Diminishing family support and disharmony in the family have also contributed to trafficking. In the wake of the earthquake 2015, thousands moved to the capital city whereas an estimated 1,000,000 residents reportedly left the Kathmandu Valley towards the districts in search of safety and better living options-often with uninformed, unsafe, irregular and inhumane fashion.³

In the given context, INHURED International with support of Karuna-Shechen⁴, conducted a post-earthquake rapid assessment in five districts that demonstrated an alarming situation conducive for human trafficking. Loss of one or both parents/guardians, destruction of homes and schools and even death of teachers created severe constraint for children to lead a normal life. Human trafficking is one of the problems that has further proliferated in the abruptly changed post-earthquake context.

According to the rapid field assessment report carried out by INHURED International in the wake of the earthquake, women, girls and young boys of the worst affected districts are at risk of unsafe migration and trafficking for the sexual exploitation, organ trading and labor profiteering in the aftermath of the devastating earthquake of April 25. The disaster has placed many women and children in more vulnerable positions to be afflicted with sexual violence, organ trading and trafficking.

Displaced women and children face a particular range of risks. In such a situation, they have experienced heightened vulnerability to sexual and gender-based violence, especially in shelters, where the risks also include increased levels of domestic violence, child abuse and alcohol induced violence. When food is not delivered directly to women and when they have been excluded from shelter management and the design of relief and reintegration plans, women's vulnerability to sexual exploitation and abuse increases dramatically.⁵ Trafficking is another serious risk that

2 United States Agency International Development, '*Trafficking in Humanitarian Emergencies*', July 2006, p. 5 available at http://pdf.usaid.gov/pdf_docs/Pnadk469.pdf.

3 Om Astha Rai, '*The Uprooted*', Nepali Times, June 2015, available at: <http://nepalitimes.com/article/nation/The-Uprooted,2284>.

4 Karuna-Shechen, founded by Matthieu Ricard in 2000, provides health care, education, and social services for the under-served people of India, Nepal, and China-Tibet.

5 United Nations General Assembly, '*Protection of and Assistance to Internally Displaced*

was heightened after people were displaced, families separated, children became orphaned and livelihoods were destroyed. Children who have lost their homes and/or families have been particularly at risk of allurements in worst forms of child labor.⁶

Coincidentally, most of the earthquake-hit districts are already vulnerable areas for human trafficking. Safeguarding human rights of such vulnerable population, especially women and children is an eminent challenge that includes concerns for sexual and gender-based violence, and reproductive health. Family reunification is another challenge as thousands of youth from the affected areas have migrated to overseas to work as contractual labors and for various reasons they find it difficult to return home.

Further, children who are separated from family members need to be registered so that tracing and reunification efforts can be undertaken as soon as possible. For the interim arrangement, they need to be sheltered and cared for as well as safeguarded against risks including trafficking for domestic labor recruitment. When family reunification is not possible, even with an extended family member, foster care or other arrangements is eminent to ensure children's safety and wellbeing in the long term.

Similarly, during the earthquake relief efforts, traffickers lured many women and girls in the name of rescue and relief. The NHRC report also suggests that vulnerability to trafficking especially to women has significantly increased after the 2015 earthquake.⁷ The number of victims of trafficking increased by 15 to 20 percent since the quake hit Nepal.⁸ Nepal Police holds record of some 1,233 reports of children and women missing in the span of three months since April 2015. It has been further found that women are trafficked in the name of marriage (often fake marriages). An appalling number of marriage bureaus operate in Nepal, around 83 to be specific. An estimated 1,000 Nepali women went to South Korea from 2005- 2013 out of which only 300 are reported to be happily

Persons, 2005, p. 16 available at https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/60/A_60_338_en.pdf

6 Sasa Petricic, *'Nepal One Year after the Earthquake: Child Labour, Child Brides, Homeless Kids'*, April 2016, available at <http://www.cbc.ca/news/world/nepal-earthquake-anniversary-children-sasa-petricic-1.3548955>.

7 National Human Rights Commission, *'Trafficking in Persons, National Report 2013- 15'*, available at http://nhrcnepal.org/nhrc_new/doc/newsletter/Trafficking_in_Persons_National_Report_2013-15.pdf.

National Human Rights Commission, *'Trafficking in Persons, National Report 2013- 15'*, available at http://nhrcnepal.org/nhrc_new/doc/newsletter/Trafficking_in_Persons_National_Report_2013-15.pdf

8 Ibid

married.⁹ The rest are in slave-like conditions. Apart from that, trafficking for organ sale like kidney has become a whole new business targeting the poor and marginalized. The report also suggests that the released figures are merely an estimation made from reported cases as many of the human trafficking cases go unregistered.¹⁰

2.3 Human Trafficking and Emerging Dimensions

According to the research conducted by IOM, gender breakdown of detected victims of trafficking for forced Labor by region (2010-2012), among the trafficking victims in South Asia and the Pacific, 77% of the victims are women and girls and 23% are men and boys. Similarly, the statistics shows 60% of the victims being adults while 40% of them are children. In terms of labor exploitation, 85% of the victims in South Asia are exploited for forced labor while 15% are exploited for the sexual exploitation.¹¹

2.3.1 Economic Vulnerability to Trafficking

Poverty is seen as a great force that has driven many to unthinkable decisions and undoable acts. That might include handing over of a child to another family member or even a stranger on the promise of a better life. These promises may also include the prospect of sending back remittances to help other family members.

According to the World Bank estimate (2015), the proportion of poor in Nepal will increase by 2 percent (on the assumption of low impact), by 2.8 percent (on the assumption of medium impact) by 3.7 percent (on the assumption of high impact) into poverty in 2015/16. With the assumption of medium-impact of the earthquake on the Nepalese economy, the

9 The Kathmandu Post, '16,500 Nepalis Trafficked in Last Two Years: NHRC' April 2016, available at kathmandupost.ekantipur.com/printedition/news/2016-04-26/16500-nepalis-trafficked-in-last-two-years-nhrc.html

10 National Human Rights Commission, 'Trafficking in Persons, National Report 2013-15'. available at http://nhrcnepal.org/nhrc_new/doc/newsletter/Trafficking_in_Persons_National_Report_2013-15.pdf

11 Ji Lien OOI, 'Emerging Trends of Trafficking in Person in the Asia-Pacific Region,' (Enhancing a Victim Centered Approach, Jeju, Republic of Korea), June 2016.

proportion of poor in mountains would increase to 43.8 percent from 35.9 percent; and in central hills, it would increase from 25.8 percent to 41.2 percent. Almost half of poor of Nepal would be in central hills. This is one of the crucial vulnerability situations of all persons including children, young, adults, elderly men and women.¹²

In hard times such as conflict and disaster, women can be more vulnerable to the negative social effects of economic restructuring and recession owing to social fabrics and state of being unskilled. Discriminatory practices such as gender-based wage differences and harassment by employers and other men seeking to deny women equal access to the market place have not been addressed.¹³ Government agencies have also rarely delivered economic development programs directly to women that would improve productivity and incomes in the informal sector that would ultimately help them acquire skills that prevents vulnerability of trafficking.

2.3.2 Overseas Employment and Trafficking

According to officials of the Department of Foreign Employment (DoFE), around 515,000 Nepali youths obtained labor permit last fiscal year to leave the country for foreign employment. A total of 527,814 individuals had left the country for jobs in the fiscal year 2013-14. The number of workers opting for foreign employment dropped this year after the earthquakes. Each year, a huge number of workers are being supplied by Nepali recruiting agents mainly to Persian Gulf nations and Malaysia. Supply of workers increased from fiscal year 2010-11 (354,716) and continued till fiscal year 2013-14 when a record high 527,814 youths left for foreign employment.

