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Supplemental Standard Operating Procedure for Victims of Gender-Based Violence and Victims of Trafficking

BACKGROUND

Nepal's legal regime grants protection against both human trafficking and violence against women. The 2015 Constitution of Nepal prohibits trafficking in persons via Article 29(3) under the 'Right against Exploitation', stating: 'No person shall be subjected to human trafficking...'. Likewise, protection of women against violence has been spelt out as a fundamental right in the 2015 Constitution. Article 38(3) dealing with the 'Rights of Women' states: 'There shall not be any physical, mental, sexual or psychological or any other kind of violence against women... Such an act shall be punishable by law and the victim shall have the right to compensation as provided for in the law.'

To counter trafficking in persons and violence against women, Nepal enacted the Human Trafficking and Transportation Control Act in 2007 and the Domestic Violence (Crime and Punishment) Act in 2009. There are other laws as well that would be applicable in relevant instances, namely, the National Penal (Code) Act (2017), the Foreign Employment Act (2007), the Sexual Harassment at the Workplace (Elimination) Act (2015) and the Witchcraft Allegation (Offence and Punishment) Act (2016). Besides, Nepal also has obligations under various international conventions and protocols it has ratified or acceded to. Among these are the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (Palermo Protocol) and the Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (CEDAW).

Although many of these laws mention 'gender' in a number of places, particularly with regard to prohibiting discrimination on the basis of gender, the focus is primarily on women. This trend is carried over into practice as well whereby legal procedures have become women-centric and the notion that other genders could also be subject to violence barely exists.¹

Despite having fairly comprehensive laws in place, another major shortcoming is the absence of any guideline or Standard Operating Procedure (SOP) to identify and screen victims of both trafficking and gender-based violence (GBV). Consequently, social workers, the police, NGO activists, prosecutors, immigration officials and others who would come in direct contact with the victims have to rely on gut instinct informed by years of experience or even common sense to find out whether someone has been subjected to trafficking in persons (TIP) or GBV.

Absence of guidelines has hindered the identification of victims by the first responders and there have been few attempts in the past to come up with a standard guideline that could be used by all concerned. As part of that ongoing process, currently three documents are being considered for adoption by actors engaged in interventions or similar activities thereof to prevent both GBV and TIP. The said documents are as follows:

- i. **Standard Operating Procedure and Ethical Guideline** prepared by the National Women Commission (July 2020);
- ii. **Guidelines on the Identification of Human Trafficking and Transportation Victims, 2076** prepared for the Ministry of Women, Children and Senior Citizens by the Office of the Attorney General with support from the United Nations Office on Drugs and Crime (UNODC);² and
- iii. **Standard Operating Procedure for the Rescue and Repatriation of Victims of Human Trafficking 2077—Sample Supporting Document** of the national network, the Alliance against Trafficking in Women and Children in Nepal (AATWIN).³

¹ In a very recent case however, the rape and murder of a transgender person by three men led to their conviction by the trial court by awarding life sentences. 'NSWP Members in Nepal Welcome Court Ruling in Violent Murder case', 7 February 2022, <https://www.nswp.org/news/nswp-members-nepal-welcome-court-ruling-violent-murder-case>.

Drafted under the Integrated Platform for Gender-based Violence Prevention and Response in Nepal Project (Sambodhan) of the National Women Commission, the **Standard Operating Procedure (SOP) and Ethical Guideline** is meant for use by personnel providing services to victims and survivors of GBV using of the national helpline as well as in shelter homes while also providing psychosocial counselling, child support and legal services in compliance with government regulations.

Likewise, the **Guidelines on the Identification of Human Trafficking and Transportation Victims** have been drafted for the 'effective implementation' of the Human Trafficking and Transportation (Control) Act, 2007 and the Human Trafficking and Transportation (Control) Rules, 2008 by ensuring the rights of victims, identifying victims of human trafficking and transportation while protecting their rights, rehabilitating them, and helping them gain access to justice by assisting the work of investigating officers, prosecutors, and other stakeholders.

