

Optimizing Screening and Support Services for Gender-Based Violence and Trafficking in Persons Victims

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About the project: The Asia Foundation, with support from the Office to Monitor and Combat Trafficking in Persons (J/TIP), United States (US) Department of State conducted a multicountry qualitative research study to improve the efficiency and effectiveness of screening and service provision to victims of trafficking in persons (TIP) and gender-based violence (GBV) in diverse contexts. The study's primary objective is to identify promising practices and challenges in integrating or separating services for GBV and TIP victims in the three target countries of **India, Nepal, and Sri Lanka**. GBV and TIP victims often suffer similar and intersecting forms of abuse, however, at the screening process these multiple vulnerabilities are often not identified and hence care is delayed. This study is premised upon a deeper study of these intersections, its resultant impact on identification of victims, leading to a concluding exploration of effective service delivery to the victims, and whether these stand in need of integration.

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The Foundation partnered with local organizations in the three countries for this research: FXB India Suraksha in India, Social Science Baha in Nepal, and Centre for Poverty Analysis in Sri Lanka.

In Nepal the research team was led by Mr. Deepak Thapa and Ms. Sudeshna Thapa who devoted their time, energy, and expertise towards spotlighting the need for improving the efficiency and effectiveness of screening and service delivery for victims of TIP and GBV. The research team at Social Science Baha who helped with the study are Bhimkala Limbu, Binod Dulal, Sita Mademba, Manju Gurung, Varsha Upraity, Binay Jung Thapa, Vibhav Pradhan, Bibhu Thapaliva, and Shambhawi Poudel.

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The research findings will provide guidance to policy makers and service providers to understand the intersectionality of abuses that TIP and GBV victims experience. We hope that it will inform the discourse on creating an integrated services delivery system for victims of TIP and GBV and help maximise the utilization of resources while providing optimal victim centric care.



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Preface

The Asia Foundation is pleased to present the publication ‘Optimizing Screening and Support Services for Gender Based Violence and Trafficking in Persons.’

This report is a result of a research project implemented by the Asia Foundation’s offices in Sri Lanka, India and Nepal with the primary objective of identifying promising practices and challenges in integrating or separating services for victims of Trafficking in Persons (TIP) and Gender Based Violence (GBV). The project produced three national level reports, Policy Briefs and Action Plans as well as a regional report to provide an evidence base to advocate for separation or integration of services for TIP and GBV victims. The national level reports were compiled by the Centre for Poverty Analysis (CEPA) for Sri Lanka, FXB India Suraksha for India, and Social Science Baha (SSB) for Nepal, while the regional study was compiled by Dr. Geeta Sekhon. The Foundation hopes that the local research groups in the target countries will take on evidence-based policy advocacy to engage a broader audience—including key policymakers to integrate the research recommendations into their current efforts. In drawing evidence from three countries facing significant challenges on Trafficking in Persons, the research results are relevant across South Asia and beyond. This is particularly so, given that resource constraints that complicate service provision efforts in these countries typify those faced throughout the region and necessitate a view to greater service integration and efficiency. Therefore, the findings of the study are disseminated nationally and regionally to increase regional synergy and cross-country learning.

In Nepal, the modus operandi for trafficking now involves hazardous domestic labor, forced prostitution, organ trafficking, and more recently; using women in drug trafficking. Restrictions on women’s migration have further forced them to use irregular channels to migrate, rendering them more vulnerable to trafficking and exploitation. The entertainment sector has also seen a rise in internal human trafficking. The study has indicated GBV to be the leading cause of TIP since trafficking perpetrators are found to prey on victims who have an unstable environment at home. The interlinkage between the two issues raises a valid question on the possibility of integrating or separating services. The qualitative data gathered from different stakeholders resulted in differing opinions. Most survivors are of the opinion that integrating services would be better, owing to the emotional support the two kinds of victims are likely to provide each other when staying together, and because parity would be ensured for both sets of victims. Some service providers also believed integration is better primarily because of cost savings since most services provided to victims are similar. Government officials, including law enforcement officials, were, however, divided in their views on the services’ integration mainly because of concerns over the possibility of GBV victims being subjected to stigma if placed together with victims TIP. Regarding services that could be integrated, many interviewees noted that medical and health-care services; psychosocial counseling services; livelihood and capacity development training, including skills training, can be provided from the same place.

The Foundation hopes that the recommendations offered by the study would support victims’ access to services in a more cohesive and meaningful manner.

Contents

- Acknowledgements..... 1
- Preface..... 2
- Executive Summary 10
- Abbreviations and Acronyms..... 17
- CHAPTER 1 Background 21**
- 1.1 Research Methodology and Data Collection..... 21
 - 1.1.1 Secondary Research 22
 - 1.1.2 Primary Data Collection 22
- Interviews 23
- Focus Group Discussions (FGDs)..... 24
- Data Management and Protection 25
- CHAPTER 2 Understanding of Trafficking in Persons and Gender-Based Violence..... 26**
- 2.1 TIP and GBV: Situational Analysis 26
- 2.2 Vulnerabilities Contributing to GBV and TIP 31
 - 2.2.1 Commonalities of Experience 35
- 2.3 Intersections of GBV, Trafficking, Migration and Human Smuggling 35
 - 2.3.1 Gender-Based Violence..... 36
 - 2.3.2 Trafficking in Persons..... 37
 - 2.3.3 GBV to TIP and Vice Versa..... 38
 - 2.3.4 Human Smuggling 40
 - 2.3.5 Internal Human Trafficking..... 43
- 2.4 Conceptual Clarity on Different Categories of TIP Victims 44
 - 2.4.1 Collaborative Effort 45
 - 2.4.2 Location of Screening..... 46
 - 2.4.3 Lack of Protocols: Identification of TIP Victims..... 48
 - 2.4.4 Lack of Protocols: Identification of GBV Victims 51
 - 2.4.5 Airport and Border Crossings 51
 - 2.4.6 Institutional Gaps 52
 - 2.4.7 Lack of Awareness on part of the victim 53
- 2.5 The Impact of Covid-19 on the incidence of TIP and GBV..... 53
- CHAPTER 3 The Legal Framework..... 56**
- 3.1 Laws on TIP and GBV 56
- 3.2 Laws Pertaining to Gender-Based Violence..... 57
 - 3.2.1 ‘Abortion Law’ (2002)..... 57

3.2.2	Social Practice (Reform) Act (1976)	57
3.2.3	Act Amending Some Nepal Acts to Maintain Gender Equality (2006)	57
3.2.4	Domestic Violence (Crime and Punishment) Act (2009)	58
3.2.5	Sexual Harassment at the Workplace (Elimination) Act (2015)	58
3.2.6	Witchcraft Allegation (Offence and Punishment) Act (2016).....	58
3.2.7	National Penal (Code) Act (2017).....	58
3.2.7.1	Sexual Offences	58
3.2.7.2	Marital Rape	59
3.2.7.3	Child Marriage	60
3.2.7.4	Dowry	60
3.2.7.5	Menstrual Violence.....	60
3.2.7.6	Law against Cyber Crime.....	60
3.2.8	Safe Motherhood and Reproductive Health Right Act (2018).....	60
3.3	Other Relevant Laws	60
3.3.1	Child Labour (Prohibition and Regulation) Act (2000)	60
3.3.2	Bonded Labour (Prohibition) Act (2002)	61
3.3.3	Act Relating to Children (2018)	61
3.3.4	Crime Victim Protection Act (2018)	61
3.4	Laws Pertaining to Trafficking in Persons	61
3.4.1	Immigration Act (1992)	61
3.4.2	Foreign Employment Act (2007)	61
3.4.3	Human Trafficking and Transportation (Control) Act (2007)	61
3.4.4	Extradition Act (2014)	62
3.4.5	Mutual Legal Assistance Act (2014)	62
3.5	International Obligations.....	62
3.6	National Plans to Combat TIP and GBV.....	63
3.6.1	National Action Plan against Trafficking in Persons, especially Trafficking and Transportation of Women and Children (2012-2022)	63
3.6.2	National Plan of Action for Year against Gender-based Violence (2010)	63
3.6.3	National Action Plan for Children 2004/5–2014/15.....	64
3.6.4	15th Five-Year Plan (2019/20–2023/24)	64
3.7	Gaps and Challenges in Laws and Their Application	65
3.7.1	Lack of Understanding of Concepts	65
3.7.2	Discriminatory Laws	66
3.7.3	‘Women-Centric’ Legal Procedures	67
3.7.4	Irregularities in Existing Laws.....	68
3.7.4.1	GBV	68
3.7.4.1.1	Consent in Rape	68
3.7.4.1.2	Cybercrime	69

3.7.4.2	TIP.....	69
3.8	Barriers to Accessing Legal Redress.....	71
3.9	Procedural Gaps.....	72
3.10	Interpretation of laws	73
3.10.1	Capacity of human resources.....	74
3.11	Select Landmark Judgements on TIP and GBV from the Higher Courts	75
3.11.1	Gender-Based Violence	76
3.11.2	Trafficking in Persons	79

CHAPTER 4 Services Available to TIP and GBV Victims and Relevant

	Service Providers.....	81
4.1	Service Delivery Stakeholders	81
4.1.1	Government Bodies.....	81
4.1.1.1	Ministry of Women, Children and Senior Citizens	81
4.1.1.1.1	National Committee for Controlling Human Trafficking (NCCHT) and District Committees.....	82
4.1.1.1.2	Human Trafficking and Transportation Control Division...83	
4.1.1.1.3	Gender-Based Violence Prevention Section	83
4.1.1.1.4	National Child Rights Council.....	84
4.1.1.2	Ministry of Home Affairs	85
4.1.1.2.1	Women, Children, and Senior Citizen Service Directorate, Nepal Police	85
4.1.1.2.2	Human Trafficking Investigation Bureau, Nepal Police.....	86
4.1.1.2.3	Cyber Bureau, Nepal Police	87
4.1.1.3	Ministry of Labour, Employment and Social Security	87
4.1.1.4	Ministry of Foreign Affairs.....	88
4.1.1.4.1	Shelter Homes.....	88
4.1.1.5	Ministry of Health and Population	89
4.1.1.6	National Human Rights Commission	90
4.1.1.7	National Women’s Commission.....	90
4.2	Other Stakeholders	91
4.2.1	National Organizations and Networks.....	92
4.2.1.1	Human Trafficking and Smuggling Prevention	92
4.2.1.2	Rehabilitation/Shelter Homes	92
4.2.1.3	Rescue and repatriation.....	93
4.2.1.4	Service Centers.....	93
4.2.1.5	Legal Aid.....	94
4.2.1.6	Psycho-social Counselling	94
4.2.2	International Organizations.....	94

4.3	Frameworks for Delivering Service	94
4.3.1	Investigation and Prosecution of Cases Concerning TIP and GBV	95
4.3.1.1	Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases (2007)	95
4.3.1.2	Standard Operating Procedure on the Protection of the Right to Confidentiality in Special Cases (2012), National Judicial Academy	96
4.3.1.3	Standard Operating Procedure on Prosecution and Adjudication in Trafficking in Persons (TIP) Cases (2011), National Judicial Academy.....	97
4.3.2	Frameworks and Guidelines Governing TIP	97
4.3.2.1	Guidelines for the Operation of Rehabilitation Centre (2011), MoWCSC.....	97
4.3.2.2	National Minimum Standard for the Care and Protection of the Victims of Human Trafficking and Transportation (2011), MoWCSC.....	97
4.3.2.3	Guidelines on Local Committee and Municipality Committee against Human Trafficking (Formation and Mobilization) (2013), MoWCSC.....	98
4.3.2.4	Guidelines for Psychosocial Counselling for Stakeholders Involved in the Campaign against Human Trafficking (2012), MoWCSC.....	99
4.3.2.5	Standard Operating Procedures to Counter Cross Border Trafficking in Persons: India-Nepal, for First Responders (2017), United Nations Office on Drugs and Crime (UNODC).....	99
4.3.3	Frameworks and Guidelines Governing GBV	99
4.3.3.1	Clinical Protocol on Gender-Based Violence (2015), MoHP	99
4.3.3.2	Guidelines for the Elimination of the Chhaupadi System (2007), MoWCSC.....	100
4.3.3.3	Guidelines on the Control of Sexual Abuse and Violence against Women Workers in Dance Restaurants, Dance Bars and other Workplaces in the Entertainment Sector (2008), Supreme Court, Nepal	100
4.3.3.4	Hospital Based One-stop Crisis Management Centre (OCMC) Operational Manual (2011), MoHP	101
4.3.4	Frameworks and Guidelines Concerning Child Victims of GBV and TIP	101
4.3.4.1	Standards for Operation and Management of Residential Child Care Homes (2012), MoWCSC	101
4.3.4.2	Child Home Operation Procedures (2018), MoWCSC.....	102
4.3.4.3	Child Search Helpline No. 104 Operation Guidelines (2019), MoWCSC.....	102
4.3.4.4	Child Helpline No. 1098 Operation Procedures (2019), MoWCSC....	103
4.3.4.5	Terms and Conditions and Process for Granting Approval for Adoption of Nepali Child by Aliens (2008), MoWCSC.....	103

4.3.5	Frameworks and Guidelines Governing Foreign Employment	104
4.3.5.1	Guidelines for Management of Domestic Workers in Foreign Employment (2015)	104
4.3.5.2	Guidelines for the Legal Protection of Nepali Workers in Foreign Employment (2018)	104
4.3.6	Miscellaneous	104
4.3.6.1	Standard Operating Procedure for the Operation of Shelter Homes during the Coronavirus (Covid-19) Pandemic (2020), MoWCSC.....	104
4.4	Services Available to GBV and TIP Victims.....	104
4.4.1	Services Available in Shelter Homes	104
4.4.2	Victim Referrals to Shelter Homes.....	105
4.4.3	Differential Access to Services: Gender and Geography	107
4.4.4	Barriers to Accessing Services.....	108
4.4.5	Victims' Perception of Services.....	109
4.4.6	Reintegration and Rehabilitation of Victims.....	109
4.4.7	Service Provision during Covid-19.....	110
4.5	Integration/Separation of Services for GBV and TIP Victims	111
4.5.1	Stakeholders' views on integration/separation of services.....	112
CHAPTER 5 Findings and Recommendations		117
5.1	Findings.....	117
5.1.1	Understanding of concepts and the prevalence of TIP and GBV	117
5.1.1.1	GBV and TIP: Situational Analysis.....	117
5.1.1.2	Vulnerabilities Contributing to GBV and TIP.....	118
5.1.1.3	Intersections of GBV, Trafficking, Migration and Human Smuggling.....	118
5.1.1.4	Conceptual Clarity on Different Categories of TIP Victims.....	118
5.1.2	Screening and Identification of Victims.....	119
5.1.2.1	Collaborative Effort	119
5.1.2.2	Location of Screening.....	119
5.1.2.3	Challenges in Correct Screening/Identification of Victims	119
5.1.2.4	Impact of Covid-19 on TIP and GBV	120
5.1.3	Legal Framework	120
5.1.3.1	Laws Governing TIP and GBV	120
5.1.3.2	International Obligations.....	121
5.1.3.3	National Plans to Combat TIP and GBV.....	121
5.1.3.4	Gaps and Challenges in Laws and Legal Procedures and Their Implementation	121
5.1.3.5	Barriers to Accessing Legal Redress.....	122

5.2	Services and Service Delivery	122
5.2.1.1	Service Delivery Stakeholders	122
5.2.1.2	Frameworks for Delivering Service.....	122
5.2.1.3	Services Available to GBV and TIP victims	123
5.2.1	Integration or Separation of Services	124
5.3	Recommendations	124
5.3.1	For the Government.....	124
5.3.1.1	For Law Enforcement Agencies	125
5.3.2	For Shelter Homes and Service Providers	126
5.3.3	On Integration or Separation of Services	126
5.3.4	On potential topics/areas for further research	127
	Bibliography.....	128
	Government Reports	128
	NGO/INGO and Research Reports	129
	UN Reports	130
	Journal Articles	131
	Other Reports/Articles.....	132
	Books.....	132
	News Reports.....	132
	Blogs	133
	Online Resources.....	133
	National Laws	134
	National Policies and Plans	134
	International Conventions.....	135
	Case Laws	135
	Guidelines/ Standards of Procedure (SOPs).....	136
	Annexures	137
	Annex I: List of stakeholders interviewed	137
	Annex II: OCMCs in operation in Nepal, 2019/20.....	140
	Annex III: Distribution of GBV victims who have received integrated services from OCMCs through 2011/12–2016/17.....	143
	Annex IV: Shelter Homes operated by NGOs in coordination with the MoWCSC	144
	Annex V: NGOs providing services to TIP and GBV victims.....	145

List of Figures

Figure 1-1: Districts Selected for Research.....	22
Figure 2-1: Trafficking Cases Registered with Nepal Police.....	31
Figure 4-1: How Victims Were Referred to the Shelter Homes	106
Figure 4-2: Victims' Preference for Rehabilitation/Reintegration	109
Figure 4-3: Victims on Integration of Services	112
Figure 4-4: Service Providers on Integration of Services	113

List of Tables

Table 1-1: Interviews Planned.....	23
Table 1-2: Interviews Conducted.....	24
Table 1-3: Number of participants in FGDs	25
Table 2-1: Complaints with the National Women's Commission (2017/018 and 2018/019)....	27
Table 2-2: Rates of Reported Crime (GBV)	29
Table 3-1: Laws Governing Gender-Based Violence and Trafficking in Persons	57
Table 6-1: Services Available in Shelter Homes.....	105
Table 6-2: Mode of Victim Referrals	106

Executive Summary

Background

This report is based on a study spread across three countries in South Asia—India, Nepal and Sri Lanka—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.

The research in Nepal was conducted in the capital, Kathmandu, along with three outlying districts bordering India—Morang and Sunsari in Province 1, and Banke in the province of Lumbini.

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

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

Situational Analysis

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

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 people of 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 stigmatization. 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 are 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

induced by 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 in Nepal

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. Traffickers 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 publicized 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 of 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 programs (such as dance, drama and musical performances showcasing cultural heritage), among others. But the different scales of domestic trafficking and transnational trafficking are 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 working 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 programs and interactions in collaboration with the police.

Government and NGO checkpoint inspections at Nepal's open border with India, however, focus almost exclusively on female travelers. Their efforts are also hampered by the failure of the law to reflect the changes taking place in the trafficking 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 potentially at risk are dependent entirely 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 sites in the city such as dance bars and *dobori* 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, a factor that also affects the ensuing legal process of seeking justice for victims and punishment for perpetrators. The authorities involved do not follow any kind of standard operating procedure or protocol for the identification of victims of trafficking or GBV. The police do not have a specific set of indicators to identify victims either. They rely on visual cues and their experience, training and interrogation skills to bring out the truth once they suspect someone is being trafficked. GBV victims are 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 complete candor are 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 provisions 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 criminalized domestic violence and sexual harassment at the workplace. 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 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 a raft of 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 are 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 lumped together 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. For instance, it is unclear where complaints are to 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 manner in which law enforcement officials handle TIP and GBV situations also leave much room for improvement. Several service providers noted that the attitude and behavior 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 misjudgment 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 organizations (NGOs) providing services such as shelter and rehabilitation, rescue and repatriation, legal aid and psychosocial counselling to both GBV and TIP victims. In addition, various international non-governmental organizations (INGOs) also work in tandem with the government and NGOs to provide funding and support to the programs and services for victims.

At the same time, different government agencies have drawn up Guidelines and Standard Operating Procedures (SOPs) to provide guidance to different aspects affecting victims of 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 threats from offenders.

Victims are mostly referred to the shelters by law enforcement officials while some come via local governments and organizations working in the sector. Most victims said that they were generally satisfied with the services they are 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, 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 want to be rehabilitated into the community. Some GBV victims want to remain in the shelters though, while others seek reintegration 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 prioritized 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 emphasizing 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 cognizant 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 as well as 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 standardized protocols for all operations relating to TIP and GBV;
- Streamline collection and dissemination of information by establishing an information management system of TIP and GBV as well as to assist prospective foreign employment migrants;
- 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.

Abbreviations and Acronyms

AATWIN	Alliance against Trafficking in Women and Children
ABC Nepal	Agroforestry, Basic Health and Cooperative Nepal
AES	Adult Entertainment Sector
AMKAS	Aaprabasi Mahila Kamdar Samuha
APF	Armed Police Force
ASI	Anti-Slavery International
CAAFAG	Children Associated with Armed Forces and Armed Groups
CAP Nepal	Centre for Awareness Promotion Nepal
CDO	Chief District Officer
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 1979
CeLLRD	Centre for Legal Research and Resource Development
CLEAR	Country Level Engagement and Assistance to Reduce Child Labour
CLMS	Child Labour Monitoring System
CMC	Centre for Mental Health and Counselling
CMS	Case Management System
CoCoN	Common Platform for Common Goal
CPECP	Community Participation for Education and Child Protection
CRC	Convention on the Rights of the Child, 1990
CSE	Commercial Sexual Exploitation
CSEC	Commercial Sexual Exploitation of Children
CVICT	Centre for Victims of Torture
CWIN	Child Workers in Nepal
CWISH	Children-Women in Social Service and Human Rights

DoFE	Department of Foreign Employment
DV Act	Domestic Violence (Offence and Punishment) Act, 2009
ESCR	Economic Social and Cultural Rights
ETSC-N	Education Training and Service for Community Nepal
FEA	Foreign Employment Act, 2007
FEDO	Feminist Dalit Organization
FET	Foreign Employment Tribunal
FGD	Focus Group Discussion
FWLD	Forum for Women, Law and Development
GAN	Global Action Nepal
GBV	Gender-based violence
GCC	Gulf Cooperation Council
GMSP	Gramin Mahila Sirjansheel Pariwar
GoN	Government of Nepal
HimRights	Himalayan Human Rights Monitors
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HRTMCC	Human Rights Treaty Monitoring Coordination Centre
HTIB	Human Trafficking Investigation Bureau
HTTCA	Human Trafficking and Transportation (Control) Act, 2007
ICJ	International Court of Justice
ILO	International Labour Organization
INGO	International Non-Governmental Organization
INSEC	Informal Sector Service Centre
INTERPOL	The International Criminal Police Organization
LACC	Legal Aid and Consultancy Centre

LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning, Asexual
LRI	Local Research Partners
MAC	Monitoring and Action Committee
MANK	Mahila Atma Nirvarta Kendra
MMS	Makawanpur Mahila Samuha
MoFAGA	Ministry of Federal Affairs and General Administration
MoHA	Ministry of Home Affairs
MoHP	Ministry of Health and Population
MoLESS	Ministry of Labour, Employment and Social Security
MOU	Memoranda of Understanding
MoWCSC	Ministry of Women, Children and Senior Citizens
NAP	National Action Plan
NCCHT	National Committee for Controlling Human Trafficking
NCRC	National Child Rights Council
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
NNAGT	National Network Against Girls' Trafficking
NORAD	Norwegian Agency of Development Cooperation
NWC	National Women's Commission
OCMC	One-Stop Crisis Management Center
OSRT	Office of the Special Rapporteur
OVN	Opportunity Village Nepal
PNCC	Pravasi Nepali Coordination Committee
RRN	Rural Reconstruction Nepal
SEE	Secondary Education Exam
SOP	Standard Operating Procedure

SOSEC	Social Service Centre Nepal
SSB	Social Science Baha
TAF	The Asia Foundation
TDH	Terres Des Hommes
TIP	Trafficking in Persons
TPO	Transcultural Psychosocial Organization
UAE	United Arab Emirates
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USD	United States Dollars
USDOS	United States Department of State
VAW	Violence against Women
VAW/G	Violence against Women and Girls
WATCH	Women Acting Together for Change
WCSCSC	Women, Children and Senior Citizen Service Centre
WCSCSD	Women, Children, and Senior Citizen Service Directorate
WDSETC	Women Development Self Employment Training Centre
WMWs	Women Migrant Workers
WOFOWON	Women Forum for Women in Nepal
WOREC	Women's Rehabilitation Centre
WOSCC	Women Skill Creation Centre
WWS	Women Welfare Society

CHAPTER 1

Background

This report is based on the study, ‘Optimizing Screening and Support Services for Gender-Based Violence and Trafficking in Persons’, spread across three countries in South Asia—India, Nepal and Sri Lanka. Its objective was to identify promising practices and challenges in integrating or separating services for victims of human trafficking and gender-based violence (GBV) with the ultimate aim of improving the efficiency and effectiveness of screening and provision of services to victims of trafficking in persons (TIP) and GBV in a variety of contexts. The project was supported by the United States Department of State (TIP Office) and was undertaken by The Asia Foundation (TAF) with Social Science Baha as its collaborating partner in Nepal.

1.1 Research Methodology and Data Collection

The project commenced with an inception meeting in New Delhi, India, in November 2019. At the meeting, which brought together TAF and the local research partners (LRPs) from the three countries, the broad outline of the study along with the tentative timeline and expected deliverables were agreed upon. As the first step, the research team in Nepal conducted a review of available information on TIP and GBV, consisting primarily of existing data, the current legal and policy frameworks, accessible service delivery mechanisms, and stakeholders active in either one or both sectors. The review was submitted as the ‘Country Assessment Report’ (for Nepal) to help guide the drafting of the research instruments.

Concurrently, the Principal Investigator (PI) developed a series of questionnaires to be used with the different groups to be interviewed for the study. The questionnaires were revised following feedback from the country teams. Thereafter, the PI conducted an in-country orientation on the project with the Nepal research team in Kathmandu in February 2020, which included a discussion of the research instruments as well as the deployment plan. The orientation workshop involved discussions on the guidelines drawn up by the PI on ethical research and conduct and self-care during research. The last aspect was important since the study was to be conducted among groups who would have experienced various forms of trauma and would thus be psychologically vulnerable. For the same reason, it was important for the researchers also to be prepared to listen to narratives that could be troubling and possibly cause some form of trauma in them as well. In order to provide guidance to researchers in taking care of one’s own mental health while undertaking such a study, a session with an expert psychosocial trainer was also made part of the orientation.

Following the orientation, the revised questionnaires were then translated into Nepali and tested as follows among respondents representing four of the different groups of individuals to be interviewed by the study:

- i. Service Provider: Shelter Home Supervisor, Pourakhi Nepal, Kathmandu;
- ii. Service Provider: Official, Aaprabasi Mahila Kamdar Samuha (AMKAS), Kathmandu;
- iii. Law Enforcement Official: Officer, Anti-Human Trafficking Bureau, Nepal Police, Kathmandu; and
- iv. Prosecutor: Official, Office of the Attorney General, Kathmandu

Thereafter, the interview questionnaires were revised for clarity as well as brevity for use during interviews.