Among the 114 returned migrant workers interviewed by Amnesty International (2011), 93 % reported that they were deceived in relation to salary, amount and type of work. Additionally, among 17 domestic workers interviewed, 11 reported about being physically or verbally abused or threatened with violence, and most were not allowed to leave the house they worked in or have a rest day. While many become victims

12 n (12)

13 S.R Bakshi, Tilak Raj Sareen, *Scio-Economic and Political Development in South Asia*, Delhi, 2004, p.146, available at <https://books.google.com.np/books?id=P6QFNb8YZoEC&pg=PA146&lpg=PA146&dq=Discriminatory+practices+such+as+gender-based+wage+differences+and+harassment+by+employers+and+other>

of sexual abuse and torture, others are forced to work within the bounds of the kafala system. Over time, its meaning has changed and it has been used primarily to regulate labor flow by the Gulf Cooperation Council (GCC) countries. In other words, this system helps Governments to monitor the movement of migrant workers within these countries.

its meaning has changed and it has been used primarily to regulate labor flow by the Gulf Cooperation Council (GCC) countries. In other words, this system helps Governments to monitor the movement of migrant workers within these countries.

Additionally, migrant workers usually pay recruitment fees to their broker. Although the Government has clearly coated fees, overcharging is common. Of 57 migrant interviewees who responded, 42 paid more than the maximum limit set by Nepalese law. By law, workers must receive a contract before they leave Nepal, yet 27 out of 62 interviewees who had responded told Amnesty International that they had not.

2.3.3 Kafala System

The kafala (sponsorship) system, regulating the relationship between employers and migrant workers is practiced in several countries and also in the Arab states of Jordan, Qatar and Lebanon. Under this system, foreign workers must be sponsored by a local citizen or a company and their immigration status is legally bound to the sponsor for their contract period.

Even though Kafala system, aims in regulating the relationship between employers and migrants, it has been identified as “a major barrier” to people in distress seeking or receiving help. Workers under kafala system often face possible arrest or deportation if they try to complain or leave their employer. Incidence of passport-withholding practices, combined with high certainty of arrest or detention for leaving an employer, make it very difficult for people to leave even the most abusive situations”

2.3.4 Key features of the system include:

- i) The contract period of a worker is minimum of two years;
- ii) During the contract period, the worker’s visa and legal status is tied to the sponsor; and
- iii) The employer has complete control over the mobility of the worker.

Kafala system is a direct example of how counter trafficking efforts of country of origin might not be sufficient to address hazards of irregular migration. Practices like kafala system not only creates obstacles for migrant workers in asserting their given legal rights in country of destination but invites unstoppable incidences of vulnerabilities and risks.

2.3.4 Labor Attaches

“Attaches” refer to a person officially assigned as a staff to a diplomatic mission from country of origin to serve in particular country. Labor attaches in particular, provides protection, and services to labor migrants in country of destination. The Ministry of Labor and Transport Management usually discharges foreign related employment and probable issues of trafficking. The Government of Nepal (GoN) also appoints labor attaches in countries which receives more than 5,000 Nepalese migrant workers. The Foreign Employment Act (FEA) 2064 BS and its corresponding rules state provisions on labor attaches. According to section 68 (2) of the Act, labor attaches have a legal obligation to take steps for the protection of labor and interest of workers; make necessary arrangements for bringing back workers to Nepal who have been found in a vulnerable state in the course of employment; provide necessary consultancy to workers, and discourage them to do any work other than one set forth in the agreement; and provides information to GoN about the condition of labor and employment, and factual information about immigration of the country where Nepalese workers are working.

In accordance with existing laws, labor attaches’ discharging of their duties not only assists in the protection of the labors against exploitations and ultimately from trafficking, but are also obligated to assist country in further strategizing steps to prevent incidences of trafficking.

2.3.5 Helping Trafficking Survivors

In the discourse of counter trafficking efforts, often rights and protection of returnees are subsided. In the context of Nepal, a further complicating situation occurs when trafficked migrants return from a crisis affected country to a home country in a situation of crisis, such as the case of Nepalese victims of trafficking returning from Libya or Yemen to Nepal in the latter half of 2015, as their home country continued to painfully recover from the earthquake and blockades.

In the situation when both the country of destination and the migrant's home country are facing situations of armed conflict (at the time of drafting this paper, an example of this would be trafficked Yemenis in Libya or Syria), temporary relocation and assistance options may need to be considered. Opportunities for sustainable reintegration require specific al that the protection, rehabilitation, and reintegration strategies for returnees and survivors be strengthened. Absence of proper mechanism to assist survivors and returnees increases possibilities for re-victimization. Hence, safeguarding rights of returnees becomes extremely important. Return process itself might take months that may expose them to further human rights violations. Further upon the arrival, returnees' rights against discrimination, right to personal security, rights against acts of violation and torture, rights to social and economic rights, rights to health services including psycho-social counseling among others should be ensured and effectively protected.

2.3.6 Special Needs of Protection during Crisis Situation

Crisis including natural disasters tend to exacerbate exposure to risks, threats and exploitation. In the context of natural disasters, the capacity of a country to respond to offences of trafficking in greatly affected. This might help traffickers to act with impunity and further increase vulnerability of the population.

Migration Crisis Operational Framework (MCOF) of IOM adopted in November 2012, identifies the range of approaches and activities to be mobilized prior to, during, and following a migration crisis, including addressing risks of people affected by crises being subjected to human trafficking. For example, it includes assessing the depth of the trafficking problem at the outset of a crisis using different data collection methods to identify the most vulnerable cases and to provide protection and assistance to migrant victims of trafficking.

IOM is mainstreaming measures to address trafficking in persons in its crisis interventions in Syria, Iraq, Yemen, and Libya. These mechanisms are still being developed and field-tested by IOM to strengthen its efforts specifically to address trafficking and exploitation in times of crisis, including trafficking of migrants. In addition to this, during crises, counter trafficking should be seen as form of immediate and lifesaving assistance in crisis situation regardless of the migrant status. Further, the Government is obliged to complement counter trafficking strategies with equal priorities as to emergency responses to loss of human lives and property during natural disasters.

CHAPTER-THREE

STUDY ON *De jure* COMPLIANCE OF NEPALESE ANTI- TRAFFICKING LEGAL MEASURES WITH INTERNATIONAL LAWS AND STANDARDS

The 3Ps approach meaning prevention, protection, and prosecution has been used as a fundamental framework, commonly accepted by members of global community in their efforts to combat trafficking in persons. The 3Ps approach has been consolidated and enshrined under UN Trafficking Protocol 2000).¹ Apart from UN Trafficking Protocol 2000, other international conventions and guidelines too have incorporated these elements into their frameworks. Hence, this study has incorporated the 3Ps approach and their corresponding elements executed the compliance test below.

