Human Trafficking and Transportation (Control) Act, 2007: ITS IMPLEMENTATION

2014

HUMAN TRAFFICKING AND TRANSPORTATION (CONTROL) ACT, 2007: ITS IMPLEMENTATION

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FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD)

HUMAN TRAFFICKING AND TRANSPORTATION (CONTROL) ACT, 2007:

ITS IMPLEMENTATION

2014

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FOREWORD

Human trafficking is a serious crime and a grave violation of human rights, affecting almost every country in the world. Every year, thousands of women and children fall victim in the hands of traffickers either within their own country or across the border. While the most common form of human trafficking prevalent worldwide is trafficking for sexual exploitation; increasing tends of trafficking due to forced labor, bonded labor, domestic servitude, forced marriage and other forms of exploitation have been observed.

In Nepal, human trafficking is considered as a major form of violence and a heinous crime. Before, human trafficking in Nepal was confined to sexual exploitation and was limited mainly to the trafficking of young girls and women to India for sexual exploitation. In today's context, the dimension of human trafficking is changing, where increasingly, men and women are being trafficked due to unsafe labor migration in various labor receiving countries. While the issues of human trafficking are complex and cross cutting, some of the root causes in Nepal are gender discrimination, illiteracy, limited economic opportunities, domestic violence, and poverty. Moreover, unequal development between the regions and unhealthy rural-urban linkages has escalated the phenomenon of human trafficking.

The Government of Nepal is deeply committed toward combating human trafficking. Nepal has ratified several International Conventions related to human trafficking and human rights including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of Child (CRC), and the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. Furthermore, the Government has enacted the Human Trafficking and Transportation

(Control) Act, 2007 along with its Rules (2008) which establish a comprehensive legal framework in addressing trafficking. The Government has been working extensively toward the effective implementation of policy level intervention and a nationwide counter trafficking initiative which addresses prevention, protection and prosecution to combat the crime of human trafficking.

The Ministry of Women, Children, and Social Welfare through the National Committee for Controlling Human Trafficking, as the nodal agency to lead government anti-trafficking efforts, is working actively to oversee and effectively implement the policies and programs for the overall development and regulation of activities related to combating human trafficking. The Ministry is working in a close collaboration with civil society, international development partners, and other relevant government stakeholders towards this end.

I would congratulate FWLD on their initiatives to analyze and finalize the report on "-Human Trafficking and Transportation (Control) Act: Its Implementation". I am confident that the report will be a useful analytical tool for policymakers, academicians, researchers, students and other stakeholders who are working toward combating human trafficking in Nepal. The Ministry believes that the report serve toward policy and institutional reforms, and will be a valuable source of information for researchers and others working in the area of advancing access to justice.

I would also like to extend my sincere appreciation to the United States Agency for International Development (USAID)-funded Combating Trafficking in Persons (CTIP) program implemented by The Asia Foundation for their technical expertise and financial support in the publication of this document.

Neelam K.C.

(Neelam KC Khadka)
Minister
Ministry of Women, Children and Social Welfare
26th May, 2014

ACKNOWLEDGEMENT

The present study **"Human Trafficking and Transportation (Control) Act, 2007: Its Implementation"** is an attempt to examine the changes in prosecution of cases related to human trafficking, the services provided to the survivors and to determine as to what extent has the TIP Act been implemented. The study has tried to pin down the effectiveness of each section of the existing legal framework on Trafficking in Person. It further analyses the gaps and weaknesses that have been creating a hurdle towards its effective implementation and justice. One of the most important aspects of the study includes the recommendations, where, the core areas have been addressed for the improvement of the law and to eliminate the gaps. The study also portrays the initiatives taken and achievements made by the Government of Nepal and various Civil Societies towards the implementation of the Act. Furthermore, additional supplementing procedures that would bring out the practical and efficient implementation of the act have also been accumulated by the study. Though being known to have one of the best acts on Human Trafficking in South Asia, findings tend to show the non implementation of many provisions despite its 7 years long enactment. A bitter truth that needs to be addressed for.

Thus, on this note, we would like to thank all those individuals and organizations, without whom this study would not have been possible. Your valued contributions and constant support has strengthened the study even more.

A word of thank you to Hon'ble Minister Neelam KC Khadka, Ministry of Women, Children and Social Welfare for kindly agreeing to provide her few yet valuable words for the study.

We are also thankful to all the key respondents and participants present during all those consultation meetings including the Ministry of Women, Children and Social Welfare, Police, Foreign Employment Promotion Board, Courts, Office of the Attorney General, NCCHT, DCCHT, representatives of all those INGOs and NGO's involved for their marvelous inputs and insights on various aspects surrounding the TIP Act.

A word of gratitude to the study team: Ms. Sapana Pradhan Malla, Mr. Sabin Shrestha, Ms. Astha Sharma Pokharel and Ms. Palita Thapa for their tireless dedication towards the completion of the study.

We are very thankful to Advocate Meera Dhungana, Advocate Sushama Gautam, Advocate Bimala Khadka, Advocate Pun Devi Maharjan, Advocate Nabin Kumar Shrestha and Mr. Harish Bhatta for their support during the study. A word of thanks to Mr. Himal Shrestha for his creative input for the design and layout of the study.

We are grateful to the United States Agency for International Development (USAID) and The Asia Foundation (TAF) for supporting the study. We would also like to thank Ms. Nandita Baruah and Ms. Rachana Shrestha of The Asia Foundation for their continuous guidance and support during this study.

Kusum Saakha
President
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EXECUTIVE SUMMARY

BACKGROUND

Trafficking in Persons (TIP) is a major form of violence in Nepal that has been recognized as a crime against the state. Before 2007, it was dealt through a special legislation: the Human Trafficking Control Act (1986). In 2007 the Human Trafficking and Transportation (Control) Act 2007 was enacted and commended for being a victim-centric act, something which the previous act failed to address for. However, since the enactment of this new law, a thorough examination of its implementation had not yet been done.

Human trafficking has in the past been conflated with prostitution. While this trend still exists, the forms of human trafficking have multiplied and changed, but the idea that human trafficking is done only for prostitutional purposes continue to exist.

This study has attempted to determine the effectiveness of the existing implementation of law and existing institutional mechanisms such as - law enforcement agencies, courts and government attorneys in dealing with the cases of TIP under the TIP Act.

METHODOLOGY

Both qualitative and quantitative data's has been used in the study; these data's have been triangulated to ensure a comprehensive analysis of the

findings. Consultation meetings were held prior to the study. The draft study was also shared amongst the concerned stakeholders. Quantitative data's and key informant interviews were collected from various concerned stakeholders. In the study - victims, court officials, public prosecutors, the National Committee for Controlling Human Trafficking (NCCHT), District Committee for Combating Human Trafficking (DCCHT), the police, rehabilitation centers, civil society amongst others were interviewed. 22 decisions on cases of human trafficking filed after the 2007 law came into effect were analyzed and extensive desk-based research to determine the effectiveness of the implementation of the TIP law was carried out.

FINDINGS

In the study, new TIP Act has been examined thoroughly, followed by comparison with the previous law, and also looking at the new legal language by itself. But the major part of the study is the chapter on the implementation. Through this study, many improvements were found in the way that law enforcement agencies and courts prosecute human trafficking, but many existing weaknesses were also found.

The strengths and weaknesses pervade each section of the TIP Act. While the wider definitions of TIP have allowed cases of labor exploitation and illegal organ transplantation to be tried as TIP cases, TIP continues to be conflated with prostitution. Definition of trafficking is silent in regard to the transportation to Nepal. There is overlap in definition of human trafficking and foreign employment fraud: cases of human trafficking filed only as foreign employment fraud. Lack of clarity in differences between human trafficking and human transportation still prevails. Extradition Act that includes individuals accused of human trafficking do not exist

between Nepal and other destination countries. While there is a provision for an interpreter/translator for victims and witnesses, there is no roster of interpreters and therefore not a single victim or witness has been provided with interpretation services by the courts. There is also lack of raid and rescue guidelines and the non clarity as to which agency is primarily responsible for the rescue.

Private legal representatives are not given access to information and decisions related to cases in the name of maintaining confidentiality, lack of clarity in difference between human trafficking and human transportation still exists, right to appeal or not continue to rest upon the Government Attorneys, survivors of human trafficking are often asked to reappear in court even after the authentication of his/her statement, and in some instances have been punished for failing to appear or for changing their statement. Some of the shelter homes are unaware about the NMS and SoP.

There is no uniformity in maintaining confidentiality of the victims. One of the most commendable sections and also worrying section of the Act is the section on compensation which the victims are supposed to receive. However, while courts have been ordering for compensation, but there no clarity on process of receiving it as there is no clear procedural guideline on it. Security is provided upon request and is only limited to the survivors. But few instances have shown that upon request, security was not provided to the survivors.

RECOMMENDATIONS

Many of the recommendations in the study simply refer to the need to implement sections that are already included in the language of the legal framework. This includes the need to maintain the burden of proof on the accused, the need to compensate survivors, and the need to ensure

high quality rehabilitation services to survivors of human trafficking.

There are also recommendations on the need to reform some of the legal language to ensure a victim-centric law enforcement mechanism. This includes the need to define prostitution as a form of exploitation rather than as TIP, the need to make the definition of human trafficking more comprehensive which would include human transportation too, an extension of the 25 days given to the police after the arrest of accused for investigation before filing a case in court and the ratification of the Palermo Protocol.

Finally, this study also recommends an improvement in transnational coordination to combat human trafficking. Such coordination would facilitate rescue, rehabilitation and would allow for extradition to Nepal of perpetrators of human trafficking.

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ACRONYMS

CDO	Chief District Officer
CTIP	Combating Trafficking in Person
DCCHT	District Committee for Controlling Human Trafficking
DOE	Department of Education
DOFE	Department of Foreign Employment
FEPB	Foreign Employment Promotion Board
FIR	First Information Report
FWLD	Forum for Women, Law and Development
FY	Fiscal Year
GBV	Gender Based Violence
GECU	Gender Empowerment and Coordination Unit
GoN	Government of Nepal
HTTCA	Human Trafficking and Transportation (Control) Act
HTTCR	Human Trafficking and Transportation (Control) Regulation, 2008
INGO	International Non-Governmental Organizations
IOM	International Organization of Migrants
MoFA	Ministry of Foreign Affairs
MoHA	Ministry of Home Affairs
MoHP	Ministry of Health and Population
MoLE	Ministry of Labour and Employment
MoWCSW	Ministry of Women, Children, and Social Welfare
NMS	National Minimum Standard
NPA	National Plan of Action
OPMCM	Office of Prime Minister and Council of Ministers
SOP	Standard Operating Procedure
PNCC	Pravasi Nepali Coordination Committee
TAF	The Asia Foundation
TIP	Trafficking in Person

CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

Trafficking in Person (TIP) is a major form of violence in Nepal and has been recognised as a crime against the state. Before 2007, it was punishable under the Human Trafficking Chapter *(Jiu Mashne Bechne-ko Mahal)* under the Country Code (1963) and through a special legislation, the Human Trafficking Control Act (1986). In 2007 a new law was enacted, the Human Trafficking and Transportation (Control) Act (hereon the 2007 TIP Act), which aimed to ensure a more victim-centric and comprehensive approach to the prosecution of human trafficking.

Human trafficking has in the past been conflated with sex trafficking. This is often explained by the fact that in the past, trafficking in Nepal consisted mainly of trafficking of young girls to brothels in India. While this trend still exists, and we still live in a patriarchal society in which women are bought and sold as commodities and forced into prostitution, the forms of human trafficking have multiplied and changed, but the idea that human trafficking for purposes of prostitution has remained.

Initially seen as mostly prevalent among women and children for the purpose of sexual exploitation, the trafficking of men has increased, and there has also been an increase in individuals being trafficked for purposes such as forced labour, organ extraction, circus work or marriage or other forms of exploitation. And while in the past India was seen as the only 'destination' country, individuals from Nepal are also being trafficked to countries in the Gulf, China and elsewhere in the world. Now, Nepal is not only a country of orgin but also found as country of desitination.[1]

1. Based on the few cases reported in police and ongoing case in court, Govt. of Nepal vs. Tara Chhetri.

To effectively combat trafficking, one must understand the causes of it. While the activating causes of trafficking can include domestic violence, dysfunctional families and economic crises, there are a lot of other structural factors at play.[2] These factors include but are not limited to poverty, unemployment, discrimination, corruption and a lack of information. Human trafficking is also guided by basic economic principles. Thus factors such as changes in demand for cheap labour or changes in demand in the sex industry will affect the prevalence of human trafficking.

The prosecution of human trafficking must also take into account its sensitive nature and the effect of the crime on the victim. Many victims of human trafficking return with sexually transmitted infections such as HIV/AIDS, they are stigmatised by society, traumatised, and require psychological help – it is precisely these factors that the 2007 TIP Act attempts to take into account. There are several approaches to combating human trafficking, and the GAATW Handbook on Human Rights and Trafficking in Persons (2001) identifies four particular approaches which will be discussed below, and then suggests a human rights based approach.[3] The framework through which individuals or organisations understand the crime of human trafficking affects how they perceive, define and develop strategies to combat it. Discourses surrounding human trafficking among those working to combat it demonstrate a need to shift from a crime control approach towards a human rights promotion approach.

Within the moralist approach, human trafficking is conflated with prostitution, and it and all those involved in it are regarded as morally reprehensible. This approach often results in policies and laws that criminalise the victim of trafficking, such as the criminalisation of sex work alongside the criminalisation of the individual who forces another

2. Frederick, J, Basnyat, M., Aguettant, J. L. (2010).Trafficking and Exploitation in the Entertainment and Sex Industries in Nepal: A Handbook for Decision-Makers. Kathmandu, Nepal: Terre des Hommes.
3. IIDS and UNIFEM (2004).Status and Dimensions of Trafficking within Nepalese Context. Kathmandu, Nepal: IIDS and UNIFEM, p. 6-9.

into prostitution. The crime control approach views heavy punishments and strong legislation as the solution to curb human trafficking. This approach is seen as repressive and as also leading to the criminalisation of the victim him/herself. The migration (illegal) approach seeks to treat human trafficking as a purely migration issue, and attempts to punish trafficked persons as illegal migrants, have strict border controls, and ban migration agencies as the best strategies to curb human trafficking. Such an approach often results in the restriction of women and girls' mobility, and increased informal channels for migration which in turn increase the risk of human trafficking.The labour approach sees the root of the problem in domestic unemployment, labour policies, and policies on migration. However, this approach ignores the informal labour sector and therefore fails to provide protections to those working in it.