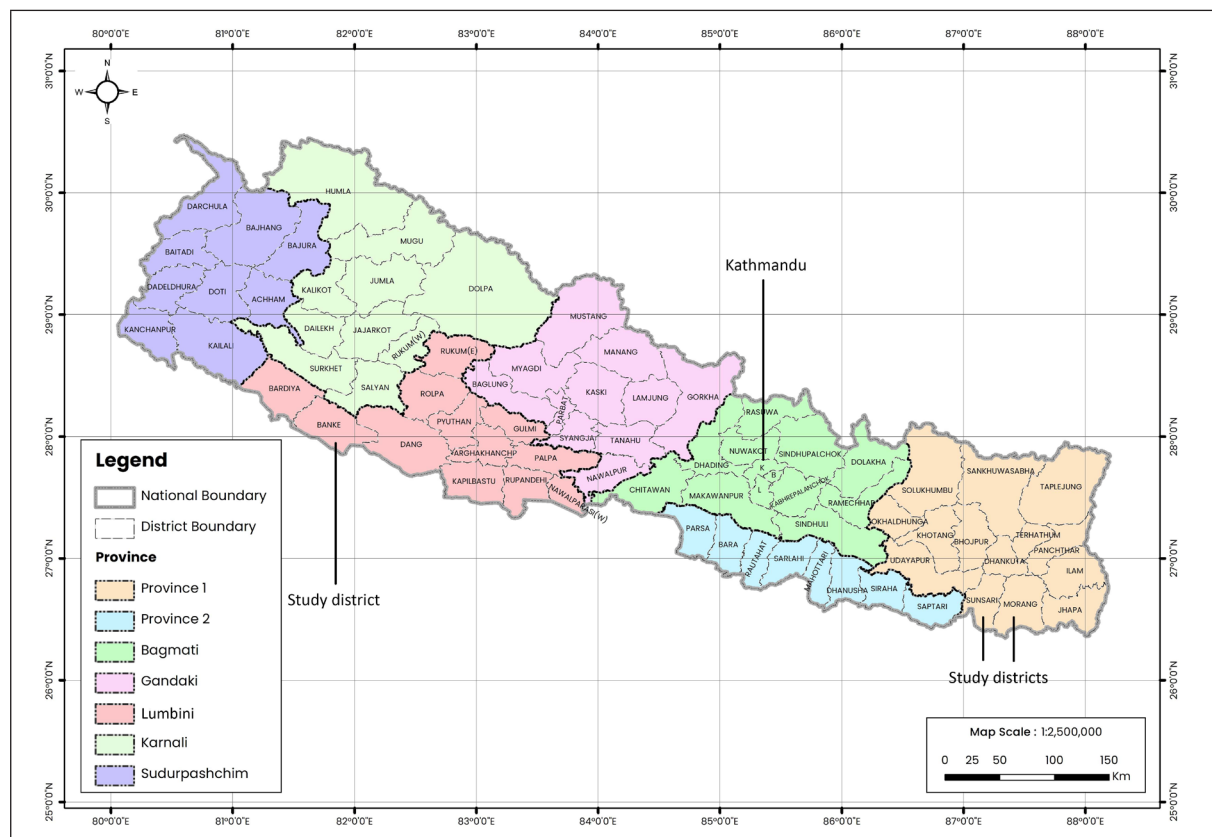
1.1.1 Secondary Research

An extensive review of the available literature on TIP and GBV was undertaken using different kinds of published material, namely, research articles, publications issued by various government and non-government organizations (NGOs), and relevant news reports. The review also included a survey of the legal and policy frameworks governing TIP and GBV in Nepal together with the various standards and protocols developed over the years.

1.1.2 Primary Data Collection

It was decided that the research would be carried out in Kathmandu as well as a few outlying districts. Accordingly, three other districts—Morang and Sunsari in Province 1, and Banke in Lumbini—were selected. The choice of these districts was guided mainly by their proximity to the Indian border, a fact relevant for collection of data on victims of TIP.

Figure 1-1: Districts Selected for Research



Disclaimer: The boundaries and names shown, and the designations used in all the maps in this report, do not imply official endorsement or acceptance by the Government of Nepal, the Government of the United States of America, or The Asia Foundation.*

*In May 2020, the Government of Nepal approved a new map that showed Kalapani, an area of dispute with India in Nepal’s north-western corner, along with Limpiyadhura and Lipulekh to be within Nepal. For more details, see ‘Government unveils new political map including Kalapani, Lipulekh and Limpiyadhura inside Nepal borders’, *The Kathmandu Post*, 20 May 2020, <https://tkpo.st/2WMngWT>.

Interviews

As per the work plan, a total of 70 interviews were to be conducted, with the breakdown as given in Table 1-1.

Table 1-1: Interviews Planned

Stakeholder group	Sub-group	Total interviews
Victims	TIP	20
	GBV	
Service Providers	(NGOs, INGOs, Governmental Service Providers)	20
	Shelter Homes	10
Law Enforcement Officials	Police	8
	Border Officials (Armed Police Force)	2
	Immigration Officials	2
Judges		4
Prosecutors		2
Other Government Officials		2
	Total	70

Due to the onset of the Covid-19 pandemic in the first quarter of 2020, fieldwork plans were completely upended. In order to continue with the assignment, it was agreed within the project team that the fieldwork would proceed with interviews conducted remotely. Accordingly, all key informant interviews (KIIs) and focus group discussions (FGDs) were done on telephone or one or another online communication platform. This included interviews with service providers; law enforcement officials—police, border and immigration officials; judges; prosecutors; and other government officials. Conducting interviews remotely was not without its challenges, which included connectivity issues, difficulties in building rapport, limitations brought about by lack of access to the internet, and unfamiliarity with technology among some of the interviewees.

In the case of victims, however, given the sensitivity of the issue and the difficulty of gaining trust during conversations taking place remotely, it was decided that the interviews would be conducted by individuals associated with the organizations running the shelter homes where the victims were being housed. The interviewers assigned from these entities were provided intensive training by Social Science Baha (SSB) researchers on the questionnaires, and each was also asked to conduct a mock interview with an SSB researcher as part of the training.

A total of 72 interviews were thus conducted, with the two extra interviewees consisting of a service provider and an immigration official. A breakdown of the number of interviews conducted for each group of stakeholders is provided in Table 1-2 (while a detailed list identifying them has been provided in Annex 1).

Table 1-2: Interviews Conducted

Group	Sub-group	Location (district)			Gender		Total Interviews
		Morang/Sunsari	Kathmandu	Banke	Female	Male	
Victims	TIP	0		0	10	0	10
	GBV	5	5	0	10	0	10
Service Providers	NGOs, INGOs, Governmental Service Providers	4	13	4	17	4	21
	Shelter Homes	5	4	1	9	1	10
Law Enforcement Officials	Police	3	2	3	4	4	8
	Border Officials	2	0	0	0	2	2
	Immigration Officials	1	1	1	1	2	3
Judges		2	2	0	1	3	4
Prosecutors		1	0	1	0	2	2
Other Government Officials		1	1	0	2	0	2
Total		19	23	10	54	18	72

All the victims interviewed were women as were a majority of the service providers. This gender disparity is a result and representative of the actual situation in the country wherein an overwhelming majority of the services available to TIP and GBV victims cater exclusively to women and a majority of the service providers are also female. The feminization of victimhood and the prevalence of ‘women-centric’ legal procedures and service provision are also explored under relevant sections in the report (see Sections 3.6.2 and 4.4.3). An equal number of male and female police officers were interviewed while a majority of the border officials, immigration officials, judges and prosecutors interviewed were male, again representative of the skewed gender ratio in these professions in the country in general.

Focus Group Discussions (FGDs)

Two FGDs were conducted, one with service providers and the other with law enforcement officials. Both FGDs were conducted virtually using online communication platforms. The number of participants involved in the FGDs is given in Table 1-3 (with full details provided in Annex 1).

Table 1-3: Number of participants in FGDs

Stakeholder	Number of participants		
	Male	Female	Total
Service providers	1	6	7
Armed Police Force officials along the Nepal-India border	6	0	6

Data Management and Protection

The interviews were recorded on digital audio recording devices wherever permitted by the interviewees. In addition, comprehensive notes were taken by researchers during all the interviews. All the data was accessible only to the research team involved, and it was stored in digital form in computers, secured by password protection.

CHAPTER 2

Understanding of Trafficking in Persons and Gender-Based Violence

This chapter provides an overview of the general situation of trafficking in persons (TIP) and gender-based violence (GBV) in Nepal. Along with facts and figures, it also explores the intersection between trafficking, GBV, human smuggling and migration as well as the understanding of these phenomena among different groups of stakeholders. In addition, the chapter also contains information on how the screening and identification of TIP and GBV victims are undertaken, and the related challenges faced by actors involved in these two sectors.

2.1 TIP and GBV: Situational Analysis

Even though the issue of GBV covers a wide spectrum of issues, almost all the focus in Nepal is on physical violence against women.¹ This could be due to the high incidence of violence perpetrated against women, particularly in the domestic sphere. For instance, the 2016 Nepal Demographic and Health Survey revealed that a third of all married women in Nepal have experienced violence, physical and emotional, from their partners.² Despite this high prevalence of GBV, the Survey also found that two thirds of those women had not shared their experiences with anyone or sought any help to end it.

Following her visit to Nepal in 2018, the UN's Special Rapporteur on violence against women, its causes and consequences, noted that there were a total of 149 GBV-related deaths in 2017.³ Of these, 140 were women, with 75 killed in intimate partner or domestic violence situations. GBV was also easily the leading cause of violent deaths that year, accounting for a third of the 446 murders recorded.⁴ The pattern continued in 2018, when the first quarter saw the number of GBV cases go up two-fold compared to the last quarter of 2017—251, up from 125—with GBV again accounting for the largest proportion of violent incidents recorded.⁵

1 Office of the Prime Minister and Council of Ministers (OPMCM) (2012) A Study of Gender-Based Violence Conducted in Selected Rural Districts of Nepal. Government of Nepal, Kathmandu. Retrieved from: <https://asiafoundation.org/resources/pdfs/OPMCMGECUGBVRResearchFinal.pdf>. Accessed: 28 January 2021; CREHPA (2013) Tracking Cases of Gender-Based Violence in Nepal: Individual, institutional, legal and policy analyses. CREHPA, Kathmandu. Retrieved from: https://www.upr-info.org/sites/default/files/document/nepal/session_23_-_november_2015/un_nepal_upr23_npl_e_annexe4.pdf. Accessed: 28 January 2021.

2 Ministry of Health and Population (MoHP) (2017) Nepal Demographic and Health Survey 2016. Government of Nepal, Kathmandu. Retrieved from: <https://www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf>. Accessed: 28 January 2021.

3 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. Retrieved from: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23948&LangID=E>. Accessed: 28 January 2021.

4 Nepal Peace Monitor (2017) Annual Review. Retrieved from: <https://bit.ly/2NVsOMC>. Accessed: 20 February 2021; UNHRC (2019).

5 Nepal Peace Monitor (2018) Sixth Quarterly Report- Trends of Violence and Contestation in Nepal April to June 2018. Retrieved from: <https://nepalmonitor.org/analysis/35>. Accessed: 20 February 2021; UNHRC (2019).

The high degree of domestic violence in Nepal is also borne out by the number of complaints received by the National Women’s Commission (NWC). In both 2017/18 and 2018/19,⁶ more than 90% of the complaints registered with the NWC were related to ‘domestic violence’ as opposed to a more general ‘violence against women’ (Table 2-1).

**Table 2-1: Complaints with the National Women’s Commission
(2017/018 and 2018/019)**

Category of Violence*	Year	
	2017/18	2018/19
Domestic Violence		
Physical	388	458
Mental	436	589
Economic	298	224
Sexual	58	47
Total	1180	1318
Violence against Women		
Rape		37
Citizenship-related ^a		6
Physical assault	8	10
Economic violence ^b	7	7
Mental torture	2	20
Sexual violence		15
Murder		7
Character assassination/ Reputational damage		21
Workplace sexual violence	0	2
Trafficking	2	0
Violence on online platform	3	
Miscellaneous ^c	0	31
Total	22	156
Grand Total	1202	1453

Source: National Women’s Commission, 12th Annual Report, Kathmandu: NWC, 2019.

*Of the two categories of violence mentioned in the table, NWC uses the Domestic Violence (Offence and Punishment) Act, 2009 (the DV Act) to define the former whereby domestic violence is ‘any form of physical, mental and sexual and economic harm perpetrated by persons with whom he/ she has a family relationship. This would also include any reprimands or emotional harm while all other acts of violence ‘primarily or exclusively committed against women and girls’ is defined as violence against women (VAW).**

**National Women’s Commission (NWC) (2020) HELPLINE-1145 – FACTSHEET: Nov 21st, 2017 - May 31st, 2020. Government of Nepal, Kathmandu. Retrieved from: https://www.nwc.gov.np/Publication_file/5ef19d056b967_NWC_factsheet_May_2020.pdf. Accessed: 28 January 2021.

a. This refers to non-cooperation in putting together the documentation required for women to acquire citizenship papers, mainly by the husband or husband’s family but sometimes also by the natal family.

b. According to the DV Act, economic violence refers to ‘privation from using jointly or privately owned property or deprivation of or access to employment opportunities, economic resources or means’.

c. The data source does not mention what this category consists of.

⁶ Nepali government data is generally provided in terms of fiscal years, which start in mid-July.

Similarly, data available from the Nepal Police shows that reporting on GBV has increased significantly over the last 25 years, from just 663 cases in 1996/97 to 19,251 in 2018/19 (before coming down slightly to 15,692 in 2019/20) (Table 2-2).⁷ It must be noted, however, that the rise is most likely a reflection of more cases being filed over time as opposed to an indication of an exponential increase in the incidence of GBV itself.⁸ It is also noteworthy that domestic violence has consistently accounted for a majority of the cases reported since 2013/14—at least 75%—which could be attributed to the gradual increase in public awareness regarding the Domestic Violence (Offence and Punishment) Act (the DV Act) enacted in 2009. There is some credence to this assumption since a 2012 study showed that a majority of women (61.3%) were unaware of any laws dealing with GBV and only 13% were aware of existing laws criminalizing domestic violence, more specifically the DV Act,⁹ a figure likely to have increased due to various government and non-government interventions aimed at raising awareness about violence against women.¹⁰ None of these agencies mentioned have reliable data, if any, on violence faced by men and those belonging to other genders. It is, therefore, not possible to provide an analysis or comparison of the extent of the violence faced by women with that faced by men or those from non-binary genders.

Despite the increase in the reporting of GBV cases due to heightened awareness, there remains the challenge of under-reporting, mainly due to fear of both retaliation and stigma.¹¹ Yet, there is a fair amount of information available on GBV in Nepal collected by myriad agencies: government bodies such as the Nepal Police and the Ministry of Women Children and Senior Citizens (MoWCSC), constitutional bodies such as the National Human Rights Commission (NHRC) and the National Women's Commission (NWC), and various NGOs.

Information on TIP, on the other hand, is sparse, scattered, and quite incomplete. A government report even stated bluntly that official information and there are no statistics to be found.¹² That is mainly due to three reasons: first, the clandestine nature of trafficking makes it difficult to track such incidents; second, victims have little incentive to be truthful even when discovered; and, finally, there are a number of contending definitions of what constitutes trafficking, any one of which may be used while collecting data, compromising the quality of the information. One example is that under the Human Trafficking and Transportation Control Act (HTTCA)

7 This period includes the national lockdown due to the Covid-19 pandemic when women had to suffer various forms of violence since they could not go anywhere, which could also have led to fewer incidents being reported. See National Women's Commission (NWC) (2020) Activities undertaken by the National Women's Commission to Eliminate Gender-Based Violence during the Lockdown Caused by Covid-19 (in Nepali). Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/2ZLE2Gs>. Accessed: 20 February 2021.

8 UNHRC (2019). The Special Rapporteur's report cited earlier also recognized that the increase in the number of incidents of violence against women could be a result of 'an increase in overall reporting'.

9 CREHPA (2013).

10 National Women's Commission (NWC) (2020) FAQ GBV Helpline. Government of Nepal, Kathmandu. Retrieved from: http://nwc.gov.np/Publication_file/5dd4f3910f867_Helpline.pdf. Accessed: 28 January 2021; Karaev Zainiddin and Chhetri Renu (2018) Addressing Gender-Based Violence in Nepal. World Bank Blogs, Kathmandu. Retrieved from: <https://blogs.worldbank.org/endpovertyinsouthasia/addressing-gender-based-violence-nepal>. Accessed: 28 January 2021.

11 UNHRC (2019); International Federation of Red Cross and Red Crescent Societies (2017) Nepal Country Case Study: Effective law and policy on gender equality and protection from sexual and gender-based violence in disasters. ICRC, Geneva. Retrieved from: <https://media.ifrc.org/ifrc/document/effective-law-policy-gender-equality-protection-sexual-gender-based-violence-disasters-nepal/>. Accessed: 28 January 2021.

12 MOWCSC (2019) National Report on Control of Trafficking and Transportation of Persons 2076. Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/316aMLr>. Accessed: 22 January 2021.

2007, prostitution, organ trafficking and labour exploitation are all recognized as comprising human trafficking and transportation even though each is quite distinct from the other.¹³

Table 2-2: Rates of Reported Crime (GBV)

Year	Rape	At-tempt to Rape	Abor-tion	Po-lyga-my	Child Mar-riage	Witch-craft*	Un-touch-ability [†]	Child Sex-ual Abuse	Domes-tic Vio-lence	Total Cases	Domestic Violence as % of Total
1996/97	112	34	74	101	5	-	-	-	337	663	50.8
1997/98	181	34	101	135	3	-	-	-	228	682	33.4
1998/99	141	18	81	96	1	-	-	-	432	769	56.2
1999/2000	186	33	89	96	5	-	-	-	711	1,120	63.5
2000/01	122	35	55	75	1	-	-	-	449	737	60.9
2001/02	129	21	14	51	-	-	-	-	410	625	65.6
2002/03	157	18	15	69	2	-	-	-	569	830	68.6
2003/04	154	19	8	44	3	-	-	-	922	1,150	80.2
2004/05	188	25	11	66	1	-	-	-	730	1,021	71.5
2005/06	195	38	14	65	1	-	-	-	939	1,252	75.0
2006/07	317	70	3	94	7	-	-	-	1,100	1,591	69.1
2007/08	309	73	13	122	4	-	-	-	881	1,402	62.8
2008/09	391	75	12	170	2	-	-	-	968	1,618	59.8
2009/10	376	101	8	146	7	4	-	-	983	1,625	60.5
2010/11	481	151	12	197	2	39	-	-	1,355	2,237	60.6
2011/12	555	156	13	249	12	35	-	-	2,250	3,270	68.8
2012/13	677	245	28	350	19	28	-	-	1,800	3,147	57.2
2013/14	912	414	18	421	15	39	14	-	6,835	8,668	78.9
2014/15	981	562	17	518	23	43	10	-	8,268	10,422	79.3
2015/16	1,089	452	22	463	20	28	19	-	9,398	11,491	81.8
2016/17	1,131	536	22	464	26	24	17	-	11,629	13,849	84.0
2017/18	1,480	727	18	602	59	48	18	-	12,225	15,177	80.5
2018/19	2,230	786	27	1,001	86	46	43	211	14,774	19,204	76.9
2019/20	2,144	687	29	734	64	34	30	232	11,738	15,692	74.8

Source: Nepal Police Crime Investigation Department (CID). 2019**.

* In Nepal, women are sometimes accused of practicing witchcraft, and are subjected to inhumane treatment. The practice was so rampant that there is a separate law to deal with the issue, the Anti-Witchcraft (Crime and Punishment) Act, 2014.

† Dalits (formerly, the 'untouchable' caste in Hinduism) are subjected to degrading treatment based on their caste status despite the existence of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011.

**Source: <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>.

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 **some form of sexual** exploitation. This could also be because, as a prosecutor put it:

13 Forum for Women Law and Development (FWLD) (2014) Human Trafficking and Transportation (Control) Act, 2007: Its Implementation. HTTCA, FWLD, Kathmandu. Retrieved from: <https://fwld.org/wp-content/uploads/2016/07/Human-Trafficking-and-Transportation-Control-Act-2007-ITS-IMPLEMENTATION.pdf>. Accessed: 28 January 2021.

'Some laws such as the trafficking law are phrased such that they relate more to women.' (Prosecutor, male, District Court, 15 September 2020)¹⁴

There is also under-reporting of TIP cases for fear among victims of retaliation from perpetrators since the witness protection system in the **country is feeble**.¹⁵ Further, even when information is available, there seems to be an innate unwillingness to share it with other agencies. To take one example, when the NHRC asked the district police offices in all the 77 districts of the country to fill out a questionnaire in an attempt to collate incidents of human trafficking for its 2019 national report on trafficking, only 53 of these offices responded to the request.¹⁶

In terms of numbers available with the Nepal Police, starting in 1997-1998 when 130 cases of trafficking were filed (Figure 2-1), the number has fluctuated from as low as 40 in 2001/02 to a record high of 308 in 2017/18 and 247 in 2018/19.¹⁷ To provide further perspective on the numbers involved and the possibility of TIP cases being kept under the radar, Maiti Nepal, a leading Nepali NGO working on both GBV and TIP, reported that it had been involved in 3,202 interceptions along the Nepal-India border in 2018.¹⁸ These were cases in which Maiti Nepal's officials, working with the police where necessary, prevented mainly girls and women from crossing the border to India, for suspected trafficking based on studying the 'women's body language' and questioning those that looked 'suspicious'.¹⁹ In the same year, Maiti Nepal rescued 250 individuals 'in the throes of trafficking' or in 'sexual servitude and other forms of exploitations'. The majority of these individuals were rescued from India, with a few within Nepal and some from the United Arab Emirates (UAE) and Kuwait. Likewise, Maiti Nepal filed 34 court cases related to trafficking in 2018. It must be noted that the number of victims rescued is higher than the number of cases filed. That is because, in many instances, cases of trafficking involve multiple victims while there may be just one perpetrator.²⁰ As the data made available by the Nepal Police and by various NGOs is not gender-disaggregated, it is not possible to provide any analysis of the extent of TIP in the case of men and those of other genders.

14 All the interviews and FGDs were conducted in Nepali and the quotes used in the report were translated into English and edited for clarity.

15 FWLD (2014).

16 National Human Rights Commission (NHRC) (2019) Manav Bechbikhan Sambandhi Rastriya Pravedan (National Report on Trafficking in Persons). Government of Nepal, Kathmandu. The report does not provide any reason why there was no response from the remaining but does mention that 22 of the 53 districts reported no cases of TIP having been filed.

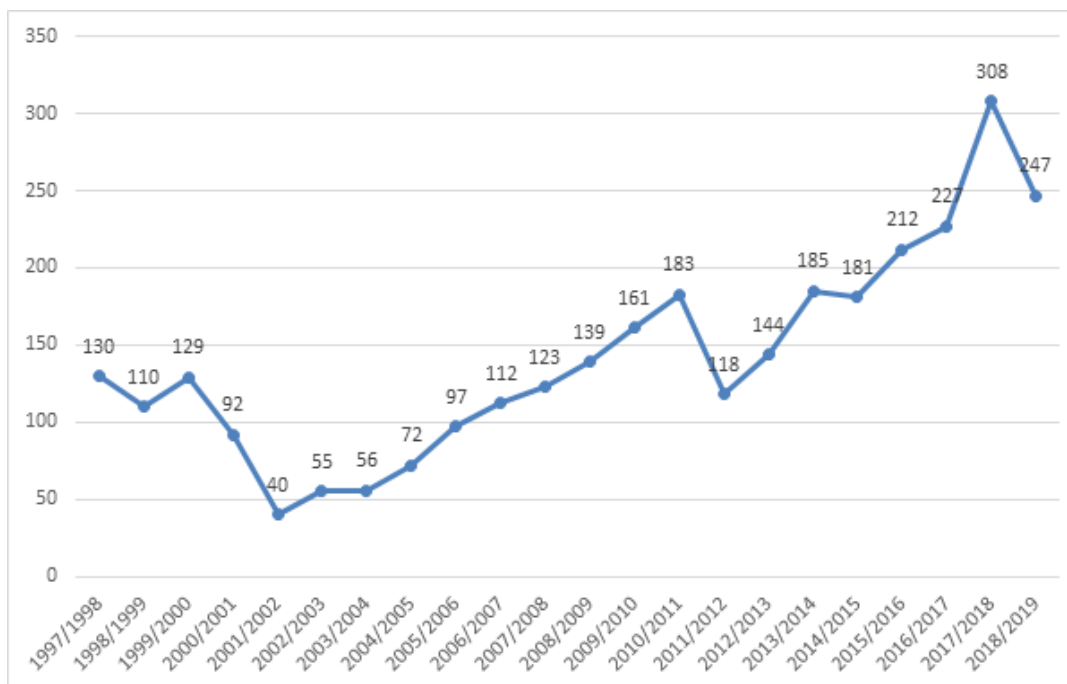
17 One recent source stated that the Nepal Police had received a total 530 complaints and rescued 1,200 people since it set up its national and international toll-free helplines in 2016. These figures are based on 'information received during field visit to South Africa', which took place from 28 October to 05 November 2018. Hence, these figures could be from the period immediately preceding the 'field visit'. United Nations Office on Drugs and Crime, Regional Office for South Asia (2019) Multi-country study on the smuggling of migrants and trafficking in persons from Nepal. UNODC, New Delhi. Retrieved from: https://www.unodc.org/southasia//frontpage/2019/November/nepal_-multi-country-study-on-trafficking-in-persons-and-smuggling-of-migrants.html. Accessed: 28 January 2021.

18 Maiti Nepal (2018) Annual Report. Maiti Nepal, Kathmandu. Retrieved from: <https://maitinepal.org/wp-content/uploads/2019/06/MN-Annual-Report-2018.pdf>. Accessed: 28 January 2021. Maiti Nepal uses calendar years to report its data whereas the government sources use fiscal years, leading to further discrepancies in data available.

19 Sharma Gopal (2018) Stop, check and call: How Nepal's women 'human interceptors catch traffickers'. Thomson Reuters Foundation. Retrieved from: <https://www.reuters.com/article/us-nepal-trafficking-border-idUSKCN1LT01J>. Accessed: 28 January 2021.

20 See, for instance, the Maiti Nepal newsletter wherein a case of trafficking six minor girls was filed against one trafficker, Retrieved from: <https://www.maitinepal.org/wp-content/uploads/2015/12/1411799635.pdf>. Accessed: 28 January 2021.

Figure 2-1: Trafficking Cases Registered with Nepal Police



Source: Nepal Police Crime Investigation Department (CID). 2019.21

Note: There were a further 103 cases till mid-January 2020.