In Nepali context, trafficking in person was firstly recognized as crime in 1963 with the adoption of *Muluki Ain*- Country Code. The National Code, 1963 (*Muluki Ain*, 2020) in its Chapter on Human Trafficking provides a general framework of trafficking in Nepal. Clause 1 of the Chapter prohibits any act of taking any person or persons, by fraud or lure, out of the territory of the country with an intention of selling. The clause has further made such act punishable by 10 to 20 years of imprisonment and prescribes the punishment also to the people who are involved in purchasing.² Later, ‘Trafficking of Human Beings (Control) Act 1980’ was enacted with some fundamental changes in the code which later was repealed by currently existing Human Trafficking and Transportation (Control) Act, 2007.

1 UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.refworld.org/docid/4720706c0.html>.

2 National Code, Nepal, 1963 (*Muluki Ain*, 2020), Chapter on Human Trafficking, clause 1.

Further, Nepal under article 29 (3,4,5) has constitutionally guaranteed a person's right against exploitation including offence of human trafficking, bonded labor, and forced labor. The offence of exploitation is a punitive act where victim is entitled to the compensation from the perpetrator.

Further, the Constitution of the Nepal 2072, article 21 ensures the victims' right to be informed about the investigation and proceedings of the case and holds right to social rehabilitation. Similarly, article 38 of the constitution ensures rights of women against any physical, mental, sexual or psychological or any other kinds of violence or oppression against women. Further, article 39 (5) ensures rights of child against trafficking, kidnapping or being held hostage.

3.1 *De jure* Compliance on Preventive Measures

Prevention measure is a key component of the 3Ps approach in countering trafficking. Prevention strategies not only help in identifying victims but also contribute in understanding loopholes in laws and policies and facilitates in amending, rectifying, or changing the approach. Preventive measure also helps cater partnerships oriented and collaborative endeavors to the community. Government, community based organizations, and relevant actors working in the field to counter trafficking can work jointly in executing preventive strategies. Further, prevention is also closely connected with protection and prosecution measures.

Following international measures serve as basic framework that help in creating, or re-evaluating preventive measures that have been tested as compliance standards below.

3.1.1 International Standards and Measures

Article 9 of the UN Trafficking Protocol 2000 provides the following preventive measures (which are to be taken as standards but not as exhaustive list)

- Establishment of comprehensive policies, programs and other measures
- Undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons
- Partnerships with include cooperation with non-Governmental

organizations, other relevant organizations and other elements of civil society

- 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
- 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.

In addition to above prescribed preventive measures for state parties of the protocol, the following are some other preventive measures enshrined in different international conventions, principles, manuals, and others:

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges State parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of commercial sex workers of women.³
- General Recommendation 19 to CEDAW obliges State Parties to take preventive, punitive and remedial measures for the protection of victims and punish to the culprits.
- The Convention on the Rights of the Child (CRC) too puts an obligation on States to take appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.⁴

3 United Nations General Assembly, '*Convention on the Elimination of All Forms of Discrimination against Women*', [adopted on 18 December 1979] 1249 UNTS 13, art 6.

4 United Nations General Assembly, '*Convention on the Rights of the Child*' [adopted on 20 November 1989] 1577 UNTS 3, art 35.

Similarly, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution-2002 too obliges Nepal to take preventive measures against trafficking in women and children. Article VIII of the Convention prescribes the following preventive measures:

- Sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under the Convention.
- Sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.

3.1.2 Special Counter Trafficking Preventive Measures prior to the Crisis Situation (including natural disasters)

Crisis tends to exacerbate exposure risks, threats, and exploitations. In the context of natural disasters, the capacity of the country to address crime is greatly hampered.⁵ Hence, IOM's MCOF, adopted in November 2012, identifies the range of approaches and activities to be mobilized prior to, during, and following a migration crisis, including addressing risks of people affected by crises being subjected to human trafficking as following:⁶

- Build the capacity of humanitarian workers to better identify and address trafficking victims, including migrants, in the context of crises.
- Raise awareness among migrants of the potential risks of human trafficking as well as ensuring informed decision making around safe migration and mobility within and from a host country.
- Improve referral mechanisms and access to justice for victims, which should extend as well top the period and location post-evacuation from the country in crisis.

5 International Organization of Migration, '*Responding to Human Trafficking and Exploitative in Times of Crisis*', 2016, p.1, available at https://www.iom.int/sites/default/files/press_release/file/CT_in_Crisis_FINAL.pdf

6 Ibid. P. 3

- Ensure anti-trafficking interventions in times of crisis have a specific, supplementary coordination and funding mechanism which also takes into account specific needs of trafficked migrants (as well as nationals).
- Where a crisis may prevent immediate prosecution, ensure that all human rights abuses related to human trafficking are correctly documented so that thorough investigations can be held at the first possible opportunity.

Apart from existing international laws and policies against trafficking, on June 2016, the Department of States, United States of America has published the annual trafficking in persons report (TIP Report 2016) ranking countries in 3 tier system stating their effectiveness in addressing human trafficking. Nepal has been listed under tier 2 watch list. Following are some key observations and recommendations put forward by the report on the prevention side:⁷

- The GoN conducted and participated in public awareness campaigns throughout the country; however, they did not often reach those most vulnerable to trafficking.
- Following increased reports of parents permitting children to move from earthquake affected areas to the capital for educational opportunities, MWCSW banned the transport of children younger than 16 years of age unaccompanied by a legal guardian to another district without approval from the child welfare board.
- To prevent sex trafficking in the adult entertainment industry, the National Committee for Controlling Human Trafficking (NCCHT) reinstated monitoring committees in nine districts.
- The Government finalized labor migration guidelines in April 2015, including a policy requiring foreign employers to cover visa and transportation costs for Nepali migrant workers to reduce the financial burden that can make them more susceptible to trafficking. This policy restricts service fees recruitment agencies can charge workers to 10,000 NPR (\$100), which is only allowed when employers are unwilling to bear all recruitment costs.

⁷ Department of State, '2016 Trafficking in Persons Report', United States of America, June 2016, p.281, available at: <http://www.state.gov/documents/organization/258881.pdf>.

- Advocates supported the policy but assessed implementation as insufficient and employment agencies remained unwilling to adhere to the policy at the close of the reporting period.
- The Government suspension on all exit permits for domestic work was lifted and the age limit for the ban on migration of females to the Gulf States for domestic work was decreased from 30 years to 24 years. In addition, the new guidelines require domestic workers' recruitment to go through licensed recruitment agencies.
- The Government did not make efforts to reduce the demand for commercial sex acts or forced labor.
- The Government provided anti-trafficking training for all Nepali peacekeeping forces before deployment and also for its diplomatic personnel.

3.1.3 National Preventive Measures to Combat Trafficking

Nepal under article 29 (3,4,5) has constitutionally guaranteed a person's right against exploitation including offence of human trafficking, bonded labor, and forced labor. The offence of exploitation is a punitive act where victim is entitled to the compensation from the perpetrator.

Further, the constitution of Nepal 2072, article 21 ensures the victims of crime the right to be informed about the investigation and proceedings of the case and holds right to social rehabilitation. The challenging part of the implementation is the translation of these provisions into acts, policies, and actions of the state.

The HTTCA 2065 is the Special Act dealing with the issues of human trafficking. The HTTCA 2065 along with its rules prohibit both internal and transnational trafficking in person. However, the HTTCA is marred with varieties of challenges. To begin with, the HTTCA is more focused on prosecution and rehabilitation aspects of the trafficking and prescribes very few prevention strategies. Under rule 7(1) (d) of the HTTC Rules, and rule 7 (1) (h) function of district committee formed under the Act is specified that legally obliges the committee to raise awareness against human trafficking and transportation and update records of the incidences of human trafficking.