Human trafficking is considered a transnational organised crime[4] by Organized Crime Control Act, and a specialised law that translates international and foreign legal standards into a domestic legal framework is extremely important. Money Lanudering Prevention Act 2008 also includes money earned or received from the offences under the prevailing human trafficking and transportation control laws as crime under the money laundering.[5] What the 2007 TIP Act has tried to do is take a victim-centric, rights-based approach to combating human trafficking. This approach is divided into three components: prevention, prosecution and protection. In each component, the rights of the survivor of human trafficking are given the most priority. In this way, it is hoped that human trafficking can be prevented, and that survivors of human trafficking can be given the services that they require to be reintegrated successfully back into society.

4. Section 2 of Organized Crime Control Act, 2014
5. Section 4 (f) of Money Laundering Prevention, Act, 2008

1.2 RATIONALE

The enactment of the 2007 TIP Act that was victim-centric and included a more comprehensive definition of human trafficking was an extremely important step forward in combating human trafficking. It came as a reaction to a previous law that focused solely on crime control, and often ignored the needs of the victim/survivor of human trafficking while prosecuting the crime. While this change has occurred on paper, it is important to understand whether the rights of survivors are protected, and whether the approach to human trafficking taken by law enforcement agencies and justice providers have changed to a human rights promotion approach in parallel with the legislation.

To examine whether this approach is actually being implemented, it is necessary to determine the effectiveness of the implementation of the law. This study has analysed the changes in prosecution of cases of human trafficking, and the services provided to survivors of human trafficking to determine to what extent the TIP Act is being implemented effectively. Through these findings, the gaps in the implementation of the law will be determined and recommendations for improvement provided.

1.3 OBJECTIVES OF THE STUDY

The major objectives of this study are the following:

a) To determine the effectiveness of each section of the existing legal framework on TIP;
b) To analyse the gaps and weaknesses in the implementation of the legal framework on TIP;
c) To provide recommendations for improvement on challenges, gaps and weaknesses

1.4 METHODOLOGY

Both qualitative and quantitative data was used in this study, and this data was triangulated to ensure a comprehensive analysis of the findings.

1.4.1 Tool of Data Collection

The following tools were used to gather both qualitative and quantitative data:

a) **Dialogue with Relevant Stakeholders:** Before beginning the research on this study, a consultation was held with lawyers, police, NGO officials and government officials. The purpose of this consultation was to understand the legal and policy framework on human trafficking, the gaps and weaknesses that exist in implementing this framework, and how these can be overcome. (See Annex I for the list of participants of the consultation)

b) **Quantitative data** was collected from the police, the Office of the Attorney General and Courts on data regarding the number of cases reported,the number of cases prosecuted, and the convictions.Data on government initiatives to combat human trafficking was collected from the Ministry of Women, Children and Social Welfare.

c) **Key Informant Interview:** A questionnaire including both open-ended and close-ended questions was developed.Interviews were conducted with key informants consisting of police officers, court officials, lawyers, non-governmental organisations (see Annex II for list of key informants).

d) **Judgement Analysis:** A total of 22 decisions on cases of human trafficking filed after the 2007 law came into effect were analysed. These 22 cases were chosen randomly.These decisions were collected from Sindhupalchowk, Kathmandu, Sindhuli, Nuwakot, Makwanpur, Kavrepalanchowk and Sankhuwasabha (see Annex III for list of cases)

e) **Court Case Monitoring Analysis:** A total of 31cases of human trafficking were monitored in court between October 2012 and June 2013. This was conducted in the Kathmandu District Court, Kanchanpur District Court, Sindhupalchowk District Court, Makwanpur District Court, Kavrepalanchowk District Court. These districts are those in which the CTIP project is being implemented.

f) **Desk Based Review:** Reports of studies conducted by government and non-government organisations related to human trafficking were reviewed.This included a report developed by NCCHT on government initiatives to combat human trafficking and studies by NGOs and INGOs on the status of human trafficking in Nepal. Legal documents related to human trafficking, such as the TIP Act, Regulation, the Foreign Employment Act and Regulation were also reviewed.

g) **Consultation Meeting for Feedback :** After the first draft of the report was prepared, a consultation meeting was held with 25 individuals to receive suggestions that could complement and strengthen the study. Participants included lawyers, government attorneys, government officials, and NGO officials

The information collected from key informant interviews were triangulated with information collected from the judgement analysis and court-case monitoring analysis, as well as with the quantitative data that was collected. Through this analysis, findings on the implementation of the TIP Act were extrapolated from the data.

1.5 SCOPE AND LIMITATION

The scope of this study is to review the effectiveness of the implementation of the TIP Act. The study does not intend to explore the implementation of policies or institutional mechanisms. The study intends to analyse the prosecution remedies used in combating human trafficking rather than the prevention of human trafficking.

This report is limited to the study and analysis of the interviews with various stakeholders, court monitoring data collected from the eight courts collected by the CTIP Partners and data collected through interviews with the relevant lawyers and, the limited statistics from the Attorney General's Office and the District Court decisions on TIP after the enactment of the TIP Act, 2007.

CHAPTER 2

LEGAL FRAMEWORK

To achieve an understanding of the legal framework surrounding TIP, and the extent to which it covers the issues that surround the crime, a review was done of the existing legal framework related to TIP.

2.1. International Legal Framework

RATIFIED INTERNATIONAL INSTRUMENTS RELATED TO HUMAN TRAFFICKING

Nepal has ratified the following human rights instruments:

- Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949 (ratified December 27, 1995)
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (Ratified April 22, 1991)
- Convention on the Rights of the Child, 1989 (Ratified September 14, 1990)
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000 (Ratified October 31, 2005)
- SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 (Signed October 31, 2005)

Nepal has ratified the following Human Rights Instruments related to combating trafficking in persons since the enactment of the new law:

- UN Convention on Transnational Organized Crime 2000 (Ratified in June 24, 2011)

Instruments yet to be ratified:

- UN Convention on Transnational Organised Crime, 2000 – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (Palermo Protocol)
- UN Convention on Migrant Workers and Their Families, 1990.
- ILO Convention 189 on Domestic Workers (2011)

As a party to different human rights instruments, the state has the obligation to translate these instruments into domestic laws and policies. The state is also accountable to periodical reports from these different committees. The following are the latest comments from the various reports:

The Concluding Observations of the 4th and 5th Periodic Review of the CEDAW Convention[6] found that there was a lack of specific data on trafficking, a lack of effective implementation of the Human Trafficking and Transportation (Control) Act (2007) a persistence of sexual exploitation, and a persistence of the root causes of poverty. Towards rectifying these concerns, CEDAW recommended that State facilitate

6. UN Office of the High Commissioner for Human Rights (2011).Concluding Observations of the Committee on the Elimination of Discrimination Against Women. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/450/52/PDF/N1145052.pdf?OpenElement>

the collection of data on trafficking, disaggregated into several relevant categories. It also recommended the effective implementation of the Human Trafficking and Transportation (Control) Act (2007), the SAARC Convention on Preventing, Combating Trafficking in Women and Children for Prostitution, and it recommended ratifying the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The root causes must also to be tackled by improving the financial situation of girls and women. And finally, it recommended an improvement in law enforcement by way of information exchange through international regional and bilateral cooperation and training of judiciary and law enforcement officials.

The Working Group on the Universal Periodic Review[7] expressed concerns on the state of human trafficking in Nepal, and questioned the effectiveness of existing policies to combat trafficking. Indonesia and Japan recommended the implementation of more stringent laws, while other delegations recommended a stronger implementation of the existing Act (2007) – especially with a focus on reforming the judiciary and law enforcement, providing security and compensation to the victims, and preventing trafficking.

The Concluding Observations (2012) of the Committee on the Rights of the Child[8] after the **Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography** show that there is much work to be done in combating human trafficking in children in Nepal.

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7. UN Office of the High Commissioner on Human Rights (2011).Report of the Working Group on the Universal Periodic Review. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement>
8. UN Office of the High Commissioner on Human Rights (2012).Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography – concluding observations. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/442/73/PDF/G1244273.pdf?OpenElement>

It recognises the Human Trafficking and Transportation (Control) Act (2007) as a positive measure in fighting trafficking in children. However, although there has been an incorporation of some of the provisions of the Protocol into national laws, domestic legislation is still not fully in compliance with all of them.

The committee also observed that there were no legal provisions that define and prohibit child prostitution or punish the act of procuring and providing a child for prostitution. Additionally, child pornography is not specifically addressed in any laws of the state party, including the electronic transactions act.

The Committee is concerned with the lack of comprehensive data on crimes such as trafficking and lack of training of the relevant professionals such as police, lawyers, judges, social workers. For these concerns, the committee recommends improving data collection and training of the relevant parties.

The committee comments that although there has been an improvement in the legal framework and policies to combat trafficking, the root causes of trafficking – poverty, gender inequality, caste discrimination – are not tackled. Active measures to improve policies and programmes to combat the root causes of trafficking have been recommended.

Another concern that the committee raised is that adoption in Nepal is inadequately regulated, thus leaving children at risk of being trafficked. It recommends the development and implementation of strict criteria on adoption of children.

The committee also reported inadequate measures in identifying, reporting and investigating cases of trafficking.

Finally, the committee emphasised the lack of privacy, legal representation and protection that victims of trafficking face during the criminal justice process, and a lack of rehabilitation and reintegration shelters thereafter.

US State Department's 2012 Report on Trafficking in Persons in Nepal[9] recommended an improvement in the law enforcement agencies against trafficking – especially through increasing efforts in identifying government officials who are complicit in trafficking – and suggested the institution of a formal procedure to identify and rescue victims of trafficking. Along with this, an improvement in cooperation with Indian officials was recommended. It also suggested awareness raising programmes targeted towards potential victims of trafficking and professionals who deal with cases of TIP. It called for the improvement of witness protection mechanisms. It also recommended that victims of trafficking not be criminalised for prostitution or forgery of documents, and that rescued victims be provided with citizenship documents upon return. It recommended increasing ways for which female migrant workers would migrate safely to the Gulf. And finally, it recommended the ratification of the 2000 UN TIP Protocol.

In 2012, Nepal has been placed in Tier 2 by the US State Department's Office to Monitor and Combat Trafficking in Persons. The description of Tier 2 is: Countries whose governments do not fully comply with the TVPA (Trafficking Victims Protection Act), but are making significant efforts to bring themselves into compliance with those standards. It was concerned with the criminalisation of victims of trafficking under prostitution, and it recommended provisions for the safe migration of women. It appreciated the establishment of the Central Crime Investigative Bureau's special unit to investigate trafficking.

9. United States Department of State, 2012 Trafficking in Persons Report: Country Narratives N-S. "Nepal". Available at: http://www.state.gov/j/tip/rls/tiprpt/2012/ [accessed 12 September 2012]

SUBSTANTIVE	PROCEDURAL
Interim Constitution (2003)	Government Cases Act (2002)
Human Trafficking and Transportation (Control) Act (2007)	Government Cases Related Regulations (2002)
Country Code (1963), Chapter 11 on Human Trafficking	Human Trafficking and Transportation (Control) Rules (2008)
Procedural Guidelines for the Prevention of Sexual Harassment against Working Women at Workplaces like Dance Restaurants and Dance Bars[10] (2008)	Evidence Act (1994)
Foreign Employment Act (2007)	Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases, 2064 (2007)[11]
Electronic Transaction Act (2008)	Foreign Employment Regulation (2008)
Money Laundering Prevention (First Amendment) Act (2011)	Extradition Act (2014)
Children's Act (1992)	Mutual Legal Cooperation Ordinance (2012)
Organized Crime Control Act (2014)	Children's Rules (1995)

10. Writ No. 2833, (2062). Came into effect in 2065 (2008).
11. Adv. Sapana Pradhan Malla vs. Government of Nepal, Writ No. 3561, 2063 (2006).

2.2. Domestic Legal Framework

The following are the domestic laws relevant to human trafficking:

The Human Trafficking and Transportation (Control) Act 2007 will be discussed extensively in the chapters to come, but another law that is extremely relevant to human trafficking is the Foreign Employment Act 2007. This is because there is a nexus between foreign employment and trafficking, and it is often that cases of human trafficking are tried as foreign employment. Thus an understanding of the laws on foreign employment is also essential.

The Foreign Employment Act 1985 was replaced by the Foreign Employment Act 2007. The GoN has also issued Foreign Employment Rules, 2008 to facilitate foreign employment and to protect the rights of migrant workers. These laws adhere to principles of gender and human rights, and also include positive efforts to encourage women to go through formal mechanisms such as the reimbursement of pre-departure orientation fee of women migrant workers (WMWs) under the Foreign Employment Rules. The provisions embodied in the Act and Regulation can be broadly categorized into (i) provisions relating to establishment of the structure for management of foreign employment (ii) provisions relating to regulation of recruitment agencies (iii) provisions relating to non-discrimination and equality (iv) provisions relating to interests and rights of migrant workers (v) provisions relating to offences and punishments (vi) provisions relating to monitoring, investigation and prosecution.

One of the main issues with the Foreign Employment Act 2007 is its failure to properly account for undocumented workers. The Preamble of the Act has focused on regularizing foreign employment, but it does not cover the protection of the rights and interest of all migrant workers including undocumented workers. Although the definition does not explicitly exclude the undocumented workers, it has not included undocumented workers specifically as in the International Convention on

the Protection of the Rights of All Migrant Workers and Members of Their Families.[12] Furthermore, the Act provides no specific provision for any kind of support in case of forced labour or labour exploitation. And the chapter on offense and punishment overlap with the offenses and punishments outlined in the 2007 TIP Act.[13]

Additionally, the Act does not provide the Department of Foreign Employment the ability to initiate an inquiry of its own accord, but only to make an inquiry in cases where a complaint has been received.