A sector increasingly associated with the rise of GBV incidents and internal human trafficking in Nepal is that of entertainment. A 2018 study found that 17% of entertainment industry workers (including those working in massage parlours, small eateries and ‘cabin restaurants’, *dobori* bars,²² dance bars and live-entertainment restaurants, guest houses, among others) are below 18 years of age; 62% had been engaged in the sector since childhood; 27% were in conditions of forced labour; 60% were at risk of sexual exploitation (with 6% already involved); and 72% already subject to violence of some kind (including withholding of payments, verbal abuse, threats, beatings, sexual assault, etc.).²³

2.2 Vulnerabilities Contributing to GBV and TIP

The Special Rapporteur’s report was explicit 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’.²⁴ There is some overlap in the causes behind GBV and the factors that precipitate trafficking such as domestic violence, dysfunctional family, separation from family, critical poverty, and traditional practices like child and forced marriages that lead to girls and

21 Nepal Police (2020) CID Wings: Women, Children and Senior Citizen Service Directorate. Nepal Police. Retrieved from: <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>. Accessed: 15 September 2020.

22 *Dobori* is a form of Nepali folk duet, and drinking spots featuring *dobori* singers along with mainly female servers/ hostesses are very popular across Nepal.

23 The Freedom Fund (2019) Prevalence of Minors in Kathmandu’s Adult Entertainment Sector. The Freedom Fund, Kathmandu. Retrieved from: <https://freedomfund.org/our-reports/prevalence-of-minors-in-kathmandus-adult-entertainment-sector/>. Accessed: 28 January 2021.

24 UNHRC (2019).

women making a break from their marital homes.²⁵ Families and communities sometimes aid the process of trafficking of Nepali women and children into the sex industry and circuses in India while the 2015 earthquake that struck central Nepal also contributed to a rise in cases of trafficking of children.²⁶

A host of social, cultural, economic and political factors compel individuals to become involved in labour migration, which has emerged as the main source of vulnerability for women being trafficked. Poverty is the primary reason vulnerable women migrate under conditions that increase their chances of being trafficked.²⁷ 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'.²⁸

The push factors that contribute to exploitation are much more pronounced for Nepalis than the pull factors. Unemployment is a key reason that has increased irregular migration among both men and women. A 2019 study reported that 90% of respondents listed the key influencing reasons to be economic factors such as wanting to escape poverty, unemployment and debt, gaining financial security, accessing health and education services, and obtaining a higher standard of living, economic independence, and wellbeing.²⁹

Similar factors contribute to organ trafficking. According to a 2015 study, the majority of victims of kidney trafficking are from the poorest and most marginalized communities while illiteracy and ignorance also make them vulnerable to fraud and deception by brokers, which allows brokers to avoid legal consequences.³⁰ Of the 36 'donors' identified by the study, 30 were men. The stigma attached to being trafficked led to victims feeling isolated and rejected, and, in some instances, brokers were able to successfully convince victims to become brokers themselves.

There is also evidence that Nepali women migrant workers (WMWs) experience a continuum of GBV and harassment before, during, and after their migration.³¹ Women often cite violence and discrimination at home, primarily from husbands and male family members, as a major factor

25 Frederick John et al. (2010) *Trafficking and Exploitation in the Entertainment and Sex Industries in Nepal: A Handbook for Decision-Makers*. Terres des Hommes, Kathmandu. Retrieved from: <https://lastradainternational.org/Isdocs/handbook.pdf>. Accessed: 28 January 2021.

26 Bohl Kenneth (2010) *Human Trafficking as a Livelihood Strategy? A Case Study of Trafficking in Women and Children from Nepal to India*. Retrieved from: [https://projekter.aau.dk/projekter/files/32314128/Master%20thesis%20\(Kenneth%20Bohl%20\)%20ccg.aau.dk.pdf](https://projekter.aau.dk/projekter/files/32314128/Master%20thesis%20(Kenneth%20Bohl%20)%20ccg.aau.dk.pdf). Accessed: 28 January 2021; Kiss Ligia et al. (2019) *The Trafficking of Girls and Young Women: Evidence for Prevention and Assistance*. Plan International, London. Retrieved from: <https://plan-uk.org/file/plan-trafficking-report-nepal-v3pdf/download?token=TkBnPz5O>. Accessed: 28 January 2021.

27 Maiti Nepal (2018).

28 UNHRC (2019).

29 UNODC (2019).

30 The Asia Foundation (2015) *Kidney Trafficking in Nepal: Study of Selected VDCs in Kavrepalanchowk District*. TAF, Kathmandu. Retrieved from: <https://asiafoundation.org/resources/pdfs/KidneyTraffickinginNepal.pdf>. Accessed: 28 January 2021.

31 Global Alliance Against Traffic in Women (2019) *Demanding Justice: Women Migrant Workers Fighting Gender Based Violence*. 108th Meeting of the International Labour Conference. GAATW, Bangkok. Retrieved from: https://www.gaatw.org/publications/Demanding_Justice_complete.pdf. Accessed: 28 January 2021.

leading to their migration.³² 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 pressures to provide for families, maintain ‘family honor’, and repay debts, taken together with linguistic, social, and cultural barriers that WMWs face during the migration process, increase risks of GBV and limit opportunities for redress.³³ To compound the situation further, instances of exploitation and abuse of women in countries of destination, particularly those in the Gulf Cooperation Council (GCC) states, has led to restrictions on the movement of women which forces them to use irregular channels to migrate. This renders them all the more vulnerable.³⁴

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.³⁵ 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’.³⁶

In addition to escaping physical and other forms of abuse faced at home, a majority of the respondents in this study also cited aspirational migration as a major factor that places individuals at risk of being trafficked.³⁷ Since personal aspirations and promises of a decent salary and employment outweigh the perils of irregular migration for many migrants, the risks of being trafficked also increase. Among the TIP victims interviewed, some of the cases were explicitly linked to aspirational migration for foreign employment.³⁸ In most instances, brokers had lured the victims under the pretence of providing foreign employment in a company and then placed them in domestic work situations, rendering them vulnerable to exploitation and abuse. In the words of one of the TIP victims:

‘We go for foreign employment due to poverty in Nepal and when we go abroad we pay a lot of money to the agents in Nepal. They orient us on what happens abroad but those things do not happen when we reach there. After reaching there, we are sold either to companies or to houses.’ (Victim of TIP, female, Kathmandu, 5 September 2020)

32 Sijapati Bandita et al. (2011) Trafficking and Forced Labour in Nepal: A Review of the Literature. Centre for the Study of Labour and Mobility (CESLAM), Kathmandu. Retrieved from: <https://www.ceslam.org/index.php/books-and-reports/trafficking-and-forced-labour-in-nepal-a-review>. Accessed: 28 January 2021; Sijapati Bandita et al. (2019) Returning Home: Challenges and Opportunities for Women Migrant Workers in the Nepali Labour Market. UN Women, Kathmandu. Retrieved from: <https://bit.ly/2YmFPkz>. Accessed: 28 January 2021.

33 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. Retrieved from: http://www.gaatw.org/publications/GAATW_Enabling%20Access%20to%20Justice_2017.pdf. Accessed: 28 January 2021.

34 Pyakurel Uddhab (2018) Restrictive Labour Migration Policy on Nepalese Women and Consequences. *Sociology and Anthropology*, 6(8),650-656. Retrieved from: https://www.hrpub.org/journals/article_info.php?aid=7232. Accessed: 28 January 2021.

35 Information received during FGD with service providers, 12 September 2020; Interview with Representative, Shelter Home, Morang, 24 June 2020.

36 MoHP (2016).

37 As Kandel and Massey (2002) put it, the aspiration to migrate ‘reflects not only socially sanctioned behaviour, but also social mechanisms of diffusion: people may observe the migratory achievements of their peers, come to see migration as a realistic prospect and develop migration aspirations’.

38 Information received during interviews with TIP victims in Kathmandu, 5-6 September 2020.

As noted by one of the participants in the FGD with law enforcement officials:

'People get trafficked when they seek employment and opportunities elsewhere because of lack of employment at home. They get lured by brokers and are then trapped. I was previously stationed at the Kathmandu airport. Based on my experience there, I have found that women went abroad as domestic workers...The broker promises one kind of job but the women don't get such a job upon reaching destination countries. Women are handed over to "Sheikh" families. The Nepali women working as domestic workers are sexually exploited by family members and are also abused by their guests.' (FGD with law enforcement officials, 7 November 2020)

A service provider corroborated that collective view:

'When women from Nepal reach destination countries, they have already been sold in at least four or five places in the name of foreign employment. Women usually find out that they have been trafficked much later when their employer tells them that they were bought for a certain amount of money. Even after being trafficked, victims are subjected to a master-slave relationship and have to endure various kinds of violence.' (NGO official, male, Kathmandu, 7 July 2020)

A government official concurred:

'The general South Asian mindset is to "go abroad and earn money" no matter how or what work you do. This is a big problem in Nepal as well.' (Immigration official, male, Morang District, 4 September 2020)

Despite his obvious cynicism, even the official had to accept that it was desperation that drove women to migrate.

'In the Madhes,³⁹ women are particularly vulnerable, due to a lack of education and employment opportunities.' (Immigration official, male, Morang, 4 September 2020)

Another official said:

'The level of education does not matter in terms of being prone to TIP. Even well-educated people can be victims of violence and trafficking.' (Government official, female, Biratnagar, Morang, 1 July 2020)

Victims are lured by false promises of material gain, and later threatened, physically assaulted, and forced into sexual and labour exploitation.

The background of the GBV and TIP victims interviewed for the study also provide some indication of who are more vulnerable. Even though the sample of 20 respondents may be too small to allow for any meaningful generalizations, they do share certain commonalities. A majority of the victims belonged to the marginalized population groups of Dalits⁴⁰ and Janajatis.⁴¹ Those from weaker economic backgrounds appeared more vulnerable to both GBV and TIP.

39 The flatlands in the southern region of Nepal, also known as the "Tarai".

40 Dalits are the formerly 'untouchables' under the Hindu caste system who still face discrimination in their everyday lives.

41 'Janajati' is the term used collectively for the many ethnic groups of Nepal, most of whom lie outside the purview of the Hindu caste system.

Also, many of the victims had only primary level education or lower, indicating a possible connection between low levels of education and vulnerability to TIP and GBV.

2.2.1 Commonalities of Experience

One of the judges interviewed felt that the suffering of the two types of victims is not the same since ‘human trafficking is more serious than GBV’. As elaborated by him:

‘When it comes to similarities in experiences, the victims of human trafficking and of GBV may not have the same experiences because the nature of the two crimes is different. The crime of human trafficking is certainly more serious than the crime of sexual violence, which is why the suffering of the victims is not the same. This is also the case because of the way society views it.’ (Judge, male, District Court, 19 September 2020)

Similarly, highlighting the differences in the way the two types of victims are perceived by society, one of the shelter home representatives said:

*‘TIP victims are viewed with **disdain by society**, but GBV victims are viewed with **pity**.’* (NGO official, female, Kathmandu, 4 August 2020)

This view was corroborated in the FGD with law enforcement officials:

*‘Our society views TIP victims negatively. After being rescued, instead of providing moral support, our Nepali **society demoralizes victims**, and tortures them further.’* (FGD with law enforcement officials, 7 November 2020)

Besides the negative perceptions towards victims of TIP, their experience itself is quite different and can be more traumatic. As one of the law enforcement officials said:

*‘There is no similarity in experience. The pain of the trafficked is many times more severe than that of the victims of GBV. Trafficking is the culmination of inhumanity. Home, family and relatives do not help. It is very **sad. For victims** of GBV, even though the experience is intense, there are relatives who help GBV victims.’* (Police Official, male, Banke District, 4 October 2020)

Service providers also agreed that the type of suffering endured by the two sets of victims is different.

‘Those affected by human trafficking suffer more than those affected by GBV because those affected by human trafficking may also have experienced GBV. GBV causes more mental problems like stress, anxiety, loss of appetite and also physical problems. If the victim has not been subjected to GBV and has only been subjected to human trafficking, she is a little more mentally strong than a victim of GBV.’ (FGD with service providers, 12 September 2020)

2.3 Intersections of GBV, Trafficking, Migration and Human Smuggling

Mutually dependent factors that increase both GBV and TIP, like conflict-induced migration, socio-economic and environmental factors, loss of formerly available employment, and changing social norms and expectations, are found to have pushed women into prostitution, increasing

their chances of being both trafficked and smuggled.⁴² There is a growing understanding about the need for clarity regarding the mutually reinforcing intersections between migration, trafficking and smuggling.⁴³

2.3.1 Gender-Based Violence

Article 1 of the 1993 UN Declaration on the Elimination of Violence against Women defines Violence against Women (VAW) to consist of ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.⁴⁴ But since VAW and GBV are oftentimes used interchangeably, GBV’s focus has ended up being directed towards women only and considered a ‘women’s issue’.⁴⁵ The patriarchal nature of Nepali society has also ensured that women are perceived as more vulnerable to GBV. Legal procedures are more women-centred since the likelihood of a woman being a victim of GBV is much higher than for male or other genders.⁴⁶ In the words of a law enforcement official,

*‘Women are protected under the law because women are classified as vulnerable. It is said that “a woman’s dignity is at the tip of the needle”. Therefore, it is very difficult for a woman to **remain in society** after being a victim. That is why the services are focused on women and children.’* (Police Official, female, Banke District, 22 September 2020)

GBV is a leading cause of TIP in Nepal since GBV makes women more vulnerable to trafficking. The sequence of events that takes a person from being a victim of GBV to a victim of TIP is also uniform, with traffickers preying on victims of GBV who face an unstable environment at home.⁴⁷ Women in domestic violence situations are also tempted to go for foreign employment and risk becoming victims of TIP.⁴⁸

Some of the service providers interviewed also view GBV as a starting point for TIP. As highlighted by one of them:

42 Frederick John et al. (2010).

43 Aengst Jennifer (2001) Girl Trafficking in Nepal. Childhub. Retrieved from: https://childhub.org/en/system/tdf/library/attachments/aengst_2001_girls_traffick.pdf?file=1&type=node&id=16256. Accessed: 28 January 2021; Asian Development Bank (2003) Combating Trafficking of Women and Children in South Asia: Regional Synthesis Paper for Bangladesh, India and Nepal. ADB. Retrieved from: <https://www.adb.org/publications/combating-trafficking-women-and-children-south-asia-regional-synthesis-paper-bangladesh>. Accessed: 28 January 2021; Crawford Michelle R and Kaufman Mary (2011) Sex Trafficking in Nepal: A Review of Intervention and Prevention Programs. *Violence Against Women*, 17(5), 651-65. Retrieved from: <https://journals.sagepub.com/doi/10.1177/1077801211407431>. Accessed: 28 January 2021; Sanghera Jyoti (2005) Unpacking the Trafficking Discourse in Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights. Routledge, Milton Park.

44 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), United Nations General Assembly, 18 December 1979. Retrieved from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/095/05/PDF/N9409505.pdf?OpenElement>. Accessed: 14 January 2020.

45 Office of the Prime Minister and Council of Ministers (OPMCM) (2012) A Study of Gender-Based Violence Conducted in Selected Rural Districts of Nepal. Government of Nepal, Kathmandu. Retrieved from: <https://asiafoundation.org/resources/pdfs/OPMCMGECUGBVResearchFinal.pdf>. Accessed: 28 January 2021.

46 Interview with Police official, female, Sunsari District, 11 September 2020.

47 Ibid

48 Interview with TIP Officer, National Human Rights Commission, Kathmandu, 27 June 2020.

Violence causes the risk of human trafficking because if a person is subject to violence, he or she is found to come in contact with brokers⁴⁹ while trying to escape the violence. Victims continue to endure violence even after being trafficked. Both of these can be caused by each other.’ (NGO official, male, Kathmandu, 4 July 2020)

As understood by GBV victims, TIP involved the selling of a person across borders into brothels for money by brokers who lure the victims with money but mainly with promises of a better life.⁵⁰ There is almost no awareness among them about internal trafficking or of the fact that physical movement across space is not a prerequisite for TIP.

2.3.2 Trafficking in Persons

In Nepal, human trafficking takes place under the guise of child adoption, foreign employment, education, international marriage, tourism, and foreign tours as part of cultural programs (such as dance, drama and musical performances abroad to cater to the growing Nepali diaspora worldwide), among others.⁵¹ Data from five years show that of the human trafficking complaints, 43% were related to victims being lured, 34% involved manipulation, fake marriages accounted for 3%, employment, 4%, and foreign travel, 2%.⁵² There is also growing realization that human trafficking has transformed in terms of nature and patterns over time. TIP in Nepal is now part of organized criminal groups who engage in activities such as forcing women into prostitution, hazardous domestic labour, organ trafficking and, more recently, using women in drug trafficking.⁵³

But, the scale of domestic and transnational trafficking is not known since neither the NWC nor the Nepal Police have disaggregated data on either. To make matters worse, there is some amount of conflation between labour migration and human trafficking even if there is no clear demarcation between violations of the rights of migrant workers due to fraudulent practices on the part of recruitment agencies and/or employers and the act of trafficking or the subsequent investigations of allegations.⁵⁴

According to a report from the Department of Foreign Employment, between 2013 and 2016/17, a total of 12,090 complaints were registered with it, 38% against individuals and the rest against recruitment agencies.⁵⁵ In 2016/17 alone, 2,383 complaints were registered of which 317 were sent to the courts. An examination of these complaints shows that most of these could be considered cases of human trafficking but the unwillingness of the victims along with

49 The Nepali term ‘dalal’, which is used to denote all kinds of middlemen, including traffickers and foreign employment agents, is usually translated into English as ‘broker’ in the context of Nepal.

50 Interview with a GBV victim, female, 6 September, 2020; Interview with a GBV victim, female, 9 September, 2020; Interview with a GBV victim, female, 10 September 2020.

51 National Human Rights Commission (2019) Manav Bechbikhan Sambandhi Rastriya Prativedan (National Report on Trafficking in Persons). NHRC, Kathmandu.

52 NHRC (2019). Although the report does not specify which five years the data covers, from the narrative it seems likely that it is for the five years previous to and inclusive of the fiscal year 2017/18.

53 Interview with Judge, female, High Court, 3 October 2020; Interview with Judge, male, District Court, 8 September 2020.

54 FWLD (2014); GAATW (2017); National Human Rights Commission (NHRC) (2018) Manav Bechbikhan Sambandhi Rastriya Prativedan (National Report on Trafficking in Persons). Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/36Xu4qa>. Accessed: 25 December 2020.

55 NHRC (2019).

lack of sufficient evidence meant legal action could not be taken against the perpetrators. The following narrative from a shelter home official is instructive in this regard:

*'We rehabilitated a woman from Morang District who was subjected to internal trafficking up to four times but she was sold again as her family and society did not accept her. But those who are sold internally in this way do not know that they have been sold. The family takes them as a burden. Because they had a daughter, the family would not send her to school or love her, but they would send their son to school. That's why she left home and **ended up getting sold.**'* (NGO official, female, Sunsari District, 19 June 2020)

2.3.3 GBV to TIP and Vice Versa

The interviews with victims asked questions about how they understood GBV and TIP, specifically asking them if they had heard of either phenomenon and whether one creates the conditions for the other. All the victims expressed knowledge about them, stated that they had heard of the terms, and that they were aware of what they mean. Only two of the victims said that they knew 'only a little'.⁵⁶ With reference to GBV, at least five of the 10 GBV victims and four of the TIP victims interviewed seemed to understand GBV as violence inflicted upon women, primarily by their own family members. In their own words:

'Gender-based violence is the violence women face at home. Like from mother-in-law, from husband, from sisters-in-law.' (GBV victim, female, Kathmandu, 6 September 2020)

'Gender-based violence means that the family inside the house commits violence, not understanding the situation of women, not seeing the contribution done by the female of the home, beats them, abuses them.' (GBV victim, female, Sunsari District, 5 September 2020)

'Gender-based violence refers to a situation where within a family in a village, a husband oppresses their wife and mother-in-law oppresses their daughter-in-law.' (TIP victim, female, Kathmandu, 5 September 2020)

Some of the victims said that GBV also included 'discrimination'.

'Gender-based violence means discriminating between son and daughter. Between a man and a woman, a woman is the one to bear all the trauma, beating and scolding. That should not happen.' (GBV victim, female, Sunsari District, 5 September 2020)

'Gender-based violence means discriminating against women, men and third gender.' (TIP victim, female, Kathmandu, 4 September 2020)

'Gender-based violence is the practice of discriminating between a son and a daughter at home. Sending a son to school, and not sending a daughter and getting her married at a young age, making her work at home only etc.' (TIP victim, female, Kathmandu, 5 September 2020)

With regard to TIP, many of the victims emphasized that it involved transporting people from one place to another and selling them through deceit, including with promises of foreign employment. In their own words:

⁵⁶ Information received during interviews with GBV and TIP victims, September 2020.

'Human trafficking is the act of luring, threatening and torturing a person and selling the person.' (TIP victim, female, Kathmandu, 4 September 2020)

'Human trafficking means taking people from one place to another, selling them by force and subjecting them to sexual violence, beatings, etc.' (TIP victim, 3 September 2020)

A majority of the victims interviewed were convinced that GBV increases vulnerability to TIP. As one GVB victim said:

'Because domestic violence can happen in the community, people break away from their homes and when they leave, people from outside have an opportunity to sell them by luring them with fake opportunities for work. That's why I think gender-based violence increases the risk of trafficking.' (GBV victim, female, Morang District, 7 September 2020)

Another said,

'Gender-based violence seems to be the cause of trafficking. If there is gender-based violence, the man will get support from the family but the woman will not get any support. The woman also has to stand on her own two feet, she has to earn herself, she cannot always live hoping for financial support from her family and her husband, and when she tries to escape this, by looking for a job or by trying to get good education, she falls into the wrong hands and gets trafficked.' (GBV victim, female, Morang District, 6 September 2020)

A majority of the service providers also noted the inter-relationship between GBV and TIP.

'Human trafficking and gender-based violence are complementary. One causes the other. These two are related to each other.' (NGO official, male, Banke District, 11 July 2020)

'Gender-based violence causes the risk of human trafficking because if a person is subjected to violence, he or she is found to come into contact with brokers while trying to escape the violence. Violence does not diminish even after being trafficked. Both of these [GBV and TIP] can be caused by each other.' (NGO official, male, Kathmandu, 4 July 2020)

'Violence against women and trafficking are intertwined. Women are trafficked because of domestic violence. Women who are victims of violence are trafficked by luring and baiting them through different hopes. Brokers also target the victims who have faced difficulties in life. Therefore, even though these two issues are different, they are connected to each other.' (NGO official, Biratnagar, Morang District, 24 June 2020).

The responses from border and immigration officials were similar. One of the border officials interviewed felt that 'gender-based violence increases the risk of human trafficking and the risk of gender-based violence remains high for victims of trafficking'.⁵⁷ Likewise, all three immigration officials were of the view that GBV has led to an increase in human trafficking. As one of them said:

⁵⁷ Interview with Police official, male, Morang District, 11 September 2020.

'Anyone could be a victim of human trafficking but the number of women victims has increased. This is a crime. Women are subjected to a lot of stress and torture. I think this makes them more vulnerable to trafficking' (Immigration official, female, Banke District, 2 September 2020)

One border official, however, believed that the two were mutually exclusive.

I have found no connection between human trafficking and gender-based violence. I have found that people get trafficked when they are offered work under false pretenses and then get sold to brothels and domestic households for work.' (Police official, male, Sunsari District, 22 September 2020)

2.3.4 Human Smuggling

There is no clear understanding of what constitutes human smuggling with the issue often fused with human trafficking and irregular migration.⁵⁸ In fact, there is no legal definition of human smuggling in Nepali law.⁵⁹ Migrant smuggling is a distinct sub-set of human smuggling that occurs across borders whereby smugglers help migrants enter or stay in a country illegally. This often entails precarious conditions (like sea crossings), and Nepalis have lately been drawn into the snare.⁶⁰ Migrant smugglers often victimize people who are desperate to enter a country using whatever means it takes, making them susceptible to abuse, exploitation and trafficking.⁶¹ The line between smuggling and trafficking is blurred, with migrants possibly experiencing being both smuggled and trafficked on the same journey.⁶²

Smuggling is carried out by a variety of actors with networks both in Nepal and abroad and whose identities keep changing.⁶³ Smugglers work as brokers or recruiters, facilitators, coordinators, organizers, transporters, accommodation and service providers, and financiers.⁶⁴ They often sponsor other Nepalis and produce fake documents. The dynamics leading to the smuggling of migrant workers, irregular migration and TIP are rooted in factors such as socio-political instability, economic disparities, and environmental factors like the 2015 earthquake, acute poverty and food insecurity.⁶⁵ However, socio-economic deprivation and low vocational skills or literacy are not necessarily always the main determinants leading to human smuggling and trafficking given the presence of relatively wealthy and well-educated individuals among those making use of human smugglers in an attempt to reach western countries.

The push factors mentioned above, particularly financial, are equally strong for women. Women themselves are attracted to foreign employment as an escape from domestic violence and as a means of economic empowerment. Due to lack of general information and awareness regarding

58 UNODC (2019).

59 Interview with Prosecutor, male, District Court, 15 September 2020.

60 Kumar Ravi (2012) New guys on the border: Nepalis join the Latin trek to America. GlobalPost. Retrieved from: <https://www.pri.org/stories/2012-07-31/new-guys-border-nepalis-join-latin-trek-america>. Accessed: 29 January 2021.

61 David Fiona et al. (2019) Migrants and the Vulnerabilities to Human Trafficking, Modern Slavery and Forced Labour. International Organization for Migration, Geneva. Retrieved from: https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf. Accessed: 28 January 2021.

62 UNODC (2019).

63 UNODC (2019).

64 United States Department of State (2020).

65 UNODC (2019).

formal channels and the proper procedures for labour migration, women often have to seek the help of brokers, which further increases the risk of both being trafficking and violence.