Similarly, the Foreign Employment Act (FEA) 2064 and its rules have attempted in prescribing preventive measures against labor exploitation.

For instance, Section 68 provides appointment of Labor Attaché in an abroad-based diplomatic mission, entrusted with the responsibility for the promotion of the interests of Nepalese workers. Further, Section 19 of the Act mandatorily requires a migrant worker to obtain permission sticker on his/her passports which is granted after screening process. Similarly, Section 32 provides establishment of a welfare fund for the welfare of the migrant workers. Similarly, 39 (1) (d) (k) (o) obliges Employment Promotion Board to take actions for the protection of interest of workers who have gone for foreign employment, to review laws relating to foreign employment, and to monitor institutions licensed to operate the foreign employment business. Further, FER rule 29 (a) further obliges the board to study and research works on the opportunities and risks of foreign employment and conduct awareness programs on foreign employment through radio, television, and newspaper on a regular manner.

Further, FER Rules 17-19 provisions different criteria and procedures for approval for sending migrant workers abroad. The FER requires the worker to be trained in different skills and aspects of the country of destination including orientation in basic labor, immigration laws, traffic rules and so on. Similarly, the FER rule no. 43 has provisions for women labor attaché to be appointed from amongst the women officers for a country where one thousand or more women workers have been sent for foreign employment. Similarly, section 7 of the Act prohibits sending a minor (under 18) for foreign employment.

In terms of children, Emergency Child Mitigation Fund (Operation) Rules, 2067 provides fund for immediate relief and rehabilitation of the children in emergency situations including children exposed to risky labor (worst form of labor), for unaccompanied minors, affected by natural disasters, suffered from sexual abuse, sale or trafficking.

3.1.4 National Policies and Strategies

In 1998 GoN developed its first National Plan of Action against Trafficking. This was revised in 2001 and was reissued as National Plan of Action against trafficking and women for sexual and labor exploitation. Now the Government has National Plan of Action against Trafficking in Person (2011-2016). Ministry has also formulated five years plan on safe migration.

Further, Nepal has National Child Protection Policy, 2011; Child Rescue Fund (Operational) Rules, 2010; among others in place for protection of victims specially children against trafficking. There are three National Plans of Actions approved by the Government relevant to the issue of trafficking of women and children in Nepal. Recently, the Ministry has created a separate Unit for dealing with trafficking issues called Human Trafficking and Transportation Section under the Division of Women and Children. The GoN has formed four-layered Committees on Combating Trafficking. The Committees are mandated to coordinate the activities of the Government bodies and non-governmental organizations working to rehabilitate victims and control the offence under the HTTC Act, 2007.

In post-earthquake setting, the GoN has tried mobilizing the mechanisms from the capital to the village levels with a view to discourage criminal activities such as human trafficking. For instance, the policies and programs of GoN for Fiscal Year 2072-2073 states that GoN will make arrangements will be made to Control gender violence. It further states for provisions for vocational skill development training will be provided to widows and girls affected by the earthquake and that the Kathmandu valley will be made 'street children free' and this campaign will be extended to other cities.⁸

3.2 *De jure* Compliance of Protection Measures

After being identified, the victims of human trafficking require protection at different stages. Protection measures are keys to victim centered approach. Protection measures are further broken down into three sub-measures of 3R meaning rescue, rehabilitation, and reintegration. Rescue is the process of identifying and is a critical phase in counter trafficking.

The United Nations Convention against Transnational Organized Crime and its Protocol against Trafficking, and Office of the High Commissioner for Human Rights (OHCHR)'s recommended Principles and Guidelines on Human Rights together prescribe different protection strategies that are aimed at protecting victims during initial stage, during criminal proceedings, and post criminal proceedings specified below:

8 GoN, Policies and Programs of GoN for Fiscal Year 2072-2073 No. 63, page 13, available at: <http://nra.gov.np/uploads/brochure/uR3txdcPfc160114062655.pdf>.

3.2.1 Initial Protection of the Victims

- Protection of victims against threat and intimidation (Article 25, United Nations Convention against Transnational Organized Crime)
- Protection of physical, psychological, and social recovery of victims of trafficking in persons in cooperation with non-Governmental organizations, other relevant organizations and elements of civil society in particular with housing, counseling information, as regards to their legal rights, in a language that victims understands. (Article 6 TIP)

3.2.2 Protection of Victims during Criminal Proceedings

- Privacy and identity protection of the victim (Article 6 of the TIP Protocol).
- Victims should not be detained, charged, or prosecuted, for irregularly entering or remaining in the state, or for other illegal acts or for crimes they have committed as a direct result of being trafficked (OHCHR Principle).

3.2.3 Protection of Victims post criminal proceedings (durable protection)

- Victims should be provided with legal and other assistance through any criminal, civil or other proceedings (OHCHR Principles).
- Appropriate procedure should be provided to ensure access to compensation, restitution for victims (Article 25, United Nations Convention against Transnational Organized Crime)
- Safe and where possible voluntary return by the destination and origin states should be ensured.

Apart from these standards, the SAARC Convention under article 9 too obliges Nepal for Care, Treatment, Rehabilitation and Repatriation of the Victims including that of shelter homes, job trainings etc. Further, following are some key observations and recommendations put forward

by the TIP Report 2016 on the protection approach:⁹

- Authorities remained without formal victim identification procedures and did not track the number of victims identified; however, the Ministry of Women, Children, and Social Welfare (MWCSW) began developing a mechanism to record this information.
- Civil Societies reported increased vigilance by authorities following the April 2015 earthquake, which led to improved identification of potential trafficking victims. Immigration officials received anti-trafficking training, resulting in an increase in identification and referral of potential labor trafficking victims to police. Nonetheless, many law enforcement officials overlooked that returning labor migrants who reported exploitation could be victims of trafficking, and the Government did not utilize proactive screening measures among this population.
- Police reduced the number of raids conducted on adult entertainment establishments in Kathmandu, resulting in a decrease in arrests of potential sex trafficking victims; this also resulted in decreased identification of victims.
- When properly identified, victims were not detained, fined, or jailed for crimes committed as a result of being subjected to human trafficking.
- Local officials reportedly facilitated the falsification of age documents for child sex trafficking victims.
- Referral efforts remained *ad-hoc* and inadequate, although the Government began drafting standard procedures for the identification and referral for both domestic and foreign victims of trafficking, as well as repatriation procedures.
- In the aftermath of the April 2015 earthquake, the Government and several NGOs focused on providing services to victims in the earthquake-affected areas, increasing services and access to vulnerable populations.

