



**The Asia Foundation**  
Improving Lives, Expanding Opportunities

## EXECUTIVE SUMMARY

### BACKGROUND

Spread across three countries in South Asia—India, Nepal and Sri Lanka—this research project aimed to identify promising practices and challenges in integrating or separating services for victims of human trafficking and gender-based violence (GBV) with the ultimate goal of improving the efficiency and effectiveness of screening and service provision to victims of trafficking in persons (TIP) and GBV in a variety of contexts.

For the research in Nepal, in addition to the capital, Kathmandu, three outlying districts—Morang and Sunsari in Province 1, and Banke in the province of Lumbini—were chosen. The latter sites were selected because of their proximity to the Indian border.

Interviews and focus group discussions were conducted with various individuals and organisations, namely, GBV and TIP victims; shelter homes; non-governmental organisations (NGOs), international non-governmental organisations (INGOs) and governmental service providers; law enforcement officials, including those posted at the border, and immigration officials; government officials; prosecutors and judges.

### DATA COLLECTION

Prior to the fieldwork, an extensive survey of available literature on TIP and GBV, mainly in reference to Nepal, was undertaken, along with a review of relevant legal and policy frameworks.

While there is a fair amount of information available on GBV in Nepal, although rife with various shortcomings, information on TIP is sparse, very scattered, and quite incomplete.

In Nepal, while the issue of GBV covers a wide spectrum, almost all the focus is on physical violence against women. Domestic violence has consistently accounted for a majority of the GBV cases reported over the last decade. This could be due to the high incidence of violence perpetrated against women, particularly at home. However, there is no reliable data, on violence faced by men and other genders. Despite the increase in the reporting of GBV cases due to heightened awareness among those affected, there still remains

the challenge of under-reporting, arising mainly out of victims' fear of both retaliation and stigmatisation. The same is true for TIP victims. Even when information is available, victims are unwilling to share it with relevant agencies. Besides, there are discrepancies in the figures made available by the government and by NGOs working on TIP, indicating the possibility of cases not receiving due and diligent attention.

GBV incidents and internal human trafficking is rising in the entertainment sector, where such cases are especially prevalent, with women involved in or coerced into prostitution as well as forced labour. Notably, there has been a rise in GBV cases in the country during the lockdowns due to the Covid-19 pandemic, which appears to have made at-risk people all the more vulnerable to both GBV and TIP.

### UNDERSTANDING OF TIP AND GBV

Violence against women (VAW) in Nepal is pervasive, occurs in both the private and the public spheres, and is further compounded by the persistence of entrenched patriarchal attitudes, gender stereotypes and harmful practices.

As a result, GBV is one of the leading causes of trafficking in Nepal, along with domestic violence, dysfunctional family, separation from family, critical poverty, and traditional practices such as child and forced marriages. Trafficking perpetrators prey on victims of GBV who come from an unstable home environment.

Migration is another major cause of trafficking. In Nepal, factors at home that propel women into foreign employment are much stronger than the pull factors. Unemployment and poverty force women to seek work as migrant workers, which makes them vulnerable and all the more susceptible to being trafficked.

Due to the strong family factors that cause TIP, families and communities sometimes assist in the trafficking of Nepali women and children.

There is also evidence that Nepali women migrant workers experience a continuum of GBV and harassment before, during, and after their migration. Highly

publicised instances of exploitation and abuse of women in countries of destination, particularly those in the Gulf Cooperation Council (GCC), has led to restrictions on the movement of women, forcing them to use irregular channels to migrate, consequently rendering them all the more vulnerable to exploitation. Women fall victim to trafficking since many do not have a clear understanding of the foreign employment process. Furthermore, men are also unwilling to report instances of exploitation as a form of trafficking, given the common perception that trafficking only affects women, with the implicit notion that it involves sexual exploitation.

In Nepal, human trafficking takes place under the guise of child adoption, employment (both within the country and abroad), education, international marriage, tourism, and tours for participation in cultural programmes (such as dance, drama and musical performances showcasing cultural heritage), among others. But the different scales of domestic trafficking and transnational trafficking is not known due to lack of disaggregated official figures on both. Human smuggling is often conflated with human trafficking as is irregular migration.

The government bodies primarily responsible for the identification and screening of TIP victims are the Nepal Police and the Armed Police Force, both deployed at the border and work together with immigration officials. They are supported by various NGOs which actively assist law enforcement officials in the screening and identification of victims, particularly at checkpoints along the border with India. The NGOs not only work at the borders but also conduct public awareness programmes and interactions in collaboration with the police.

However, government and NGO checkpoint inspections at Nepal's open border with India focus almost exclusively on female travellers. Their efforts are also hampered by the failure of the law to reflect the changes taking place in the sector and the lack of comprehensive legal guidelines and procedures related to the definitions of high-risk groups, victim identification, rescue, legal aid, repatriation and family reunification and rehabilitation. Most victims and individuals facing potential risks are entirely dependent on the work of NGOs and most of the rescue and repatriation efforts take place outside the state system, without the engaged participation of and monitoring by state representatives.