12. Foreign Employment Act 2007, s. 2
13. Foreign Employment Act 2007, ch. 9

CHAPTER 3

COMPARISON OF OLD AND NEW TIP LAW

Human trafficking was declared an offence during the reign of King RanaBahadur Shah in the 18th century. Subsequently, the National Code of 1853 prohibited the slave trade, human trafficking, and the act of separating children from mothers and selling them.[14]

In 1986, the Human Trafficking (Control) Act was enacted, making the chapter of Human Trafficking of the Country Code essentially inoperative, unless there were provisions that were not covered by the Act.

As the nature, forms and mode of trafficking changed, and an understanding of the crime developed, the **Traffic in Human Beings (Control) Act 1986** was replaced by the **2007 TIP Act**. While the TIP Act of 1986 was more focused on crime control, the 2007 Act takes a more victim-centric approach. While the previous act conflated human trafficking with prostitution, the 2007 TIP Act broadens the definition of human trafficking to include other forms of exploitation. And finally, the 2007 TIP Act attempts to reflect the definitions of trafficking used in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) of the 2000 Convention against Transnational Organised Crime, although this has not yet been ratified by Nepal.

The definition of human trafficking has been broadened by the 2007 TIP Act to include other forms of exploitation besides exploitation for prostitution, including the organ extraction and labour exploitation, among others. The previous Act conferred wide discretionary power on judges to decide on punishments, but the 2007 TIP Act provides standard

14. IIDS and UNIFEM (2004).Status and Dimensions of Trafficking within Nepalese Context. Kathmandu, Nepal: IIDS and UNIFEM, p. 6-9.

S. NO	Human Trafficking and Transportation (Control) Act 2007	Traffic in Human Beings(Control) Act 1986
1.	**Preamble :** Whereas it is expedient to control the acts of human trafficking and transportation, and to protect and rehabilitate the victims of such act by enacting law, the 'Legislature-Parliament' has enacted this Act.	**Preamble:** Given that it is desirable to control women trafficking in order to safeguard the interest of the general public and maintain good conduct, His Majesty King Birendra Bir Bikram Shah has with the advice and consent of the National Panchayat enacted this act.
2.	**Definition:** Section 2, 3 and 4 of the act has broadened its definition and has incorporated other forms of exploitation such as labor exploitation and organ extraction among others. Act has also included separate definition of exploitation and victim.	**Definition:** Section 4 of the Act constituted the offence of human trafficking, but, by relating it to commercial sex work and sale of human beings. The definition was narrow.
3.	**Section 6. Certifying the Statement:** Once the statement is certified by the district court; It is taken as an evidence even if the victim is not present during the court proceedings.	Statements used to be certified by the nearest district court if the person filing the complaint was the victim.
4.	**Section 7. Arrest and investigation:** No need to take prior approval of the court.	Prior approval of court was necessary for initiation of the investigation.
5.	**Section 8: Accused in Custody while Prosecuting** Except the case of prostitution, court shall keep the accused in custody while prosecuting cases on human trafficking.[15]	**Whether to detain any accused while proceeding of the case is decided based on the** evidence available for the time being, any person accused of the following offence appears to have been guilty of the offence or there are reasonable grounds based on such evidence to believe that such person has been guilty of the offence, the office shall, unless proved to the contrary, try the case by holding the accused in detention.[16]

15. However this provision has been declared ultravires by the Supreme Court of Nepal in the case of KamleshDuvedi vs. Government of Nepal, Writ No. 064-WS-0027. Decision Number 8139, Decision Date 2066-3-11
16. No. 118 (2) of Chapter on Court Proceedings of Country Code

	Section 10. Right to keep separate Legal Practitioner: The law has provided the right to the victim to keep an additional law practitioner to represent his/her case during court hearings.	There was no provision for keeping separate legal practitioner.
	Section 11. Provision of Translator and Interpreter : The victim, with the permission of the court can manage a translator or interpreter if the working language used by the court is not understandable by the victim.	Provision of translator and interpreter did not exist.
	Section 12. Act related to Rescue: Government of Nepal is responsible for managing the rescue of any Nepali Citizen sold in foreign land.	There were no separate provisions related to rescue.
	Section 13. Rehabilitation Center: Government of Nepal has been supporting various rehabilitation centers and providing trainings to the survivors and has been continuously monitoring these centers.	There were no facilities for rehabilitation centers.
	Section14. Rehabilitation Fund: Rehabilitation fund has been established for the operation of the rehabilitation centers.	There were no rehabilitation funds as there were no rehabilitation centers.
	Section15. Punishment: Standard punishment has been set for different types of offences.	Act conferred wide discretionary power on judges to punish the offenders
	Section 17. Compensation: Victim is provided compensation which shall not be less than half of the fine levied as punishment to the offender.	Victims were not provided compensation.
	Section.18. Seizure of Property: Any movable or immovable property acquired as a result of this offence shall be seized.	There were no provision regarding seizure of property.
	Section 19. Award: If anyone is rescued or a person involved in an offense is arrested through the information provided by the Informant, such Informant will be rewarded with 10 percent of the fine levied as punishment.	Informants were not provided awards.
	Section 20. Confidentiality of the informant: The name and address of the Informant will always be kept confidential.	There were no specific provisions for maintaining the confidentiality of the informant.

	Section 21. Exemption from penalty: There is exemption from penalty to the accused after fulfilling some prerequisite.	There were no provisions regarding the exemption from penalty.
	Section 25. Prohibition against disseminating confidential information: Anyone responsible for disseminating confidential information without consent of the victim is subjected to fine.	There were no provisions for the prohibition of dissemination of confidential information.
	Section26. Security: Upon request, security is provided to victim/witness.	Special provisions for security of survivor/witness were not envisaged.

punishment for the different kinds of exploitation. The 2007 TIP Act does not require the prior approval of the court to begin procedures for arrest and investigation. The 2007 TIP Act provides measures for victim/witness protection and compensation to the victims. For the first time, the law itself has included a provision of a separate legal representative in the Act, and there is also a provision for a translator/interpreter.

While the Traffic in Human Beings (Control) Act 1986 took a crime control approach to address human trafficking, the 2007 TIP Act takes a more rights-based and victim-centric approach. The TIP Act has broadened its definition and brought victim centric provisions, and an examination of whether these changes are actually implemented will be explored in the next chapters.

CHAPTER 4

IMPLEMENTATION STATUS

There has clearly been a significant change in the legal framework on human trafficking as of 2007. What is most important now is to examine whether six years after its enactment, these changes have translated into a victim-centric and just approach in the actual prosecution of human trafficking cases. Questions remain regarding whether the definition of human trafficking has indeed expanded, whether perpetrators are appropriately punished, whether victims are being provided the services that they deserve. Such are the questions that this chapter aims to explore. Each section of the TIP Act will be examined to determine to what extent the provisions contained in it are implemented and what kind of obstacles are faced by victims and service-providers.

4.1 Definition of Human Trafficking

Even if Nepal is yet to be party to the Palermo Protocol - a supplementing protocol to the Convention on Transnational Organized Crime – many aspects of this protocol are covered by the newly enacted law.

One of the biggest challenges faced by a survivor of human trafficking is the social stigma that is associated with victims of the crime. This stigma exists primarily because trafficking is conflated with prostitution, and because prostitution is seen as undignified. Because the majority of sex workers are women, trafficking is therefore seen as a women's issue. The TIP Act has made efforts to eradicate this conflation by broadening the definition of trafficking on sexual exploitation.

The Act has broadened the definition of trafficking detailing out the means and purpose of trafficking and transportation. Sections 4(1) and 4(2) of

the Act not only prohibit trafficking[17] and transportation[18] but distinguish the act of 'human trafficking' from the act of 'human transportation'. The Act includes organ extraction and prostitution within the definition of human trafficking, and includes various forms of exploitation as purposes for human transportation. The Act covers transportation of individuals, not only to foreign destinations but also within the territory of Nepal. The act applies to all offenders even if the crime is committed in a foreign land against a Nepali citizen.

Section 2 of the Act defines **'Exploitation'**as an act of keeping human beings as slaves and bonded. This word also implies the removal of human organs except otherwise determined by existing law.[19] This new definition of exploitation brings labour exploitation within one of the purposes of human trafficking, thus allowing for the law to also be applied in cases in which men are trafficked.A "**Child"** is defined as individuals who have not reached the age of 18, while the previous Act defined children as those not yet reached age 16.[20]

Although the 2007 TIP Act includes broader definitions for human trafficking and transportation, it demonstrates that the legal discourse still implicitly conflates human trafficking with prostitution. Section 4(1)(b), 4(1)(c) 4(1)(d) mention prostitution and organ extraction explicitly within the definition of trafficking. No other forms of exploitation are mentioned, and therefore the Act punishes the exploiters as human traffickers **only** in cases where the exploiter has put the victim into prostitution or has

17. Human Trafficking and Transportation (Control) Act 2007s. 4(1) defines trafficking as:
    - Selling or purchasing a person for any purpose
    - Pushing someone into prostitution, with or without any benefit.
    - Extracting human organs expect as determined by the law.
    - Engaging in prostitution as a client
18. Section 4 (2) of the Human Trafficking and Transportation (Control) Act 2007that defines Trafficking as: Taking a person out of the country for the purpose of buying and selling. And also taking anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or hand over him/her to somebody else for the purpose of prostitution and exploitation.
19. Human Trafficking and Transportation (Control) Act 2007, s 2(e)
20. Human Trafficking and Transportation (Control) Act 2007, s. 2(d)

unlawfully extracted organs, but punishes the exploiter who has forced the victim into bonded labour or other forms of exploitation as a human transporter.

Additionally, the Act prohibits forcing anyone into prostitution, and engaging in prostitution as a client. However, the Act is silent on criminalizing women in sex work.

IMPLEMENTATION STATUS

A. Wider Definition of Trafficking Used to Prosecute Cases of Organ Extraction, Labour Exploitation

The nature and definition of trafficking have been somewhat broadened by the TIP act: cases of organ extraction and exploitation of domestic workers have been registered in court as cases of human trafficking.

CASE STUDY 1

ORGAN EXTRACTION CASES PROSECUTED AS HUMAN TRAFFICKING

Until recently victims of organ trafficking were extremely reluctant to file cases against traffickers. Either because they were not aware that this constituted human trafficking, or because they felt threatened by the perpetrator. However, through the initiative of Legal Aid and Consultancy Centre (LACC), Nepal Tamang Women Ghedung (NTWG), and Forum for Protection of People's Rights (PPR) cases of organ trafficking have been registered in Kathmandu and Kavrepalanchowk. FIRs were filed by five survivors of illegal kidney extraction: in Kavre on April 9th and 10th, 2013, and the metropolitan police circle in Kathmandu on May 13th, 2013. Through these FIRs an investigation of kidney trafficking rackets in Kathmandu was carried out, and a total of 10 people were arrested.

This initiative sets a legal precedent in which illegal organ extraction is prosecuted as human trafficking thus allowing human trafficking to be seen as a crime that is multi-faceted, transnational and organized,

and not simply as a women's issue. Similarly, in another case of kidney trafficking (Nepal Govt vs. Binod Dhakal, Krishna Bd. Darji) on June 1st, 2013 Kathmandu District Court gave a verdict that the accused Mr. Dhakal and Mr. Darji to be imprisoned for 10 years and fined Nrs. 200,000 each and compensate the survivor with Nrs. 200,000 as per HTTCA.

CASE STUDY 2

LABOUR EXPLOITATION PROSECUTED AS HUMAN TRAFFICKING

SMR is a mother of two from Churiyamai VDC of Makwanpur District. Given her financially difficult situation, she turned to her friend, Ms. Kamala Rumba, who told her that she would be able to find her a job in Bahrain. Taking the offer for the sake of her children, she got on an airplane on the 28th of November , 2009 to Bahrain. At the airport, she was met by Kamala's sister, Sunita, and a Bahraini man, Jaafar.

The work that she found waiting for her was not what she had expected: she had to work from 4am to 12am, for employers who were unsatisfied with her work. She turned to Kamala, Sunita and Jafaar for help, and she gave each of them NRs. 2000 in exchange for a promise for a better job. After not receiving her salary for some time, SMR asked Jaafar – and as an answer she got physical abuse and repeated rape. When she managed to escape from Jaafar, she started working in another house for a woman who eventually helped her return to Nepal. By December 22nd, 2010 she was back on Nepali soil.

SMR filed a complaint against Kamala and Sunita in the District Police Office in Makawanpur, and a month later, the District Court's verdict was that Kamala and Sunita were guilty under Section 3(1), 4(1) (a) (b) and 4(2) of the Human Trafficking and Transportation (Control) Act 2007. Kamala appealed to the Appellate Court in Hetauda, and the court granted her release on bail. On March 5, 2012, Kamala was declared guilty and sentenced to 20 years in prison and a fine of NRs. 200,000, by which time she had already fled to Bahrain. However this case is a result of the declration of section 8 void , as detention is now discretion of the judges and in the absence of mechanism to restrict the mobility of accused outside the country or tracking system of internal mobility is made, this provision may be determental for rule of law.

CASE STUDY 3

DOES HUMAN TRAFFICKING AND TRANSPORTATION CONTROL ACT INCLUDE TRASPORTATION FROM FOREIGN LAND TO NEPAL UNDER TRAFFICKING OFFENCE ?

This case of human trafficking for the purpose of prostitution involves 4 victims: Ka-Kumari, Kha-Kumari, Ga-Kumari, and Gha-Kumari. These girls from India were lured to come to Nepal by Tara Chhetri by giving false promise of better job. She then brought each of these girls to her house in Lalitpur, a brothel, and forced them to engage in prostitution. Initially, there was a debate whether this case should be dealt under trafficking or not as there was transportation from foreign land to Nepal. Defendant lawyer raised the question that HTTCA includes transportation from Nepal to foreign land but it is silent in regard to the transportataion from foreign land to Nepal. After this discussion, now the case is ongoing in Lalitpur District Court under HTTCA .