⁹ Department of State, '2016 Trafficking in Persons Report', United States of America, June 2016, p.281, available at: <http://www.state.gov/documents/organization/258881.pdf>

- The MWCSW maintained partial funding of eight rehabilitation homes and emergency shelters for female victims of gender-based violence, including trafficking located at Kailali, Banke, Rupandehi Chitwan, Parsa, Sindhupalchok, Kathmandu, and Jhapa.
- During the reporting period, the Government opened the first long-term shelter for women referred from emergency shelters. The MWCSW revised guidelines to increase funding for victim services, including legal assistance, psychological support, transportation, reunification with families, medical expenses, and other forms of support.
- The Government allocated funds for the protection of adult male trafficking victims but did not fund shelter services. Emergency shelters for vulnerable female workers—some of whom were likely to fall under the category of trafficking victims—in Nepali Embassies in Kuwait, Oman, Saudi Arabia, Qatar, Bahrain, and United Arab Emirates were inadequate to support the high demand for assistance.
- The Government does not have established procedures for alternatives to the deportation of foreign victims.
- During the reporting period, the Nepali embassy in India assisted in repatriating two Nepali women who were promised jobs in Saudi Arabia, but were instead forcibly held and allegedly raped by a Saudi Arabian diplomat posted in India; two of their alleged traffickers were arrested by police in Nepal.
- The Foreign Employment Promotion Board collected fees from departing registered migrant workers for a welfare fund to provide repatriation and one year of financial support to families of injured or deceased workers, which could include trafficking victims.
- During the fiscal year, the fund was used to repatriate 216 migrant workers and provide financial support to the families of 181 injured and 1,002 deceased workers.
- A revision to the HTTCA adopted in a gender equality bill in October 2015 ensures victim compensation when the Government is unable to collect fines from traffickers. Victim witness protection mechanisms remained insufficient legally and in practice, and were impeded by a 2015 amendment to the HTTCA that reinstated a provision allowing victims to be fined

if they failed to appear in court or criminally liable for providing testimony contradicting their previous statements.

- The Government trained prosecutors on victim protection needs during legal proceedings. Although victim confidentiality improved, identifying information—such as phone numbers and names of relatives—periodically appeared in public documents, increasing victims’ risks of reprisals.¹⁰

3.3 National Protection Measures to Combat Trafficking

The HTTCA 2065 obliges law enforcement authorities to maintain complete confidentiality of the complainant under section 5 of the Act. Further, section 10 of the Act protects victims’ right to seek additional legal practitioner for quality representation. Similarly, victim’s right to interpretation and translator is guaranteed under section 11 of the Act which is further elaborated with procedures under rule 10 of the HTTC Rules. Section 13 of the Act protects victim’s right to family reconciliation and rehabilitation which is further elaborated by rule 16 of the HTTC Rules. Section 26 protects victims against retaliation. Further, Section 27 of the Act prescribes for in-camera hearing.

Similarly, the FEA obliges Foreign Employment Protection Board (FEPB) to protect rights and interest of Nepalese workers living abroad under 39(1) (d) of the Act. Similarly, section 68 (2) obliges labor attaché to furnish information to the GoN about the condition of labor and employment, factual information about immigration of the country where Nepalese workers are working and steps taken by that country for the protection of labor and international human rights and interests of workers; to make necessary arrangements for bringing back to Nepal any worker who has been helpless in the course of foreign employment; to provide necessary consultancy to workers, and discourage them to do any work other than that set forth in the agreement;

Similarly Section (73) provisions for Labor Desk (1) The GoN shall establish a Labor Desk at the international airport and other place, as required, in order to examine whether workers proceeding for foreign employment are going for such employment in accordance with this Act or not. Similarly, section (75) Provisions on sending workers back to Nepal where any worker becomes helpless by the reason that the worker has not got such facilities as set forth in the contract and such worker

10 Ibid

has to return to Nepal, the concerned licensee shall arrange for the returning of such worker to Nepal.

3.4 *De jure* Compliance of Prosecution Measures

Prosecution of the trafficking cases is one of the important approaches in countering the offence of trafficking. However, if the prosecution process is non-systematic, due-process are not followed, is biased against the victim, and is not human rights-centric, it can potentially re-traumatize and re-victimize the victim. Hence, the prosecution process has to be carefully planned ensuring protection of victims rather being sensitive to the success rate of the case. As the prosecution phase is categorized into pre-trial, trial, and post-trial phase, the following are some internationally prescribed and agreed basic standards to be incorporated into each of the phases.

Pre-Trial Standards

Criminalization of different forms and offences of trafficking:

The Convention against Transnational Organized Crime, Article 5, 6, 8 and 23 oblige States to criminalize participation in an organized criminal group, laundering of the proceeds of the crime, corruption, and obstruction of the justice respectively.

States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct (OHCHR Recommendation 12). Further, states shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by Government al or by non-State actors (OHCHR Recommendation no. 13).States shall also ensure that trafficked persons are given access to effective and appropriate legal remedies. (OHCHR Recommendation no. 17)

Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences (OHCHR Recommendation no. 15).

Trial Standards

- Penalize the person who exploits others for the purpose of the trafficking even with the consent of the victim (Article 1 of the UN Protocol 1950);
- The consent of the victim of trafficking in person to the intended exploitation shall be irrelevant if any means of exploitation is used including 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. Article 3 (2) (b) of 2000 Protocol;
- Criminalize act of accomplice and directing offence of trafficking (Article 5(2) of the 2000; Article 2 of 1950 Convention), attempt of the offence (article 3 of 1950 Convention);
- It should be placed as extraditable offence (article 8 of 1950 Trafficking Convention and of the SAARC Convention);
- Identity of the victims of trafficking in persons including by making legal proceedings confidential TIP 2000, Article 6 (1);
- Each party shall ensure that domestic legal or administrative system contains measures that provides victim of trafficking information relevant to court and administrative proceedings and provide 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 the rights of defense; and
- Status of the victims of trafficking in receiving States- states should permit victims of TIP to remain in its territory temporarily or permanently in appropriate cases- article 7 of the TIP 2000.

Post-Trial Standards

States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking. (OHCHR Recommendation no. 16)

- Appropriate procedure to provide access to compensation, restitution for victims (Article 25, United Nations Convention against Transnational Organized Crime); and
- Safe and where possible voluntary return by the receiving and origin states.

TIP Report 2016 Observation and Recommendation for Nepal on prosecution approach:

- Some Government officials are reportedly bribed to include false information in genuine Nepali passports, including of age documents for child sex trafficking victims, or to provide fraudulent documents to prospective labor migrants, a tactic used by unscrupulous recruiters to evade recruitment regulations.¹¹
- The GoN continued to prosecute suspected traffickers in 2015; however, the law did not define the prostitution of children as human trafficking absent force, fraud, or coercion.
- The GoN took steps to address the increased vulnerability of women and children in areas affected by the April 2015 earthquake, including awareness-raising programs.
- The GoN adopted labor migration guidelines in April 2015, including a policy to reduce the financial burden on Nepali migrant workers at risk of being subjected to trafficking.
- Nonetheless, the GoN's victim identification and protection efforts remained inadequate, and the Government did not track the total number of victims identified.
- The GoN inconsistently implemented anti- trafficking laws, as many Government officials continued to employ a narrow definition of human trafficking. The impact of the April 2015 earthquake placed a significant strain on Government resources.¹²
- The report recommends to ensure that victims are not punished for unlawful acts committed as a direct result of being subjected to trafficking.¹³
- The HTTCA criminalizes slavery and bonded labor but does not criminalize the recruitment, transportation, harboring, or receipt of persons by force, fraud, or coercion for the purpose of forced labor.¹⁴
- Forced child labor and transnational labor trafficking may be prosecuted under the Child Labor Act and the FEA.
- The NCCHT drafted prospective revisions to the HTTCA to bring the definition of human trafficking closer in line with international law; however, the Government did not adopt the revisions by the end of the reporting period.¹⁵
- The Nepal Police Women's Cell conducted 181 sex and labor

11 Ibid

12 Ibid

13 Ibid

14 Ibid

15 Ibid p.282

trafficking investigations under the HTTCA during the Nepali fiscal year, compared with 185 cases in the previous fiscal year. These investigations involved crimes in which women and girls were the primary victims; crimes involving male victims are handled by other police investigative units. In one of these investigations, police arrested members of a transnational crime network involved in trafficking Nepali women and children in the Middle East and Africa.¹⁶