The third document, Standard Operating Procedure for the Rescue and Repatriation of Victims of Human Trafficking, was prepared to help the state in drafting an SOP for the rescue and repatriation of victims of human trafficking. The SOP hopes to achieve an increase in the effectiveness of laws, policies and national action plans in controlling human trafficking as well as to increase the uniformity and effectiveness of rescue, repatriation, rehabilitation and family or social rehabilitation and reintegration services.

These three documents are at various stages of being adopted or revised. It is noteworthy though that the SOP on GBV does not mention trafficking even once and neither do the Guidelines on the Identification of Human Trafficking and Transportation Victims have any reference to GBV. The only possibility of GBV even being considered in the latter is in Section 12, which refers to 'any other offence' committed against victims of TIP that would require further investigation of the same. Likewise, while the SOP for the Rescue and Repatriation of Victims of Human Trafficking does mention GBV, it is only in the context of the need to extend services to victims and survivors of GBV as well.

Having completed the Nepal country report as part of the research project, 'Optimizing Screening and Support Services for Gender-Based Violence and Trafficking in Persons', the research team from Social Science Baha and the collaborating partner, The Asia Foundation, believe that the inability of these documents to recognise the vulnerability of GBV victims to TIP and also of how TIP causes GBV is a glaring lacuna. It is in order to bridge this huge gap that this supplemental SOP has been prepared for adoption or adaptation by the key actors involved in preventing both GBV and TIP.

THE CONTEXT

This section is divided into two sub-sections. The first consists of the main findings from the afore-mentioned study with reference to illustrating how closely interlinked GBV is with TIP and vice versa. It provides the main findings from the available literature and empirical evidence collected as part of the research conducted for the project. The latter included interviews and focus group discussions (FGDs) with victims of TIP and GBV, service providers (representing NGOs, INGOs, governmental institutions and shelter homes), law enforcement officials (representing the Nepal Police, the Armed Police Force and immigration officials), and judges and prosecutors. It also includes a short summary of the result of a series of virtual FGDs on the possible links between TIP and GBV conducted by the organisation, Shakti Samuha, on behalf of the project, with victims of human trafficking and GBV, civil society organisations working on issues of TIP and GBV, government officials, and the Nepal Police. The second sub-section provides a concise review of existing SOPs and guidelines with reference to the objective of this document.

Linkages between TIP and GBV

Following her 2018 visit, the UN's Special Rapporteur on violence against women, its causes and consequences, noted that violence against women in Nepal 'is pervasive, occurring in both the private and the public spheres throughout the country, and is further compounded by the persistence of entrenched patriarchal attitudes, gender stereotypes and harmful practices'. There is clearly an overlap between the causes that lead to GBV and the factors that precipitate trafficking, namely, domestic violence, dysfunctional family, separation from family, critical poverty, and traditional practices like child and forced marriages that lead to girls and women making a break from their marital homes.

² The year mentioned is in the Bikram Sambat calendar, which, in the absence of any indication of when precisely the draft was readied, could be either 2019 or 2020. Original title in Nepali, 'Manav Bechbikhan तथा Osarpasar Peditko Pahichan Sambandhi Marganirdeshan, 2076' under consideration by the Government of Nepal.

³ The year mentioned is in the Bikram Sambat calendar, which, in the absence of any indication of when precisely the draft was readied, could be either 2020 or 2021. Original title in Nepali, 'Manav Bechbikhanbata Pedit/Prabhavit Byaktiharuko Uddar तथा Firtikalagi Karyasanchalan Prakriyasambandhi Mapdanda – Namuna Sahayogi Dastawej'.

⁴ The project was funded by the United States Department of State through the 'Optimizing Screening and Support Services for GBV and TIP Victims' grant of The Asia Foundation.