(Source: Ka Kumari V s Tara Chhetri)

B. Continued Conflation of Human Trafficking with Prostitution

Despite the evolution of the definition of TIP, social and legal discourses still conflate human trafficking with prostitution. One of the interviewees working with foreign migrants felt that men are unwilling to file their cases of exploitation as human trafficking as they feel that human trafficking is a women's issue and implies sexual exploitation.[21] Additionally, the TIP Act itself considers the crimes of putting someone into prostitution and organ extraction as human trafficking[22], but considers forcing someone into other forms of exploitation as human transportation.[23] While this shows

21. Interview with key informants
22. Human Trafficking and Transportation (Control) Act 2007, s. 4(1)(b), (c)
23. Human Trafficking and Transportation (Control) Act 2007, s. 4(2)(b)

CASE STUDY 4

CRIMINALIZATION OF SEX WORKERS

On Friday, February 27 2009 a brothel in Kathmandu was raided. While the TIP Act states that anyone who engages in prostitution has a client is to be prosecuted under the Act's definition of Human Trafficking, the clients were set free. On the other hand, the sex workers were detained and prosecuted under the Some Public (Crime and Punishment) Act 1970.

This demonstrates that, while the TIP Act has not yet been able to criminalize those engaged in prostitution as clients, though law is based on the decriminalization concept, criminalize pimp, client but not the sexworker as promoted by Swedish model. Law enforcement is using Public offence Act which is to maintain pubice safety and security in the country not to protect women but crimilanize her vulnerability.

a lack of clarity in the legal discourse regarding the difference between human transportation and human trafficking, it also demonstrates the emphasis that is put on prostitution in defining human trafficking.It is undeniable that the discriminatory and patriarchal mentality in Nepal and in other destination countries leaves women vulnerable to exploitation and that the form that this exploitation takes is often sexual. However, it is also true that the human trafficking can be done for purposes other than prostitution as well, and that the conflation of human trafficking stigmatizes survivors of trafficking, criminalises sex workers, and fails to provide justice to individuals who have been trafficked for purposes other than sex work.

C. Cases of Human Trafficking Filed Under Foreign Employment Act

There is an overlap in the definition of human trafficking between the TIP Act (2007) and the Foreign Employment Act (2007), and the conflation of TIP with prostitution means that many cases that do not involve prostitution but could fit the legal definition of trafficking are prosecuted under the Foreign Employment Act (2007). While the Foreign

Employment Department does not have data on the number of cases that were transferred as cases of human trafficking, an individual who worked at the Department claims to have forwarded over a hundred cases of human trafficking to the police, but found that not a single one was registered as human trafficking.[24] This suggests that it is far easier to file cases as foreign employment fraud rather than report these cases to the police to be filed as human trafficking.

CASE STUDY 5

FOREIGN EMPLOYMENT FRAUD OR HUMAN TRAFFICKING?

The Parvasi Nepali Coordination Committee (PNCC) and the International Organization of Migration (IOM) rescued three Nepali men who were imprisoned in Malaysia after running away from the company that they worked for as it paid them one third the minimum wage. News reports and interviews with key informants have revealed many such stories, and most of them involving men. In some cases, the men are stranded and then rescued, in others the lucrative employment promised to them turns out to be a job in exploitive conditions. The legal framework of Nepal remains unclear as to whether such cases should be prosecuted under TIP act or the Foreign Employment Act.

When asked whether cases such as those described above should not be considered TIP, interviewees responded that they should as they fit the legal definition, but they are not, primarily because the survivors themselves feel that human trafficking is a women's issue and that they therefore have not been trafficked.[25] These cases are usually sent to the Foreign Employment Department and filed under the Foreign Employment Act (2007). Filing the case as fraud under the Foreign Employment Act means that the case is resolved more quickly as there is a separate Foreign Employment Tribunal

24. Interview with key informant
25. Interview with key informant

which ensures speedy trials. Additionally, the Foreign Employment Act compensates the victim the amount that he or she paid the perpetrator while going abroad with an additional fifty percent of that amount.[26] The TIP Act on the other hand, while it contains provisions for compensation, is not able to ensure this compensation to the victim. However, the Foreign Employment Act is more lenient in terms of punishment to the accused.

There is a system in place in the Department of Foreign Employment whereby if a complaint is received and the Department finds that it fits the definition of human trafficking, they also report it to the police. However, they do not follow up on whether the case is registered, and a police interviewee claims that they seldom receive such reports from the Department.[27] Without a systemized procedure for the Department to report such crimes to the police, it seems that several cases of human trafficking slip through the cracks. Also Department lacks clear recording system.

4.2 Reporting

The TIP Act in section 5 provides that anyone may report a crime of human trafficking to the nearest police station, and that the confidentiality of the informant must be maintained during this reporting.

IMPLEMENTATION STATUS

There are several estimates on the number of women and children being trafficked out of Nepal. The 2009/2010 Report of the Special Rapporteur of the National Human Rights Commission places this estimate at between 5,000-7,000. However, as TIP is a transnational, organised crime, it is extremely difficult to establish exactly what this number is. Regardless, it is clear that the number of cases being reported is far below even the lowest estimate of number of people being trafficked.

26. Foreign Employment Act 2007
27. Interview with key informants.

Although the law allows individuals besides the victim him/herself to report an incident of human trafficking, and the numbers of cases registered with the police have increased throughout the years, this number still remains far below the estimated number of individuals actually being trafficked. Interviewees cited several reasons for this, some involve decisions made by the victim themselves to not report the crime, and others involve decisions by law enforcement agencies.

Table: Number of TIP Cases Registered with the Police

Year	Number of Cases
2064-2065	123
2065-2066	139
2066-2067	161
2067-2068	184
2068-2069	118
2069-2070	144

Source: Women and Children Service Director, Nepal Police.

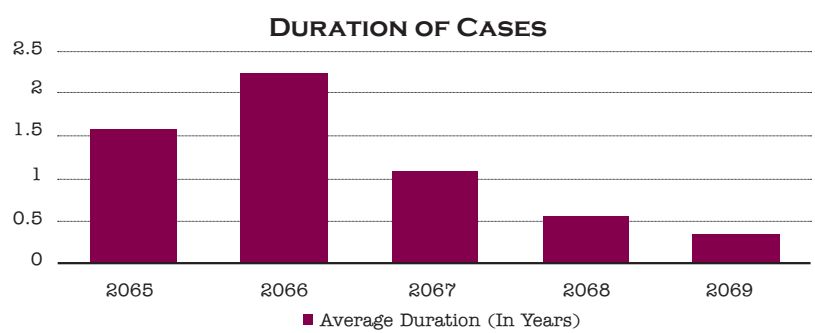
There are several reasons for the under-reporting and under-registration of human trafficking cases. Many cases of trafficking are a result of fraudulent promises for foreign employment. Due to the overlap in the Foreign Employment Act and the TIP Act, many cases are reported to the police or investigated by the Foreign Employment Department.[28] Additionally, due to the fact that trafficking is seen as women's issue, many instances of trafficking involving men as victims are not reported as human trafficking and are instead reported under the Foreign Employment Act.[29]

28. Interview with key informant
29. Interview with key informant

The social stigma attached to victims of human trafficking means that victims would often rather return to their homes and be rehabilitated back into society discreetly, and they do not feel that they can do this if they report the crime. Additionally, the lengthy process of court trials dissuades victims from reporting the crime, as they feel that it will simply extend their suffering and stigmatization. Victims would often rather use informal mediation mechanisms to settle cases of human trafficking, as they feel that informal mediation is far more discreet and swift.

Time consumed for filing the case

The District Court Regulation stipulates that cases including trafficking require swift trials, speedy witness and evidence examination, and continuous hearings.[30] Continuous hearings ensure that cases of human trafficking are prosecuted swiftly so that perpetrators do not abscond, so that victims are not threatened by the accused throughout the duration of the court procedures, and so that victims are provided justice at the earliest possible.However, continuous hearings are not implemented in most courts around Nepal. This means that court procedures for human trafficking cases are extremely long. This either deters survivors from reporting the case, or leaves those who have reported the crime burdened with the court procedures for months, if not years. While the findings demonstrate that only very few cases were heard through continuous hearings, many have received speedy trials, with many cases being decided



30. District Court Regulations, r. 23

within a few months. Additionally the duration of cases has decreased very steadily since 2066.

Human trafficking is an organised crime, and the lives and families of victims of trafficking are often threatened by the perpetrators so as to dissuade them from reporting the crime. On the other hand, the perpetrators or those involved in the crime are often close relatives of the victim. For this reason the victim is reluctant to report the crime. Members of the general public do not generally report cases of human trafficking although the Act enables them to. Reporting is usually done by the victim him/herself, close relatives, or organisations working on safe migration.[31]

Supreme Court Order on Continuous Hearings

On July 31st, 2013 the Supreme Court decided in favour of a PIL on the implementation of continuous hearings filed by Forum for Women, Law, Shakti Samuha and Maiti Nepal. The litigation demanded the following:

- An order to the Home Ministry, Police Headquarters and Office of the Attorney General to ensure whenever possible that all accused are present in court during the investigation process of such serious cases.
- An order to the district court that when the charge sheet is being filed against the accused that have already been taken into custody, all witness statements are to be taken at the same time.
- An order to district courts to establish a case hearing calendar to ensure the implementation of continuous hearings in cases such as human trafficking, rape, abduction, domestic violence.
- An order to Supreme Court for the adoption of a guideline on the implementation of continuous hearings to be drafted and implemented.
- An order to the Appellate Court to ensure the effective monitoring of whether continuous hearings are being implemented in all courts as required by the regulations issued by the Supreme Court, and subsequently to ensure this implementation.

(Maiti Nepal/Shakti Samuha/FWLD vs Office of Prime Minister and Council of Ministers et. al./ Writ No. 069-WO-0258)

31. Interview with key informants; analysis of decided cases.

Under-registration of first instance reports of TIP

Most of the interviewed organisations working on combating TIP did not think that there was a problem of the police not registering cases after the cases had been reported. However, the cases that are not registered are not the ones that are brought forth by organisations, but rather cases where the individual victim or witness reports a case by him/herself. Many police officers claim that the reason for this may be the fact that the burden of proof rests on the accused once the case is registered, and they feel that there is a risk that an innocent person could get accused.[32] This shows two things: first that there is a tendency to doubt victims of trafficking. And second that although FIRs are meant to be registered immediately, the police are using their discretion to decide whether there is enough reason to suspect the accused and whether or not to register the FIR.

CASE STUDY 6

REFUSAL TO FILE FIR

FWLD is currently providing legal aid in a case of human trafficking. The relationship between a husband and wife in question had not been smooth: while the husband lived in Kathmandu, he refused to accommodate the wife who was staying at the in-laws' house in Jhapa. When she finally convinced him to let her come to Kathmandu, he was never at home and she eventually discovered that he was having an extra-marital affair. They had a shop in Kathmandu, and when the goods ran out he convinced her to go to Jhapa to restock. She had initially refused to go without him, but he insisted that she go with good friend of theirs. When they got to Jhapa, they checked into a hotel room. And while the woman was sleeping a man came into the room in the middle of the night claiming to have bought her from her husband. A few minutes later, her husband along with the police, entered the room and took the wife and the other man into custody accusing them of having an extra-marital affair. At the police station, the police forced the woman to sign a statement claiming that she wanted to separate from the husband and be with the other man.

32. Interview with key informant

Eventually, she returned to Kathmandu and with the help of FWLD sent FIR to be filed at the police in Hanuman Dhoka. The police refused to file the FIR until the forced statements from the wife, husband and the other man taken in Jhapa were sent to them. But four months later, the FIR was still not registered. Only after a lawyer from FWLD wrote to the Office of the Prime Minister and Council of Ministers was this FIR registered two days later.

Additionally, although the Act allows anyone to report a crime of human trafficking, police seldom register cases if the victim is not present, either because he or she has not yet returned or been rescued from the location to which he or she has been trafficked to.

Furthermore, as there is only a record for cases of TIP registered, there is also a lack of accurate data on the number of cases that were reported but not registered.

4.3 Certifying the Statement

As per the law[33], the initial statement of the complainant is certified as soon as possible. If the person filing the complaint is a victim, then the police officer is under the obligation to record the statement of the victim immediately and take him/her to the District Court for authentication/ certification of statement at the soonest. Even if the offence does not fall within the jurisdiction of that particular district court, the district judge must certify the statement. After the authentication of the statement of the victim, it can be taken by the Court as evidence even if the victim does not appear for the court proceedings.

33. Human Trafficking and Transportation (Control) Act 2007, s 6

IMPLEMENTATION STATUS

Although this section says that once the statement is authenticated, victim need not appear in court, section 15(6) talks about punishing the victim in case of failure to attend court upon a summons. Though the act says that once the statement is authenticated, victims need not appear in the court, in instances of failure to do so, they have even been punished. In response to a PIL filed by FWLD, the Supreme Court of Nepal ordered for the revision and amendment of section 15(6). On the other hand, there is no proper mechanism for summoning the victim as sometimes they are not notified of the summons.

CASE STUDY 7

THE CRIMINALISATION OF A VICTIM[34]

A few years ago, Ms. MKC was persuaded by Jyoti Rai that she would be taken to Kuwait to brighter financial prospects and a better future. Naturally, MKC agreed. Rai paid for her passport and sent her to India, where she was met by Prem Adhikari. Through Bombay, she was sent as domestic work to Kuwait, where after enduring numerous accounts of sexual and physical abuse and no pay, it became clear that she had been sold by Rai for sexual exploitation and forced domestic labour. Realising this, MKC escaped and reported to the Nepali police.

MKC gave her First Instance Report (FIR) and, as the procedure goes, was taken to the District Court much later to testify this statement. In doing so, she maintained that the FIR was not one that she had given, but that the signature on it was indeed hers. Thus, she gave a slightly more detailed statement in the District Court. Despite the slight difference, the district court decided in favour of the victim and gave Jyoti Rai a mere 2 years in prison, although the Human Trafficking and Transportation (Control) Act (2007) prescribes 10-20 years for the offender who traffics anyone for any purpose.

It is true that the FIR is one of the major and most direct pieces of evidence used in arguing a case. But what is also true is that victims are threatened and

34. Appeal Court Raj Biraj. State Crime Case 2067, Appeal No. 05-067-01291/CS-0206

easily persuaded in such traumatising cases to give contradictory statements – either by the accused themselves or even by the harassing behaviour of the police or court officials. And in fact, by prescribing that the victim giving the FIR must be taken immediately to the court to certify the statement, the Act (2007) demonstrates that it is conscious of this fact. The rest of MKC's story tells of a lack of sensitivity to and awareness of this issue.