- The GoN prosecuted alleged traffickers in 341 cases in the fiscal year; of these, 227 remained pending.¹⁷ This data was not disaggregated to distinguish between sex and labor trafficking cases, or new cases versus those initiated in the previous fiscal year.
- At the district level, courts convicted 260 traffickers during the fiscal year, compared with 203 traffickers in the previous year, and acquitted the accused in 107 cases.¹⁸
- Victims of transnational labor trafficking preferred to submit claims for compensation through the FEA, rather than pursue lengthy criminal prosecutions under the HTTCA, often to avoid the stigma associated with being labeled a trafficking victim and because the potential to be awarded compensation was higher.¹⁹
- Approximately 35 police officers received extensive crime scene training on investigating trafficking and gender-based violence by an NGO, in partnership with the GoN.²⁰
- Despite this training, police officers' lack of awareness of the anti-trafficking law, challenges in evidence collection, and poor investigative techniques impeded prosecution efforts.²¹
- In 2013, the anti-corruption commission indicted 46 officials from the Departments of Foreign Employment and Immigration for issuing fraudulent documents; criminal proceedings were ongoing at the close of the reporting period.
- The GoN did not report any newly initiated investigations, prosecutions, or convictions of Government officials complicit in human trafficking or related offenses.²²

16 Ibid

17 Ibid

18 Ibid

19 ibid

20 Ibid

21 Ibid

22 Ibid

National Prosecution Measures

Pre-Trial Standards

- The HTTC Act 2065 criminalizes different forms of trafficking but in a very narrow sense. It has not criminalized forced labor as a form of trafficking.
- Victim himself/herself can be prosecuted (Section 4 of the HTCCA)

Trial

Section 10- Right to keep additional representatives

Section 20: Confidentiality of the informant: The name and address of the informant and the details provided by the informant under Sub-Section (1) of Section 19 shall be kept confidential.

Section 26:Security: If a person provides reasonable ground and requests the nearest police office for security against any type of retaliation for reporting to the police under Section 5 or providing statement on court or remaining as a witness, that police office should provide any or all of the following protection measures to him/her:

- (a) To provide security during traveling in course of attending case proceeding in the court,
- (b) To keep or cause to keep under police protection for a certain period,
- (c) To keep at rehabilitation center.

Post-Trial

The HTTCA Section 17 provides that a court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender.

CHAPTER- FOUR

COMPLIANCE ANALYSIS AND RECOMMENDATION

4.1 Compliance Analysis

This study has attempted in analyzing *de jure* compliance of the Nepal's national laws and policies to international laws and standards against trafficking. To begin with, as a primary law of the country, Constitution of Nepal 2072 guarantees a person's right against trafficking. Under article 29 sub-article (3,4,5) of the Constitution, a person's right against exploitation including offence of human trafficking, bonded labor, and forced labor has been guaranteed. Further, the Constitution also recognizes the offence of exploitation as a punitive act where victim is entitled to the compensation from the perpetrator.

Prior to this, the National Code, (*Muluki Ain 2020*) was first to recognize the act of trafficking as a criminal offence. The *Muluki Ain* in its chapter on human trafficking provides a general framework of trafficking. However, prohibited acts of trafficking under the code are only limited to external trafficking. Clause of *Muluki Ain* also lacks in its elementary definitions of the trafficking and did not recognize internal trafficking as an offence. Owing to different ambiguities, a new special Act was enacted in 1980 and further was repealed by the existing special Act '*Human Trafficking and Transportation Control Act 2007 (HTTCA)*' and its corresponding rule.

The GoN has also enacted several plans and policies which signifies the country's solidarity to the global fight against trafficking. Apart from this, Nepal's ratification to several conventions including CEDAW, CRC, UN Protocol against Trafficking 1950, SAARC Convention against Trafficking among others, obliges her to take substantial steps against trafficking in persons.

Nepal's is a transit, source, and also destination for offence of trafficking in persons. However, the forms of trafficking, modus operandi of the traffickers, and destination countries have been changing. This requires the country to consider different dimensions while enacting, amending or strategizing any anti-trafficking legal frameworks and policies. The recent earthquake 2015 has further increased vulnerability of persons at risk

of trafficking that further demands pro-active and effective measures to minimize threats aggravated against human life and security during crisis.

In this context, the table below analyses the compliance of Nepalese anti-trafficking laws with the international standards and presents some categorical recommendations.

4.1.1 Prevention Measures Compliance Table

| S.N | International Standards | National Provisions | Compliance Analysis |
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| 1. | Enact policies, programs and other measures to combat trafficking | In addition to the constitution, and Special Acts against trafficking, Nepal has several plans and policies against trafficking including National Plan of Actions against Trafficking (2011-2016), National Child Protection Policy, 2011; Child Rescue Fund (Operational) Rules, 2010. | There are legal policies and frameworks in place which for many of the operational aspects refers to HTTCA. Hence, in order to have a <i>de jure</i> compliance of these plans and policies with the international standards, the HTTC first has to be reviewed, and revise as per necessity. It has to be amended in different areas including the criminalization of victims of trafficking and narrow definition of forms of trafficking. |
| 2. | Media campaigns, awareness, social and economic initiatives | Rule 7(1) (d) of the HTTC Rules, and rule 7 (1) (h) function of district committee formed under the Act legally | National laws comply with the given international standards. However, in order to make the |

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| | | <p>obliges the committee to raise awareness against human trafficking and transportation and update records of incidences of human trafficking.</p> <p>Foreign Employment Rule (FER) rule 29 (a) too obliges the board to study and research works on the opportunities and risks of foreign employment and conduct awareness programs on foreign employment through radio, television, and newspaper in a regular manner</p> <p>The <i>Foreign Employment Rules</i> 17-19 too prescribes preventive strategies including worker to be trained in different skills and aspects of the country of destination including orientation in basic labor, immigration laws, traffic rules and so on.</p> <p>Similarly, Section 39 (1) (d) (k) (o) of the FEA obliges Employment Promotion</p> | <p>awareness campaigns more effective, partnerships and meaning participation from the community in the designing phase is important</p> |
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| | | <p>Board to take actions for the protection of interest of worker who have gone for foreign employment, to review laws relating to foreign employment, and to monitor institutions licensed to operate the foreign employment business.</p> <p>The Foreign Employment Protection Board to protect rights and interest of Nepalese workers living abroad under 39(1) (d) of the FEA.</p> <p>Section 68 (2) obliges labor attaché to give information to the Government of Nepal about the condition of labor and employment, factual information about immigration of the country where Nepalese workers are working and steps taken by that country for the protection of labor and international human rights and interests of workers</p> | |
| 3. | Bilateral and multilateral cooperation addressing root cause and discourage | No provision on exchange of information has been specified under the Acts, | Efforts to address root cause have to be simultaneously made. |

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| | demand. | rules, and policies. | Implementation activities should be made to discourage demand side. For instance encouraging public to avoid products from certain factories that sells products exploiting children. |
| 4. | CEDAW Recommendation 19 to take preventive, punitive and remedial measures | FER rule no. 43 provisions for women labor attaché to be appointed from amongst the women officers for a country where one thousand or more women workers have been sent for foreign employment. | The recommendation has been partially complied through the HTTC Act and rules. Apart from the labor attaches and general preventive strategies for potential trafficking victims and survivors, the acts and rules does not prescribe any frameworks considering special preventive programs for women. |
| 5. | Special protection to prevent sale or trafficking in children for any purpose | Section 7 of the FEA prohibits sending a minor (under 18) for foreign employment. | The law has not defined the prostitution of children as human trafficking absent |