Labour migration is a sector that has also emerged as the main source of vulnerability for women being trafficked. There are also many social, cultural, economic and political factors that contribute to individuals becoming engaged in labour migration, with poverty identified as the primary reason women migrate under conditions that increase their chances of being trafficked. Traffickers also target potential victims based on women's social, family and economic conditions. As the Special Rapporteur noted, 'women facing economic difficulties and wishing to seek alternative work abroad face heightened risks of trafficking and sexual exploitation'. In fact, back in 1992, the CEDAW General Recommendation No. 19: Violence against women, categorically recognised the fact that '[p]overty and unemployment increase opportunities for trafficking in women' and urged the state parties to adopt 'specific preventive and punitive' countermeasures.

There is also evidence that Nepali women migrant workers experience a continuum of GBV and harassment before, during, and after their migration. Women often cite violence and discrimination at home, primarily from husbands and other male family members, as a major factor leading to their migration. Rather than being isolated events, the experiences of violence and harassment are seen as part of a system in which labour is violently extracted from their bodies. Extreme economic pressure to provide for families, maintain 'family honour', and repay debts, taken together with linguistic, social, and cultural barriers that women migrant workers face during the migration process, increase risks of GBV and limit opportunities for redress.⁶

Women who have returned from foreign employment can also be subjected to domestic violence, increasing the risk of human trafficking among that group. There are chances that victims of GBV find themselves trafficked and again suffer GBV after being rescued. Women whose husbands are away for foreign employment also have to face the 'burden of domestic work, social violence, economic violence and terror, sexual violence and domestic violence'.⁷ To compound the situation further, instances of exploitation and abuse of women in countries of destination, particularly those in the Gulf Cooperation Council (GCC) countries, have led to restrictions on the movement of women, forcing them to use irregular channels to migrate, consequently rendering them all the more vulnerable.⁸

Besides trying to escape physical and other forms of abuse faced at home, 'aspirational migration' is a major factor that places individuals at risk of being trafficked. Since personal aspirations and promises of a decent salary and employment outweigh the risks of irregular migration in the minds of many migrants, the risks of being trafficked also increase. In most instances, brokers lure the victims under the pretence of providing foreign employment at a company and then place them into situations of domestic servitude.

Most strikingly, it is clear that GBV increases vulnerability to TIP. Almost all victims of trafficking experience some form of GBV prior to being trafficked even though they would be quite unaware that they were being subjected to GBV. In nearly all the cases, the person who trafficked them would be someone known to them (neighbours, relatives, friends, family members) but who would also be quite aware of the situation the victims were in at the time. Further, even after rescue, many of them continue to face GBV simply because they were victims of trafficking.

Existing Frameworks

The various SOPs and guidelines, dealing with GBV and TIP, already in force in Nepal, also have failed to make the connection between GBV and TIP as laid out below.

The Clinical Protocol on Gender-Based Violence (2015) was prepared by the Ministry of Health and Population to serve as a guidance tool for the effective management of healthcare services provided to GBV victims. Its objective is to enable healthcare service providers to provide quality services to victims; and to set the standard for the provision of holistic services to victims, including both medical and psychosocial services. Although the Protocol covers sexual, physical, psychosocial, and emotional violence against women, men, and children, it focuses primarily on gender-based violence against women. The Protocol does mention TIP but only in the context of summarising the main content of the Human Trafficking and Transportation Control Act (2007), among other laws, in its Annex 18.

⁵ United Nations Human Rights Council (UNHRC) (2019) Visit to Nepal: Report of the Special Rapporteur on violence against women, its causes and consequences A/HRC/41/42/Add.2. UNHRC Nepal.

⁶ Global Alliance Against Traffic in Women (2017) Enabling Access to Justice: A CSO Perspective on the Challenges of Realising the Rights of South Asian Migrants in the Middle East. GAATW, Bangkok.

⁷ Ministry of Health and Population (2017) Nepal Demographic and Health Survey 2016. Government of Nepal, Kathmandu.

⁸ Uddhab Pyakurel (2018) Restrictive Labour Migration Policy on Nepalese Women and Consequences. *Sociology and Anthropology*, 6(8),650-656.