In the case of women migrant workers, the number going abroad through irregular means is even higher due to the legal ban on going to the Gulf countries for domestic work. The ban on women migrating to certain countries for work in certain vocations has been shown to be counterproductive since this places women at a higher risk of being trafficked to those countries.⁶⁶ Women also fall victim to traffickers since many do not have enough knowledge of the foreign employment process. Reaching destinations through irregular channels and through third countries further increases their vulnerabilities and also raises questions about the legality, and criminality, of their conduct.⁶⁷

Trafficking has increased due to hopes among the population of employment opportunities, higher earning potential and a better life. Attempts to evade the government ban on migrating to many of the Gulf countries has also helped contribute to the situation.⁶⁸ In the words of a border official:

'Women want to go for foreign employment voluntarily, but they can also be trafficked on the pretext of foreign employment. In my opinion, it is better not to go to the countries where the government has banned them.' (Police official, male, Morang District, 11 September 2020)

Several service providers also elaborated on this issue during an FGD:

'Although GBV can lead to human trafficking and there is some connection between the two forms of violence, not all cases of TIP are a result of GBV. There are many cases where some women have been trafficked abroad even if they have not been subjected to violence but due to greed to earn money, some even pretend to be married to traffickers in order to pass through the border.' (FGD with service providers, 12 September 2020)

TIP victims were asked if they were aware that women have sometimes been prevented from going to foreign countries for work, and if they thought such proscriptions were helpful in keeping women safe. A majority of the TIP victims said that they were aware of the travel restrictions on women, but many were of the view that such restrictions do little to keep women safe. In the words of some of the TIP victims interviewed:

'They [women] are not safe. Even if they do not go for foreign employment, they are subjected to violence in their own homes and societies.' (TIP victim, female, Kathmandu, 3 September 2020)

'I don't think it [the restrictions] makes women very safe because when people don't find jobs in Nepal then they feel tortured and face many kinds of problems. If you go abroad, you will get at least a little bit of salary. After getting a salary, one can be happy within one's family too. After living abroad for some years, one comes back and gets back in touch with their family. That's why I don't think so.' (TIP victim, female, Kathmandu, 5 September 2020)

66 NHRC (2019).

67 David Fiona et al. (2019).

68 The Nepali government has placed restrictions on women migrant workers numerous times since 1998 'for the security of women migrant workers in order to prevent exploitation and trafficking'. See Pyakurel Uddhab (2018).

'No [the restrictions aren't helpful]. Because going abroad for employment does not necessarily mean that women will be corrupted. Malpractices are prevalent even in Nepal. Even though I have not seen it with my own eyes, it is seen on Facebook and YouTube that fathers are raping their daughters and brothers are raping their sisters. Injustice and atrocities are more prevalent in Nepal now than in the foreign countries.' (TIP victim, female, Kathmandu, 6 September 2020)

'In order to prevent women from going abroad, the government of Nepal should provide employment to the women. They should understand what kind of vocational training is good for women and if they provide such training then they don't have to go abroad.' (TIP victim, female, Kathmandu, 6 September 2020)

The TIP victims were also asked about the change of routes by women who sought to circumvent the government bans. At least three of the victims stated that they did not know anything about the matter while two stated said travelling from Nepal had become easier than earlier.⁶⁹ Notably, one of the TIP victims interviewed stated that there had been no change in the routes used by women who want to migrate:

'It (routes) hasn't changed. I have seen and heard that when going for foreign employment, people go through India. If someone does not have a passport, I have seen and heard them use someone else's citizenship to make a passport.' (TIP victim, female, Kathmandu, 3 September 2020)

Government officials at the border exit points were not clear about the differences between 'migration', 'smuggling of migrants' and 'trafficking'.

'We have not worked directly on human trafficking even though we are immigration officers. It is done through coordination. But we have a general understanding of the issue. Elsewhere, these issues might be officially separated, but we have not been officially informed. We know about the issue from self-study.' (Immigration official, female, Banke District, 2 September 2020)

'No [the three terms are not clearly differentiated by immigration officials]. Our job is checking documentation; we are not required to do this work.' (Immigration official, male, Morang District, 4 September 2020)

One of the border officials interviewed did not answer the question directly, while the other said:

'All three situations are the same because in all three cases trafficking is done under the pretext of emigration.' (Police official, male, Biratnagar, Morang District, 11 September 2020)

He further said,

*'If there is a lack of clarity in understanding these three concepts then people will get into trouble. Because if we **let people go only on** the basis of their claim that they are going to India for work, the person might face risk of trafficking.'*

The immigration officials, however, pointed out that their job does not entail identification. In the words of one of them:

⁶⁹ Information received during interviews with TIP victims, 5-6 September 2020.

'People know what these situations are, but practically, we have received no training, nor are we authorized to identify victims. If something is suspicious, the most I can do at a personal level is notify the police, but it is not a job requirement for me to do so.' (Immigration official, male, Morang District, 4 September 2020)

2.3.5 Internal Human Trafficking

Internal trafficking in Nepal is especially prevalent in the entertainment sector with women pushed into prostitution and conditions of forced labour. According to a 2018 study conducted by the National Human Rights Commission (NHRC), around 20% women and children engaged in the entertainment sector are at risk of being trafficked.⁷⁰ The report states that women workers have chosen to work in the entertainment sector due to lack of other employment opportunities and the possibility of higher incomes. Some of them have been forced to enter the profession through deceit or because they had inadequate knowledge. Often, women and girls have been made to work in the sector by their husbands, boyfriends, girlfriends, partners, friends, fathers, brothers and other relatives. It is generally family members (usually male relatives or domestic partners) who are responsible for the internal trafficking of women and girls in Nepal.⁷¹ But preventive efforts have been lax with regard to internal trafficking with little attention paid to the increase in trafficking in the entertainment sector.⁷² A government official pointed to a shortcoming that could have contributed to the rise in internal trafficking in the fact that it had been more than a decade since the Supreme Court had issued a directive to make the entertainment sector 'dignified' by crafting laws to govern it but nothing had been done.⁷³

In the past, those working to prevent human trafficking considered only women sold across the Nepal border as having been trafficked. Now they have begun to increasingly look at the issue of the sale of women within the country as well.⁷⁴ Another change was how today men as well as individuals from all genders, castes and ethnicities, religions, and class and social backgrounds are considered potential victims of trafficking.⁷⁵ Traffickers use deception, intimidation and abuse of power but due to lack of awareness and the complex legal system, victims are more vulnerable to internal trafficking.⁷⁶ As an official put it:

*'The focus of law is found mainly on trafficking across borders, leading to a lack of legal focus on internal trafficking.'*⁷⁷

70 NHRC (2018).

71 NHRC (2019).

72 Interview with NGO official, female, Sunsari District, 19 June 2020.

73 Interview with TIP officer, National Human Rights Commission, Kathmandu, 27 June 2020. The Guideline for the Control of Sexual Violence against the Female Workers in Dance Restaurants, Dance Bars and Other Such Places, 2008 outlines the different provisions in relation to i) requirement of registration of the business, ii) prohibition of the acts of sexual abuse, sexual violence and inhuman treatment to the female workers, iii) function, duties and rights of the employers, customers and monitoring and punishment committee and iv) provisions for the complaint handling and monitoring system'. National Human Rights Commission (NHRC) (2015/16) Manav Bechbikhan Sambandhi Rastriya Prativedan (National Report on Trafficking in Persons). Government of Nepal, Kathmandu. Retrieved from: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/TIP_National_Report_2015_2016.pdf. Accessed: 30 January 2021.

74 Interview with NGO official, female, Sunsari District, 19 June 2020.

75 Interview with NGO official, female, Kathmandu, 1 July 2020.

76 Interview with NGO official, female, Kathmandu, 9 July 2020.

77 Interview with TIP Officer, female, National Human Rights Commission, Kathmandu, 27 June 2020.

2.4 Conceptual Clarity on Different Categories of TIP Victims

The identification of those at risk of human trafficking is a key component of controlling and preventing TIP. People in vulnerable situations with a strong likelihood of being entrapped in conditions leading to trafficking would include people working in destination countries as migrant workers, those engaged in the adult entertainment sector, people who are missing, and rural adolescents and child labourers.⁷⁸ The authorities lack the human and financial resources as well as the training required to systematically track potential victims, with government and NGO checkpoint inspections at Nepal's open border with India focusing almost exclusively on women.⁷⁹

Anti-trafficking efforts are also hampered by the failure of the law to reflect the changes taking place in the sector. As stated by a government official:

'The legal definition is clear. But there are many types of trafficking that are not classified accordingly. For example, in the Act [HTTCA], employing a person in one job and making them work in something else falls under the definition of trafficking. But exploitation is not clearly defined. This makes it difficult for us to gather enough evidence. Exploitation and trafficking during foreign employment are not included.' (TIP Officer, female, National Human Rights Commission, Kathmandu, 27 June 2020)

Because of the lack of legal guidelines and procedures related to the definition of high-risk groups, victim identification, rescue, legal aid, repatriation and family reunification and rehabilitation, most victims and those facing potential risks are entirely dependent on the work of NGOs.⁸⁰ As one immigration official elaborated:

'Even immigration officials only play a supporting role in coordination with NGOs, mainly because they do not have specific guidelines or instructions regarding trafficking, which has hindered their work against trafficking. Their work is limited to checking documents at various checkpoints. Whatever general understanding of the issues regarding trafficking they have comes from self-study or on-the-job experiences. The lack of proper instructions to deal with trafficking limits the actions taken by the immigration officials.' (Immigration official, male, Morang District, 4 September 2020)

Due to the lack of implementation of bilateral and multilateral agreements dealing with the rescue and repatriation processes of TIP victims, most of the rescue and repatriation efforts take place outside the state system, without the responsible participation of and monitoring by state representatives.⁸¹

A key difficulty in differentiating between the various categories of TIP victims is the lack of data. The Nepal Police collects nationwide data on cases of violence against women and girls (VAW/G) through the GBV information management systems, while the NWC maintains the data of cases of VAW reported to it through its case management system. Women trafficking as a form of GBV is also reported to the NWC.⁸² However, there is no integrated data management

78 US DOS (2020).

79 Ibid.

80 NHRC (2019).

81 Ibid.

82 Ministry of Women, Children, and Senior Citizens (MoWCSC) (2018) Response of the Government of Nepal to the List of Issues and Questions in Relation to the Sixth Periodic Report of Nepal Adopted by the Committee on the Convention

system on TIP arising from GBV, which is one of the key challenges in the referral process.⁸³ There is also a lack of data on the cases filed and investigated under the Sexual Harassment Act.⁸⁴

Trafficked or migrating

The title of the news report read: ‘21 Trafficked Nepali Women Coming Home after Nine Months’, and the opening sentence, ‘After nine months of languishing in the Indian state of Manipur, the Nepal Embassy in India has finally rescued a group of 21 Nepali women who were en route to Persian Gulf countries on foreign employment.’* Taken together they provided an example of the muddled picture of how irregular migration for foreign employment, human smuggling, and human trafficking all end up being understood as one and the same.

* Neupane Suresh Raj (2020) 21 Trafficked Nepali Women Coming Home after Nine Months. The Kathmandu Post. Retrieved from: <https://tkpo.st/3eifBFi>. Accessed: 28 January 2021.

Women seeking to work in foreign countries have found their ambitions thwarted as a result of the periodic bans put in place by the Nepali government starting in 1998 on women going abroad as migrant workers. As an ILO report states: ‘As bans on women migrating into domestic work ignore the motives that prompt them to migrate, short of a total closure of borders, women still migrate through non-official and more risky channels. Bans make women take greater risks to exit by exposing themselves to smugglers and traffickers. In many countries, bans have led to passport fraud and corruption.’**

**International Labour Organization (2016) Women’s Mobility and Domestic Work. ILO, Geneva. Retrieved from: http://apmigration.ilo.org/resources/policy-brief-women2019s-mobility-and-domestic-work/at_download/file1. Accessed: 28 January 2021.

That is what has been happening with women (and also men) in Nepal, with women increasingly more vulnerable to trafficking since they have to rely on agents to circumvent the bans.***

BBC (2019) The women desperate to leave Nepal. BBC. Retrieved from: <https://www.bbc.com/news/stories-48154577>. Accessed: 28 January 2021.

Identification/Screening of GBV and TIP Victims

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 working with immigration officials. They are supported by various NGOs, actively assisting law enforcement officials in screening and identifying victims, particularly at checkpoints along the border with India.

2.4.1 Collaborative Effort

As victim identification is a complex task, NGOs collaborate with the police and border and immigration officials for screening and identifying victims of both GBV and TIP. Explaining the rationale for the cooperation, a law enforcement official said:

on the Elimination of all forms of Discrimination Against Women. Government of Nepal, Kathmandu.

83 Interview with Legal Officer, National Women’s Commission, 2 December 2019.

84 Forum for Women Law and Development (2018) Shadow Report on Sixth Periodic Report of Nepal on CEDAW. FWLD, Kathmandu. Retrieved from: <https://fwld.org/publications/shadow-report-on-sixth-periodic-report-of-nepal-on-cedaw/>. Accessed: 28 January 2021.

*'We are working in collaboration with various organizations because we understand that human trafficking and GBV are complex cases.'*⁸⁵

In order to screen victims effectively, law enforcement officials rely on information gathered from various sources. Collaboration is very important for them and that includes during the rescue of victims at the border.⁸⁶ As elaborated by one of the law enforcement officials:

'[The NGO] Saathi has currently been providing support to provide shelter to victims we have rescued. In the absence of local governments, the Government of Nepal provided funds, but now the municipality provides the fund. Among the organizations we are working in coordination with are Maiti Nepal, Shakti Samuha, Asha Nepal, Atma Nepal, Sana Haat and many more.' (Police official, female, Banke District, 22 September 2020)

Law enforcement officials have also reported that they find the booths set up by NGOs at the border checkpoints helpful and effective in identifying the victims.⁸⁷ As reported by one of the law enforcement officials deployed at the Rani border in Morang District:

'At this checkpoint, eight organizations in collaboration with the police monitor and interrogate the suspects. If there is a case of trafficking, we assist with legal action and if we find that the case is something else, we hand over victims to their families.' (Police official, male, Biratnagar, Morang District, 11 September 2020)

NGOs not only work at the borders but also conduct public awareness programs and interactions in collaboration with the police.⁸⁸ According to an NGO representative, if they find a suspect or a likely victim of trafficking, they report them to the Human Trafficking Investigation Bureau of the Nepali Police.⁸⁹ However, about collaboration with the police, one of the NGO representatives was of the view that the dealings of frontline police officials were not helpful since victims are shunted from one office to another.⁹⁰

2.4.2 Location of Screening

All the law enforcement officials interviewed said they conduct screening at the various checkpoints along the Nepal-India border. They target the border areas as they are popular gateways to India, from where people travel to other parts of the world.⁹¹ In most of the cases, the women identified as possible victims are taken to the Women's Cell Counselling Branch. They also conducted screenings at hotels in the border areas. Rented flats as well as entertainment venues in the city areas were also targeted for proactive identification since these places are suspected hubs for prostitution. As clarified by a police officer deployed at the Women, Children and Senior Citizen Service Centre in Sunsari District:

85 Interview with Police official, female, Banke District, 22 September 2020.

86 Interview with Police official, male, Morang District, 23 September 2020.

87 Interview with Police official, , female, Sunsari District, 11 September 2020; Interview with Police official, male, Sunsari District, 15 September 2020.

88 Interview with NGO official, male, Banke District, 11 July 2020.

89 Interview with NGO official, male, Kathmandu, 7 July 2020.

90 Interview with INGO official, female, Kathmandu, 30 June 2020.

91 Interview with Police official, male, Banke District, 4 October 2020.

‘Cases can come from anywhere, but as mentioned above, trafficking cases here are usually located in the hotel/entertainment sector.’⁹²

A police officer said that during the lockdown in the wake of the Covid-19 pandemic, the number of women travelling with unrelated people, and identified as possible TIP victims, had also increased.⁹³ One of the law enforcement officials said that some of the emerging trafficking hotspots frequented were districts found along the Indo-Nepal border such as Chitwan and Rupandehi.⁹⁴ Although the immigration officials reported that they do not conduct screenings, they consider the Delhi airport and other parts of India accessible via land ports as suitable locations for screening and identifying possible victims.⁹⁵

According to NGO representatives, screening and identification is mostly done in bus stands in India and Nepal, hotels. As one of them said:

‘Now, in Kathmandu, under the guise of canteens [small eateries] [sic], women have been found forced into sexual activities, involving money transactions, against their will by the owner ... There are similar activities at bus parks, dance bars, dohori bars and massage parlors.’ (NGO official, female, Kathmandu, 9 July 2020)

Another NGO representative reported having established migration information centres at Kathmandu’s main Gongabu Bus Park, where people from all over Nepal arrive.⁹⁶ Service providers also identified dance bars and *dohori* restaurants in some parts of Kathmandu as possible locations of screening for victims.⁹⁷ Another service provider reported targeting people under the age of 18 during screening.⁹⁸ Districts like Sindhupalchowk, Nuwakot, Pokhara, Baglung and Palpa were some of the emerging trafficking hotspots according to another.⁹⁹

Case Study I: Screening and identification of GBV and TIP victims

This case study is based on the testimonial of a staff member of a Kathmandu-based NGO interviewed as part of this study in July 2020. The facts as mentioned in the case study were narrated by the respondent, and are being presented hereunder without substantiating all the claims made.

There is no government standard to be followed for screening and identifying GBV and TIP victims. The NGO has developed its own format to identify victims of GBV and TIP. The victim is interviewed in accordance with the format, following which the staff consult each other to determine whether the person is a victim of TIP or GBV. These reflections indicate that it is necessary for the Government of Nepal to work in coordination with stakeholders to develop a set of criteria and protocols to identify real victims which is then communicated to all agencies involved in the sector. This will lead to a uniform understanding of the process

92 Interview with Police official, female, Sunsari District, 11 September 2020.

93 Interview with Police official, male, Banke District, 5 October 2020.

94 Interviews with Police official, female, Sunsari District, 11 September 2020; Police official, male, Morang District, 23 September 2020; Police official, female, Banke District, 22 September 2020.

95 Interview with Immigration Official, female, Banke District, 2 September 2020.

96 Interview with NGO official, male, Kathmandu, 7 July 2020.

97 Interview with INGO official, female, Kathmandu, 23 June 2020.

98 Interview with NGO official, male, Kathmandu, 4 July 2020.

99 Interview with NGO official, female, Kathmandu, 29 June 2020.

of identifying a victim and resolve the current problem that has arisen from everyone working in silos.

Among the obstacles is lack of any clear legislation, and a traditional approach to the issue of TIP, i.e., assuming only victims of sexual violence are TIP victims. GBV not being considered with the sensitivity it demands is another obstacle. The local administration and police have a simplistic understanding of GBV, and view it as a domestic dispute which would sort itself out, leading to more problems in identifying GBV victims.

Only a handful of police officers in the urban areas talk to victims of TIP with a proper understanding of the issue. Most view TIP as a form of prostitution and talked to the victims accordingly, causing despair and frustration among the victims and leading them to hide facts. The situation is not very different with the judiciary. With people being sold in the name of foreign employment, the bodies responsible have failed to understand that human trafficking is not related only to sexual activities.

The victims are reluctant to follow due legal process due to fear of being stigmatized. The law clearly states that where female victims are concerned a female police officer should be investigating such cases and where there are no female police officers, the investigation should be conducted in the presence of a female social worker. In the absence of such an enabling environment, the victims are not able to express themselves openly to the police. And, when one victim goes through such a disconcerting process and shares that experience with another victim, others are most likely to avoid the legal process.

Victims and their families lack awareness on laws dealing with TIP and GBV. They find it difficult to appreciate that issues such as gathering evidence and court proceedings take a long time, and the breach of right to privacy and confidentiality by the media traumatize victims for life. There have been cases where the victims have been trafficked by their relatives, impeding the victims' efforts to file a case. There are no service providers at the local level and even those currently in place do not have the human resources with the skills to deal with victims.

Screening/Identification of Victims: Key Challenges

Nepal does not have any kind of standard operating procedure (SOP) or protocol for the identification of victims of trafficking or GBV. Identifying individuals likely to fall victim to trafficking is difficult since traffickers, when confronted, often make claims that are not easy either to verify or reject. As identification of potential victims and their traffickers require coordination with legal and state mechanisms, there are a range of challenges.¹⁰⁰ Visual and non-procedural approaches to identifying victims are among the major factors that pose difficulties in the screening of TIP victims, and also affect the ensuing legal process of seeking justice for victims and punishing perpetrators. These key challenges remain in the screening and correct identification processes as outlined below.

2.4.3 Lack of Protocols: Identification of TIP Victims

In almost all cases regarding trafficking, government officials said they rely on 'hunches' and experience over the years in being able to spot something that is amiss. Immigration officials do not have any definite guidance that they can follow. One of them said:

¹⁰⁰ NHRC (2019).

'Generally, it's things like their education level, income, salary, and other personal details. If we suspect someone, we don't let them go. We provide a letter listing our reasons for not allowing them to travel.' (Immigration official, male, Kathmandu, 17 September 2020)

And since government officials can wield such authority, they do not appear to find the absence of such guidelines particularly constraining. As one police official said:

'Perceptions and understanding make a difference. As the investigating officers are trained and the subject is taken as a sensitive one, the investigation is done in accordance with the law so that the identification is done properly...The law is clear. That is our protocol.' (Police official, male, Kathmandu, 10 October 2020)

The challenges faced by the police at the border with a myriad of responsibilities also became clear in this exchange during an FGD with them.

'We do not yet have any guidelines and protocols for identification at present. We investigate and check based on suspicion and information. We do not have a separate mechanism to check for trafficking in persons at the border. Our focus is to monitor the import and export of illegal goods and weapons.' (FGD with law enforcement officials, 7 November 2020)

The problem is compounded when the people are deliberately deceitful, as the FGD with the police made clear.

'We have found that those who being sold are often afraid to travel alone; they are in a group. We monitor such people closely, but it is very difficult to identify them. They come ready with made-up stories. We can only know after a lot of interrogation, otherwise they cannot be identified.' (FGD with law enforcement officials, 7 November 2020)

The police do not have a specific set of indicators to identify the victims either. They rely on their experience, training and interrogation skills once they suspect someone. The basic indicators were visual cues such as body language and the details in the answers or statements the person provides. As stated by one police official:

*'We can identify victims as they speak. We can tell if they are speaking the truth or not by asking a variety of cross-questions. We can also tell by judging by **their behaviour and** gestures.'* (Police official, female, Morang District, 11 September 2020)

The process of identifying the victims without a set of standard indicators is a lengthy and challenging process, involving in-depth investigation.

'It takes a long time to identify the victims of human trafficking. Extensive study and research should be done. There are also ways to collect evidence as prescribed by law. It is possible that it is never known when persons are being sold. In-depth investigation reveals indicators and it varies from case to case.' (Police official, male, Kathmandu, 10 October 2020)

Their method was made clearer during an FGD with law enforcement officials:

'When we ask them about their destination and purpose of travel, they say they are going for medical treatment or some other purpose. When we ask them for the contact number of their parents or local

government representative, no one is ready to provide those details. They say they don't know and do not use a phone. But we can assume that students in Class 12 will obviously know their phone number. When they give such doubtful answers, we become suspicious.' (FGD with law enforcement officials, 7 November 2020)

Various stakeholders reported that some traffickers claim to be married to the women/ girls, or to be in romantic relationships with them. Others pose as siblings or some other relative. Most are able to produce certificates and documents. Given this, a majority of the law enforcement officials noted that factors that could identify potential victims include contradictory answers and other discrepancies in their stories, and 'suspicious behavior'. Women/girls are also identified based on the differences in physical appearance between them and their fellow travellers (who could be potential traffickers), and the way they talk to each other. Following their interception, they often display lack of knowledge about human trafficking and the potential risks of crossing borders under false pretexts.

Shelter homes do not always participate in the identification process since it is the police, different government agencies and NGOs who refer the victims to them.¹⁰¹ However, an official from one NGO reported that they had a set of 22 written guidelines they followed to identify and differentiate between the cases of victims.¹⁰² A majority of the other service providers interviewed reported using psycho-social counselling, conversations and filling out standardized forms as methods for identifying victims.¹⁰³ The difficulty lies in the women/girls themselves being quite unaware of what is happening to them.

No woman feels they have been trafficked. They themselves are confused about what is happening to them. Identification depends on the questions we ask them and the answers they give. The question of how, why, who, where is asked in a way that they do not know our motives.' (NGO official, female, Kathmandu, 1 July 2020)

Rather than relying on precise indicators, shelter homes also identify victims by talking to them at length. As stated by one of the shelter home representatives interviewed:

'The victims themselves come to us. Conversations with them reveal the nature of the violence they faced.' (NGO official, female, Morang District, 24 June 2020)

They look for signs of risk such as single women, women travelling who seem unaware of their destination, and women lacking legal documents as general indicators to help them identify victims.¹⁰⁴ One shelter home also mentioned using oral, written, psychological and documentation methods for identifying victims.¹⁰⁵

In line with what the service providers and the law enforcement officials themselves said, the victims of TIP were also of the view that the behaviour of a person that aroused suspicion was

101 Interview with NGO official, female, Sunsari District, 7 July 2020.

102 Interview with NGO official, male, Kathmandu, 7 July 2020.

103 Interview with NGO official, male, Kathmandu, 4 July 2020.

104 Interview with NGO official, female, Morang District, 24 June 2020.

105 Interview with NGO official, female, Kathmandu, 1 July, 2020.

the most important indicator that identified someone as a victim.¹⁰⁶ In fact, none of them were aware that other indicators could be used for identification.

2.4.4 Lack of Protocols: Identification of GBV Victims

Similarly, with GBV victims, a majority of the service providers reported that they mostly identify victims based on conversations with the victims themselves as well as with their families. In the words of one of the service providers interviewed:

'After listening to the victim, you contact her neighbors and ask if she is really a victim. Talking to the person who claims to be suffering from it also reveals whether she is a real victim or not....' (NGO official, female, Banke District, 29 June 2020)

Another service provider said they invite both parties to discuss matters in order to find out who has committed the violence and who the victim is.¹⁰⁷ Identification was done in coordination with the police and social workers:

'People who come to us are victims. They come crying and with physical wounds. They come to us from our groups or through referrals. We identify by coordinating with social workers and the police. Similarly, we also go and investigate with other human rights activists in the district.' (NGO official, female, Sunsari District, 2 July 2020)

Some of the services providers pointed out that they did not engage in screening themselves as they mostly dealt with cases referred to them.

'Our incoming cases do not need to be identified as they are usually referred. Sometimes the victims even come by themselves. By sitting and talking to them, we also identify ourselves, on the basis of the conversation.' (Hospital official, female, OCMC, District Hospital, Sunsari District, 13 July 2020)

'We work through two or three channels. Many cases come from the police. Cases are also sent by the people's representatives. We also receive referrals from human rights defenders. That's why we rarely participate in screening processes.' (NGO official, male, Morang District, 1 July 2020)

2.4.5 Airport and Border Crossings

There are many cases where women (and men) are trafficked through Kathmandu's international airport to destination countries where they become victims of TIP. In many cases, these are individuals without complete documentation, yet manage to fly out due to arrangements worked out by traffickers with airport officials.¹⁰⁸ In some cases, women reach countries which have been banned by the Nepali Government for work, and risk becoming victims of TIP.