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| | | <p>Emergency Child Mitigation Fund (Operation) Rules, 2067 provides fund for immediate relief and rehabilitation of the children in emergency situations including children exposed to risky labor, for unaccompanied minors, affected by natural disasters, suffered from sexual abuse, sale or trafficking.</p> <p>Further, Nepal has National Child Protection Policy, 2011; Child Rescue Fund (Operational) Rules, 2010; among others in place for protection of victims specially children against trafficking.</p> | <p>force, fraud, or coercion. Hence review of the definition of the Acts is important.</p> |
| 6. | <p>Training and sensitization of officials including law enforcement officials to effectively conduct inquiries and investigate</p> | <p>None of the Acts and rules provisions for the mandatory or any format of training to be provided to the officials. Trainings are provided on a programmatic basis.</p> | <p>There is not any systematic legal framework that prescribes process of identification, rescue, inquiry and investigation and any partnerships for the same. This affects the functioning of all of the other preventive strategies in a negative</p> |

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| | | | <p>manner.</p> <p>Further, TIP Report 2016 too has pointed out Immigration officials received anti-trafficking training, resulting in an increase in identification and referral of potential labor trafficking victims to police. Nonetheless, many law enforcement officials did not recognize that returning labor migrants who reported exploitation could be victims of trafficking, and the GoN did not utilize proactive screening measures among this population.</p> |
| 7. | <p>Special laws for crisis situation</p> <ul style="list-style-type: none"> • Build capacity of humanitarian workers to better identify and address trafficking victims in crisis; • Referral mechanism | <p>Policies and Programs of GoN for Fiscal Year 2072-2073 provides for mobilization of the mechanisms from the centre to the village levels will be made effective in order to discourage the criminal activities like human</p> | <p>No special laws for crisis situation have been enacted. These are done only in an <i>ad hoc</i> manner.</p> <p>All the efforts undertaken by the GoN has been in an <i>ad</i></p> |

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| | <p>for evacuation and post evacuation;</p> <ul style="list-style-type: none"> • Documentation of human rights violation | <p>trafficking. However, no target activities has been prescribed in order to implement the vision of the program for the fiscal year</p> | <p><i>hoc</i> basis and there are not any preventive strategies in place that facilitates in minimize greater vulnerability caused by the crisis situation.</p> <p>There are no systems for proper record of the human rights violations including the offence of trafficking in persons.</p> |
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Protection (3R-Rescue, Rehabilitation, and Reintegration) Measures Compliance Table

| INITIAL PROTECTION | | | |
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| S.N | International Standards | National Provisions | Compliance Analysis |
| 1. | Protection of physical, social recovery of victims (in cooperation with non-Government al organization and CBOs) | <p>Section 13 of the HTCA and further elaborated by HTTC Rules no. 11 provides for establishment of Center for the physical or mental treatment, social rehabilitation and family reunion of the victim.</p> <p>Rule no. 13 (1) obliges the center to provide the victim with the psycho social counseling and advise related to health services, make necessary arrangements for medical facilities as per the necessity of the victim.</p> <p>Section 13 of the Act protects victims right to family reconciliation and rehabilitation which is further elaborated by rule 16 of the HTTC Rules.</p> | <p>Apart from these provisions HTTC Rules the concept of physical recovery, social recovery and partnership have not been explicitly specified in the anti-trafficking laws and policies.</p> <p>Physical recovery and social recovery including programs of reintegration is integral for effective prosecution and rehabilitation.</p> |

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| 2. | Protection against threat and intimidation | Right against retaliation ensured under section 26 of HTTC Act | This has been seen in the full compliance with the given standard. |
| 3. | Housing, counseling, information as regards to their legal rights in a language that victims understands | <p>Section 10 of the HTTCA protects victims' right to seek additional legal practitioner for quality representation</p> <p>Victim's right to interpretation and translator is guaranteed under section 11 of the HTTC Act which is further elaborated with procedures under rule 10 of the HTTC Rules.</p> | <ul style="list-style-type: none"> Though not incorporated in the framework, as reported by TIP Report 2016, the Government opened the first long-term shelter for women referred from emergency shelters. MWCSW revised guidelines to increase funding for victim services, including legal assistance, psychological support, transportation, reunification with families, |

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| | | | <p>medical expenses, and other forms of support.</p> <p>However, again if these support services are only given at <i>ad hoc</i> basis and no consolidated legal framework is enacted, their monitoring and evaluation about the effectiveness of the protection provided becomes difficult.</p> |
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DURING CRIMINAL PROCEEDINGS

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| 1. | Protection of identity and protection | Section 5 of the HTTC Act and Section 26 of the same Act guarantees the complete confidentiality and respect. | The in-camera proceedings and anonymity of the witness has complied with the principle of identity and protection. |
| 2. | Victims should not be detained, charged, prosecuted for irregularly entering in the state or for other illegal acts or for crimes they have committed | The section 4 of the HTTC A provides lists of acts considered as human trafficking that includes to go in for prostitution. Further, Nepalese anti-trafficking laws and policies does not speak about the status of a | The HTTCA penalizes victims (for instance, a person coercively working as commercial sex workers) which is not in line of jurisprudence of victim protection and non-re-victimization. |

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| | | foreign trafficked victims. | It does not speak about the immigration status of the foreign victims in Nepal or any procedures related therewith. |
| POST CRIMINAL PROCEEDINGS PROTECTION | | | |
| 1. | Legal assistance and others including repatriation. | <p>As per section 28 of the HTCA, GoN is the plaintiff in all cases filed under this Act. Hence the legal assistance if provided to the victim by the public prosecutor and if the victim wishes he or she also can keep additional legal practitioner as per his or her choice under section 10 of the Act.</p> <p>On the other hand, FEA under section (75) provisions on sending workers back to Nepal where any worker becomes helpless by the reason that the worker has not got such facilities as set forth in the contract and such worker has to return to Nepal, the</p> | <p>The legislative intent behind specifying the right to interpreter implicitly signifies the service to be provided to the non-national. However, nothing explicit has been specified about the rights of the foreign trafficking in person victims found in the country.</p> <p>The process of repatriation which involves and requires cooperation from country of origin can also be provided by the bilateral agreements. However, basic provisions including which authority will be</p> |

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| | | <p>concerned licensee shall arrange for the returning of such worker to Nepal. Such process is facilitated by the labor attaché. However, nothing of any repatriation process is specified under the legal framework as the law has not envisioned about the foreign victim of trafficking</p> | <p>responsible for repatriation process, nature of the mechanisms required and so on has not been specified. The Act and the rule only specifies about the voluntary return of the Nepalese victims stranded in the foreign land.</p> |
| 2. | Appropriate procedures to provide access to compensation, restitution | <p>Section 17 of the HTTCA provides that the court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender</p> | <p>This procedure entitles victim entitled to compensation only upon the conviction of the offender. This questions integration of the victim centered approach in the compensation process.</p> |
| 3. | Care, treatment, rehabilitation, shelter, job and trainings | <p>Section 13 of the HTTCA protects victims right to family reconciliation and rehabilitation which is further elaborated by rule 16 of the HTTC Rules.</p> | <p>Efforts of sustainable protection and empowering the survivor an effective partnership plan between Government and elements of civil society is the must. However, Nepalese anti-trafficking laws</p> |