The Hospital Based One-stop Crisis Management Centre (OCMC) Operational Manual (2011), also of the Ministry of Health and Population, is a guidance tool for OCMC-implementing hospitals, health centres, district attorney's offices, district police offices, women and children's offices as well as related organisations responsible for the management, monitoring and evaluation of OCMCs. The Manual provides guidelines on the preliminary services to be provided to GBV victims, namely, health services, psychosocial counselling, information, education and empowerment, safe home services, and rehabilitation. The Manual does not mention TIP anywhere in the main text but does point out that trafficking is a form of GBV in its Annex 4.

The Standard Operating Procedures to Counter Cross Border Trafficking in Persons: India-Nepal, for First Responders (2017) produced by the United Nations Office on Drugs and Crime (UNODC) outlines detailed indicators for the identification of trafficked victims by first responders, including border guards, police/anti-human trafficking units, NGOs, airport and land transport authorities, immigrations authorities, shelter homes and civilians. The SOP focuses on the interception of possible TIP victims and suspected traffickers at the border and also outlines the existing formal and informal repatriation processes between India and Nepal. GBV is mentioned only once in the SOP, in a list providing the helpline number for victims of GBV in Nepal.

The Guidelines for Psychosocial Counselling for Stakeholders Involved in the Campaign against Human Trafficking (2012) of the Ministry of Women, Children and Senior Citizens (MoWCSC) provides for psychosocial counselling to TIP victims. Significantly, the guidelines are aimed at increasing awareness regarding the possibility of re-victimisation of victims but does not deal with re-victimisation as a result of GBV at home, the family or the community at large.

The Guidelines on Local Committee and Municipality Committee against Human Trafficking (Formation and Mobilization) (2013) of the MoWCSC is aimed at bringing uniformity in how committees are to be formed at the local level, in accordance with the Human Trafficking and Transportation (Control) Rules (2008). Although the anti-trafficking local committees are to include the local GBV watch group, there is no other recognition of the fact that GBV could itself be a primary cause of trafficking.

The National Minimum Standard for the Care and Protection of the Victims of Human Trafficking and Transportation (2011), also of the MoWCSC, deals with protection officers in Section 36. It simply notes that the women protection officer deputed to the district Women and Children Office as per the Domestic Violence (Crime and Punishment) Act (2009) also serves as the contact person for those affected by TIP, and makes no other connection between the two phenomena.

STANDARD OPERATING PROCEDURES—SUPPLEMENT

From a review of the literature and empirical evidence, it is clear that there exist strong, clear and almost linear linkages between GBV and TIP. It thus becomes even more pertinent for those working to prevent both GBV and TIP to understand how each contributes to the other. Barring a few exceptions, most individuals and institutions work either on GBV or TIP, adding further urgency for the need to understand that both are part of a continuum of the same phenomenon. The supplement presented below is an attempt to bring about a change in perspective on how GBV and TIP should be understood, including the need to ensure that service providers deal with victims/survivors of both GBV and TIP in an even-handed manner. It discusses the three documents mentioned above to identify specific sections in each and suggestions have been provided (in bulleted italics) that could help consider GBV and TIP in tandem, given their strong inter-connections.

For the sake of readability, the documents referred to has been shortened as follows:

- i. the Standard Operating Procedure and Ethical Guideline – **SOP and Ethical Guideline on GBV,**
- ii. the Guidelines on the Identification of Human Trafficking and Transportation Victims, 2076 – **Guidelines on TIP,** and
- iii. the Standard Operating Procedure for the Rescue and Repatriation of Victims of Human Trafficking, 2077—Sample Supporting Document – **SOP on TIP.**

Key terms

A shortcoming in all the three documents is that they have not dealt with some of the standard definitions of concepts and actions that are crucial to be understood by those engaged in preventing GBV and TIP and helping victims of either.

Informed consent: Informed consent is a voluntary agreement given by an individual after a thorough understanding of the facts and of any implications their action may lead to. It is important to ensure that an individual be provided with all the facts necessary and be in a position to understand what they mean in order to be able to provide informed consent.

Informed assent: Informed assent is provided mainly in the case of children who are too young to understand the facts of any case and are thus unable to provide informed consent but are old enough to agree to participate in receiving services.