In order to screen victims effectively, law enforcement officials rely on information gathered from many sources. All the law enforcement officials interviewed said they conduct screening at the checkpoints at different Nepal-India border exits as they are popular gateways to India, from where people travel to various parts of the world. In addition, rented flats as well as entertainment venues in the city such as dance bars and dohori restaurants were also targeted. As identification of

potential victims and their traffickers requires coordination with legal and state mechanisms, there exists a range of challenges in identification. Relying mainly on visual and non-procedural approaches to identifying victims is one of the major factors that pose difficulties in the screening of TIP victims, and also affects the ensuing legal process of seeking justice for victims and punishment for perpetrators. The authorities involved did not follow any kind of standard operating procedure or protocol for the identification of victims of trafficking or GBV. The police did not have a specific set of indicators to identify the victims either. They relied on visual cues and their experience, training and interrogation skills to bring out the truth once they suspected someone as being trafficked. GBV victims were also identified through conversations with the victims themselves as well as with their families.

The open border between Nepal and India also poses a significant challenge in the identification of trafficked victims. In addition, several institutional gaps hinder proper screening and identification of victims, such as victims being forced to reconcile with perpetrators and also the practice of settling cases through financial payments. The lack of government guidelines on victim identification and victims' limited awareness of the laws were also seen as barriers, in addition to government representatives' alleged collusion with perpetrators and the lack of awareness and lack of financial resources among the service providers. Most often, the women/girls at potential risk of being trafficked travel in disguise and try to circumvent the screening process. Notably, all those interviewed for the study were of the view that lack of awareness among victims as well as lack of complete candour were major barriers hindering proper identification.

## **PROTECTION AFFORDED THROUGH THE LEGAL FRAMEWORK**

There are a number of laws governing GBV and TIP, starting with the Constitution of Nepal (2015) and the National Penal (Code) Act (2017). The latter includes laws on abortion, sexual offences, marital rape, child marriage, dowry and menstrual violence. In addition, there are many other laws that provide protection against GBV, including those that have criminalised domestic violence and sexual harassment. Similarly, the primary piece of legislation governing TIP in Nepal is the Human Trafficking and Transportation Control Act (2007) (HTTCA). There are also several National Plans in place to combat TIP and GBV, while landmark judgements have been issued in relation to TIP and GBV by the higher courts. However, Nepal is not a party to a number of international agreements which could provide

protection to vulnerable groups although, in an encouraging sign, the government acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Trafficking Protocol) in June 2020.

Despite the existence of numerous laws relevant to GBV and TIP, there remain several gaps and challenges with regard to the implementation of laws and legal procedures. First, there is the absence of a common understanding of the different issues arising out TIP and GBV cases. For instance, fraudulence in labour migration, human smuggling and trafficking, and victims engaged in commercial sex are all conflated with TIP. In addition, certain laws—including those dealing with citizenship and foreign employment—continue to discriminate against women. At the same time, legal procedures tend to deal mainly with issues only affecting women.

While most law enforcement and government officials seemed to think that the legal definitions of TIP and GBV were clear, service providers in general were not so sure and raised doubts about how well the general public understands them. A common view was that the HTTCA does not differentiate between the many types of TIP and fails to address the issue of consent in the context of labour trafficking. For instance, there is no legislation that deals specifically with the smuggling of migrants, leading to human smuggling often being conflated with trafficking. There are also many contradictions among existing laws as well as in the provisions between the civil and criminal codes, leaving open the possibility of manipulation. Even something as recent as the National Penal Code (2017) is vague on the issue of 'consent'.

Complex legal proceedings also pose barriers for victims when they do seek legal redress. To start, it's unclear where complaints should be filed. The various agencies handling the complaint process also do not adequately disseminate information on the legal process. When cases are prosecuted, there are procedural gaps, such as poor investigations, lack of trained investigators and prosecutors, and frequent turnover of personnel. The way law enforcement officials handle TIP and GBV situations also leave much room for improvement. Several service providers noted that the attitude and behaviour of the police towards the victims are not always positive. Furthermore, judges' perceptions and their interpretation of laws in cases relating to human trafficking and GBV affect the administration of justice. The availability, or lack thereof, of evidence also determines the nature of the justice received by the victim, as do the possibilities of corruption and misjudgement on the part of the judges.