106 Interview with a TIP victim, female, 5 September 2021.

107 Interview with NGO official, female, Banke District, 29 June 2020.

108 Such arrangements are known as 'setting' in Nepali from the English word Nepali-ised to mean working out an arrangement to engage in activities that are either illegal or illicit. Kattel Shambu (2019) Manav Taskar Lagi Setting Milauchhan Adhyagaman ka Karmachari (Immigration Officials Working in Tandem with Human Traffickers). The Annapurna Post. Retrieved from: <http://annapurnapost.com/news/123757>. Accessed: 28 March 2019.

The 1,700-km open border between Nepal and India poses a significant challenge in the identification of trafficked victims since traffickers have a range of modus operandi to choose from. Actual victims of trafficking or those at potential risk of trafficking cross the border often pretend to require medical attention in Delhi and other bigger urban centres.¹⁰⁹ There are also border crossings by people on religious trips, and traffickers have been known to take their victims across by pretending to be part of a pilgrimage tour.¹¹⁰ The unregulated open border also was identified as a major impediment to screening victims in the FGD conducted with law enforcement officials.¹¹¹

But, as reported by most of the TIP victims interviewed, the reason people travelled via India to countries where they were barred from was the non-issuance of labour permits by the Government of Nepal, making it impossible for them to travel from Nepal for work.¹¹²

2.4.6 Institutional Gaps

Various stakeholders are often forced to reconcile with perpetrators and cases settled through financial payments, preventing victims from getting justice.¹¹³ Another barrier mentioned in the FGD with law enforcement officials was the process itself.

'The victim does not register a complaint with the police, because the legal process is very cumbersome and costly. Therefore, it is challenging to identify GBV victims.' (FGD with law enforcement officials, 7 November 2020)

Additionally, lack of awareness among victims, collusion of government officials with perpetrators, and lack of financial resources also result in victims not being able to access justice.¹¹⁴ Female victims are often harassed in the name of interrogation, with insensitive remarks and questions as well as being subjected to the preconceptions of the law enforcement officials.¹¹⁵ In addition, victims also feel intimidated and humiliated by the police, making them hesitant to express what happened to them in detail.¹¹⁶ In the words of an NGO official:

*'The first thing to do when one is a victim of violence is to go to the police administration and the way they look at the victim varies from person to person. Not the entire police **administration**, but there are still some who are not gender-sensitive. Even in rape cases they blame the victims by providing reasons such as they were walking around at night. They blame the woman for being trafficked. The victim loses her confidence and she doesn't dare to approach the authorities as she feels she will be blamed anyway.'* (NGO official, female, Kathmandu, 24 July 2020)

109 Gurung Ganesh (2013) Living the Golden Dreams: The Gulf and Nepalese Women. Maiti Nepal, Kathmandu. Retrieved from: <https://www.maitinepal.org/wp-content/uploads/2015/12/1389690472.pdf>. 28 January 2021.

110 Maiti Nepal (2018).

111 Information received during FGD with law enforcement officials, 7 November 2020.

112 Interview with a TIP victim, female, 5 September 2020.

113 Information received during FGD with service providers, 12 September 2020.

114 Interview with NGO official, female, Banke District, 29 June 2020.

115 Interview with NGO official, female, Sunsari District, 7 July 2020.

116 Interview with a GBV victim, 6 September 2020.

TIP victims have recounted stories of abuse at the hands of the police while in custody and have expressed fear of being exposed in newspapers and of being tarred with the tag of prostitution.¹¹⁷ The lack of coordination between different organizations and the absence of knowhow in dealing with such sensitive matters among government functionaries could be a barrier, said an immigration official.¹¹⁸

2.4.7 Lack of Awareness on part of the victim

Most often the women/girls at potential risk of being trafficked travel under the guise of being part of a married couple, with a father, etc., making it difficult for the police to identify the victims unless they notice something ‘suspicious’.¹¹⁹ As elucidated by a border official:

‘These people while crossing the border were mostly dishonest about their purpose of visit and were mostly unaware of the risk that the person they were relying on may sell them.’ (Police official, male, Biratnagar, Morang District, 11 September 2020)

Immigration officials also face different difficulties in identifying the victims since traffickers use a number of techniques. There were also people who try to circumvent the proper process of obtaining documents for foreign travel, which makes them more vulnerable to TIP.¹²⁰ As stated by one of the border officials:

‘In some cases, the person transporting the victim crosses the border beforehand and tells the victim to come after them but we know that something is wrong because such victims often look confused. We ask them where they are coming from, where they are going, who is taking them, and search for their family’s contact number. This way, you can find out where someone is going and how they got there.’ (Police official, male, Morang District, 11 September 2020)

2.5 The Impact of Covid-19 on the incidence of TIP and GBV

Several media reports have documented the rise of GBV in the country during the lockdowns enforced due to the Covid-19 pandemic.¹²¹ Many of the stakeholders interviewed were of the view that the incidence of GBV had increased after the Covid-19 outbreak.

‘During the time of the corona epidemic, there are more cases of gender-based violence because most people are daily wage earners and because people cannot earn daily wages because of the epidemic, there are quarrels and clashes at home.’ (Police official, female, Banke District, 22 September 2020)

‘Because women have had to stay at home more often, gender-based violence cases have gone up.’ (Police official, female, Sunsari District, 11 September 2020)

117 Chaulagain Ganesh Prasad (2009) Trafficking Survivors in Nepal: An Exploratory Study of Trafficked Women’s Experiences and Perceptions of their Reintegration. University of Bergen. Retrieved from: <https://childhub.org/en/child-protection-online-library/chaulagain-ganesh-prasad-2009-trafficking-survivors-nepal>. Accessed: 28 January 2021.

118 Interview with Immigration official, female, Banke District, 2 September 2020.

119 Interview with Police official, female, Sunsari District, 11 September 2020.

120 Interview with Immigration official, male, Kathmandu, 17 September 2020.

121 Sharma Namrata (2020) In Nepal lockdown, a domestic violence spike. The Nepali Times. Retrieved from: <https://www.nepalitimes.com/latest/in-nepal-lockdown-a-domestic-violence-spike/>. Accessed: 28 January 2021; UN Women (2020) What happened after the COVID-19 hit: Nepal. UN Women, Kathmandu. Retrieved from: <https://www.unwomen.org/en/news/stories/2020/11/what-happened-after-covid-19-hit-nepal>. Accessed: 28 January 2021.

Another law enforcement official said that the rate of reporting of GBV cases had also increased noticeably.

'Suicides have increased. It is associated with gender-based violence. It is not because of Covid-19 that the rate of incidents has increased, only the number of complaints has increased.' (Police official, male, Morang District, 23 September 2020)

One of the service providers interviewed also mentioned that the entertainment sector had 'come to a standstill' because of the pandemic and that 'violence was found to have increased because of the economic crisis'.¹²² In addition, at least two of the service providers interviewed mentioned that domestic violence fuelled by alcohol had increased during the lockdown.¹²³

In contrast to the incidence of GBV, it was noted that TIP had gone down during the pandemic, owing mainly to the closing of international borders and the restrictions imposed on movement. Border officials interviewed said that there had been no instances of trafficking because of the 'sealed borders'.¹²⁴ Echoing them was an immigration official.

'Human trafficking is not easy due to closed borders. It doesn't seem to be increasing at the moment because the borders are closed and people cannot go abroad.' (Immigration official, female, Banke District, 2 September 2020)

Several news reports have, however, highlighted that women and girls are being trafficked into various countries, mainly India, even during the pandemic as 'they tend to be more susceptible to trafficking during adverse situations created by the coronavirus outbreak'.¹²⁵

The outbreak of the pandemic resulted in an extensive reverse migration of Nepali migrant workers. Early in the year, the government estimated there 1.3 million Nepalis living abroad were expected to seek to return home as a result of the pandemic.¹²⁶ By 15 September 2020, a total of 63,347 people had come back via rescue flights coordinated by the Government of Nepal and about 200,000 more Nepalis were estimated to be awaiting immediate repatriation.¹²⁷

In addition, an estimated 1.7 million daily wage workers in Nepal and another million workers on temporary contracts have been significantly impacted by Covid-19.¹²⁸ Further, in the absence of

122 Interview with NGO official, female, Sunsari District, 19 June 2020.

123 Interviews with NGO official, male, Banke District, 11 July 2020; and INGO official, female, Kathmandu, 15 July 2020.

124 Interviews with Police official, male, Morang District, 11 September 2020; and Police official, male, Sunsari District, 15 September 2020.

125 Himalayan News Service (2020) Human trafficking continues unabated amidst COVID pandemic. The Himalayan Times. Retrieved from: <https://thehimalayantimes.com/nepal/human-trafficking-continues-unabated-amidst-covid-pandemic>. Accessed: March 1 2020.

126 Baniya Jeevan, Bhattarai Sadikshya, Thapa Binay Jung and Vibhav Pradhan (2020) COVID-19 and Nepali Labour Migrants: Impacts and Responses. Kathmandu: Centre for the Study of Labour and Mobility.

127 International Organization for Migration (IOM) (2020) Status of Nepali migrant workers in relation to COVID-19. IOM, Kathmandu. Retrieved from: <https://publications.iom.int/system/files/pdf/rapid-phone-survey.pdf>. Accessed: 27 February 2020.

128 International Labour Organization (ILO) (2020) Impact of COVID-19 on Nepali Migrant Workers: Protecting Nepali Migrant Workers during the Health and Economic Crisis. ILO, Kathmandu. Retrieved from: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/briefingnote/wcms_748917.pdf. Accessed: 1 March 2020.

sustainable wages and social security protection mechanisms, daily wage labourers and informal sector workers have been rendered the most vulnerable to the socio-economic impact of the pandemic.¹²⁹ Employers have unilaterally expelled or annulled the contracts of Nepali migrant workers; a large number of Nepalis have been infected and have died due to Covid-19 in the major labour destinations, especially the Gulf, with workers already facing exploitation and abuse before the pandemic facing increased risk.¹³⁰ Notably, many women migrant workers (WMWs) who have returned to Nepal have also been facing various challenges, including socio-economic, psycho-social and health problems; along with discrimination, abuse and stigmatization. Some WMWs were also facing challenges in reuniting with their families and communities.¹³¹

129 Ibid.

130 National Human Rights Commission (NHRC) (2020) Human Rights Situation During COVID-19 pandemic: a brief assessment. Government of Nepal, Kathmandu. Retrieved from: https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRCNepal_Covid_Report_2020.pdf. Accessed: 27 February 2021.

131 Ibid.

CHAPTER 3

The Legal Framework

This chapter provides an overview of the current laws that govern issues arising from trafficking in persons (TIP) and gender-based violence (GBV). It presents a brief analysis of the existing legal framework, including gaps and challenges in the laws and legal procedures as well as in their implementation. The chapter also encapsulates government plans and policies pertaining to TIP and GBV, and presents select landmark judgements, from the higher courts, related to TIP and GBV cases which have provided victims with protection as well as justice.

3.1 Laws on TIP and GBV

The government has taken several steps to address the twin issues of TIP and GBV. Laws such as the Human Trafficking and Transportation (Control) Act, 2007 have been enacted along with various provisions introduced in the National Penal (Code) Act, 2017, particularly with regard to rape, to provide protection to victims of such crimes. Nepal is also a party to the UN Convention on Elimination of All Forms of Discrimination Against Women (1981) and its Optional Protocol (1999), accepting the individual complaint procedure. Nepal also acceded to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime in June 2020.

Starting with the Constitution of Nepal of 2015, there are a number of laws dealing with GBV and TIP. The Constitution safeguards the rights of women in the form of the rights to live with dignity (Article 16), freedom (Article 17), equality (Article 18), and privacy (Article 28) as well as through the rights of victims of crimes (Article 21), right against torture (Article 22), right against exploitation (Article 29), and right to health (Article 35). The Constitution also has a separate article on the rights of women (Article 38), which clearly provides for the protection of women against physical mental, sexual, and psychological or any other forms of violence as fundamental rights, with penalties for perpetrators and compensation for victims. The rights of victims of crimes provide for them to get information about the investigation and proceedings as well as the right to social rehabilitation and compensation.

The Constitution specifically refers to trafficking in persons and slavery in the right against exploitation (Article 29) while the right of children (Article 39) prohibits the ‘illegal trafficking’ of children. The Directive Principles lays down policies the State shall pursue with regard to labour and employment, making it incumbent on the State to ensure foreign employment is free from exploitation, safe and systematic, and one that guarantees employment and rights of workers.

Other laws relevant to GBV and TIP are provided in Table 3-1.

Table 3-1: Laws Governing Gender-Based Violence and Trafficking in Persons

Laws on GBV	Laws on TIP
Safe Motherhood and Reproductive Health Right Act (2018)	Labour Act (2018)
National Penal (Code) Act (2017)	Constitution of Nepal (2015)
Witchcraft Allegation (Offence and Punishment) Act (2016)	Extradition Act (2014)
Sexual Harassment at the Workplace (Elimination) Act (2015)	Mutual Legal Assistance Act (2015)
Constitution of Nepal (2015)	Foreign Employment Act (2007)
Domestic Violence (Crime and Punishment) Act (2009)	Human Trafficking and Transportation (Control) Act (HTTCA) (2007)
Act Amending Some Nepal Acts to Maintain Gender Equality (2006)	Immigration Act (1992)
Social Practice Reform Act (1976)	
Some Public (Crime and Punishment) Act (1970)	

3.2 Laws Pertaining to Gender-Based Violence

3.2.1 ‘Abortion Law’ (2002)

The 11th amendment to the 1963 Country Code in 2002 allowed Nepali women to seek abortion on any grounds up to 12 weeks of uterine gestation (pregnancy); up to 18 weeks in case of rape or incest; and at any stage of pregnancy if it is likely to affect the health, including the mental health, of the woman or if the foetus is deformed or undeveloped. Pre-natal sex determination and sex selective abortion is illegal. This provision is also enshrined in the new National Penal (Code) Act, 2017 that replaced the Country Code of 1963.

3.2.2 Social Practice (Reform) Act (1976)

This Act imposes restrictions on social events such as marriage, funerals, and births, and defines dowry as an offence with both giver and recipient of dowry liable to fines, imprisonment or both.

3.2.3 Act Amending Some Nepal Acts to Maintain Gender Equality (2006)

The implementation of this Act saw the repeal or amendment of more than 50 provisions in various Acts considered discriminatory towards women while also bringing in new provisions that would ensure the rights of women.¹³² Among the latter were sexual violence being established as a crime, the end to the system that only males could receive court summons, and also one that allowed men to opt for a second marriage should their wives not bear children for 10 years after marriage.

¹³² UN WOMEN (2014) Mapping Progress on Women’s Rights in Nepal. UN Women, Kathmandu. Retrieved from: <https://bit.ly/3acuokR>. Accessed 28 January 2021.

3.2.4 Domestic Violence (Crime and Punishment) Act (2009)

This Act considers domestic violence to consist of ‘any form of physical, mental, sexual and economic harm’ caused by one person to another with ‘whom he/she has a family relationship and this word also includes any acts of reprimand or emotional harm.’¹³³ Under this Act, any ‘person who has knowledge of an act of domestic violence been committed, or is being committed, or likely to be committed, may lodge a written or oral complaint setting out the details thereof, with the Police Office, National Women’s Commission or a local body’ within a period of 90 days. The proceedings of cases filed under this Act are to be held in-camera if requested by the victim.¹³⁴ It also provides for compensation to victims of domestic violence.

3.2.5 Sexual Harassment at the Workplace (Elimination) Act (2015)

This Act defines workplace sexual harassment as ‘physical touch with sexual intent, demonstrating sexual objects, audio-visual objects or other seductive materials at the workplace’, all of which have been prohibited by the National Penal (Code) Act 2017 as well.¹³⁵

3.2.6 Witchcraft Allegation (Offence and Punishment) Act (2016)

This Act makes it a criminal offence to accuse anyone of practising witchcraft and provides for victim protection and compensation.¹³⁶ Related to this is the prohibition of inhumane treatment of any person under the National Penal (Code) Act, 2017.

3.2.7 National Penal (Code) Act (2017)¹³⁷

The year 2017 saw the enactment of the National Penal (Code) Act, 2017; the Criminal Offences (Sentencing and Execution) Act, 2017; the National Criminal Procedure (Code) Act, 2017; the National Civil (Code) Act, 2017; and the National Civil Procedure (Code) Act, 2017. These laws replaced the Country Code of 1963, which had covered both criminal and civil offences, including defining gender-based violence as an act committed on the basis of gender that may inflict physical, sexual or psychological harm to the victim. While the National Penal (Code) Act, 2017 does not retain the definition of gender-based violence provided in the Country Code of 1963, it does contain provisions for various other offences that constitute gender-based violence such as rape, child-marriage, menstrual violence and sexual abuse.

3.2.7.1 Sexual Offences

The Chapter on Sexual Offences under the National Penal (Code) Act (2017) defines rape as ‘non-consensual intercourse with an adult woman or any intercourse with a girl under 18’ (thereby defining rape as committed only by men and against women and girls only).¹³⁸ Punishment ranges

133 Domestic Violence (Crime and Punishment) Act (2009). Retrieved from: <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf>. Accessed: 30 January 2021.

134 In in-camera proceedings of a court case, only those who are directly part of the case are allowed entry into the court room, with no outside observers or the media granted access.

135 Forum of Women Law and Development (2018) Court Watch Monitoring on Sexual and Gender Based Violence Cases in Trial in Selected District Courts. FWLD, Kathmandu. Retrieved from: <http://fwld.org/wp-content/uploads/2019/01/Case-monitoring-final.pdf>. Accessed: 28 January 2021.

136 FWLD (2018).

137 The Penal Code is divided into chapters, sections, sub-sections and clauses, in that order.

138 FWLD (2018).

from seven years to life imprisonment, depending on the age of the victim.¹³⁹ In addition, the Chapter stipulates that the offending individual shall be punished with an additional sentence of up to 10 years of imprisonment and a fine of up to NPR 100,000 (ca. USD 853) if he commits rape knowing that he is infected with HIV and an additional sentence of up to three years of imprisonment and a fine of up to NPR 30,000 (ca. USD 252) in the case of any other sexually transmitted disease. Also, the Chapter stipulates an additional sentence of up to five years' imprisonment in the case of gangrape or the rape of a woman who is infirm or disabled, suffering from mental or physical illnesses, or pregnant (six months or more).

With regard to incest, the Chapter prohibits sexual intercourse with another person knowing that the person is a relation with whom marriage is prohibited according to the customs or traditions practised in his or her caste or lineage. The punishment for incest ranges from one year to life imprisonment and a fine of NPR 10,000 (ca. USD 85) to 100,000 (ca. USD 839), depending on the offender's relation with the person. Additionally, if the rape victim is a woman with whom sexual intercourse is prohibited under the aforementioned provision on incest, the offender is also liable to the punishment provided under the provision on incest, in addition to that provided for rape.

The law also includes a 'Right to Retaliation', a unique right that enables a victim of rape/attempt to rape to resist and take action to defend herself by all means possible. The victim is not held to have committed a crime should the assailant be killed in the process of rape or immediately afterwards.¹⁴⁰

The Code allows for the abortion of a foetus up to 18 weeks if the pregnancy has been caused by rape or incest but to be carried out with the consent of the pregnant woman.¹⁴¹ It also requires that hearings on rape cases be held in-camera. The statute of limitation prescribed for reporting the crime of sexual offence is one year.¹⁴² The Code also provides for appropriate compensation to the victim.¹⁴³ The Chapter on Sexual Offences deals with the crime of child sexual abuse as well.

3.2.7.2 Marital Rape

Sexual intercourse forced upon a wife by a husband without her consent is considered marital rape in the Chapter on Sexual Offences, wherein the husband would be liable to imprisonment of up to five years.¹⁴⁴ The Chapter does not, however, address the issue of rape of a man by

139 As stipulated under the National Penal (Code) Act, 2017, Section 219 (2), any person who commits rape shall be liable to the sentence of imprisonment as follows: a) imprisonment for life if the woman/girl is below 10 years of age or above 70 years of age or is completely disabled; b) imprisonment for a term ranging from 18 years to 20 years if the minor girl is above 10 or more years of age but below 14; c) imprisonment for a term ranging from 12 years to 14 years if the minor girl is of 14 years of age or above but below 16; d) imprisonment for a term ranging from 10 to 12 years if the woman is of 16 years of age or above but below 18; and e) imprisonment for a term ranging from seven years to 10 years if the woman is of 20 years of age or above.

140 While this provision was under the chapter on rape in the Country Code 1963, in the National Penal (Code) Act, 2017, it is under the chapter on 'General principles of Criminal Justice', Section 26 (2)(b).

141 Abortions in such cases are permissible until 28 weeks under the Safe Motherhood and Reproductive Health Right Act of 2018.

142 With the exception of incest and bestiality.

143 With the exception of incest and 'unnatural sex'.

144 FWLD (2018).

his spouse. The Code further provides that a wife who has filed a claim of marital rape shall be provided with physical and material security until the case is decided. The Country Civil (Code) Act, 2017 also provides for marital rape as one of the grounds for divorce.

3.2.7.3 Child Marriage

The Chapter on Marriage prohibits marriage between parties below 20 years of age.¹⁴⁵ It states that marriage before attaining the age of 20 shall be declared void and anyone involved in the act or causing such an act can be punished. The statute of limitation period to file a claim related to child marriage is, however, only three months from the date of knowledge of the incident.

3.2.7.4 Dowry

The Penal Code prohibits both the bridegroom's and the bride's families from engaging in any kind of transaction in cash or kind during a marriage.

3.2.7.5 Menstrual Violence

Any act of discrimination towards women during her menstrual or lactating period, including practising untouchability or engaging in any inhumane act towards women such as forcing them into observing the menstrual taboo of *chhaupadi*,¹⁴⁶ is prohibited.

3.2.7.6 Law against Cyber Crime

The Chapter on Offence relating to Defamation provides that no person shall commit libel in writing, by conduct, by signs, by visible representation, or by publicity or by other means. Anyone found guilty of libel is liable for punishment of up to two years or a fine up to NPR 20,000 (ca. USD 173) or both. If the libel is committed through electronic means or by other means of mass communication, an additional sentence of up to one year imprisonment or a fine up to NPR 10,000 (ca. USD 85) is added. The statute of limitation to file a claim related to libel is three months from the date of knowledge of the commission of the offence.

3.2.8 Safe Motherhood and Reproductive Health Right Act (2018)

This Act increases the number of conditions under which abortion is legal. It also requires governments at all levels to set aside funds to provide for free abortion care in public health facilities. The Act permits abortion for up to 12 weeks' gestation, and in the case of rape or incest, up to 28 weeks.

3.3 Other Relevant Laws

3.3.1 Child Labour (Prohibition and Regulation) Act (2000)

This Act prohibits the employment of children below 14 years of age and the employment of any child in hazardous forms of labour.

¹⁴⁵ Ibid.

¹⁴⁶ A form of exile during the menstrual period practiced mainly in far-western Nepal when women and girls are prohibited from touching other people and objects and are forced to live in specially constructed huts away from home.

3.3.2 Bonded Labour (Prohibition) Act (2002)

The Act prohibits the employment of anyone as bonded labourers.

3.3.3 Act Relating to Children (2018)

This Act defines children as individuals under 18 years of age and states that a child should be protected against all forms of abuse and exploitation, with protection guaranteed by the state and the family/guardian.

3.3.4 Crime Victim Protection Act (2018)

The Act outlines the ‘rights and duties of victims in the criminal justice process’, including matters relating to compensation. Among others, the Act ensures the right to privacy of victims whereby victims of rape, incest, human trafficking, and sexual harassment in particular have the right to privacy in the course of investigation, inquiry, prosecution and court proceedings.

3.4 Laws Pertaining to Trafficking in Persons

3.4.1 Immigration Act (1992)

The Immigration Act 1992 regulates the movement of foreigners into, within and from Nepal, as well as the movement of Nepali nationals from and into Nepal. The Act prohibits giving false or wrong particulars regarding name, age, nationality, using a forged passport or visa, or instigating others to do so.

3.4.2 Foreign Employment Act (2007)

The Foreign Employment Act 2007 was enacted to replace the Foreign Employment Act 1985 in order to further facilitate foreign employment as well as protect the rights of migrant workers. There are prohibitions against gender discrimination in the course of sending workers for foreign employment as well as against sending anyone under the age of 18. The Act does not deal with issues of forced labour or labour exploitation, and is concerned more with regulating the foreign employment business. The Foreign Employment Policy 2012, however, has a separate section in its action plan to ensure the rights of women in the migration cycle, including preventing human transportation, trafficking and smuggling.¹⁴⁷

3.4.3 Human Trafficking and Transportation (Control) Act (2007)

The Human Trafficking and Transportation (Control) Act 2007 (HTTCA) defines activities considered to constitute human trafficking and human transportation. Accordingly, ‘human trafficking’ is 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; while ‘human transportation’ is defined as: 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.

¹⁴⁷ Foreign Employment Policy 2068 (2012). Department of Foreign Employment, Ministry of Labour, Employment and Social Security, Government of Nepal, Kathmandu. Retrieved from: <https://www.ceslam.org/uploads/backup/foreign%20employment%20policy%202012.pdf>. Accessed: 30 January 2021.

According to the HTTCA, those convicted of buying or selling a human being are liable to imprisonment of 20 years along with a fine of NPR 200,000 (ca. USD 1700). Victims of trafficking are entitled to compensation not less than half the fine levied. The name and address of the informant are to be held in confidence and the proceeding of the cases held in-camera.

3.4.4 Extradition Act (2014)

The Extradition Act 2014 can be used to extradite absconding accused or offenders (who may be traffickers or smugglers of migrants) from a foreign state to Nepal at the request of the Government of Nepal under the conditions and processes as mentioned within the Act.

3.4.5 Mutual Legal Assistance Act (2014)

The Mutual Legal Assistance Act 2014 details the scope of legal assistance the Nepali government can seek from any foreign state and vice versa, including the examination of evidence, serving notice, investigation, and enforcement of judgments.¹⁴⁸

3.5 International Obligations

Nepal is not yet party to a number of international agreements which could provide protection to various vulnerable groups. Some of these major omissions are: the Convention on the Protection of the Rights of All Migrants and Members of Their Families; the 1951 Refugee Convention and its 1967 Protocol; and the Convention for the Protection of all Persons from Enforced Disappearance 2007.¹⁴⁹ While Nepal acceded to the Palermo Trafficking Protocol in June 2020, it will take some time before national laws are amended or crafted to reflect commitments under the Protocol.