Rai appealed her sentence and requested to be released. On the other hand, the Government of Nepal appealed that the sentence was too short, and that it should be the full 20 years. On the grounds that xxx denied that the FIR was hers – although her following statement in the District Court still pointed towards Rai's Guilt – the Appeal Court ordered Rai's release and instead gave the victim a fine of NRs. 3,000 for providing false information, citing Section 28 of the Government Cases Act (1992).

4.4 Arrest and Investigation

The TIP Act[35] has set some special criteria for carrying out investigation at any time if there is a chance that the offender will escape or evidence relating to the offence will disappear or be destroyed if immediate action is not taken.

IMPLEMENTATION STATUS

Although this is a positive aspect of the law, there are several complications during the arrest and investigation. First of all, human trafficking is often a transnational crime. As Nepal's only extradition treaty – that with India -- does not include the extradition of individuals accused of human trafficking, it is difficult to arrest perpetrators of the crime who are outside of Nepali territory. Another challenge in regard to the investigation is the lack of bilateral scientific cooperation, something which would play a vital role in this kind of transnational offence.

35. Human Trafficking and Transportation (Control) Act 2007, s. 7

Additionally, FIRs are often registered only after the pressure of the public and sometimes victims are asked to show where the crime occurred to the police, something which is very difficult for a crime that is transnational and organized in nature.

Some interviewees felt that the 25 day limit in investigation before a case is to be filed in court is not long enough for cases of human trafficking.[36] While this 25 days limitation for investigation is standard for state related criminal cases, human trafficking is a very complicated crime with the involvement of multiple individuals and with evidence to be collected from within and outside the country.

4.5 Burden of Proof

The TIP Act places the burden of proof on the accused.[37] This means that any person accused of the crime of human trafficking or transportation of humans has to prove that he/she is innocent by furnishing the requisite evidence. Survivors of human trafficking seldom have proof that they have been trafficked – most often they are asked for bus or airplane tickets, which they have not retained from their travels. As other kinds of proof are also extremely difficult to obtain, the burden of proof is shifted onto the accused.

IMPLEMENTATION STATUS

Some interviewees[38] felt that universal principle of criminal justice which presumes innocent until proved guilty should not allow for the burden of proof to fall on the accused. Because of this provision, sometimes police are reluctant in registering FIRs as they feel that cases are often fabricated and that registering the FIR risks implicating innocent individuals.

36. Interview with Key informant
37. Human Trafficking and Transportation (Control) Act 2007, s. 9
38. Interview with key informants

4.6 Right to Keep Separate Legal Practitioner

As human trafficking is a state-related offense it is prosecuted by government attorneys. For the first time the Act[39] itself has explicitly stated that a victim is allowed to keep additional legal professionals such as legal aid or private lawyers in cases of state-related crimes. A private lawyer can help strengthen the case of victims and help them access to justice. Such a provision can also reduce incidences of hostility as victim can interact more with and be supported by private lawyers.

IMPLEMENTATION STATUS

Most victims are not aware of this provision and in instances where they are, they are unable to afford a private lawyer. However, several international and national governmental organizations are providing free legal aid to

Directives issued by Supreme Court of Nepal

a. For the issuance of Mandamus to the subordinate District Courts for providing information to the victims and witnesses on the date of hearing and the decision of the court on cases filed under the Human Trafficking and Transportation (Control) Act, 2064.

b. For issuance of Mandamus in the name of Nepal Police to make arrangements for providing information concerning the whole process of investigation.

c. For issuance of Mandamus in the name of Attorney General of Nepal making mandatory arrangement for providing a copy of the charge sheet to the victim witness after it is filed (in the court) and also about the compensation amount according to the judgment after the decision is made by the court, and also for taking necessary steps towards realization of the compensation amount.

(Source: FWLD vs. Office of Prime Minister and Council of Ministers et al, Writ No. 068-WS-0045, NKP 2070, Volume No: 3, Decision No: 8973, Page No: 326)

39. Human Trafficking and Transportation (Control) Act 2007; s 10

victims of trafficking.[40] The Nepal Bar Association, for instance, provides free legal aid to victims in grave cases. More projects are available for legal representation as a defence lawyer than to the vitictm.[41]

The filing of an appeal to a decision made by the court must be initiated by the government attorney. This cannot be done by the survivor alone, and thus a separate legal representative cannot appeal.

On the one hand, the Act allows additional legal representation, but on the other hand in the name of the confidentiality, legal representatives are often denied access to information and decisions related to cases.[42] Principle of maintaining confidentiality for justice has been misused not realizing that if lawyers after having information on case has a duty to maintain the confidentiality, in case of disclosure the liability goes to the person who has information of that case. Private lawyers also often do not have information on the date of hearing and other practical information related to cases, and this proves an obstacle for the effective representation of the victim. In fact not easy to get power of attorney of victim to represent them in the court unless they are living in a rehabilitation shelters. Even after recognizing right to be represented by the private lawyers in human trafficking cases mechanism to facilitate the process neither realized nor recognized by the state machineries.

4.7 Provision of Translator and Interpreter

The 2007 TIP Act provides that the victim has a right to a translator and interpreter. The individual unable to understand the official language is to request to District Committee for a translator.[43]

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40. E.g. The Asia Foundation with the support of USAID is providing free legal aid to the victims of trafficking in six districts: Kathmandu, Kavrepalanchowk, Sindhupalchowk, Makwanpur, Banke and Kanchanpur
41. Interview with the key informants
42. Interview with key informants
43. Human Trafficking and Transportation (Control) Act 2007, s. 10

The DCCHT[44] is responsible for the preparation and update of a list of experts or interpreters who can translate the official language. This list is to be prepared after issuing a public notice based on the skills of interested individuals.[45]

IMPLEMENTATION STATUS

Even 6 years after the enactment of the Act, 5 years after the enactment of its Regulation and after the formation of DCCHTs, not a single list of interpreters or translators exists. Moreover, during interviews[46] DCCHT members shared that there is not a clear guideline on the criteria for the selection of interpreters. Most CDOs were unaware of the provision at all.[47] And even survivors and NGOs working on combating human trafficking are unaware of the existence of such a provision.[48]

CASE STUDY 8

ROSTER OF TRANSLATOR/INTERPRETER NOT MAINTAINED

In Baitadi, a translator was needed for the case proceedings, but the judge did not know where to find a translator. After getting information from the FWLD, contacted DCCHT, but upon enquiring found out that a roster of translators was not maintained.

44. District Committee is formed pursuant to section 23 of the Act and is headed by the Chief District Officer Member of the team include, government attorney, police, journalist, women and children development officer and women activist working against human trafficking
45. Human Trafficking and Transportation (Control) Rule 2008, s. 10
46. Interview with key informant
47. Interview with the Key informants
48. Interview with the Key informants

4.8 Provision of Rescue

Part 3 of the 2007 TIP Act is regarding provisions for rescue, rehabilitation and reintegration. This part has been commended for being a benchmark in holistic and victim-centric legislation. However, it is arguably the most difficult aspect of the Act to implement.

The Act states that the GoN "shall manage for the rescue of any Nepali citizen sold abroad".[49] This section has been commended as ensuring a holistic treatment of a crime such as human trafficking. Laying such a responsibility on the government enables and demands that the government itself play an active role in prosecuting cases of human trafficking.

The National Plan of Action (NPA) on Human Trafficking states that the GoN will identify individuals who have been trafficked abroad and are requiring rescue, as well as individuals who have been trafficked and have already returned to Nepal. It also plans to collect data on the number of survivors of trafficking who have special need and disabilities, as well as periodically collecting data on Nepali citizens who are victims of trafficking and are still in destination countries. It also plans to rescue children who are in exploitative conditions abroad, and to do this through diplomatic means. The NPA also calls for the establishment and strengthening of mechanisms to rescue victims of trafficking by developing bilateral MOUs, allocate a budget to diplomatic missions abroad on rescue. The NPA calls also for the strengthening of coordination between Nepali diplomatic missions abroad, the Nepali diaspora, and the labour attaché to facilitate the rescue of Nepali citizens.

IMPLEMENTATION STATUS

A. Establishment of Safe Houses

The GoN has safe houses in four countries: Saudi Arabia, Kuwait, Qatar and UAE to temporarily house returnee Nepali migrants.[50] The

49. Human Trafficking and Transportation (Control) Act 2007, s. 12
50. Interview with key informant

establishment of these houses has been commended, as Nepali citizens abroad now have a temporary shelter between being rescued and being repatriated. However, this initiative needs to be expanded substantially as these safe houses can only comfortably shelter about 12-14 people at a time.[51]

B. Rescues Carried Out

In September 2012, a recording system was established by the Ministry of Foreign Affairs to keep track of the number of Nepali migrant workers rescued from exploitive conditions abroad. Between September 2012 and January 2013, MoFA had received 195 requests for rescue from abroad.[52] Excluding this number, FEPB reports that 1767 individuals have been rescued from abroad.[53] Additionally, the table below shows the number of individuals rescued and brought to the 8 rehabilitation centres financially supported by the government:

C. Guidelines on Repatriation

Terre des Hommes, Shakti Samuha, AATWIN, and the Government of Nepal have developed a repatriation guideline for survivors who have been trafficked to India. This guideline includes a set of practical guidelines for facilitating safe and voluntary repatriation of Nepali trafficked survivors.

D. Challenges Faced in Rescue

As Nepal is considered a source country for traffickers many anti-trafficking efforts, both governmental and non-governmental, place a

51. Interview with key informant
52. Government of Nepal (2013).A Report on Anti-Human Trafficking Initiatives Led by Government of Nepal. Ministry of Women, Children and Social Welfare: Singha Durbar, Kathmandu. p. 18
53. Government of Nepal (2013).A Report on Anti-Human Trafficking Initiatives Led by Government of Nepal. Ministry of Women, Children and Social Welfare: Singha Durbar, Kathmandu. p. 18

Government of Nepal
Ministry of Women, Children and Social Welfare (MoWCSW)
Secretariat of National Committee for controlling Human Trafficking
FY 2069-2070 Asadh

District	Rehabilitation Center	No. of Rescue and Relief till Jestha	Rescue and Relief of Asadh	Total Rescue and Relief	Survivors Housed in Shelter Home
Chitwan	Adarsha Nari Bikash Kendra	84	23	107	7
Rupandehi	Maiti Nepal	218	15	233	3
Sindhupalanchowk	Shakti Samuha	17	2	19	8
Kailali	Srijanshil Samaj	21	5	26	9
Parsa	Maiti Nepal	147	29	176	2
Banke	Saathi	239	15	254	15, 2 children
Kathmandu	ABC Nepal	8	0	8	20
Jhapa	Maiti Nepal	603	32	635	33
Total		**1337**	**121**	**1458**	

(Source: NCCHT)

strong emphasis on rescue from abroad. And the inclusion in the Act of rescue as a government responsibility is a very big step forward. However, there are several challenges with regard to rescuing trafficking victims from outside of Nepal.

Firstly, there are no clear guidelines on how the rescue is to be conducted. The law is not clear, nor is it clear exactly whose responsibility this is: the Foreign Employment Board as well as the Ministry of Foreign Affairs are coordinating rescues, while the DCCHTs are also budgeted a very small amount for rescues. Additionally, the police are also involved in rescue. However, they may not have cross-border jurisdiction, nor have transborder agreements or bilateral agreements been entered, nor is there a regional convention in effect on this regard. There are many legal procedures to be considered during rescues, and there are also considerations about where the rescued individual will be housed. Without these clearly defined, it is difficult for any single agency to take responsibility. Whose responsibility in case of in country trafficking and process for rescue and how to collaborate with foreign government or our own government is not clear.

CASE STUDY 9

GIRLS STRANDED IN SARNALAYA DUE TO A LACK OF RAID AND RESCUE GUIDELINES

Three Nepali girls were rescued by the Rescue Foundation and kept in Allahabad, waiting to be repatriated. Maiti Nepal came in contact with these girls and initiated a process for their repatriation, but they were asked for a formal letter from the Government of Nepal, toauthorize Maiti Nepal to carry out this repatriation. On June, 2012 they wrote a letter to the Police Headquarters of Nepal asking for this letter, but they got a reply saying that this was not their responsibility. They then approached NCCHT for the same letter, and NCCHT wrote a letter to the Ministry of Foreign Affairs. Maiti Nepal has not yet received the letter from the Ministry.

On the other hand, the Embassy of Nepal in India have not been able to verify these girls as being Nepali citizens as they do not have the required

identification documents to prove their nationality. As the verification and the letter are lacking, these girls are still in India.

Such a story clearly reveals that due to a lack of coordination between governmental organizations, and in the absence of clear policies and guidelines on rescue and repatriation, victims are not able to be rescued, repatriate and rehabilitated swiftly.

(Source: Maiti Nepal)

Additionally, if the survivor of trafficking is involved in a case abroad – either as a defendant due to immigration issues, or as a witness in criminal cases against traffickers or exploiters – then the destination country often delays in allowing for this individual's return to Nepal. As Nepal does not have extradition treaties that include human trafficking with countries to which many Nepali citizens migrate to (ie. India, Kuwait, Qatar, Malaysia, etc.), immediate rescue is often complicated by these legal obstacles.

FWLD under the CTIP project prepared a model guideline for internal raid and rescue which outlines the methods in which the rescue of a victim of trafficking should take place, who should be involved in the rescue team (health workers, social workers, police). It also outlines what the government's role should be in the rescue.

Shakti Samuha, AATWIN and the Government of Nepal have recently created a Repatriation Protocol to be implemented for repatriation between Nepal and India.

4.9 Provision of Rehabilitation and Reintregration

The 2007 TIP Act places the role of providing rehabilitation centres for the physical and mental treatment, social rehabilitation and family reconciliation of the victims on the government. It also outlines the

responsibilities of the rehabilitation centres.[54] The regulations detail the responsibilities of the District Committee in establishing rehabilitation centres. It provides that the operation of the centre may be handed over to a private or non-governmental organisation and that an institution interested in running a rehabilitation centre must seek approval from the District Committee.[55]

The Act also requires the government to establish a rehabilitation fund for the operation of rehabilitation centres.[56] This is to include funds from the GoN, from national and international organisations, and half of the amount of the fines received from those convicted of human trafficking and transportation as outlined in section 15 of the Act.