## ACCESS TO SERVICES FOR TIP AND GBV VICTIMS

The major government institutions providing services to victims of GBV and TIP include the Human Trafficking Investigation Bureau (HTIB), the Women, Children, and Senior Citizen Service Directorate (WCSCSD), and the Cyber Bureau, all under the Nepal Police; the National Committee for Controlling Human Trafficking (NCCHT), the Human Trafficking, Transportation Control Division, the Gender-Based Violence Prevention Section and the National Child Rights Council under the Ministry of Women, Children and Senior Citizens (MoWCSC); the Ministry of Labour, Employment and Social Security (MoLESS); the Ministry of Foreign Affairs (MoFA); the Ministry of Health and Population (MoHP); the National Human Rights Commission (NHRC) and the National Women's Commission (NWC). There are also several non-governmental organisations (NGOs) providing services to both GBV and TIP victims, such as shelter and rehabilitation, rescue and repatriation, legal aid and psychosocial counselling. In addition, various international non-governmental organisations (INGOs) are also working in tandem with the government and NGOs to provide funding and support to the programmes and services for victims.

At the same time, various government agencies have drawn up Guidelines and Standard Operating Procedures (SOPs) to provide guidance to different aspects related to TIP and GBV, covering areas as diverse as investigation and prosecution to the operation of shelters. It should be noted though that not all of the procedures outlined are followed to the letter, and in some cases, were not even known to many of the actors involved. With regard to services available to victims at the shelters, most provide accommodation and in-house services related to psychosocial support, health care, vocational training and economic security, legal aid and counselling, and life-skills and education-related to victims. However, service providers also pointed out that resource constraints pose significant challenges. Several reported being subjected to political pressure and threat from offenders as well.

Victims are mostly referred to the shelters by law enforcement officials while some come through local governments and organisations working in the sector. Most victims said that they were generally satisfied with the services they were receiving and grateful to the service providers for providing support even during the Covid-19 pandemic.

Gender disparity in access to services is evident. While shelter services are mostly available only to women and female minors, many of the service providers working to provide psychosocial counselling and legal services in particular stated that they also provide services to men

and persons of other genders. In addition, access to services is also affected by geographical location since most are concentrated in the cities and in border regions.

One of the major barriers hindering access to services, however, is the unwillingness, on the part of victims to seek help openly. Political pressure and influence are also other obstacles.

With respect to reintegration, shelters usually conduct risk assessments to ensure that there is no risk to the victim from their family and community, before reintegrating the victims into their community. A majority of the TIP victims interviewed said they would want to be rehabilitated into the community. Some GBV victims wanted to remain in the shelters, while others wanted to be reintegrated into their homes, and yet others opted to lead independent lives away from their families.

## INTEGRATION OF SERVICES AS A WAY FORWARD?

With regard to integrating services for both TIP and GBV victims, most victims interviewed were of the view that integrating services would be better than providing services separately, owing mainly to the emotional support the two kinds of victims are likely to provide each other when staying together. In addition, some victims were also of the view that integration of services would ensure parity in the kind of services the two kinds of victims get, and neither would be prioritised over the other. Service providers were divided though. Some seemed to think integration was better, citing budgetary constraints as one of the major reasons, while also emphasising that victims could bond with and support each other. Others felt that the two types of victims have different needs and that services should be provided separately as much as possible.

Likewise, law enforcement officials were also divided while all the government officials interviewed were of the view that providing separate and specialized services would be better. Judges and prosecutors, on the other hand, tended to think integration would be better although they also seemed cognisant of the related challenges. With regard to services that could be integrated, many interviewees noted that medical and health-care services; psychosocial counselling; livelihood and capacity development, including skills training, could be provided from the same place.

## RECOMMENDATIONS

Based on the key findings of the study the following recommendations have been made for three key groups of stakeholders.

For shelter homes and service providers:

- Ensure effective screening and identification of victims in coordination with law enforcement agencies;
- Establish shelter homes that cater to the needs of men and sexual minorities;
- Avoid concentrating services in urban and border areas;
- Develop effective referral mechanisms;
- Develop a systematic and uniform feedback mechanism;
- Ensure that interaction between victims in shelters do not impact them negatively; and
- Vigorously raise public awareness to eliminate social stigma and discrimination against victims; inform the general public about services available to victims.

For law enforcement agencies:

- Avoid infringing on the right to free movement of individuals when screening for potential victims;
- Expand screening and identification beyond official border crossings and potential female victims only; also cover potential male victims and those from gender and sexual minorities;
- Establish systems such as 24-hour hotlines to report GBV and TIP crimes;
- Ensure witness protection of victims;
- Practice victim-centric investigation procedures and victim participative criminal justice processes;
- Use trauma-informed language with the victims; and
- Provide intensive GBV- and TIP-specific training to all the law enforcement personnel.

For government officials:

- Enforce existing laws to protect victims while also amending them to reflect new developments in the field;
- Implement and monitor standardised protocols for all operations relating to TIP and GBV;
- Streamline information and establish an information system;
- Specify the functions, roles and duties of the federal, provincial and local governments;
- Increase the number of shelters across Nepal;
- Allocate an annual budget to support shelters and service providers;
- Establish long-term shelters at the community level;
- Set up shelters that cater to the needs of men as well as sexual minorities;
- Conduct periodic monitoring of shelters and service providers;
- Provide timely training to government officials; and
- Raise public awareness regarding what constitutes TIP and GBV, the related laws, and services available to victims.

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