The Civil and Penal Codes and other national legislations need to be amended to reflect Nepal's commitment to the obligations under the Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (CEDAW) and the Convention on the Rights of the Child, 1990 (CRC). While the substantive rights under Nepal's international obligations are generally addressed by the Constitution and other national laws, there seems to be a major lag in implementation. In the previous Universal Periodic Review cycle, more than five member countries recommended that Nepal amend its laws on rape and domestic violence to broaden the sphere of protection to match international standards, to ensure that the police provide a safe and confidential environment to report incidents of violence, including sexual violence and incidents of trafficking, all of which have still not been addressed.¹⁵⁰

148 Mutual Legal Assistance Act, 2014 (2070 B.S.). Retrieved from: <http://www.pioneerlaw.com/news/mutual-legal-assistance-act-2014-2070>. Accessed: 30 January 2021.

149 UNODC (2019).

150 United Nations Human Rights Council (UNHRC) (2015) Report of the Working Group on the Universal Periodic Review: Nepal A/HRC/31/9. UNHRC, Nepal. Retrieved from: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/9. Accessed: 28 January 2021.

3.6 National Plans to Combat TIP and GBV

3.6.1 National Action Plan against Trafficking in Persons, especially Trafficking and Transportation of Women and Children (2012-2022)

The National Action Plan (NAP) on trafficking prepared by the Ministry of Women, Children and Social Welfare (now, MoWCSC) has outlined five priority areas: prevention, protection, prosecution, capacity-building, and coordination, cooperation and collaboration.¹⁵¹ Some aspects of the Plan are as follows:

- Work with district committees for controlling human trafficking to raise awareness through various media.
- Identify individuals who have been trafficked abroad and require rescue and rehabilitate individuals who have been trafficked and have already returned to Nepal. Service centres will provide services to victims of GBV as well.
- Collect data on the number of victims of trafficking who have special needs and disabilities, as well as periodically collecting data on Nepali citizens who are victims of trafficking and are still in destination countries.
- Rescue children who are in exploitative conditions abroad, through diplomatic means.
- Establish and strengthen mechanisms to rescue victims of trafficking by developing bilateral memorandums of understanding (MOUs), allocate a budget to diplomatic missions abroad for rescue.
- Create greater awareness about trafficking while also pushing for amendments to existing laws.
- Develop the capacity of prosecutors to deal with cases of trafficking.
- Continue developing bi- and multilateral relations to combat trafficking.

The Ministry publishes an annual review of its efforts at curbing trafficking of persons in which a whole section is devoted to activities under the priority areas outlined in the Action Plan. The latest report, from 2020, was quite critical of what the Action Plan had achieved and identified the main problem to be the uncertainty over a new constitution and restructuring of the state, and the question of how extensive the institutional changes would be.¹⁵² Earlier, an internal mid-term review carried out in 2018 had found that ‘the government had implemented less than one third of the plan’s prosecution and capacity-building objectives’.¹⁵³

3.6.2 National Plan of Action for Year against Gender-based Violence (2010)

The National Plan of Action for the Year against Gender-based Violence was a strategic one to tackle GBV prepared by an inter-ministerial committee to guide different ministries, agencies and partners to work on responses to and prevention of GBV. The Plan articulated three objectives each in terms of responding to and preventing GBV, with a detailed strategic action plan highlighting programs/activities and activities to be implemented by the main agency and other supporting agencies.¹⁵⁴

151 MoWCSC (2019).

152 Ibid.

153 United States Department of State (2020).

154 Nepal Development Research Institute (2017) Situational Assessment for Improved Gender Based Violence Prevention and Response in Selected Districts of Nepal. NDRI, Kathmandu. Retrieved from: <http://www.ndri.org.np/wp-content/>

The three objectives in responding to GBV were:

- legal and institutional reforms and implementation for better access to justice for GBV victims,
- GBV victims to be provided services at the community level, and
- strengthening the health sector to make it responsive to GBV.

Likewise, the objectives under prevention were:

- awareness against GBV and highlighting zero tolerance towards it,
- economic and social empowerment of women and girls, and
- close cooperation among groups involved in implementing the Plan.

The 2010 Plan was followed by the National Strategy and Action Plan for Ending Gender-Based Violence and Gender Empowerment (2012/13-2016/17), which provided continuity to the programs and activities in the earlier plan while also focusing on women's empowerment.¹⁵⁵

3.6.3 National Action Plan for Children 2004/5–2014/15

The Action Plan for Children aimed to reduce and eradicate the worst forms of child labour through various activities. As part of its activities to 'protect children from sexual harassment, exploitation and trafficking', the Action Plan sets out the following: conducting legal literacy programs and massive awareness-raising programs; ensuring compensation from the offender; tightening security in the border areas; implementing income-generating programs for vulnerable groups; developing networks to implement and monitor activities from the local to the national level; activating children's clubs to address these issues; and rescuing trafficked children and promoting skill development training in rehabilitation centres.

3.6.4 15th Five-Year Plan (2019/20–2023/24)

The Plan contains a separate section on 'controlling human trafficking'. It identifies the following as major problems in the context of human trafficking:

- change in the dimensions and forms of human trafficking and transportation;
- lack of clear identification of the vulnerable groups/communities;
- failure to identify the victims and the perpetrators, trafficking even by one's close relatives and acquaintances;
- failure to make the foreign labour migration systematic and dignified;
- sexual exploitation of women going abroad as domestic helpers and for other foreign employment;
- existence of sexual exploitation of women and adolescent girls in the hotel and hospitality industry;
- existence of sale of human organs due to lack of awareness and due to poverty; and

uploads/2017/11/1_Revised-Final-Report_2017001_Situational-Assessment-for-Improved-GBV-Prevention-and-Response-in-Selected-Districts-of-Neapl.pdf. Accessed: 28 January 2021.

155 Office of the Prime Minister and Council of Ministers (2016) National Strategy and Action Plan for Ending Gender-Based Violence and Gender Empowerment 2012/13 - 2016/17. OPMCM, GoN, Kathmandu. Retrieved from: <https://bit.ly/37sVkwS>. Accessed: 30 January 2021.

- expansion of international criminal networks and involvements; and lack of effective international collaboration and partnership.

The Plan also outlines a number of strategies and working policies in order to meet the following objectives:

- empower socio-economically communities and groups vulnerable to human trafficking and transportation;
- control human trafficking and transportation through preventive measures; and
- make the rescue, protection, access to justice, and rehabilitation services for victims of and the people affected by human trafficking and transportation more effective.

3.7 Gaps and Challenges in Laws and Their Application

While there is a generally protective and supportive environment to promote and protect the rights of girls and women through various legal and procedural provisions, the mechanisms for their implementation, monitoring and ongoing evaluation have been found wanting.¹⁵⁶ In the words of one of the service providers, ‘The law is good in itself, but the implementation is not.’¹⁵⁷

In order to support victims of GBV, One-Stop Crisis Management Centres (OCMCs) have been set up in several hospitals. In addition, community service centres, child care homes and rehabilitation centres have been established across the country for victims of violence; and national GBV and child helplines have been established so that cases can be reported and channelled to the proper supporting mechanisms.¹⁵⁸ There are efforts being made at the government level as well with programs aimed at preventing trafficking, including providing scholarships from the Ministry of Education to children from disadvantaged social backgrounds; the establishment of migrant resource centres to improve skills and provide vocational training to aspiring migrants; and the incorporation of content related to human trafficking, sexual exploitation, and migration in middle/high school curriculums.¹⁵⁹

3.7.1 Lack of Understanding of Concepts

An analysis of international commitments and national laws and policies to address violence against women and girls (VAWG) found gaps in the understanding of governing and implementing agencies with regard to what qualifies as violence against women and as trafficking. HTTCA has criminalised some, but not all, forms of trafficking while Nepal’s accession to the Palermo Protocol requires the adoption of a broader definition for TIP.¹⁶⁰ The main difficulty, however, remains a lack of a common understanding of the different issues that arise when dealing with TIP and GBV. For instance,

156 CREHPA (2013).

157 Interview with NGO official, female, Kathmandu, 29 June 2020.

158 NHRC (2018).

159 Ibid.

160 United States Department of State (2020).

- **Fraudulent Labour:** There is no clear demarcation of the difference between violations of the rights of migrant labourers and trafficking, including how to report and investigate allegations.¹⁶¹
- **Human smuggling and human trafficking:** There are no national laws against smuggling and a lack of conceptual clarity in the difference between the two crimes.¹⁶²
- **Victims engaged in commercial sex:** HTTCA criminalises the person engaging in prostitution as well as using of someone in prostitution. The majority of those involved in prostitution are females under the age of 18, and many are victims of internal trafficking.¹⁶³ A literal reading of the law doubly victimises them as they could also be charged with criminal activities under HTTCA.
- **Absence of disaggregated data:** Neither the National Women's Commission (NWC) nor the Nepal Police has disaggregated data on domestic and transnational trafficking.
- **GBV and violence against women (VAW):** The two concepts are used interchangeably which has had the effect of a lot of focus being directed towards women only.¹⁶⁴ In addition to men, sexual and gender minorities are largely excluded from any discussions related to GBV in Nepal.
- **Aggregation of cases:** There is no disaggregated data to distinguish between cases of sex and labour trafficking as well as cases of forced marriage and other non-trafficking crimes that occur without exploitation in forced labour or commercial sex. There is also an ongoing problem of wrong classification of labour violations whereby the majority of transnational labour trafficking cases continue to be misidentified as labour violations and are resolved through an administrative procedure under the Ministry of Labour in lieu of a criminal investigation.¹⁶⁵

3.7.2 Discriminatory Laws

Nepal still lacks a comprehensive anti-discrimination law that encompasses all forms of direct, indirect as well as multiple and intersecting forms of discrimination in both the public and private spheres, including on the basis of gender.¹⁶⁶ The provisions in the Act to Amend Some Nepal Acts for Maintaining Gender Equality 2006 was a step in the right direction but it excludes sexual and gender minority groups. While the 2015 Constitution has established the right to equality as a fundamental right, there still exist some discriminatory laws, including the provision regarding citizenship within the Constitution itself; there is no recognition of the independent identity of women in transferring citizenship to children, nor can women confer citizenship on a foreign spouse.¹⁶⁷

161 FWLD (2014); GAATW (2017).

162 UNODC (2019).

163 ECPAT International (2020) ECPAT Country Overview: Nepal. ECPAT international, Bangkok. Retrieved from: <https://www.ecpat.org/wp-content/uploads/2020/01/ECPAT-Country-Overview-Report-Sexual-Exploitation-of-Children-in-Nepal-2020-ENG.pdf>. Accessed: 28 January 2021; FWLD (2014).

164 OPMCM (2012).

165 United States Department of State (2020).

166 UNHRC (2019)

167 International Commission of Jurists (2017) Serious Crimes in Nepal's Criminal Code Bill, 2014: A Briefing Paper. ICJ, Geneva. Retrieved from: <https://www.icj.org/wp-content/uploads/2017/03/Nepal-Serious-Crimes-Bill-Advocacy-Analysis-Brief-2017-ENG.pdf>. Accessed: 28 January 2021.

There are also other national laws that have different provisions for men and women. In 2015, the government issued the Directives Related to Managing Domestic Workers Going for Foreign Employment, setting the minimum age at 24 years for women seeking domestic work in certain destination countries, and prohibiting a mother with a child aged two and younger from seeking foreign employment.¹⁶⁸ This directly contradicts the non-discrimination clause in the Foreign Employment Act 2007, which has set 18 as the minimum age at which people can leave for foreign employment. Together, these prohibitions, in fact, increase the risk of exploitation as well as trafficking of younger women as they seek to migrate through irregular channels and which also compels them to work as undocumented workers abroad.

The rape of persons other than females is not recognized in the National Penal (Code) Act, 2017. It only deals with sexual intercourse with a woman without her consent or sexual intercourse with a girl below the age of 18, with or without her consent.¹⁶⁹ The punishment for rape varies in accordance with the age of victim, woman or a girl; there is no such provision for children of other gender identities. Furthermore, the provision on marital rape only mentions rape of a woman by her husband, and not vice versa and is also silent regarding non-heterosexual marriages. The HTTCA, however, uses gender-neutral terms and applies to all genders.

3.7.3 'Women-Centric' Legal Procedures

Many of the stakeholders interviewed noted that legal procedures tend to be 'women-centric' as evidenced by the establishment of the Women, Children and Senior Citizen Service Centres, which cater primarily to women, along with such laws that require investigation be conducted by female police officials in the case of women victims, mainly because 'women are at greater risk.'¹⁷⁰ In the words of law enforcement officials:

'Legal procedures are women-centered because women are more likely to be victims, because generally out of 15 cases registered, only two cases involve men and the remaining 13 cases involve women.' (Police official, female, Sunsari District, 11 September 2020)

'We treat all victims of crime equally, regardless of their gender. But because women are more vulnerable to GBV, we are a little more sensitive. However, we do not punish a man as soon as he is accused by a woman. There has to be adequate evidence.' (Police official, female, Morang District, 11 September 2020)

A judge at the Kathmandu High Court further elaborated:

'We do not make decisions solely through a women-centric lens but we still need to be more sensitive because our society is full of patriarchal ways of thinking, women are considered to be second-class citizens. In terms of population women make up more than half the population and statistically the majority of women face injustice. Since it is mostly women who face injustice, the law has also prioritized cases involving women, and on that basis as well, the courts can be more women-friendly. The court takes

168 Guidelines for Sending Domestic Workers for Foreign Employment (2016). Retrieved from: https://www.ceslam.org/uploads/backup/Guidelines_for_Sending_Domestic_Workers.pdf. Accessed: 15 January 2021.

169 ICJ (2017).

170 Interviews with Police official, male, Morang District, 11 September 2020; and Police official, male, Sunsari District, 15 September 2020.

the victim's statement as first evidence in most cases of GBV and human trafficking. (Judge, male, High Court, 5 September 2020)

3.7.4 Irregularities in Existing Laws

While most of the law enforcement and government officials interviewed seemed to think that the definition of TIP and GBV was clear in the law,¹⁷¹ many of the service providers raised doubts regarding the clarity of the laws and the difficulty for the general public to understand the provisions because of the difficult language used.¹⁷²

3.7.4.1 GBV

One government official said, “The laws are radical and progressive. The definition seems to be correct. Since we rely on the UN’s definition of GBV, I think that’s fine.”¹⁷³ However, an NGO official said that the laws on GBV did not recognize the power relations within the diverse Nepali society where perpetrators usually have the upper hand due to their political connections.¹⁷⁴ Further, while one of the law enforcement officials interviewed thought that new laws served to discourage GBV in society,¹⁷⁵ most of other respondents felt otherwise.

The legal definitions of GBV were perceived as weak by almost all the shelter homes representatives, NGOs and even judges. As stated by a shelter home official:

‘The legal definition of GBV covers everything but the implementation side is not strong. According to the legal definition, women should be given justice, but in reality, the same woman is often blamed in the legal process. If there is any kind of violence against women, there is a women’s cell in the police office [to look into it] and there is a growing understanding that one can have one’s say. But there is a problem somewhere in the law.’ (NGO official, female, Banke District, 9 July 2020)

In addition, there are many contradictions in laws as well as in the provisions of the Civil and Penal Codes, which leaves room for manipulation. For example, child marriage in Nepal is only voidable under the Civil Code while it is void *ab initio* under the Penal Code. Likewise, according to the Penal Code, punishment for marital rape is a maximum of five years’ imprisonment compared to 10 to 12 years for sex with a woman aged 16 to 18. Likewise, the failure to formulate the necessary Rules to accompany the Sexual Harassment at Workplace (Prevention) Act 2015 has also prevented its effective implementation.

3.7.4.1.1 Consent in Rape

The issue of ‘consent’ in the definition of rape in the National Penal Code 2017 is also vague and needs clarification. Situations where this may arise include where the person is unable to give consent (due to a disability, intoxication, lack of consciousness, etc.); is mistaken about the

171 Interviews with Police Official, male, Women, Children, and Senior Citizen Service Centre, Biratnagar, Morang District, 23 September 2020; Police official, male, Banke District, 4 October 2020; and Police official, male, Kathmandu, 10 October 2020.

172 Interview with NGO official, female, Kathmandu, 10 July 2020.

173 Interview with Government official, female, Morang District, 1 July 2020.

174 Interview with a Prosecutor, male, District Court, 15 September 2020.

175 Interview with Police official, female, Itahari, Sunsari District, 11 September 2020.

nature of the act; or is threatened with violence or bodily injury.¹⁷⁶ In cases of rape as well as sexual harassment, the accused is considered innocent until proven guilty and the onus is on the victim to prove the absence of consent.

An interviewee narrated the difficulty of proving absence of consent which can make the victim's case weaker, a fact particularly relevant in cases where victims are from the adult entertainment sector.¹⁷⁷ She narrated an incident from a year earlier when an 18-year-old girl was forcibly taken to a hotel and sexually abused. A review of the CCTV footage, however, could not establish that she was under duress and hence she lost the case. The informant also said that such cases are quite common.

3.7.4.1.2 Cybercrime

There are more complications where cybercrime is involved. The digital publication, *Record Nepal*, reported a case where the victim was raped and the act filmed and distributed without her knowledge.¹⁷⁸ After she reported the case to her local police station, it was prosecuted as a primary violation of the Electronic Transaction Act, 2008 and the court dealt solely with the crime of shooting and transferring the video.

3.7.4.2 TIP

Government officials interviewed said that although the legal definition of TIP was clear, the HTTCA does not differentiate between the many types of TIP. There is no legislation dealing with the smuggling of migrants, with the issue often conflated with trafficking.¹⁷⁹ Since one of the definitions of 'foreign employment fraud' consists of sending 'a person abroad by giving false assurance',¹⁸⁰ cases of human trafficking are filed as foreign employment fraud.¹⁸¹ Referring to this, a Kathmandu-based service provider said: 'The legal definition is not so clear. It is not easy to understand, it also seems to have a double meaning in terms of foreign employment and human trafficking...'¹⁸²

Further, criminalization of prostitution under HTTCA does not prevent sexual exploitation and sex trafficking of girls and women but proceeds to further victimize them.¹⁸³ Victims of trafficking forced into prostitution are criminalized but the act of exploitation for prostitution itself is not.¹⁸⁴ In short, the HTTCA does not absolve the victim of criminal liability. In the words of one of the prosecutors interviewed:

176 ICJ (2017).

177 Interview with NGO official, female, Kathmandu, 1 July 2020.

178 Acharya Nirmal (2019) Nepal's Rape Culture Has Gone Online – and Our Laws Are Dismal. *The Record*. Retrieved from: <https://www.recordnepal.com/wire/features/nepals-rape-culture-has-gone-online-and-our-laws-are-dismal/>. Accessed: 28 January 2021.

179 UNDOC (2019).

180 Section 43, Foreign Employment Act, 2007.

181 Forum for Women Law and Development (2014).

182 Interview with NGO official, male, Kathmandu, 7 July 2020.

183 Forum for Women Law and Development (2018) Concluding Observations on the Six Periodic Report on Nepal on CEDAW. FWLD, Kathmandu. Retrieved from: <https://fwld.org/publications/concluding-observations-on-the-sixth-periodic-report-of-nepal-on-cedaw/>. Accessed: 28 January 2021.

184 FWLD (2018).

‘If a boy and girl are found in a hotel, it is generally understood that the girl is the victim, and the boy and the establishment are involved in trafficking. The trafficker will say I have consent and have paid for sex. So, he may have taken consent, but prostitution is illegal under the trafficking law. A sex worker risks imprisonment for three months, but there are no laws for those buying sex.’ (Police official, male, Banke District, 4 October 2020)

While the Criminal Code criminalizes the act of abduction or hostage taking with the act or intention of forcing someone into prostitution, it does not cover other instances of forced prostitution. The HTTCA also requires that for an incident to be prosecuted as an offence of child sex trafficking, there has to be evidence of force, fraud or coercion being used.¹⁸⁵

Some police officials continue to arrest, detain, and fine adult and child sex trafficking victims identified in the adult entertainment sector.¹⁸⁶ Having ratified the Palermo Protocol in June 2020, Nepal is bound by the legal obligation to align its domestic laws with the international standards prescribed by the Protocol, which stipulates non-criminalization of TIP victims. In addition, the issue of consent in the context of labour trafficking has not been addressed adequately in Nepal because of which the perpetrators remained immune to legal actions.¹⁸⁷ A judge recognized the absence of consent in trafficking and said, ‘The issue of consent comes to the fore in the case of rape. In the case of trafficking, there will be more deception and temptation, so there is no question of consent; it is their *modus operandi*.’¹⁸⁸

One of the NGO officials explained how this affects victims:

‘Agents are also sending victims to countries where labour permits have not been approved. People who were to be taken to Germany have been taken to Cambodia and left stranded. When we present such cases in the court as human trafficking, there is not enough evidence to prove that it is human trafficking. The current trafficking in persons Act does not address trafficking in the name of foreign employment. At present, people voluntarily go to different places for employment. But the way they give consent can be different and can be deceptive, exploitative, forced labour. Therefore, the current legal definition does not address the changing nature of human trafficking associated with “consent”.’ (NGO official, male, Kathmandu, 30 June 2020)

The HTTCA does not discuss labour exploitation in situations such as forced or bonded labour.¹⁸⁹ Neither has it criminalized ‘the recruitment, transportation, harboring, or receipt of persons by force, fraud, or coercion for the purpose of forced labour...[as well as] all forms of child sex trafficking’.¹⁹⁰ The definition of trafficking in HTTCA does not deal with transportation of victims into Nepal either.¹⁹¹ In addition, the HTTCA also lacks adequate laws pertaining to internal trafficking.

185 Kiss Ligia et al. (2019).

186 United States Department of State (2020).

187 Interview with INGO official, female, Kathmandu, 24 June 2020.

188 Interview with Judge, male, High Court, 5 September 2020.

189 United States Department of State (2020).

190 United States Department of State (2018) 2018 Trafficking in Persons Report: Nepal. USDOS, United States. Retrieved from: <https://www.state.gov/reports/2018-trafficking-in-persons-report/nepal>. Accessed: 28 January 2021.

191 FWLD (2014).

No extradition arrangements exist with countries of destination to bring individuals accused of human trafficking to justice.¹⁹² The one extradition treaty Nepal has, with India from 1953, does not deal with trafficking and the provision in the treaty that comes closest to trafficking is the one that dealing with ‘abduction or kidnapping’.¹⁹³

3.8 Barriers to Accessing Legal Redress

The complex legal proceedings can overwhelm any woman without a high level of education or with limited access to legal aid.¹⁹⁴ The lengthy and complex complaint process leads to few GBV cases being reported in the first place. That is followed by delays in court hearings, making it quite difficult for complainants to pursue their cases. It is also very difficult for victims to receive compensation. Legal aid is provided only to the economically weak (with an annual income of less than NPR 40,000 [c. USD 350]) but not to those who may be socially vulnerable.¹⁹⁵

There are also ambiguities regarding the appropriate body to address complaints for victims of trafficking and GBV. The DV Act identifies four different institutions for lodging an initial complaint—the local government, the police, the courts, and the National Women’s Commission. The latter being based in Kathmandu is not accessible to everyone. Proper training and information are not provided to all of the above-mentioned agencies and persistent paternalistic mindsets sometimes frustrate victims.¹⁹⁶ There is also a marked gap in dissemination of information on authority, duties and limitations of each agency in handling the complaint process.

This can be seen especially in victims of labour trafficking with many workers, both men and women, quite unaware of how redress can be sought, including in cases involving trafficking. Those with knowledge of the redressal process still prefer to submit claims for restitution under the Foreign Employment Act (FEA) 2007 rather than lodge a criminal case under the HTTCA. The reasons are manifold, including the lengthy period required for criminal prosecution under the HTTCA, the stigma associated with trafficking, the potential for compensation being higher under FEA, and overall poor access to institutions providing redress.¹⁹⁷ Officials at the Department of Foreign Employment (DoFE) are also known to encourage migrant workers who have been in situations of trafficking to register complaints under the FEA rather than notify the police.¹⁹⁸ Many migrant workers remain unaware of the process for obtaining redress even when they had been subjected to trafficking. And although it was possible for prosecutors to file cases of both trafficking and foreign employment fraud, they believe it would violate the double jeopardy rule and demur. Victims also do not know they could have their own legal representative involved in the case, and where they do, their cases are hampered because they

192 Ibid.

193 UNODC Regional Office for South Asia (2015) *Compendium of Bilateral and Regional Instruments for South Asia: International Cooperation in Criminal Matters, Volume II*. UNODC, New Delhi. Retrieved from: https://www.unodc.org/documents/terrorism/Publications/SAARC%20compendium/SA_Compendium_Volume-2.pdf. Accessed: 28 January 2021.

194 FWLD (2018).

195 Ibid.

196 CREHPA (2013).

197 United States Department of State (2020); FWLD (2014).

198 United States Department of State (2020).

cannot gain access to important case files or were kept uninformed about when the hearings would be held.

There are also reported instances of individuals initiating human trafficking cases to take personal revenge which leads to increased suspicions about real victims.¹⁹⁹ There is no provision for action against those who file such cases. There were also cases of people being wrongly accused. As stated by a prosecutor, the victims sometimes provided false statements in a bid to make the accused suffer as much as they can. He continued that although there are laws against false testimony, the perjurer is penalized only if everything stated was false. This makes evidence gathering difficult.²⁰⁰

The protection mechanisms set in place for victims also do not function effectively as the MoWCSC does not allocate funds for the protection and rehabilitation of male trafficking victims who also do not receive services.²⁰¹

3.9 Procedural Gaps

Prosecution of cases is hampered by poor investigation as well as hurried prosecutions, leading to lack of evidence.²⁰² The proceedings of GBV cases all depend on the evidence presented by the victims and collected by investigating officers. There is a lack of accountability in the police force for the protection of evidence. A 2015 amendment to the HTTCA reinstated a provision that would fine victims of trafficking for failing to appear in court. Victims can also face criminal liability should their testimony contradict their previous one, thus impeding victim protection.

Efforts are further hampered by the presence of very few investigators and prosecutors trained to work on trafficking victims and the difficulties are further compounded by the frequent turnover of personnel.²⁰³ As expressed by a Kathmandu-based INGO representative, they have to be mindful of questions such as ‘How has law enforcement officials been groomed? Are the right personnel receiving the necessary training?’²⁰⁴

Neither the Human Trafficking Investigation Bureau (HTIB) of the Nepal Police nor other law enforcement units has the resources to coordinate with NGOs and victims while registering cases against traffickers. Procedural gaps are also evident in the manner law enforcement personnel handle TIP and GBV situations. Several service providers noted that the attitude and behaviour of the police towards the victims are not always positive.²⁰⁵

‘In the case of rape, it is a matter of policy to ask questions in a natural and confidential manner, but in practice, the victim is asked for evidence of the incident, they are asked what the scenario behind the

199 Pokhrel Mukesh (2016) Manav Bechbikhan tatha Osarpasar Mudda: Fasaune Hatiyaar (Human Trafficking and Transportation Cases: Weaponized for Conspiracy). Himalkhabar. Retrieved from: <https://www.himalkhabar.com/news/946>. Accessed: 28 January 2021. Although the Penal Code of 2017 criminalizes the filing of false complains, it does not apply to cases where the government is the plaintiff (Section 98[2] of the Penal Code).