The regulations require the rehabilitation centre to form a management committee of which the members are 50% female.[57]

The regulation provides for skilful training of the victims[58], and that the victim shall be kept in the rehabilitation centre until they are reunified with the families, but only for a maximum period of six months.[59]

The Regulations provide that the monitoring of the rehabilitation centres is the responsibility of the National Committee, and also provides a monitoring guideline.[60] The Regulation sets out operation standards for the rehabilitation centre including the provision of legal assistance, medical treatment, psycho-social counselling, and education.[61] It provides that the District Committee may file for the closure of the centre if it is not run adequately.[62]

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54. Human Trafficking and Transportation (Control) Act 2007. s. 13
55. Human Trafficking and Transportation (Control) Regulations 2008, r. 11
56. Human Trafficking and Transportation (Control) Act 2007. s. 14
57. Human Trafficking and Transportation (Control) Regulations 2008, r. 12
58. Human Trafficking and Transportation (Control) Regulations 2008, r. 15
59. Human Trafficking and Transportation (Control) Regulations 2008, r. 16
60. Human Trafficking and Transportation (Control) Regulations 2008, r. 14
61. Human Trafficking and Transportation (Control) Regulations 2008, r. 13
62. Human Trafficking and Transportation (Control) Regulations 2008, r. 18

IMPLEMENTATION STATUS

A. Development of Policy Documents

After the enactment of the TIP Act, two policies on rehabilitation centres have been developed:

- **A National Minimum Standard (NMS)** on victim care, and
- **A Standard Operating Procedure (SOP)** on rehabilitation shelters have also been adopted in 2012.

This is a very important development as these policy documents outline a victim-centric approach to caring for survivors of TIP, and they establish a standard for rehabilitation shelters which is the responsibility of the GoN to monitor and uphold.

B. Government-Supported Rehabilitation Centres and Shelter Homes

The GoN has allocated a rehabilitation fund for survivors of TIP used to provide for their rescue, medical treatment, family reunion, psycho-social counselling, and vocational training. The fund was Nrs. 9,081,000 for July 2012-July 2013.[63] This fund includes half of the fine collected from individuals convicted of human trafficking or transporting, funds from the government budget, and from national and international organisations. However, this amount is still not enough to ensure comprehensive services to survivors of human trafficking.

The GoN is required by the TIP Act to establish rehabilitation centres and shelter homes. The GoN has 8 NGO-run rehabilitation shelter homes in: Kathmandu, Kailali, Banke, Chitwan, Jhapa, Sindhupalchowk, Parsa, and Rupandehi. From the rehabilitation fund, the GoN has allocated a total of Nrs. 3,000,000 in July 2012-July 2013 to run these centres.[64] The following table shows the budget allocated to rehabilitation centres from the rehabilitation fund:

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63. Government of Nepal (2013).A Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal. Ministry of Women, Children and Social Welfare and the National Committee for Controlling Human Trafficking: Kathmandu, Nepal. p. 14
64. Ibid.

No.	Name of Rehabilitation Center	FY 66/67 BS (2009-2010) (in NRs.)	FY 67/068 BS (2010-2011) (in NRs.)	FY68/069 BS (2011-2012) (in NRs.)	FY 69/070 BS (2012-2013) (in NRs.)	FY 70/071 BS (2013-2014) (in NRs.)	Total
1	ABC Nepal, Kathmandu	1,000,000	500,000	1,027,000	-	1,500,000	4,027,000
2	Srijansil Samaj, Kailali	1,000,000	500,000	1,791,870	-	500,000	3,791,870
3	SAATHI, Banke	1,000,000	-	1,698,000	-	-	2,698,000
4	Adarsha Nari Bikas Kendra, Chitwan	1,000,000	-	500,000	1,000,000	-	2,500,000
5	Maiti Nepal, Jhapa	1,000,000	-	1,000,000	1,000,000	-	3,000,000
6	Gramin Mahila Srijansil Pariwar, Sindhupalchok	1,000,000	-	1,325,622	-	-	2,325,622
7	Maiti Nepal, Parsa	1,000,000	-	500,000	-	712,000	2,212,000
8	Maiti Nepal, Rupendehi	1,000,000	-	1,200,00	1,000,000	-	3,200,000
Total		**8,000,000**	**1,000,000**	**9,042,492**	**3,000,000**	**2,712,000**	**23,754,492**

Source: Government of Nepal (2013). *A Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal.* Ministry of Women, Children and Social Welfare and the National Committee for Controlling Human Trafficking: Kathmandu, Nepal. p. 15

The GoN has also established 15 service centres for cases of gender-based violence in some districts where there are not rehabilitation centres. Between July 2012 and January 2013, a total of 990 cases were handled by these service centres.[65] There are another 84 additional community service centres as well.[66]

C. Services Provided in Rehabilitation Centres

The 2007 TIP Regulations also provide that legal assistance, psycho-social counselling, medical facilities, education, and vocational trainings are to be provided by the rehabilitation centres. All interviewed rehabilitation centres provided these services, and interviewees responded that most services were provided well. The one criticism from interviewees, both from those living in the shelter homes and those running it, were regarding vocational trainings.

Most of the rehabilitation shelters provide vocational training and also support individuals who want to continue their education. Many individuals are also sent to trainings offered outside of the shelter, or to vocational trainings in other parts of Nepal. There are several kinds of vocational trainings that rehabilitation shelters can offer – interviewees mentioned trainings related to counselling, teaching, electronics. However, most of the trainings that are actually available in these shelters involve handicrafts including embroidery, knitting and sewing.[67] Many interviewees did not feel that such trainings translated into a skill set for which there is much demand in the labour market. Additionally, such trainings adhere to very traditional and strict rules on the role of women.[68]

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65. Government of Nepal (2013).A Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal. Ministry of Women, Children and Social Welfare and the National Committee for Controlling Human Trafficking: Kathmandu, Nepal. p. 15
66. Ibid.
67. Interview with key informant
68. Interview with key informant

D. Monitoring of Rehabilitation Centres

The TIP Act states that regular monitoring of shelter homes is the responsibility of the National Committee, and the NCCHT has been carrying out regular monitoring of rehabilitation shelters. Additionally, both a NMS and an SOP for rehabilitation have been created. Establishing a standard for the rehabilitation centres is an extremely positive step forward, as it places emphasis on ensuring a victim-centric approach.

However, in interviews with three organisations that ran shelter homes, only one of them actively adhered to the NMS, and this was also the only organisation that reported of a government monitoring mechanism through which their shelter homes were regularly monitored. One of the interviewees responded that the NMS are too high, and that it is impossible in the social and financial context of Nepal to adhere to these standards.[69] Staff at one of the rehabilitation centres said that it was difficult to even rent out houses as landlords were reluctant to rent their houses out to shelter trafficked women.

4.10 Provision of Punishment

Section 15 of the Act provides for varying degrees of punishment depending on the nature of the crime. The maximum punishment is 20 years of imprisonment and a fine of 2 hundred thousand rupees. And the minimum is of one year for human transport. The degrees of punishment also vary depending on the relationship of the offender to the victim.[70]

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69. Interview with key informant
70. Human Trafficking and Transportation (Control) Act, s. 15:
    Punishment: (3) If an offence under Section 3 is committed by person holding a public post; in addition to the regular punishment for that offence, he/she shall be liable for Twenty five 25 percentage additional punishments.
    (4) If anyone commits an offence under Section 3 with a person under protection or guardianship or if the victim is relative of the offender as incorporated in the Chapter of Incest in civil code , he/she is shall be liable for ten percentage additional punishment besides regular punishment under this Act.
    (5) If anyone commits an offence under Section 3 repeatedly, for every offence he/she shall le liable for it additional one-fourth punishment in addition to the regular punishment.

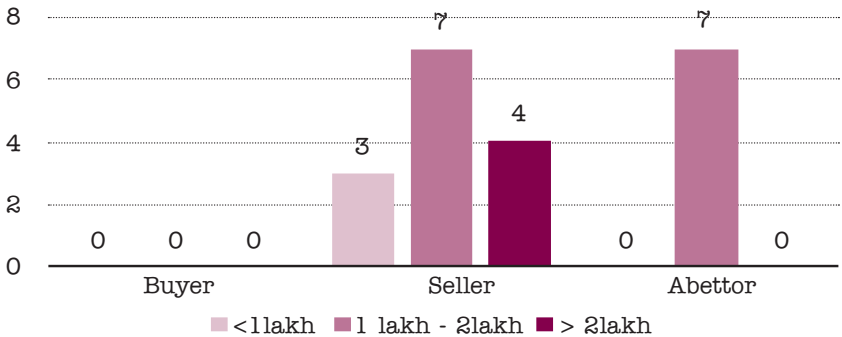
The section on punishment places emphasis on punishing the trafficker or transporter rather than the exploiter or others involved in the crime, unless the exploiter has put the victim into prostitution or extracted organs illegally. The problem this poses is twofold: firstly, it exacerbates the narrow definition of trafficking, implicitly viewing prostitution and organ extraction as the only forms of exploitation faced by victims of trafficking. Secondly, it fails to punish strictly those who have exploited the victim of trafficking otherwise.

Court Decisions

Of the cases that were monitored between September 2012 and June 2013 in which the accused were convicted, most were sentenced to between 10 and 20 years, and fined between 1 and 2 lakhs. The tables below show the trend in conviction in the judgements analysed:

Diagram 1: Degree of Punishment Imposed in Cases of Human Trafficking

Diagram 2 : Fine Imposed in Cases of Human Trafficking



These graphs show that while the seller and the abettor are punished for human trafficking, buyers usually are not. The reason for this is that as Nepal is mostly a source country for human trafficking, the buyers are often outside of Nepal, and extradition treaties between Nepal and other countries do not allow for the extradition in cases of human trafficking. The Nepal-India Extradition Treaty of 1953 does not include human trafficking as one of the offenses in which individuals may be extradited to the other country.[71]

CASE STUDY 10

TRAFFICKERS PUNISHED FOR EACH COUNT OF HUMAN TRAFFICKING

While in the past, if an individual was accused of many counts of human trafficking, that individual if convicted would only get punished for the gravest case. However, this tendency is beginning to change, with the accused being sentenced to imprisonment and given a fine that is equal to the aggregate of all the counts of the crime committed.

An example of this is the case of Bajir Singh Tamang, who trafficked six girls and women from Sindhupalchowk to brothels in India. He has been sentenced to a total of 170 years in prison.

71. India-Nepal Extradition Treaty 1953, a. 2.

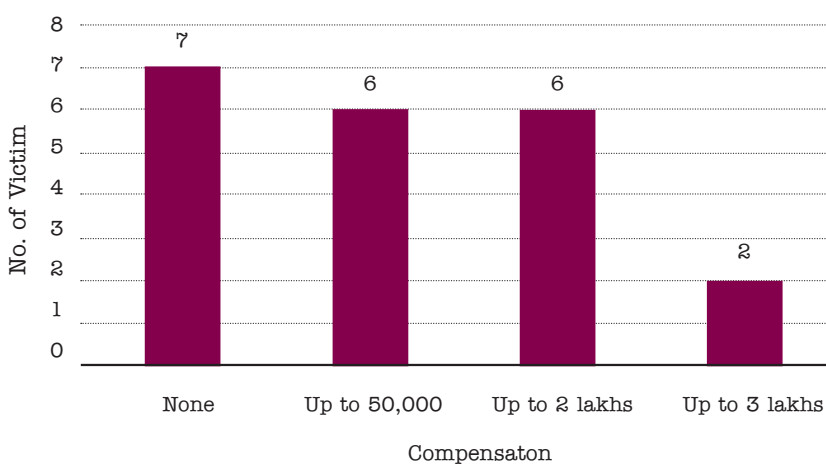
4.11 Provision of Compensation

The TIP Act[72] provides that a victim shall be given compensation of at least one half of the amount fined to the offender. It also has other provisions for cases in which the victim dies before the compensation is given.

IMPLEMENTATION STATUS

Decisions from most courts are in line with the TIP Act in that they order for the compensation of the victim. Officers of the Decision Execution Section at the Kathmandu and Lalitpur District Courts revealed that they had not received any requests from a survivor of trafficking for their compensation.[73] The chart below shows the number of cases in which compensation was decided of the 22 cases decided.

Diagram 3: Compensation decided in Cases of Human Trafficking



72. Human Trafficking and Transportation (Control) Act 2007. s. 17
73. Interview with key informant

CASE STUDY 11

INTERIM RELIEF TO THE VICTIM

Bindiya who was 5 months pregnant was sold to a brothel in India for IC 50,000.000. She was tortured and exploited for 15 years, and her son was given away. After spending 24 years of her life in a brothel, she was able to return to Nepal with the help of a Nepali woman. Upon her return, she found out that she was HIV positive.

She filed a case against the perpetrator at the Makwanpur District Court, and Justice Tek Narayan Kunwar ordered the compensation of NRS 300,000 to the survivor to be provided immediately from the human trafficking rehabilitation fund.

Source: Government of Nepal vs Sita Ram Thing, Makwanpur District Court

Of the 22 cases, in 6 cases compensation was not given. Of these cases, in 3 compensation was not requested. In one case, compensation was not given because the accused was found guilty of human transportation rather than human trafficking and only sentenced to 2 years and 3 months. In another case, compensation was not given because the accused was convicted of child marriage rather than human trafficking, and provisions on child marriage do not provide for compensation. And in another case, compensation was not given as the judge felt that the government had not yet created a mechanism by which survivors could receive compensation, but that this system had to be established. In two cases compensation was not requested, but it was given.

However, despite the decision to give compensation by the courts, this compensation is usually not received by the survivor of human trafficking. The reasons for this are many. Firstly, they may not want to go to the Decision Execution Office as they want to maintain their confidentiality, or they have already settled into a new life and do not want to revisit the case.[74] It was also found that survivors of trafficking were not aware of the

74. Interview with key informants (court case execution section)

provision regarding compensations.[75] But some survivors said they even do not have information about the judgment. Only if they are living in the shelter they get updated about the case and only if cases is handled by the NGO. This also indicates lack of effective mechanism for communication of verdict of the court.

Another is that although survivors are entitled to 50% of the fine received from accused, in many cases the accused to do not have money, property or any other means to pay that fine. Therefore, survivors end up without compensation.