Victim: A victim is someone against whom an offence has been committed such as being subjected to GBV and/or trafficking.

Survivor: The term 'survivor' is often preferred over 'victim'. There is a difference in connotation though, with 'victim' implying someone who has been subjected to a crime (someone who has been oppressed) whereas 'survivor' implies someone who has had a traumatic experience but is on their way to recovery and taking charge of their future (someone who is empowered).

Perpetrator: An individual, a group of individuals or an institution that causes or allows an offence against another individual or group. The definitions contained in the Human Trafficking and Transportation Control Act (2007) are also essential to be understood by those engaged in these sectors.

Human Trafficking: Human trafficking consists of the selling and buying of a person; using someone in prostitution; extracting human organs besides what is determined by law; and engaging in prostitution as a client.

Human Transportation: Human transportation consists of taking someone out of the country for the purpose of buying and selling; and using various means to take someone away for the purpose of prostitution and exploitation.

Changes Suggested in Victim Identification

Section 6 of the Guidelines on TIP deals with victim identification.

Sub section 2 of Section 6 requires local bodies, the police and other security officials, organisations and civil society to ask questions of a victim or potential victim of trafficking to learn if the said person has actually been victimised or not. Among the questions to be asked are - the person's marital status, guardian, and relationship with family or guardian.

- *It is essential to also enquire whether the victims found themselves in a situation of being trafficked due to GBV or domestic violence or other forms of harassment, discrimination or exploitation at home or by the family, including pressure to contribute to family finances.*

Sub section 5 requires border and immigration officials along with organisations working to prevent trafficking to ask the questions mentioned above of potential victims while also asking other questions to ascertain the reason for their going abroad.

- *It is essential to find out whether the potential victim is going away to avoid GBV or domestic violence or other forms of harassment, discrimination or exploitation at home or by the family. Further, the questions should also be aimed at finding out whether they are being pressured by the family to go abroad, how they are financing their migration, and, in the case of labour migrants, if they have the full details of the company or individual providing them with employment.*

Sub section 3 refers to Annex 1 that consists of a series of questions to determine if someone is a victim of trafficking or not.

- *It is also important to ascertain if conditions at home are such that they decided to leave as a way out of an oppressive situation. Questions should also be framed to ask about the likelihood of GBV, domestic violence or exploitation at home.*

Section 7 deals with victims already in a foreign country.

Sub section 1 of Section 7 requires the police to conduct a preliminary investigation with the help of the individual or institution filing a case if the victim is already in a foreign country.

- *In the course of investigation, the police should also investigate to understand the reason the victim is in a foreign country and if it had anything to do with the situation at home, such as GBV, domestic violence or exploitation, including the possibility of the same recurring upon their return.*

According to Sub section 5, once a victim has been identified, steps for repatriation should be taken immediately.

- *It will be essential to ensure that the victim is not likely to be subjected to any kind of physical or mental threat at home upon their return. Repatriating victims back to situations of violence at home can perpetuate the cycle of GBV leading to TIP leading to GBV and so on.*

Sub section 4 refers to Annex 2 that consists of a series of questions to determine if someone already in a foreign country is a victim of trafficking or not. Among the questions asked is how a victim arrived in the foreign land and if the person is facing some kind of problem or not.

- *It will be important to find out if the victim had been forced to go to a foreign country due to the situation at home which could consist of GBV, domestic violence or exploitation at home. It will also be essential to establish that the victim has not faced any GBV in the foreign country*

Sections 9 and 10 refer to identification of victims of internal trafficking and of child victims of trafficking.

- *In both cases, it has to be established whether or not the victims have faced situations of GBV or domestic violence at home or been subjected to one or other form of exploitation.*

Section 12 deals with the preliminary report to be prepared by the police with the help of sets of questions provided in the annexures.