200 Interview with Police official, male, Banke District, 4 October 2020.

201 United States Department of State (2020).

202 FWLD (2018).

203 United States Department of State (2020).

204 Interview with INGO official, female, Kathmandu, 6 August 2020.

205 Interview with Representative, female, Shelter Home, Morang District, 24 June 2020.

rape was. The law makes the victim feel more confused, and they feel more victimized? (NGO official, male, Banke District, 11 July 2020)

There is also lack of coordination between the police and the prosecutors, leading the police to submit incomplete cases that the latter cannot pursue in the courts. Further, many cases are frustrated because the victims do not cooperate. Since cases are usually investigated following referrals or complaints, the time lag would have led to evidence being lost. It has been more than a decade since the Supreme Court ordered human trafficking cases be fast-tracked,²⁰⁶ and although there was some movement initially towards that end at the level of the district courts, it has since petered out.²⁰⁷

Procedural gaps mean that legal recourse is often considered by GBV victims to be the last option. As a result, women are forced to seek reconciliation with the accused. As an official with a shelter home said:

'The fact that there is a provision for reconciliation in the law does not mean that the victims should reconcile because in such cases it is important that the victim's side also is heard...A victim is discouraged from filing a case by the authorities saying things like she has a small child. They also try to persuade the victim by saying that it would be taboo and socially stigmatising for a woman to live at her mother's house by leaving her husband. This is not right and the victim's appeal must be addressed promptly.' (NGO official, female, Kathmandu, 24 July 2020)

3.10 Interpretation of laws

While the availability of evidence determines the justice received by the victim, the perception of judges in cases dealing with human trafficking and GBV also affect the administration of justice. One of the judges interviewed believed judges had a good understanding of issues regarding human trafficking and GBV:

'Each case is different because the facts of each case are not the same when it comes to case proceedings, hearings and adjudication. It all depends on the gravity of the evidence available, which is sometimes less or more. And as a result the decision made based on such evidence may not be mathematically precise.' (Judge, male, District Court, 19 September 2020)

Another said that even though Nepal had clear Supreme Court guidelines on TIP and GBV, there also were the chances of corruption and misjudgment on the part of the judges.²⁰⁸

'While imparting justice, the judges look at the cases in two distinct ways. First, the restorative justice system, where we see if the victim has been compensated or not. The second, from the victimology²⁰⁹ point of view, where we see what kind of community the victim comes from but also the victim's status. We

206 Jyoti Poudel and others v. Nepal Government and Others (2009).

207 There is a record of a rape case having been decided within seven days in 2013. Subedi Binu (2018) Fast Track Court Kina (Why Fast-Track Courts?). Kantipur. Retrieved from: <https://ekantipur-com.newsproxy.info/opinion/2018/10/07/153887749467072099.html>. Accessed: 28 January 2021.

208 Interview with Judge, male, High Court, 5 September 2020.

209 Victimology is a 'branch of criminology that scientifically studies the relationship between an injured party and an offender by examining the causes and the nature of the consequent suffering'. Karman Andrew (2020) Victimology. Retrieved from: <https://www.britannica.com/topic/victimology>. Accessed: 28 January 2021.

also look at factors causing restrictions and compulsions.’ (Judge, male, High Court, 5 September 2020)

Judges are bound by case laws as well and if the prosecutor has prepared meticulously, they have a chance of winning.²¹⁰ Hence, the decision of a court depended not only on the law but also on the evidence presented. In the words of another judge:

‘The current laws were amended with the active participation of the courts in upholding the constitution and international standards. The judges regard cases of TIP and GBV as highly sensitive. However, not only the law but other factors, too, influence the outcome. The judicial process does not change. But the investigation, the context of the case raised, the type of prosecution filed, the effect of the opposition lawyer, the perpetrator, and the victim also have a great effect on the execution of the law.’ (Judge, female, High Court, 3 October 2020)

However, a shelter home official stated that although the law was good on paper, the outcome of any legal case depended on the interpretation of the written law. As she said:

‘The HTTCA has been amended. As in the previous law, those who were sold had to submit evidence such as [travel] tickets, but now the victim’s statement is enough...Law practitioners are saying that even if the law is good, how it is interpreted should be changed...while taking the statement, the police seem not to believe what the victim says and asks for evidence, hence giving mental stress to the victim.’ (NGO official, female, Biratnagar, Morang District, 24 June 2020)

3.10.1 Capacity of human resources

In terms of the kind of support various stakeholders have received to prepare them for work on TIP and GBV, most reported having been equipped better through training. All the police officers interviewed, including those deployed at the border, said that they had undergone training, generally as part of their orientation following entry into service. As elaborated by one of the law enforcement officials:

‘In the course of basic training, all the police are also required to undergo training on human trafficking and gender-based violence. This is a mandatory component of the training. We have an anti-human trafficking bureau that also conducts training. For example, there is training on how to collect information, how to investigate and how to make arrests. Human trafficking is a very sensitive issue. The name and address of the victim have to be kept confidential. Hence, basic training is mandatory for everyone.’ (Police official, male, Kathmandu, 10 October 2020)

In addition, at least three of the law enforcement officials interviewed also pointed out that the training they had received had been useful at work. As one of them said:

‘It has been eight months since I came to Rani Customs checkpoint. I have only received orientation training on human trafficking and gender-based violence, which has helped me in my work.’ (Police official, male, Morang District, 11 September 2020)

²¹⁰ Interview with Judge, male, District Court, 8 September 2020.

Another said:

I have taken 16 days' training related to women, children and senior citizens. In addition, an organization called CoCoN has been providing training related to human trafficking and sexual violence for 5/7 days every year with the participation of staff members of several organizations working at the border including the police. Training is making it easier to work.' (Police official, female, Sunsari District, 11 September 2020)

Both the prosecutors interviewed also reported to have received some form of training on TIP and GBV.

We have trainings occasionally. If the need arises, various special trainings are also provided, including training on human trafficking. I have also completed 17 days' training on cybercrime. I also have some training on human trafficking and GBV. I have also received training on how to protect the victims, how to provide victims with compensation and how to conduct research in this regard.' (Prosecutor, male, District Court, 5 September 2020)

Notably, none of the three immigration officials interviewed said they had received any training on TIP. One of them, deployed at the Tribhuvan International Airport in Kathmandu, said,

It's been eight months since I started working in the immigration department. A theoretical exam on human trafficking and sexual violence is included in the course. We have to study it compulsorily when we apply for the position of section officer of the government. But I have taken no separate training in this regard.' (Immigration official, male, Kathmandu, 17 September 2020)

Notably, not all the service providers interviewed had received formal training either. One said that he had learnt about the issues through his experience 'working on related policy issues, reading books, participating in workshops, etc.'²¹¹ In contrast, training was quite intensive for another service provider in a Kathmandu-based shelter home.

When I came to this organization, I received training and information on issues like – What is TIP? How does it happen? How to work against trafficking? Similarly, I have taken psychosocial training on how to deal with victimized women. I have also received self-care training which helps to refresh oneself when working with victims, and helps understand how to keep oneself in balance, how to manage work.' (NGO official, female, Kathmandu, 9 July 2020)

3.11 Select Landmark Judgements on TIP and GBV from the Higher Courts

The interpretation of laws as evidenced by case laws gives insights into the course the law is taking. In Nepal, case laws also point to a gradual, albeit incremental, push towards ending gender discrimination. As one of the judges interviewed for the study said:

We can see in the current scenario that legal amendments have taken place when various writs challenge laws that contradict the constitution, or if the constitution doesn't match international laws, or on the basis of writ petitions where the Supreme Court has issued a directive. Prior to 2006,²¹² we had several

211 Interview with NGO official, male, Banke District, 11 July 2020.

212 This is a reference to the Act Amending Some Nepal Acts to Maintain Gender Equality enacted that year.

laws perpetuating gender discrimination in Nepal; the active nature of the court is the reason the laws have been successfully amended? (Judge, female, High Court, 3 October 2020)

Given below are some of the judgements that mark a watershed on issues pertinent to both GBV and TIP.

3.11.1 Gender-Based Violence

- **Annapurna Rana v. Council of Ministers and Others (1998) – on privacy**

In this case, the lower court had ordered a woman to undergo a virginity test to determine her marital status as part of a property dispute case. The woman appealed to the Supreme Court, and the court found such an examination to be in violation on the woman's constitutional right to privacy and invalidated the lower court order.²¹³

- **Meera Kumari Dhungana v. HMG (2001) – on marital rape**

The petitioner challenged the definition of rape in the then Country Code as violating Article 11 of the Constitution as it did not include marital rape. The petitioner argued that rape constitutes any physical relationship against the will of a woman and that consent was a fundamental basis for sexual intercourse or contact. The Supreme Court considered the discussions during the case, the right to equality guaranteed by the Constitution, international human rights instruments ratified by Nepal along with changing norms and values in criminal law over time, and ruled that defining marital rape to constitute a criminal offence was appropriate, reasonable and contextual. And, since the law at the time did not recognise rape by a husband, it directed the government to introduce a bill to amend current legislation. Subsequently, the Country Code was amended in 2006 to criminalize marital rape, and the same has been carried over into the National Penal (Code) Act of 2017.

- **Advocate Sharmila Parajuli v. Ministry of Law (2003) – on sexual harrassment**

The Supreme Court ordered the formulation of laws with special reference to Article 2 of CEDAW that recognises the role of the state in taking steps to prevent sexual harassment. The Sexual Harassment at the Workplace (Elimination) Act was finally enacted in 2015.

- **Sapana Pradhan Malla and Others v. Office of the Prime Minister and Others (2005) – on age of marriage**

This suit challenged provisions of the Marriage Registration Act 1971 that prescribed different ages for men and women (22 and 18 years, respectively) for marriage since this went against the Constitution and international human rights instruments guaranteeing the right to equality. The suit also argued that the provision in the Marriage Registration Act did not correspond to the provision of the Country Code that prescribed a common age for both men and women. The Supreme Court ordered the government to amend the relevant laws in order to bring about uniformity between them. After the 11th amendment to the Country Code in 2002, the minimum age of marriage for both males and females was fixed at 18 with parental consent and 20 without parental consent. Under the 2017 Civil Code, the minimum age of marriage is 20 for both males and females, irrespective of parental consent.

213 Karki Sushila (2009) Gender Equality and Justice in Nepal: A Bird's Eye View. NJA Law Journal. Retrieved from: <http://nkcs.org.np/nja/elibrary/pages/view.php?ref=40&k=>. Accessed: 28 January 2021.

- **Meera Dhungana v. Office of the Prime Minister and Council of Ministers and Others (2006) – on dowry**

This case was related to the Social Practice (Reform) Act 1976, which prohibits the gifting and receipt of dowry, whereby the petitioner claimed that the Act discriminated between those giving and demanding dowry in terms of punishment. The Supreme Court agreed that there is no reasonable criteria to discriminate between the bride's side and the groom's simply because one gave dowry and the other side asked for it, and directed the government to make appropriate legal arrangements based on the principle of equality.²¹⁴

- **Jit Kumari Pangeni (Neupane) and Others v. Office of the Prime Minister and Council of Ministers and Others (2006) – on marital rape**

The petitioner's husband had indulged in forceful sexual relations and battery violence against her. The petitioner claimed that prevailing laws were insufficient to deal with such an act since the rapist husband would receive imprisonment of only three to six months, which when compared to other rapists was discriminatory. The Supreme Court observed such an act cannot be entitled to rebate in punishment merely because of his relationship with his spouse. The Court further observed that there was no rationale in differentiating between marital and non-marital rape, and that the rebate in punishment would deem to be inconsistent with the right to equality as envisaged by the Constitution.²¹⁵

- **Sapana Pradhan Malla v. Office of the Prime Minister and Council of Ministers and Others (2006) – on right to privacy of children, women victims of rape, people living with HIV/AIDS**

The writ was filed pursuant to Article 88(2) of the Constitution of Nepal 1990, requesting the issuance of a directive order for the purpose of making and implementing the necessary law for the enforcement as well as protection of the right to privacy guaranteed in the Constitution. The Supreme Court ordered the government to draft a law describing the rights and duties of parties concerned and maintain a level of privacy as prescribed (by the law) in lawsuits in which women or children are involved as a party. The Court ordered that privacy be maintained from the time of registration of the case and beyond the disposal of that case.²¹⁶

- **Sunil Babu Pant v. Government of Nepal (2007) – on discrimination against gender and sexual minorities**

The Supreme Court held that the state shall recognize the existence of the third gender or transgender citizens and not deprive them of the constitutional provisions guaranteeing the rights to equality and non-discrimination. In a subsequent case in 2013 (Prem Kumari Nepali v. National Women's Commission), the Court held that all constitutional and legal rights provided to citizens should be enjoyed by all citizens whether they are men, women, homosexual/lesbian or 'third gender.'

214 National Judicial Academy (NJA) (2010) The Landmark Decisions of the Supreme Court, Nepal on Gender Justice. Government of Nepal, Kathmandu. Retrieved from: <https://uniteforreproprights.org/wp-content/uploads/2018/01/20.-The-Landmark-Decisions-of-GJ-1.pdf>. Accessed: 28 January 2021. Accessed: 28 January 2021.

215 Ibid.

216 Ibid.

- **Jyoti Poudel and others v. Nepal Government and others (2009) – on criminal procedure reform**

In this case, the Supreme Court issued a directive order to amend the Domestic Violence (Offence and Punishment) Act, 2009 to inter alia establish a fast-track court for trying these cases taking consideration into various articles of CEDAW such as Articles 2(b)(f), 3 and 5.²¹⁷

- **Laxmi Dhikta v. Office of the Prime Minister (2010) – on reproductive rights**

The Supreme Court issued a directive to the government to initiate the process of framing a separate and comprehensive law on safe and legal abortion while also expanding abortion services and subsidising these for poor women. The directive also instructed the government to begin awareness campaigns on women's right to abortion and to allay any misgivings people may have about abortion.²¹⁸ The Safe Motherhood and Reproductive Health Right Act enacted subsequently in 2018 covers the Court directives.

- **Somprasad Paneru and Others v. Office of Prime Minister and Council of Ministers and Others (2004) – on *kamlari* practice**

The Supreme Court directed the Government to enact a comprehensive legislation governing domestic workers, not only for the abolition of the *kamlari*²¹⁹ practice but also for the prevention of exploitation of children on any other grounds, and for the protection of the right of the child under the CRC.

- **Reshma Thapa v. Office of the Prime Minister (2005) – on witchcraft accusation**

The Supreme Court issued a directive to the government to enact legislation to eradicate and deter conduct that victimizes women by subjecting them to allegations of witchcraft. The Witchcraft Allegation (Offence and Punishment) Act was subsequently enacted in 2016.

- **Dil Bahadur Bishwakarma v. Office of the Prime Minister (2005) – on *chhaupadi***

The Supreme Court held that the practice of *chhaupadi* violates the fundamental right to equality and issued an order of mandamus directed at various government departments to stop the practice.

- **Prakash Mani Sharma v. Ministry of Women, Children and Social Welfare (2008) – on women workers in cabin and dance restaurants**

The Supreme Court issued a directive to the government to enact the necessary legislation for monitoring, controlling and supervising 'cabin and dance restaurants' in Nepal, noting that the operation of businesses in the sector is not covered by any domestic laws, leaving women workers vulnerable to abuse. In the interim, the Supreme Court also issued a set of Guidelines aimed at regulating businesses in the sector and ensuring the safety of workers (see section 4.3.3.3).

²¹⁷ The fast-track courts have not been established yet. Subedi Binu (2018).

²¹⁸ Lakshmi Dhikta v. Nepal (2010) Legal Abortion Must be Available to All Women. Retrieved from: https://www.reproductiverights.org/sites/crr.civicactions.net/files/flash/LBS_LAKSHMI%20DHIKTA_FINAL%20NOV2010.pdf. Accessed: 29 January 2021.

²¹⁹ The *kamlari* system is a traditional form of bonded labour practiced in western Terai region of Nepal.

- **Lakpa Sherpa v. Government of Nepal (2016) – on same-sex rape**

With this landmark decision, the Supreme Court held that a woman can rape another woman. Elaborating further, the court stated that if a woman deceives another woman and uses any objects or sex toys forcefully for her sexual gratification, the act should be considered rape.²²⁰

- **Bhupendra Khadka v. Government of Nepal, Nepal Army (2020) – on rape using position of power**

The Supreme Court upheld the decision of the military court against Bhupendra Khadka, concluding that consent given out of fear arising from someone's rank and position cannot be considered consent. Elaborating further, the Court stated that 'rank plays paramount importance in the military where lower-level staffs are under the strict control of the top-ranking officers. As such, there is no free consent where a man has a high position in an institution such as the army, with Khadka then a lieutenant in the Nepal Army, because of which the woman, a low-ranking soldier, cannot easily reject his proposal'.²²¹

3.11.2 Trafficking in Persons

- **Tara Devi Dahal v. Durga Dhimal (1995) – on burden of proof on the accused in cases of human trafficking**

Enticed by promises of marriage by a man, Tara Devi was taken across the border to India. After having sexual intercourse with her, the man took her to the city of Patna and sold her to a brothel for Rs 16,000 (ca. USD 200). The police, however, rescued her before the transaction could take place. The accused protested thereafter that he was not party to human trafficking and his confession before the police had taken place after he had been tortured during interrogation. The Supreme Court upheld the decision of the lower courts that since the police confession by the accused was corroborated by the statement of the complainant, until proven otherwise, her statement should be considered trustworthy. The burden of proof was on the accused, not the other way around in cases of human trafficking.²²²

- **Suntali Dhimi (Shah) v. Office of the Prime Minister and Council of Ministers and Others (2011) – on non-immunity for prosecutors**

The Supreme Court ruled that the extraordinary jurisdiction of the Supreme Court under Article 107 of the Interim Constitution cannot be obstructed or limited by the provision providing professional immunity to prosecutors and discretionary power to the Attorney General to decide on prosecuting cases. According to this precedent, the Supreme Court can now review any case where there is the possibility of malafide and arbitrary exercise of this power, leading to perpetrators not being prosecuted or the case itself dropped.

220 See Khatiwada Nabin (2017) SC sets precedent against same-sex rape. Republica. Retrieved from: <https://myrepublica.nagariknetwork.com/news/12958/>. Accessed: 2 March 2021.

221 See Khati Anubhav (2020) Supreme Court's verdict: consensual sex unduly influenced by post and power falls under rape. DGS Media: a new perspective. Retrieved from: <https://dgs.com.np/news/supreme-courts-verdict-consensual-sex-unduly-influenced-post-and-power-falls-under-rape/>. Accessed: 1 March 2021.

222 Sarasu Thomas Esther (2010) Cooperation to Combat Cross Border Trafficking: India-Nepal-Bangladesh. WISCOMP Perspectives, 31. WISCOMP, New Delhi. Retrieved from: <https://bit.ly/2MDHUWr>. Accessed: 28 January 2021; Sharing Electronic Resources and Laws on Crime (1995) His Majesty's Government on the FIR of TDD v. Durga Dhimal. SHERLOC, UNODC, Nepal. Retrieved from: https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/npl/his_majestys_government_on_the_fir_of_tdd_v_durga_dhimal.html. Accessed: 30 January 2021.

- **Government of Nepal v. Sita Ram Thing, Makwanpur District Court (2012) – on victim rehabilitation**

A woman sold to a brothel in India filed an FIR with the police after returning to Nepal five years later. That led to a trial in the Makwanpur District Court, where the accused were charged under the HTTCA. The Court found all three perpetrators guilty and sentenced them to 20 years imprisonment and a fine of NPR 200,000 each (ca. USD 1,700), with half the amount going to the victim.

- **Government of Nepal v. Bajir Singh Tamang, Sindhupalchok District Court (2012) – aggregate crime of trafficking**

Bajir Singh Tamang was found guilty of trafficking six women/girls from Sindhupalchowk district and arrested by the police in 2012. During his interrogation, he confessed that he had sold six women/girls to Indian brothels. Accordingly, a case was filed against him at the Sindhupalchowk District Court, where he made a statement confessing to all his crimes. Consequently, the Court convicted him and sentenced him to a 170-year jail term. This is a landmark decision in the history of Nepal where the perpetrator was sentenced based on an aggregation of crimes.²²³

- **Lok B. Sarki v. Government of Nepal (2017) – on victim compensation**

The Supreme Court held the view that compensation should be decided based not on the financial status of the defendant but on the nature or severity of pain suffered by the victim.

223 NJA (2010).

CHAPTER 4

Services Available to TIP and GBV Victims and Relevant Service Providers

This Chapter outlines the different types of services currently available to victims, and the institutions involved in providing these. It also discusses the barriers in accessing these services as well as the challenges faced in providing them. It looks at the frameworks and guidelines governing these service interventions, and stakeholders' views on whether these should be integrated or separated for trafficking in persons (TIP) and gender-based violence (GBV) victims.

Victims of TIP and GBV require and are provided with a number of services by different agencies, from legal interventions to rehabilitation and reintegration into society. These services, provided by both government and non-government institutions, can be categorized as follows:

- i. rescue (including interception);
- ii. investigation and prosecution;
- iii. rehabilitation (including shelter home facilities and the provision of essentials such as food and clothing; health care services; formal and non-formal education; legal aid; psycho-social counselling; capacity development and life skills training, such as vocational training; and financial/ monetary assistance); and
- iv. reintegration, repatriation and family reunification.

4.1 Service Delivery Stakeholders

4.1.1 Government Bodies

4.1.1.1 Ministry of Women, Children and Senior Citizens

The Ministry of Women, Children and Senior Citizens (MoWCSC) is the nodal ministry charged with controlling gender-based violence (GBV) as well as human trafficking and transportation.²²⁴ As part of its mandate, it is responsible for drafting policies and laws related to these sectors while also conducting programs aimed at the prevention of both GBV and TIP through an institutional structure as detailed below. It also publishes periodic resource materials related to TIP and GBV such as the annual National Report on Control of Trafficking and Transportation of Persons.

²²⁴ Ministry of Women, Children and Senior Citizens (2020) Ministry's Work Area. Retrieved from: <https://mowcsc.gov.np/ministrys-work-area>. Accessed: 30 January 2021.

4.1.1.1.1 National Committee for Controlling Human Trafficking (NCCHT) and District Committees

The National Committee for Controlling Human Trafficking was formed under the MoWCSC under the Human Trafficking and Transportation Control Act (2007) (HTTCA) that provides for the formation of such a body and the necessary district committees to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control offences.²²⁵

As mentioned in the Human Trafficking and Transportation (Control) Rules (2008), the NCCHT has the mandate, among others, to formulate and submit the necessary policies, plans and programs against human trafficking and transportation and implement them; assist those stranded in foreign countries and repatriate them to Nepal in coordination with organizations working in the sector; update records relating to human trafficking and transportation; and monitor the implementation of obligations under international as well as regional treaties relating to human trafficking and transportation to which Nepal is a party.²²⁶ In addition, the NCCHT is tasked with coming up with standards to distribute seed funds among those who have received skills training.²²⁷

District committees for controlling human trafficking have been formed in all 77 districts and down to the ward levels.²²⁸ These committees have the mandate, among others, to rescue those at risk of being trafficked; to recommend to the concerned bodies the issuance of necessary documents in case rescued victims do not have authentic identification documents; and to form and mobilize committees to control human trafficking and transportation at the local level.²²⁹ In addition, the committees are also required to monitor rehabilitation centres in the district; raise awareness; and implement programs, policies and plans formulated by the NCCHT. District committees are also being authorized to establish and operate committees at the local level while being required to present updated records in the district to the NCCHT every three months.²³⁰ For much of the period of political transition that lasted until 2018 and the expected restructuring of the state, these committees were not able to function properly due to the uncertainty of what form a federate government following the 2015 Constitution would take.²³¹ By the same token, it appears that only the national committee has been active in some measure.

The HTTCA also provides for the establishment of a rehabilitation fund under the MoWCSC, for victims of human trafficking and smuggling, to provide them with the basic necessities, including food, shelter, clothing, health care, counselling, legal aid, skill development trainings and seed capital.²³²

225 Section 23, Human Trafficking and Transportation Control Act, 2007

226 Section 4, Human Trafficking and Transportation (Control) Rules (2008).

227 Ibid.

228 Ministry of Women, Children and Senior Citizens (MoWCSC) (2017) National Report on Control of Trafficking and Transportation of Persons 2074. Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/2Mxptmn>. Accessed: 22 January 2021.

229 Section 7, Human Trafficking and Transportation (Control) Rules (2008).

230 Ibid.

231 National Women's Commission (NWC) (2019) 12th Annual Report (2075 Shrawan to 2076 Asar). Government of Nepal, Kathmandu.

232 MoWCSC (2017) National Report on Control of Trafficking and Transportation of Persons 2074.

4.1.1.1.2 Human Trafficking and Transportation Control Division

The Human Trafficking and Transportation Control Division was established under the Gender Mainstreaming and Child Development Division of the MoWCSC in 2013 to prioritize activities aimed at controlling human trafficking and transportation.²³³ It carries out various activities in concert with different ministries, departments, committees, and national and international non-governmental organizations and networks while also managing the NCCHT secretariat.

In terms of the kind of activities it has been involved in, as provided in MoWCSC's most recent annual report (2019), the Division was involved in the repatriation of more than 200 Nepalis from the northeast Indian states of Manipur and Mizoram.²³⁴ It also carried out a mapping exercise in Sindhupalchowk and Makwanpur districts, which helped identify human trafficking prevention opportunities and develop communication and reporting mechanisms in federal and provincial ministries and regions and localities.

4.1.1.1.3 Gender-Based Violence Prevention Section

The Gender-Based Violence Prevention Section under the MoWCSC has been operating the 'Mangala Sahana Long-term Rehabilitation Centre'²³⁵ in coordination with the national NGO, ABC Nepal, since 2016. The Centre, located in Kathmandu, has been providing support to victims of different forms of GBV such as counselling, residential services, health care services, formal and non-formal education, life skills training, and vocational training.²³⁶ The Mangala Sahana Centre has provided services to just 21 victims since its establishment.²³⁷ Most victims in the Centre have been abandoned by their families and cannot be reintegrated into society even after having received psychiatric and medical treatment given their highly fragile mental health.²³⁸ Hence, the Centre has been providing services to the same group of victims ever since it was set up, and that probably explains why apart from the routine mention in various documents about its existence, there is nothing on how this intervention has worked.