In a writ[76] filed by FWLD, the Supreme Court of Nepal has ordered "To create a separate compensation fund as early as possible managing necessary allocation of amount in the budget of fiscal year 2070/071 for payment of compensation to the victims of such crime, after a judgment by the court, pursuant to Section 17 of the Human Trafficking and Transportation Act 2064 and also to take and cause to take necessary measures by the concerned police office to pay compensation to such victim(s)."

CASE STUDY 12

COURT SHALL ORDER FOR THE COMPENSATION TO BE PROVIDED FROM THE REHABILITATION FUND

Ministry of Women, Children and Social Welfare has also submitted the amendment proposal to " Act for the amendment of some act to end gender based violence, 2068" which states that court shall order for the compensation to be paid from the rehabilitation fund if there is chance of victim not being able to get the compensation from the perpetrator.

Source: Ministry of Women, Children and Social Welfare

75. Interview with survivors
76. NKP 2070, Volume No: 3, Decision No: 8973, Page No: 326

4.12 Provision of Award

According to the TIP Act[77] awards are given to informants of crimes of trafficking in those cases where a victim is rescued or a perpetrator is arrested. This is a positive aspect of the law as it encourages people to report cases of human trafficking. The award is to be provided from the rehabilitation fund.

IMPLEMENTATION STATUS

There was no data on number of individuals that had received this award so far. Moreover, there is lack of clarity on which agency is responsible for providing the award: whether it is Ministry of Women, children and Social Welfare, Ministry of Foreign Affairs or other.[78]

In none of the 22 cases analysed during the research period were awards demanded and none of this cases have reached the Supreme Court for the final decision.

Until now, the institution responsible for maintaining the record of informant and distributing the award has not been determined.

4.13 Confidentiality

The law provides that the personal information of the informant is to be kept confidential, including their real name and address during the registration of the complaint with the police[79], and during court proceedings.[80] The Regulation requires the police officer registering a complaint of human

77. Human Trafficking and Transportation (Control) Act 2007. s. 19
78. Interview with Mr. KiranRupakheti, Under Secretary, NCCHT
79. Human Trafficking and Transportation (Control) Act 2007, s. 5(2)
80. Human Trafficking and Transportation (Control) Act 2007, s. 20

trafficking or transportation to provide the complainant with an imaginary name.[81] In practise, this is either a pseudonym or a code number.

The law prohibits the public dissemination of confidential information of the victim as well, including their real name, or any other information that would be detrimental to their character. The Act subjects anyone who breaches this to a fine up to ten thousand rupees.[82] This is an important part of this legislation, as it ensures the confidentiality of the victim without him/her having to request it. Even before this law was enacted a detailed guideline on confidentiality in cases of violence against women, including cases of individuals affected with HIV/AIDS, was provided through a Supreme Court decision.[83] The **Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases 2007** protects the 'personal introductory information' of individuals appearing as a party to the case outlined.[84] The guideline requires that their name shall be replaced by a pseudonym or a code.[85] Their personal information is protected from the time of filing of the complaint, and throughout all procedures and even during the period following the implementation of the verdict.[86] The guidelines require anyone who comes to know about their personal information through the court proceedings to keep them secret.

IMPLEMENTATION STATUS

The TIP Act and the Procedural Guidelines on confidentiality were enacted in the same year. Since the Procedural Guidelines were issued by the Supreme Court itself, there has been a wide dissemination and

81. Human Trafficking and Transportation (Control) Regulations 2008, r. 9
82. Human Trafficking and Transportation (Control) Act 2007, s. 25
83. Sapana PradhanMalla /FWLD vs. the Government of Nepal.Writ no. 3561 year 2063 (2006). Decision date: December 25th, 2007. Decided by: Justice Khil Raj Regmi and Justice KalyanShrestha
84. Ibid
85. Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases 2007, r. 5
86. Ibid

implementation of the guideline, and giving a pseudonym or code number to survivors of trafficking has become ingrained in the police and court procedures. These guidelines are still used in the absence of a proper law. However, while the confidentiality of the victim is being secured, the confidentiality of the informant (if he or she is not the victim) is not as rigorously applied. This shows that it is not enough only to enact a law, but also to develop guidelines and ensure the dissemination of those guidelines.

Directives issued by Supreme Court of Nepal

After the development of the Procedural Guidelines on confidentiality, it was massively distributed by the Supreme Court, the Office of the Attorney General (OAG), and FWLD in collaboration with CTIP in the form of posters. The posters can now be seen in courts, the OAG, and police stations.

The court and FWLD also published the decision of the Supreme Court jointly, and the Supreme Court also published the judgment in its bulletin and distributed it. A number of trainings have also been conducted with law enforcers.

Constant monitoring of effective implementation is necessary to ensure the practical realisation of any rights that the law provides.

In 2068, the National Judicial Academy also developed a Standard Operating Procedure (SOP) on confidentiality.[87] The SOP requires code names to be used to maintain the confidentiality of the informant, and also provides codes for each District Court to be used as part of the code name.

Of the decisions analysed, a total of 19 survivors' confidentiality was maintained through pseudonyms or codes, and 3 survivors' real names were used. The three cases in which original names were used were registered in 2064 or 2065. In all cases after 2065, the survivors were given pseudonyms or codes.

87. National Judicial Academy (2068).Standard Operating Procedure on the Protection of the Right to Confidentiality in Special Cases.

Confidentiality maintained	Pseudonym	6
	Code Name	13
Confidentiality not maintained	3	

These findings demonstrate that it is not necessary only to change the law to ensure confidentiality, but also to ensure that all those that are involved in ensuring confidentiality are aware and informed of the legal provisions and guidelines.

Disclosure of Personal Information

There are still some gaps in the implementation of the provisions on confidentiality. Although a pseudonym or case number is used in formal documents, throughout the prosecution procedure the name or other personal information of the complainant is often revealed: either in the investigation procedure, in the court room, or even by the media.[88] There may often be a necessity during the prosecution of a case to reveal certain personal information about the complainant or victim. However, the mechanism by which this information is revealed only when necessary as well as a mechanism to ensure the accountability of those people who have this kind of information is unclear.

Pseudonyms vs. Codes

While the guidelines on confidentiality allow either pseudonyms or codes to be used to replace the names of victims and others who are a party to cases of human trafficking, there is no standard in any court on which one should be used. Using a pseudonym risks stigmatising the pseudonym that is used, thus codes are more appropriate. Additionally, in the coding process, a scientific documentation process is yet to be introduced.

88. Interview with key informants

4.14 National and District Committee to Combat Human Trafficking

A. Formation of National and District Committees

The Act provides the GoN with the power to form a National Committee or a District Committee to coordinate national initiatives to combat trafficking and rehabilitate victims of human trafficking.[89] The Regulations outline the composition of the National Committee, chaired by the secretary of the Ministry of Women, Children and Social Welfare (MoWCSW), and representatives from the Ministry of Home Affairs, the Ministry of Labour and Transport, the Ministry of Foreign Affairs, the Office of the Attorney General, the Nepal Police, activists, and survivors of human trafficking.[90]

B. Powers of the Committee

The Regulations also outline the powers, functions and duties of the Committee which include duties related to prevention, prosecution and protection.[91]

IMPLEMENTATION STATUS

A. Establishment of National and District Committees

A National Committee on Controlling Human Trafficking (NCCHT) and 75 District Committees on Controlling Human Trafficking (DCCHTs) have been created. The creation of these bodies is one step forward on the government's commitment to combat human trafficking.While there is some coordination between the NCCHT and DCCHT, one of the

89. Human Trafficking and Transportation (Control) Act 2007, s. 23
90. Human Trafficking and Transportation (Control) Regulations 2008, r. 3.
91. Human Trafficking and Transportation (Control) Regulations 2008, r. 7

key informants felt that the initiatives of both bodies could be improved through much more effective coordination.

The following table outlines the annual budget given to the DCCHTs throughout the country:

S. No.	No of Districts	Annual lump sum (per district)	Total annual budget for DCCHTs
1	40 district	NRs. 57,000/-	NRs. 2,280,000/-
2	35 district	NRs. 42,000/-	NRs. 1,470,000/-
Grand Total			**NRs. 3,750,000/-**

Source: Government of Nepal (2013). A Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal. Ministry of Women, Children and Social Welfare and the National Committee for Controlling Human Trafficking: Kathmandu, Nepal. p. 15

This table outlines the annual budget of each DCCHT:

S. No	Activities	Budget
1.	Meeting (3 meetings/ per year)	NRs. 6,000/- per meeting
2.	Awareness programs	NRs. 15,000/-
3.	Protection, rescue etc.	NRs. 9,000/- NRs. 24,000/-*
*35 districts receive NRs. 9000/- and 40 districts receive NRs. 24,000/-		

Source: Government of Nepal (2013). A Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal. Ministry of Women, Children and Social Welfare and the National Committee for Controlling Human Trafficking: Kathmandu, Nepal. p. 15

B. Activities of NCCHT and DCCHTs

A secretariat for NCCHT has been formed in 2011 within the Ministry of Women, Children and Social Welfare. And in 2013, the NCCHT carried out and published its own research study on government efforts

to combat human trafficking. It has also formed three sub-committees: on prevention, prosecution and protection. On April 2012, the NCCHT finalized a psychosocial counselling guideline for service providers. The NCCHT has met a total 6 times between April 2012 and March 2013.[92] NCCHT is also preparing the implementation plan for the National Plan of Action on Trafficking.

While these activities show some degree of commitment towards combating human trafficking, they are not enough; and the budget allocated to DCCHTs does not allow for the kind of activities required. 35 DCCHTs each receive a total of Nrs. 42,000 per year, and 40 DCCHTs each receive Nrs. 57,000 per year. This amount is extremely small as it is intended to include expenses for rescue, protection and all administrative costs. That the budget is only allocated for three meetings every year in each district is indicative of the little priority given to the DCCHTs in financial budgeting.

4.15 Security

The TIP Act states that security is to be provided to a victim or informant if that individual provides reasonable grounds and requests for security at the nearest police office.[93]

IMPLEMENTATION STATUS

Police interviewees claimed that in cases in which applications for security were made, they had been providing security.[94] However, interviews with survivors of trafficking indicated that although they requested for security, it was not provided very effectively: a report was registered, but nothing

92. Government of Nepal (2013).*A Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal.* Ministry of Women, Children and Social Welfare and the National Committee for Controlling Human Trafficking: Kathmandu, Nepal. p. 11
93. Human Trafficking and Transportation (Control) Act 2007, s. 26
94. Interview with key informants

was done to prevent the party of the perpetrators from threatening the survivors or their family. In some instances, survivors are not aware that they should request for security.[95]

Providing security to survivors of trafficking and their families is important first of all for the well-being of the survivor. Security is also important to ensure that cases of trafficking are effectively prosecuted as without security victims/witnesses may be threatened by the accused and thus withdraw cases that they have reported(to protect them from being hostile), change their statements, or fail to report cases of human trafficking altogether.

Another question is should in each case survivors or family or witness should ask for the security or state should make necessary arrangements?

Other challenge is problem in the law itself, law allows to criminalize hostility. As a result victims are neither protected by law enforcement system rather they are criminalized. FWLD challenged this law and supreme court of Nepal has issued directive to amend the law.[96]

Expenditure of the witness

Court has recently made a judgment to provide necessary expenditure to the witness of human trafficking.

Directives issued by Supreme Court of Nepal

(i) To make mandatory allocation of required amount to be made for payment for government witnesses in state criminal cases and cases under Human Trafficking and Transportation Act 2064, in the budget of fiscal year 2070/70/71 and make or cause to make available to such witnesses through concerned police office.

95. Interview with key informants
96. Source: NKP 2070, Volume No: 3, Decision No: 8973, Page No: 326

(ii) To make or cause to make management of presenting the government witness in the court for subjudice cases, by making payment of expenses amount to be made available to government witnesses before being present in the court, with the receipt of payment made to such witness.

(iii) To make or cause to make necessary protection of such persons, by making necessary provisions for protection if asked for by the informant or by victim pursuant to section 26 of the Human Trafficking and Transportation Act, 2064 through concerned police office

(Source: FWLD vs Office of Prime Minister & Council of Ministers, et. al., NKP 2070, Volume No: 3, Decision No: 8973, Page No: 326)

Pursuant to the decision of Supreme Court, Office of Prime Minister and Council of Minister sent the letter for the implementation of the said decision to the Ministry of Finance, Ministry of Home Affairs, Ministry of Women, Children and Social Welfare and Ministry of Law and Federal Affairs Nepal.

Ministry of Finance has allocated the budget to District Police Offices and Metropolitan Offices under the other travel heading in the budget of FY 2070/71.

S. No.	Office	Budget Allocated
1	District Police Offices	7000000
2.	Metropolitan Offices	300000
	Total	**7300000**

Police Headquarter also send the circular to all district police offices in regard to the travel allowances to be provided to victim/witnesses of cases against the state.

Office of Government Attorney also send the circular to all District Attorney Offices for the travel allowance to be given to Victim/Witness

of trafficking after the directive of Supreme Court and this has been implement in some places.

Some amendment proposal have been submitted on HTAT Act. One of the proposed provision of the amendment is to add a provision whereby the witness of human trafficking would be provided travel allowance by the office of Government Attorney when they come to the court for their statement.

4.16 In Camera Hearings

The Act provides that cases of human trafficking should be heard through in-camera hearings or closed hearings, in which the public is not allowed into the court room.[97]

IMPLEMENTATION STATUS

Although most cases of TIP are conducted through in camera hearings, how firmly this is adhered to varies from district to district. On the one hand, in some courts there is very loose monitoring of who enters the court room. And on the other hand, in the name of in camera hearings in some courts, individuals from rehabilitation centres or shelter homes in which the survivor of trafficking is staying at – individuals whom the survivor is probably most comfortable with – are often not allowed into the court room with the survivor.[98] This risks making the survivor feel vulnerable in the court room.

97. Human Trafficking and Transportation (Control) Act 2007, s. 25
98. Interview with key informants

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

Throughout this study the implementation status of the TIP Act has been explored. What has been found is that although the Act was intended to bring a change in the way that the crime of human trafficking is prosecuted, and although some positive changes have come about, even after 6 years of its enactment the Act has not had the full effect that it was intended to have. Although, Anti-Trafficking legislation have been recognized as one of the comprehensive and progressive benchmark legislation in Asia, it is not free from criticism. Gap is seen in the law especially legislation has not been able to include the preventive mechanism, it rather focuses on prosecution which is critical component of the law. In effective implementation of the law, while confidentiality of the victim in registration of the cases are largely maintained in the case filed but realized it is due to Supreme Court guidelines and its follow-up with the law enforcement including with the court, however, similar situation does not exist in the effective implemenation of other provisions.