- *The questions to ask will have to include those that enquire about the reasons a victim trusted a third person who later victimised them, but without victim-blaming and shaming. Likewise, some probing will need to be done to find out why the victims left home with a view to ascertaining whether there were conditions of GBV, domestic violence or exploitation at home. Finding out how others in the family behave towards the victim is one of the ways in which the home situation can be reflected.*

Changes Suggested in Protection

Sections 13, 14, and 15 of the Guidelines on TIP deals with the protection of victims and referrals, including handing over victims to their family.

- *It is essential to consider whether factors such as GBV, domestic violence or other similar conditions could have served as a 'push factor' for the victim to be susceptible to being trafficked.*
- *Investigating this aspect is particularly relevant in those cases in which sending the victim back to their family is being considered. Unless it can be ascertained with certainty that the victims will not be subjected to any such violence at home, they should not be handed over to their family but only if they provide their consent to such an approach.*

- *Where there are aspects of GBV or conditions for other kinds of violence at home, the police should forward the matter for criminal prosecution to the relevant authorities.*
- *If the victim has been subjected to GBV at the hands of traffickers, it will be essential to ensure that they receive proper psycho-social rehabilitation both from the TIP and GBV perspective before reintegration into their family or community.*

Section 4.6 of the **SOP on TIP** does recognise the need to extend services to those beyond victims of trafficking and recognises victims of GBV, domestic violence and rape as well.

Section 2.2.1(l) of the **SOP on TIP** deals with rehabilitation of children with their family and recommends ensuring that every effort be made to ensure that going back to the family is in the best interest of the child and that they are not in danger of being re-trafficked.

- *In both cases, there should be explicit mention of the fact that violence at home can be condoned by the community as well as the state, and can be a major cause of trafficking and should be ruled out before victims are sent back to their families.*
- *If the children have faced GBV at the hands of traffickers, proper and sustained psycho-social service should be provided to them for them to heal and to regain resilience.*

Section 2 of the SOP and Ethical Guideline on GBV dwells on the 'guiding principles on working with GBV survivors.'

- *The principles should clearly spell out the need to ensure non-discrimination between victims of GBV and victims of TIP given the likelihood of overlaps between the two categories. This includes ensuring their confidentiality and taking informed consent before any intervention is made.*

The guiding principles emphasise that the safety of women and girls should be a top priority.

- *The safety aspect should include ensuring that they do not become susceptible to trafficking given that victims of GBV are often targeted by human traffickers. This would include assessing the needs of victims who are particularly vulnerable to being trafficked and providing specialised services if and as needed.*
- *Care should be taken to ensure the safety of trafficked victims before they are reintegrated into their families in order to ensure that they are not subjected to any form of GBV that forces them to re-enter the trafficking cycle.*

Section 3 of the SOP and Ethical Guideline on GBV deals with a safety plan for victims/survivors based on the risk they could potentially face.

- *The assessment of risk factors should include the possibility of being trafficked and the crafting of a safety plan for them should they find themselves in a situation of being trafficked.*

Section 4 of the SOP and Ethical Guideline on GBV is devoted specifically to ethical guidelines.

- *The recommendation on what kind of services to be provided and how they should be provided explicitly spell out the fact that women and children who have faced domestic violence, sexual offence and child abuse are at heightened risk of being trafficked. As part of the services there should be efforts to ensure they are aware of the kind of enticements they are likely to receive from potential traffickers and how they can counter them, both at the personal level and institutionally. The services should also focus on increasing their knowledge regarding services available for victims of GBV.*

The same section requires an assessment to understand if any intervention could lead to increased violence among women and children due to a number of reasons such as 'cultural norms, gender discrimination, gender-based exclusion, unequal gender norms, or institutional weakness.'

- *The assessment should include a checklist that will ensure that women and children are not at risk of being trafficked.*

Likewise, it also calls for providing referral services to women and children who have been subjected to violence and abuse while also providing them with material that would support them in their rehabilitation.

- *It will be important for women and children facing situations of violence to also become aware that they fit the profile of people that traffickers prey on and to be constantly vigilant about approaches that are likely to be made to them, including through the medium of social media, which could lead to their being trafficked. Such information could be provided to them through educational materials as well as through counselling.*

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