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| | | | do not prescribe framework for creating referral network and process of locating necessary help. |
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Prosecution Measures Compliance Table

| PRE-TRIAL STANDARDS | | | |
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| S.N | International Standards | National Provisions | Compliance Analysis |
| 1. | Criminalization of the offence | Section 4 of the HTTC Act criminalizes different forms of trafficking but in a very narrow sense. For instance, it does not recognize forced labor as act of trafficking. | According to the International Organization of Migration, 85% of the victims of trafficking in South Asia are exploited for forced labor while 15% are exploited for the sexual exploitation. Nepalese national anti-trafficking framework has not able to incorporate the new dynamics and forms of trafficking which as a result |

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| | | | make the law obsolete. |
| 2. | Prosecute, investigate and adjudicate trafficking including attempt, accessory by both state and non-state actors | The HTTC Act provisions on the prosecutorial aspect, investigatory body and adjudication process. Section 15 (1) (h) of the Act provides The person engaged in provocation, conspiracy and attempt of an offence of human trafficking or transportation or an abettor of that offence shall get half out of full punishment envisioned for that offence. Similarly Section 15 (2) provides for the punishment on the aggravated offence included ones committed by public officials. | Despite of the HTTC Act provisions, in absence of procedures for specialized counter trafficking investigative or prosecutorial units the expected level of compliance might not be achieved. |
| 3. | Access to appropriate legal remedies | Legal remedies as provided by the national framework are limited to penalty for the offender and compensation for the victim. | |
| 4. | Effective and appropriate sanctions including for attempts, and aggravated crimes | Section 15 to 17 of the HTTCA prescribes for penalties for committing offence including for accessories, director, and aggravated offence. | The HTTCA and its corresponding rule also does not envision separate or increased penalties for trafficking crimes committed in an organized manner |

TRIAL STANDARDS

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| 1. | <p>Penalize persons who exploit others for purpose of the trafficking even with consent</p> | <p>The HTTC Act criminalizes perpetrators, abettors, conspirer of the offence under section 4 and 15 of the Act.</p> | <p>Though the criminalization of most of acts and elements of the offence of trafficking has been criminalized. However, punishing ones who go in for commercial sexual work and gets exploited is against the principle often of non-criminalization of the victims and non-re-victimization. The HTTC Act penalizes victims (for instance, a person coercively working as commercial sex workers) which is not in line of jurisprudence of victim protection.</p> <p>Apart from this, though Nepal is part to Palermo Convention but the Act does not specify punishment and criminalization of act committed by an organized crime group.</p> |
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| 2. | Consent is irrelevant if means of exploitation is present | Only in case of a child | The emerging jurisprudence of exploitation being key element has not been included in existing laws and policies. |
| 3. | Criminalize acts of accomplice, and directing offence and attempt | <ul style="list-style-type: none"> • Applying higher penalties for offences conducted in aggravating circumstances.¹ | <p>As specified under Regional Bali Process manual following can be incorporated as acts that aggravates the punishment:</p> <ul style="list-style-type: none"> • where the offence involves a risk of, or results in serious injury or death of a victim, including death by suicide; • where the victim is particularly vulnerable - for example, the victim is a child or a person with a disability; |

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| | | | <ul style="list-style-type: none"> • where the victim was exposed to a life-threatening illness such as HIV/AIDS; • where the offence involved more than one victim; or • where the crime was committed as part of an organized criminal group |
| 4. | Protecting identity of the victim during trial | Section 20 and 26 of the HTTCA prescribes the protection. | This is fully in <i>de jure</i> compliance. |
| 5. | Providing victim relevant information and incorporating their concerns and views at appropriate stages of criminal proceedings | Constitution article 21 ensures the victims' of crime right to be informed about the investigation and proceedings of the case and holds right to social rehabilitation. | The challenging part of the implementation is the translation of these provisions into acts, policies, and actions of the state. |
| 6. | Temporary residence | Not specified about this | |
| POST TRIAL STANDARDS | | | |
| 7. | Freeze and confiscate assets of individual and legal persons | Section 18. of the HTTC act provides Seizure of | In satisfactory compliance with |

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| | involved in trafficking | Property: (1) Any movable or immovable property acquired as a result of an offence under this Act shall be seized. (2) If it is proved that anyone uses or provides to use any house, land or vehicle for any offence under this Act, that house, land or vehicle shall be seized. | international standards |
| 8. | Compensation | The HTTCA Section 17 provides that a court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender. | Compensation upon the conviction of the perpetrator. This does not guarantee financial security of the victim, and on the hand would she or he is willing to wait until the case is decided should be the question in line. Prosecution process if re-traumatizes the victim, the value of compensation is nothing. This Act also limits possibility to file civil suits in human trafficking cases. |
| 9. | Voluntary Return | No rights of returnees | Rights of returnees has |

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| | | guaranteed. | to be guaranteed to prevent re-victimization Rights of returnees including right against discrimination, acts of violence and torture, right to personal security, rights to social and economic rights, health services including psychosocial help. |
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4.2 Recommendations

- Issue: The HTTCA and other Acts and polices have placed unequal value on 3Ps and have placed comparatively less value on prevention and protection.

Action: Carefully design and amend legal frameworks with equal priorities set for 3Ps approach

- Issue: Nepalese national laws and policies against trafficking do not incorporate new emerging trends and forms of trafficking, and modus operandi of traffickers that has made the law obsolete.

Action: Create a proper and periodic research and information sharing mechanism for an updated laws and policies.

- Issue: New emerging jurisprudences including ‘stand-alone activities’, focus on the forms of the exploitation among others have not been incorporated in the existing laws and policies

Action: Incorporate emerging jurisprudence into national laws and policies through amendments and creation of new policies

- Issue: Absence of victim identification process that results in weak prosecution and protection

Action: Establish a formal victim identification process for effective

protection and prosecution

- Issue: Lack of legislative frameworks, action plans and policies for partnerships has weaken prospects of collaborative efforts

Action: Create a proper referral system for effective partnerships. Also enact explicit set of policies that also includes survivors of trafficking as partners so their feedbacks and first-hand experience can help formulating more practical plans

- Issue: Absence of special acts and policies to deal with crisis induced trafficking activities

Action: Enactment of special Acts and policies to deal with trafficking issues during crisis. To elucidate, this might include steps for humanitarian actors to discharge quick role for public safety, identification of cases of trafficking, proper documentation of the violations

- Issue: Forced labor not taken as forms of trafficking as a result of which less cases has been registered as trafficking

Action: Recognize forced labor as forms of trafficking and incorporate the same in the law

- Issue: Rights of foreign victims of trafficking and steps for repatriation are not specified under the legal frameworks

Action: Categorical specification of rights of foreign victims of trafficking and steps for repatriation under existing laws

- Issue: The criminalization of the victims under the Act has violated the universal principle of non-criminalization of the victim. Further, the consent of the victim is irrelevant when there are explicit elements of exploitation

Action: Immediately repeal the provisions that penalizes victims of trafficking

- Issue: Access to compensation is not victim-centric. The compensation is only provided upon the conviction of the perpetrator (present laws). This further increases vulnerability of the victim

Action: Creation and management of a separate fund to compensate victims of the conviction of the accused.

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