The reasons for the challenge in implementation are many, but can be categorized into four main reasons. The first is that there is still a lack of understanding surrounding human trafficking. There is not a clear distinction between human trafficking and offences under the Foreign Employment Act, nor has human trafficking itself been fully understood as a crime that is not necessarily conflated with prostitution.

The second reason for the challenge in implementation is the lack of resources. While this may be a problem for the investigation of a lot of crimes in Nepal, it is particularly challenging for crimes such as human trafficking that are transnational and organised, where evidence is difficult to gather, and arresting the accused is just as complicated. The lack of resources also has an impact on how victim-centric Nepal's approach towards prosecuting human trafficking can be: while survivors of human trafficking are left traumatized and stigmatized, the resources allocated to

the rehabilitation of survivors are hardly enough to cover all the services that should be provided if the approach is going to be truly victim-centric.

Another reason for the obstacles in implementation is regarding access to and the dissemination of information. Only if law enforcers as well as all parties involved in the case are aware of the legal provisions and policies surrounding these provisions will the legal framework be implemented. This study demonstrated that survivors of human trafficking often are unaware of their rights, and service providers are often unaware of their responsibilities.

This study has also demonstrated that there is generally a lack of standard procedures and guidelines for the implementation of many of the provisions of the TIP Act. While the Act has brought with it rights and responsibilities, appropriate mechanisms have not been developed for their implementation. To ensure accountability, specific agencies or individuals must be given explicit responsibilities: only in this way can plans for the improvement of the implementation of the TIP law be targeted appropriately. Adequate budget to be allocated for the effective implementation of law and strengthening institutions.

The following are recommendations that have come from the analysis of the findings of this study.

Definition

- The distinction between offences to be punishable under the Foreign Employment Act and those to be punishable under the TIP Act must be clearly understood by all law enforcers.
- Cases that are punishable under both Acts must be filed under both Acts.
- Forced prostitution must be defined as a form of exploitation rather than as a form of human trafficking itself.
- Voluntary sex work must not be conflated by the Act with human trafficking.

- The definition of human trafficking and human transportation must not be separated so that perpetrators get less punishment as 'transporters' rather than 'traffickers'. Rather the definition for human trafficking must be made more comprehensive to include the transport of individuals for purposes of exploitation. Definition needs to clarify that the transportation not only include from Nepal but also to Nepal. Law need to recognize that Nepal can be country of origin, but also country of transit and destination.

Reporting

- In instances where the victim has not yet returned or been rescued from the destination country/place of exploitation, the FIR from the informant should be registered.
- FIRs must be registered and then investigation begun; evidence must not be required by the police at the stage of FIR registration.
- If an FIR is not registered immediately, then the police officer must provide a reason for this in writing.

Certifying the Statement

- There is a contradiction between the provision which provides that a survivor of human trafficking, after certifying his/her statement once, must not appear in court again and the practice of criminalizing victims who fail to reappear in court. Survivors' hostility or their failure to appear in court must not be criminalized. The Supreme Court's decision in this regard must be effectively implementation.

Arrest and Investigation

- The 25 days given for police to investigate a case before registering it in court is far too short for cases of human trafficking as it is a transnational, organized crime. For this reason this time should be extended.

- The extradition treaty between Nepal and India must include human trafficking, and extradition treaties must be made between Nepal and other destination countries.
- To ensure international cooperation in rescue and arrest, the Palermo protocol must be ratified.
- Need to take initiative for the effective implementation of the SAARC Convention.

Burden of Proof

- The understanding for the reasons to place the burden of proof on the accused must be clearly understood by law enforcers, and it must not be seen as a reason to not register an FIR.
- The burden of proof should strictly be placed on the accused in cases of human trafficking.

Right to Keep Separate Legal Representative

- Confidentiality needs to be maintained but as per the law those who have information is responsible for maintaining the confidentiality. In the name of maintaining confidentiality, private/legal aid lawyer should not be denied access to the information pertaining to the case.
- Mechanisms should be developed for the maximum representation of the victims for which Court/Police/Government Attorney should facilitate the process. For this, special directive/regulations need to be developed.
- Victims must be notified of court proceedings as per the Supreme Court decision.

Right to Translator/Interpreter

- Orientation should be given to the DCCHT especially to the CDO and WCO who head and manage the DCCHT on their liability under the Act and Regulation.

- DCCHT should prepare the roster of interpreter/translator so that they can help the survivors' access to justice by facilitating them.

- Judges and court officials and victim needs to be aware about the provision and also survivors should be communicated about this facility. Necessary coordination to be made with DCCHT.

Rescue

- Clear guidelines on raid and rescue must be established procedures for rescue from abroad, but also in situations of in-country trafficking.

- The responsible authorities in Nepal and abroad need to be clearly identified by the legal framework for both in-country and external trafficking.

- Due process needs to be clearly defined through a victim justice and rights-based approach.

- The number and capacity of safe homes for Nepali citizens in destination countries must be increased.

- Cross-border meeting among the border administration should include human trafficking as an agenda and have detail discussion on rescue, repatriation and border management.

- Bilateral/multilateral agreement to be entered with the countries for necessary cooperation on rescue, repatriation, investigation and judicial proceedings.

Rehabilitation

- Government budget allocated to rehabilitation fund should be increased.

- The number of rehabilitation centres around Nepal should be increased.
- The vocational trainings provided in or through the rehabilitation centres must teach skills for which there is a demand in the labour market, and through which survivors of trafficking can genuinely sustain themselves.
- The NMS and SOP must be effectively implemented by carrying out regular and adequate monitoring of all rehabilitation centres.
- Rehabilitation programs to be linked with economic empowerment programs. Also to be linked with the steering committee on Violence against Women Empowerment Program of the Office of Prime Minister and Council of Ministers.

Punishment

- While it has thus far been the norm to punish the perpetrator only for the crime that carries the greatest punishment, perpetrators must be punished the for the aggregate of all crimes committed.
- The provision which punishes any individual, including the survivor of trafficking, for changing their statement or failing to appear in court must be amended to ensure that survivors are not punished.

Compensation

- Effective implementation of the decision on compensation should be ensured so that the survivors can use it for their rehabilitation and other needs.
- Survivors should be notified of the decision of compensation provided maintaining confidentiality.
- State needs to create a mechanism of providing the interim relief to the victims and compensating it from the fine once received.

- Supreme Court should keep a separate record of human trafficking and file to be collected and also imprisonment to be made.
- TIP Act needs to be amended to read as Rehabilitation and Compensation Fund instead of the Rehabilitation Fund in order to justify the decision made by the Supreme Court of Nepal on May 2, 2013. The court has ordered for the creation of a separate compensation fund at the earliest by managing the necessary allocation of the money from the budget of fiscal year 2070/071 for payment of compensation to the victims of such crime, and to take and cause to take necessary measures by the concerned police office to pay compensation to such victim(s).

Awards

- MoWCSW and NCCHT must take responsibility for distributing awards to informants.
- A procedure for claiming this award must be clearly defined. Recording and reporting mechanism to be introduced to facilitate the award issuance process.

Confidentiality

- Provide clarity on how to ensure accountability of court officials, police, legal representatives, or others who are compelled to disclose the personal information of an informant or survivor during court procedures. Ensure that this mechanism ensures that these individuals do not expose personal information beyond the necessary.
- Provide training and information dissemination to law enforcers, prosecutors, court officials on maintaining confidentiality.
- Ensure that confidentiality is secured using systemized codes rather than pseudonyms.

- Knowledge and skill on how confidentiality is maintained must be improved, as well as on providing code names and decoding is necessary for the law implementer.
- Alongside the confidentiality of the victim and the informant, the confidentiality of the accused must also be ensured if revealing their personal information jeopardizes the confidentiality of the survivor or victim of human trafficking.
- Confidentiality of those giving testimony as well as informants, not only victims/survivors, must also be ensured.

District Committees

- Increase budget for DCCHTs throughout Nepal, and include in this budget enough resources to carry out:
    - Rescue of Nepali citizen trafficked internally and externally.
    - Monitoring of rehabilitation centres.
    - A documentation mechanism for incidences of human trafficking.
- Train DCCHT staff to conduct activities outlined above.
- Increase coordination between NCCHT and DCCHT.
- Establish Village Committees to Control Human Trafficking (VCCHT).

Victim and Witness Security

- Police should be made accountable for ensuring security once an application demanding security has been received according to the law.
- Security should not only be limited to victims and informants, but should also be granted to families, legal representatives and the relevant shelter or rehabilitation centre.

- Information to be disseminated on budget allocation for the witness and victim and proper mechanism for the distribution to be institutionalized.

In-Camera Hearings

- In-camera hearings must be ensured, but those who the survivor trusts must be allowed into the court room.
- In-camera hearing procedures must ensure an environment that is not hostile to the victim.
- Continuous hearing to be institutionalized and make binding for all cases prosecuted under HTTCA.

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ANNEX I

LIST OF PARTICIPANTS OF CONSULTATION WITH RELEVANT STAKEHOLDERS

S.No.	Name	Organization
	Vesh Kumari Adhikari	Appelate Court Patan
	Namrata Shrestha	CAC- Nepal
	Prabhakar Shrestha	CREHPA
	Salina Joshi	SAATH SAATH Project
	Uma Tamang	Maiti Nepal
	Parbati Thapa Magar	Nepal Police
	Krishna Jeevi Ghimire	Office of Attorney General
	Ramesh Sharma Poudel	District Attorney Office Kathmandu
	Sudeep Gautam	CeLRRd
	Kirti Thapa	Gender Unit, PMO
	Nira Kandel	LACC
	Dr. Kiran Rupakheti	Ministry of Women, Children and Social Welfare
	Pitamber Koirala	TPO Nepal

Kamal Thapa Kshetri	NHRC
Nawjeet Karmacharya	Terres des hommes
Sushila khakurel	Shakti Samuha
Sandhya Sitoula	CeLLRd
Rajya laxmi Bajracharya	Nepal Bar Association
Rachana Shrestha	The Asia Foundation
Benu Maya Gurung	AATWIN
Tara Devi Maharjan	NWC
Awani Mainali Bhattarai	NWCS
Satish Sharma	PPR Nepal
Saroj Shrestha	Steps Nepal
Rajendra Ghimire	PPR Nepal
Muna Upadhyaya	FWLD
Palita Thapa	FWLD
Astha Sharma Pokharel	FWLD
Sapana Pradhan Malla	Former member of Parliament
Sabin Shrestha	FWLD
Pragati Sharma	Nepal Bar Association
Jyoti Pandey	NJA Nepal

ANNEX II

LIST OF KEY INFORMANTS

1. **Dr. Kiran Rupakheti**
   Under Secretary
   NCCHT

2. **Ms. Sarada Bashyal**
   Women and Children
   Development Officer
   Kathmandu

3. **Ms. Padma Mathema**
   Former Special Rapporteur on Trafficking
   Office of Special Raporteur
   National Human Rights Commission

4. **Ms. Rama Parajuli**
   Public Prosecutor
   Appellate Court
   Lalitpur

5. **Ms. Benu Maya Gurung**
   Program Coordinator
   AATWIN

6. **Ms. Pooja Mahato**
   Program Coordinator
   Shakti Samuha

7. **Ms. Praveena Gurung**
   National Programme Officer
   IOM

8. **Mr. Nawjeet Karmacharya**
   Child Protection Officer
   Terres des home

9. **Ms. Bimala Mainali**
   Founder
   Asha Nepal

10. **Ms. Yamuna Bhattarai**
    Defendant Lawyer
    Celrrd

11. **Ms. Pratima Pokharel**
    Public Prosecutor
    Kathmandu District Court

12. **Mr. Dol Raj Shahi**
    Inspector
    Jawalakhel

13. **Ms. Chattra Gurung**
    Pourakhi

14. Mr. Ram Prasad Aryal
    Defendant Lawyer
    CeLrrd

15. **Mr. Diwas Acharya**
Director
Foreign Employment Department

16. **Mr. Puran**
Decision execution department
Kathmandu District Court

17. **Mr. Dev Kumar Shrestha**
Decision execution department
Lalitpur District Court

18. **Mr. Narendra Pathak**
Advocate

19. **Ms. Sajani Joshi**
Advocate
Maiti Nepal

20. **Ms. Sumitra Shrestha**
Shelter Home Incharge
Maiti Nepal

21. **Survivors - 5**

22. **Ms. Ganga Pant**
DSP
Balaju

23. **Mr. Prabhakar Shrestha**
Centre for Research on Environmental Health and Population

24. **Mr. Om Subedi**
Former Justice
District Court Kathmandu

25. **Ms. Sunita Nepal**
Under Secretary
NCCHT

26. **Ms. Sushama Gautam**
Advocate
FWLD

27. **Mr. Rup Narayan Shrestha**
Advocate
Avenue Law Firm

28 . **Ms. Meera Dhungana**
Coordinator
Shantimalika

ANNEX III

LIST OF OF CASES DECIDED BASED ON NEW ACT COLLECTED DURING STUDY

1. Muna Tamang Vs Krihna Giri, Decision No: 156, 2067/10/24
2. Chautara C Vs Aite/Manu/Pinkai/Jaya Tamang, Decision No: 178, 2068/01/21
3. Geeta Basnet Vs Thaneshwor Devkota, Decision No. 51, 2066/08/02
4. Manisha Jaisi Vs Janaki Devi Jaisi et al, Decision No. 92-064-00294,2065/09/05
5. Boudha Vs Bhawana Basnet, Case No. 2378, 2068/03/23
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9. Kalimat Sha 1 Vs. Pushpa/Thulimaya Tamang, Decision No. 739, 2069/03/25
10. SMR Vs Kamala Rumba/SunitaMoktan, Decision No. 321, 2068/11/22
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13. Bindiya Vs Sita Ram Thing / Shyam Kumar Bomjan/ Shashi Kumar Titung, Decision No. 106, 2069/06/23
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