Short-term shelter homes have been set up in a total of 36 districts across the country in addition to the Mangala Sahana Centre.²³⁹ These have been providing GBV victims legal aid, psychosocial counselling and financial support. Victims are provided with residential facilities for up to 45 days in the shelter homes.²⁴⁰

233 MoWCSC (2017) Annual Progress Report 2072/2073. Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/2Fq0D4C>. Accessed: 22 January 2021.

234 MoWCSC (2020) Annual Progress Report 2075/2076. Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/3dMG9SF>. Accessed: 20 February 2021.

235 The Centre is named after Mangala Devi Singh and Sahana Pradhan, deceased pre-eminent women political leaders of the country's two major parties, Nepali Congress and the Nepal Communist Party, respectively.

236 ABC Nepal (2020) Our partners: ABC Nepal. Retrieved from: <http://abcnepal.org.np/wp/ourpartners/>. Accessed: 15 September 2020.

237 Email communication from an official of the MoWCSC, dated 23 September 2020. According to the MoWCSC's annual report for 2018/2019, there were 20 victims in the Centre that year. Ministry of Women, Children and Senior Citizens. MoWCSC (2019).

238 Email communication from an official of the MoWCSC, dated 23 September 2020.

239 Ministry of Women, Children, Senior Citizens (2020) TOR on the establishment of the Mangala Sahana Long-term Rehabilitation Centre. MoWCSC, Kathmandu.

240 MoWCSC (2020)

The Gender-Based Violence Prevention Fund was set up under the Gender-Based Violence Prevention Section to help GBV victims. As per the Gender-Based Violence Prevention Fund (Operation) Regulations 2010, the MoWCSC can provide financial assistance through the Fund as relief for immediate rescue, medical treatment, legal aid, psychological treatment, counselling and rehabilitation of GBV victims.²⁴¹ Victims are entitled to financial assistance of NPR 20,000 to 500,000 (ca. USD 170–4,250).²⁴²

A majority of GBV victims have not been able to access the Fund since most do not even know it exists.²⁴³ Of the NPR 7.5 million (ca. USD 63,000) allocated for the Fund in 2018/19, only NPR 3.2 million (ca. USD 27,000) was used, with 31 people receiving relief. In 2019/20, the allocation was cut down to NPR 6 million (ca. USD 51,000). Despite these issues, in January 2020, the MoWCSC requested all the local governments to establish such a Fund at their respective levels.²⁴⁴

It is not known if the Fund has been established in all the 753 local governments but a number of local governments have adopted the necessary regulations required for its operation. A Google search for the Fund returned pages showing such operational procedures having been adopted by a number of local governments. In the first three results that showed up, the Fund was to consist of a fixed percentage of its annual budget,²⁴⁵ funds from various sources as mentioned,²⁴⁶ and a percentage of program funds of I/NGOs working on various issues related to women.²⁴⁷

4.1.1.1.4 National Child Rights Council

Minors are at a heightened risk of being trafficked and being subjected to GBV with the risk being even higher for missing children.²⁴⁸ A total of 453 TIP and GBV cases involving children below 18 years of age were reported in 2018/19. In order to mitigate the risks of trafficking and GBV among children, the National Centre for Children at Risk (under the National Child Rights Council)²⁴⁹ has been operating in partnership with various institutions, including the Nepal Police and the Social Welfare Council.²⁵⁰

241 Section 5, Gender Based Violence Prevention Fund (Operation) Regulations (2010). Retrieved from: <https://bit.ly/33vgiri>. Accessed: 29 January 2021.

242 Ibid; Section 13.

243 Rai Vidya (2019) Sahayog paudainan laingik himsa pidit (GBV victims don't get assistance). Ekantipur. Retrieved from: <https://ekantipur.com/news/2019/11/09/157331468958838799.html>. Accessed: 9 November 2019.

244 Ministry of Federal Affairs and General Administration (MoFAGA) (2020) GBV Elimination Fund to be established at the local level (in Nepali). MoFAGA, Kathmandu. Retrieved from: <https://www.mofaga.gov.np/news-notice/1668>. Accessed: 29 January 2021.

245 Bhajani Municipality, Kailali District, <https://bit.ly/2P2NBhZ>.

246 Kamal Rural Municipality, Jhapa District, <https://bit.ly/3tstubO>.

247 Bheri Municipality, Jajarkot District, <https://bit.ly/3vG7uMS>

248 National Child Rights Council (NCRC) (2020) Nepalma baalbaalikako sthiti prativeedan 2076 (Report on the status of children in Nepal, 2019). Ministry of Women, Children, Senior Citizens, Government of Nepal, Kathmandu. In 2019/20, the majority of child victims of trafficking were 11–16-year-olds as were the majority of girl victims of rape and victims of child marriage. With respect to child victims of domestic violence in the same year, the majority were 17–18-year-old children.

249 The National Child Rights Council, which replaced the erstwhile Central Child Welfare Board, is operating under the chairpersonship of the Women, Children and Senior Citizens Minister. District Child Welfare Boards that had been operating under the Central Child Welfare Board have been dissolved and the establishment of Child Welfare Boards at the province and local level is underway.

250 MoWCSC (2019).

Open 24 hours a day, the Centre aims to provide relief and immediate assistance to missing, helpless and distressed children. It has been operating a free helpline for over a decade. The helpline has also been connected to various District Police Offices and Women, Children and Senior Citizen Service Centres outside the Kathmandu Valley.²⁵¹ As reported by the National Child Rights Council, a total of 3,422 children were reported missing in 2018/19, of whom 2,540 have been found.²⁵² In addition to the helpline operated by National Centre for Children at Risk, child helplines are also operational in 12 districts, with a total of 3,501 children in distress having received services through the helpline in 2018/19.²⁵³

4.1.1.2 Ministry of Home Affairs

The Ministry of Home Affairs (MoHA) is involved in both the TIP and GBV sectors primarily through the Nepal Police, the Armed Police Force and the Department of Immigration. Although MoWCSC has the main responsibility of drafting laws and policies regarding TIP and GBV, as the primary body responsible for maintaining law and order in the country, it is MoHA that executes many of these laws, some of which are directly related such as, the HTTCA or indirectly such as, the Social Practice (Reform) Act. Further, with a senior official from MoHA an ex-officio member of the National Committee for Controlling Human Trafficking (NCCHT) and the Chief District Officers (who report to MoHA) heading the District Committees of the NCCHT, the role of MoHA in controlling TIP is paramount.

The primary arm of MoHA acting against TIP and GBV, however, is the Nepal Police, which itself has a number of specialized and dedicated units operating in these two sectors.

4.1.1.2.1 Women, Children, and Senior Citizen Service Directorate, Nepal Police

The Women, Children, and Senior Citizen Service Directorate (WCSCSD), established under the Crime Investigation Department of the Nepal Police, has the express objective, among others, to strengthen the capacity of the police in handling GBV cases; produce informative materials on GBV; and raise public awareness on the same while also coordinating with stakeholders in preventing GBV.²⁵⁴ It works in the areas of sexual offence (rape, attempt to rape, sexual abuse and exploitation of children, and marital rape); domestic violence (physical, sexual, mental and economic violence); marriage (polygamy, child marriage); socially discriminatory practices (allegations of witchcraft, untouchability); *chhaupadi*;²⁵⁵ reproductive rights (illegal abortion); human trafficking and transportation; physical abuse and torture; and other associated offences against women and children.²⁵⁶

251 Ibid.

252 NCRC (2020)

253 MoWCSC (2019). Namely, Kathmandu, Morang, Makwanpur, Banke, Kaski, Kailali, Chitwan, Udaipur, Sunsari, Dailekh, Surkhet and Bajura.

254 Nepal Police (2020) CID Wings: Women, Children and Senior Citizen Service Directorate. Nepal Police. Retrieved from: <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>. Accessed: 15 September 2020.

255 *Chhaupadi* is a practice that prohibits women and girls from entering their homes and participating in everyday family activities while menstruating. It is primarily practiced in Hindu families in far-western Nepal.

256 Nepal Police (2020) CID Wings: Women, Children and Senior Citizen Service Directorate; Asian Development Bank (2009) Grant Assistance Nepal: Establishing Women and Children Service Centers. ADB. <https://www.adb.org/sites/default/files/project-document/64919/38097-nep-gar.pdf>. Accessed: 28 January 2021.

The WCSCSD operates through the Women, Children and Senior Citizen Service Centres (WCSCSCs) throughout the country. Formerly known as Women's Cells, established in 1996 in police offices as a pilot project in four districts, Kathmandu, Lalitpur, Kaski and Morang, and one at the Police Headquarters, WCSCSCs have the mandate to investigate crimes against women and children; collect the first testimony from victims; arrest offenders; and take action to prevent crimes and abuse against women and children.²⁵⁷ A total of 244 WCSCSCs have been established in the country spread across all 77 districts. Checkpoints have also been set up in 20 places at the Nepal-India border and at 10 strategic highway locations.²⁵⁸ About two thirds of the police officials stationed in the WCSCSCs were female, as noted by the 2018 NHRC report on trafficking.²⁵⁹ The report also mentions that although many WCSCSCs are in separate buildings, ill-equipped and not victim-friendly.

In terms of the challenges faced by the WCSCSCs, one study from 2014 looking at workplace harassment in Banke and Bara districts of western Nepal found that none of the women interviewed said that they had ever gone to or would consider going to the WCSCSC were they to be harassed.²⁶⁰ Officials at the WCSCSC in Banke claimed that without an official complaint, the police are unable to act and that women often withdrew their complaints, mostly out of fear of reprisal or of having their reputations tarnished. Many women understood harassment as something they had to endure quietly or to be confronted directly by themselves.

4.1.1.2.2 Human Trafficking Investigation Bureau, Nepal Police

The Human Trafficking Investigation Bureau (HTIB) was formed in 2019 under the Crime Investigation Department of the Nepal Police in order to make human trafficking-related investigations more 'effective and result-oriented.'²⁶¹ As provided for in the Police Regulations 2015, the HTIB has the following mandate:²⁶²

- to prevent and investigate offences related to human trafficking and smuggling,
- to make arrangements for the rescue and protection of the victims,
- to supervise, monitor and coordinate the work done by other police offices in relation to human trafficking, and
- to manage records related to human trafficking and smuggling.

The HTIB receives complaints related to human trafficking and smuggling and also carries out investigations. It works in collaboration, cooperation and partnership with various governmental

257 NHRC (2019).

258 Namely, Pashupatinagar, Bhadrapur, Kakarbhitta, Thadi Dhanusha, Malangwa, Gaur, Inaruwa, Triveni, Maheshpur, Krishnanagar, Belahiya, Gulariya, Dhangadhi, Belauri, Gaddachauki, Bhattamod, Barhabise, Jamunia, Rani and Birgunj; and Birtamod, Itahari, Butwal, Attaria, Bardibas, Mirchahiya, Pathlaiya, Mugling, Lamahi and Kohalpur, respectively.

259 National Human Rights Commission (2018).

260 Coyle Daniel et al (2014) Women's insecurities and the workplace in Nepal: A study from Banke and Bara districts. Forum for Women, Law and Development, Informal Sector Service Centre, Institute of Human Rights Communication Nepal, International Alert, National Business Initiative, Saferworld, Kathmandu. Retrieved from: <https://www.files.ethz.ch/isn/177981/womens-insecurities-and-the-workplace-in-nepal-high-res.pdf>. Accessed: 28 January 2021.

261 Nepal Police (2020) Home: Anti-Human Trafficking Bureau. Nepal Police. Retrieved from: <https://www.nepalpolice.gov.np/index.php/anti-human-trafficking-bureau-1>. Accessed: 12 September 2020; Poudel Nayak (2019) Nepal Police sets up separate bureau to look into human trafficking cases. The Kathmandu Post. Retrieved from: <https://bit.ly/3nJkRYk>. Accessed: 28 January 2021.

262 Section 56 (a), Police Regulations 2071 BS (2015). Retrieved from: <https://bit.ly/2ZIBeCi>.

and NGOs, including the MoWCSC, the Office of the Attorney General, the Departments of Foreign Employment, Immigration, and Money Laundering Investigation; Interpol; and various I/NGOs.²⁶³

In reference to the work of the HTIB, one of the law enforcement officials interviewed stated:

*'We conduct rescue operations from all seven continents, mostly from Africa, China, India, South America and Thailand, in coordination with **Interpol**. Our Human Trafficking Investigation Bureau has various desks [sections] looking at cases from East Asia, Australia, etc. We conduct monitoring 24 hours a day **through Interpol**.'* (Police Official, male, Police Headquarters, Kathmandu, 10 October 2020)

Not much information is available on the effectiveness of HTIB's work given that it was set up just before the outbreak of the global Covid-19 pandemic.

4.1.1.2.3 Cyber Bureau, Nepal Police

The Cyber Bureau aims to prevent and investigate crimes 'that may occur using technology.'²⁶⁴ Since its establishment, the Bureau has been receiving complaints of online abuse and carrying out investigations. According to the Bureau, of the 5,574 cases filed at the Cyber Bureau since 2016, a majority relate to online abuse faced by women.²⁶⁵ Reportedly, increased access to the internet has led to widespread misuse of social networking sites, giving rise to cybercrimes directed towards women. The Bureau has also expressed its commitment to controlling cybercrimes against the Lesbian, Gay, Bi-sexual, Transgender, Intersex, Queer/Questioning, Asexual (LGBTIQ+) community.²⁶⁶

4.1.1.3 Ministry of Labour, Employment and Social Security

In the decade since 2008/2009, over 4 million labour permits have been issued by the Department of Foreign Employment (DoFE) to Nepali workers seeking employment abroad.²⁶⁷ This figure does not take into account the hundreds of thousands of Nepalis who work in India and those who have gone for work abroad using irregular channels. Of late, human trafficking and smuggling in the guise of providing aspiring migrants with foreign employment has been on the rise in Nepal.²⁶⁸

263 Nepal Police (2020) Home: Anti-Human Trafficking Bureau. Nepal Police.

264 Nepal Police (2019) Home: Cyber Bureau. Nepal Police. Retrieved from: <https://bit.ly/3nNHmeK>. Accessed: September 12, 2020.

265 Dhungana Shuvam (2019) Online Violence Against Women in Nepal On The Rise. The Kathmandu Post. Retrieved from: <https://tkpo.st/2mvpCdx>. Accessed: 1 October 2019.

266 Guragain Pabitra (2020) Nepal Police Cyber Bureau Ready To Address Crime Against Sexual And Gender Minority. Nepal24Hours. Retrieved from: <https://bit.ly/2GFslez> Accessed: 3 September 2020.

267 Ministry of Labour, Employment and Social Security (MoLESS) (2020) Migration Report 2020. Government of Nepal, Kathmandu. Retrieved from: <https://moless.gov.np/wp-content/uploads/2020/03/Migration-Report-2020-English.pdf>. Accessed: 28 January 2021.

268 UNODC (2019); Lamichhane Bishnu (2019) Human Trafficking on Rise in Guise of Foreign Employment. Republica. Retrieved from: <https://bit.ly/3jRKR7>. Accessed: 30 July 2019; Mandal Chandan Kumar (2019) Department of Foreign Employment Seeks Support of Other Government Agencies for Overseas Job Frauds. The Kathmandu Post. Retrieved from: <https://tkpo.st/2PpE40V>. Accessed: 9 December 2019.

As part of its efforts to control human trafficking and smuggling taking place in the course of foreign employment, the Complaints Registration and Investigation Section in the DoFE under the Ministry of Labour, Employment and Social Security (MoLESS) is mandated to receive complaints against individuals and recruitment agencies from migrant workers or their family members. While complaints against recruitment agencies are directly dealt with by DoFE, those against individuals are forwarded to the Foreign Employment Tribunal (FET). The FET is a semi-judicial body established with the aim of providing justice to victims of fraudulent migration practices, in a smooth and ‘fast-tracked’ manner. Migrant workers can also register complaints against recruitment agencies at the District Administration Office, which are then forwarded to DoFE within seven days.²⁶⁹ However, while victims of labour trafficking can seek prosecution under HTTCA, given its lengthy procedure combined with the possibility of receiving compensation under the Foreign Employment Act, most individuals opt for their cases to be decided by the DoFE or FET.²⁷⁰

In addition to DoFE, the Foreign Employment Board (formerly known as the Foreign Employment Promotion Board) also carries out welfare-related activities for migrant workers and their families, including providing compensation for death and injury to repatriated victims and/or their families. The Board also conducts various activities and programs aimed at making migration safe and productive.²⁷¹

The Covid-19 pandemic with its border closures and loss of jobs meant Nepali workers were affected in large numbers. When discussions first began about opening up the airspace for repatriation flights, preliminary government estimates showed that 25,000 people needed to be brought back on a priority basis in the first two weeks alone,²⁷² a proposition that Nepal was not institutionally prepared to follow up on. (See Section 2.7 for more details.)

4.1.1.4 Ministry of Foreign Affairs

Working with Nepali diplomatic missions abroad, the Department of Consular Services under the Ministry of Foreign Affairs has been rescuing and repatriating victims of human trafficking and smuggling in various countries. A total of 1,621 rescue and repatriation operations were carried out by the Department in 2018/19, with men outnumbering women by a factor of two (1,075 to 512). While the number of females repatriated from India is significantly higher than males, it is higher for males from countries like Saudi Arabia and the UAE.

4.1.1.4.1 Shelter Homes

Many Nepali embassies abroad do not have dedicated safe houses, mainly due to lack of resources. Even so, stranded Nepalis or those who have been facing abuse and exploitation are given shelter in the embassy premises. A total of 414 individuals received services from the three safe houses operated by Nepali diplomatic missions in Qatar, Kuwait and Saudi Arabia in 2018/19, a majority of them in Kuwait. Notably, women (359) far outnumber men (55) in

²⁶⁹ MoLESS (2020).

²⁷⁰ United States Department of State (2020).

²⁷¹ MoLESS (2020).

²⁷² Baniya Jeevan et al. (2020) COVID-19 and Nepali Labour Migrants: Impacts and Responses, Centre for the Study of Labour and Mobility (CESLAM), Kathmandu. Retrieved from: <https://www.ceslam.org/uploads/backup/research-paper-x-covid-19.pdf>. Accessed: 30 January 2021.

terms of the use of these facilities. In addition, Nepali diplomatic missions also conduct a number of activities such as training, seminars, interactions and research on human trafficking and smuggling.²⁷³

4.1.1.5 Ministry of Health and Population

One-stop Crisis Management Centres (OCMCs) were established in government hospitals as part of the National Plan of Action for the ‘Year Against Gender-based Violence, 2010’ in order to ‘strengthen the health sector for effective and efficient responses to GBV’.²⁷⁴ The specific mandates of the OCMCs are to: i) cater to the physical and mental health needs of survivors; ii) provide psycho-social counselling to survivors; iii) provide legal advice and support through district attorneys and legal counsellors; iv) refer survivors to safe shelter homes; v) work with the police and district administration offices to provide security to survivors and vi) help rehabilitate survivors by providing further counselling.²⁷⁵ According to latest information, OCMCs have been established in 67 hospitals across the country.²⁷⁶ The Ministry of Health and Population (MoHP) plans to establish 11 more OCMCs in the country by July 2021.²⁷⁷ A comprehensive list of OCMCs currently in operation in Nepal is provided in Annex II.

OCMCs provide services to the following target groups:²⁷⁸

- those affected by all forms of GBV,
- homeless, physically and mentally incapacitated women and children who are at risk of GBV, GBV-affected women and children who have been abandoned and are suffering from severe mental illnesses,
- GBV-affected single women, women with disabilities, and women senior citizens,
- women and children who are suffering from or are at risk of GBV caused by armed conflict or natural calamities,
- HIV/AIDS-infected women and child victims of GBV, and
- GBV victims belonging to the LGBTIQ group.

A total of 8,664 GBV victims received integrated services from OCMCs between 2011/12 and 2016/17. The largest proportion was victims of physical/domestic violence (37%), followed by mental torture (29%) and sexual assaults/rape (29%).²⁷⁹ Although they have problems such as not having trained staff and proper infrastructure, OCMCs have generally been viewed as playing a key role in providing services to victims of GBV.²⁸⁰ For instance, a 2017 study on the performance of OCMCs indicate that their functionality, including staff attitudes and multi-

273 MoWCSC (2019).

274 Office of the Prime Minister and Council of Ministers (2010) National Plan of Action for “Year Against Gender-based Violence, 2010”. OPMCM, Kathmandu. Retrieved from: <https://bit.ly/2GY95Zc>. Accessed: 30 January 2021.

275 NHRC (2018).

276 Ministry of Health and Population (2019) Guidelines for the Operation of Hospital-based One-Stop Crisis Management Centers, 2019/2020. MoHP, Kathmandu.

277 MoHP (2019).

278 Ibid.

279 NHRC (2018).

280 Atreya Alok et al. (2020) When sexual offence is an unexpected diagnosis – exploration of medical, legal and social aspects in Nepalese scenario. *Medico-Legal Journal*, Volume 88: 4, 192–195, Retrieved from: <https://journals.sagepub.com/doi/abs/10.1177/0025817220935878>. Accessed: 30 January 2021.

sectoral coordination, had improved over time in two of the four districts studied.²⁸¹ Among other critical gaps hindering the performance and effectiveness of the OCMCs were lack of appropriate infrastructure, inadequate staffing, insufficient capacity and training of OCMC staff and supporting hospital teams, including doctors, to undertake medico-legal examinations, low public awareness about OCMCs as well as the illegality and consequences of GBV, and insufficient funds to provide comprehensive services to GBV survivors.

4.1.1.6 National Human Rights Commission

The Office of the Special Rapporteur (OSRT) on Combating Trafficking in Persons was constituted under the statutory National Human Rights Commission (NHRC) in 2005 to investigate cases of trafficking in persons, especially those involving women and children. The OSRT is mandated to monitor the incidence of trafficking; coordinate national, regional and international efforts to combat trafficking; generate high-level commitment aimed at improving the human rights situation of women and children in Nepal; develop indicators for monitoring the situation of TIP; facilitate the maintenance of a comprehensive and up-to-date national database system; and publish annual reports on the situation of trafficking in persons.²⁸² The OSRT has been publishing annual reports since 2005.

4.1.1.7 National Women's Commission

The National Women's Commission (NWC), an independent constitutional body, is mandated, among others, to receive complaints relating to GBV while also providing legal counselling, psychosocial and mediation services to women and girls experiencing GBV.²⁸³ In 2018/19, it received a total of 1,474 complaints relating to domestic violence and violence against women.²⁸⁴ The NWC has also been operating a national 24-hour toll-free helpline (*Khabar Garaun*²⁸⁵ 1145) to provide instant and effective support to survivors of GBV.²⁸⁶ Victims seeking support can call the helpline for shelter, psychosocial services, child support and legal aid, among others.

Every 10 minutes, a woman somewhere in Nepal dials the 1145 helpline to seek assistance.²⁸⁷ The majority of these calls are made by survivors of domestic violence who are either looking

281 Ministry of Health and Population (MoHP) (2017) Health Sector Transition and Recovery Program, Case Study: Performance of Hospital-Based One Stop Crisis Management Centers (OCMC). Government of Nepal, Kathmandu. Retrieved from: http://www.nhssp.org.np/NHSSP_Archives/gesi/Performance_of_hospital_based_OCMC_Jan_mar2017.pdf. Accessed: 2 March 2021.

282 NHRC (2018).

283 National Women's Commission (NWC) (2020) About Us: National Women's Commission. Retrieved from: <https://www.nwc.gov.np/aboutus>. Accessed: 17 September 2020.

National Women's Commission (NWC) (2020) NWC Helpline-1145-Factsheet: Nov 21st, 2017 - Jan 31st, 2020. Government of Nepal, Kathmandu. Retrieved from: https://www.nwc.gov.np/Publication_file/5e5e2192698ba_NWC_factsheet_March_2020-2.pdf. Accessed: 28 January 2021.

284 National Women's Commission (NWC) (2019) 12th Annual Report (2075 Shrawan to 2076 Asar). Government of Nepal, Kathmandu. The helpline is operated with the support of World Bank in partnership with the NGOs, Child Workers in Nepal (CWIN), Legal Aid and Consultancy Centre (LACC), Transcultural Psychosocial Organization (TPO), and Saathi.

285 '*Khabar Garaun*' translates to 'let's report' in English.

286 National Women's Commission (2020) Helpline Service-mapping. Government of Nepal, Kathmandu. Retrieved from: <https://nwchelpine.gov.np/service-mapping>. Accessed: 17 September 2020.

287 Gurung Tsering D (2019) Calls to National Helpline for Women are Growing, But It Is Accessible to Only a Few. The Kathmandu Post. Retrieved from: <https://bit.ly/2SOshvc>. Accessed: 2 April 2019.

to report incidents of abuse or calling to inquire about support services.²⁸⁸ Helpline operators undergo several training sessions on handling communication with victims of abuse and torture prior to their placement, including those focused on understanding what constitutes GBV, learning to listen actively and with empathy, and also evaluating the person's mental health status. As part of the 1145 helpline, the NWC also maintains an online information management system that maps all organizations in Nepal that provide various services to GBV victims.²⁸⁹

The Helpline received 885 calls related to domestic violence from April to June 2020, over twice the number received in the same period prior to the lockdown (Dec 2019–Feb 2020).²⁹⁰ Reportedly, the Helpline 'has been instrumental in providing first-hand remote support to survivors of GBV during the lockdown as many referral services are not functional'. Along with operating the Helpline, the NWC has also been providing victims with referrals to various shelter homes.²⁹¹ The Case Management System (CMS) implemented by the NWC manages, implements, coordinates and monitors the services provided to the victims through the Helpline. The CMS works as a database management system and serves as a national GBV data repository where all vital information is kept confidential and shared only with the concerned service providers.²⁹²

4.2 Other Stakeholders

The civic space that opened with the democratic transition of 1990 saw the rapid growth of NGOs in Nepal. The open political atmosphere allowed for Nepali NGOs to access funds directly from donors, a possibility that did not exist earlier. Further, international NGOs (INGOs) were also allowed to work in Nepal with local partners, which taken together with bilateral and multilateral donor agencies seeking to work with non-state actors meant that that the space opened up for participation of civic society in policymaking, and in advocating for change.²⁹³ Thus, for example, the first push for state action against GBV, although it meant only women at that point, came through an NGO established in 1992.²⁹⁴ The government has also recognized the role of NGOs through documents such as the periodic development plans wherein the role of civil society organizations as partners in various sectors has been recognized.²⁹⁵ Over the years, NGOs have become major players in both sectors with non-government initiatives aimed at prevention, rescue and rehabilitation far exceeding the capacity of the government.

288 Gurung Tsering D (2019).

289 National Women's Commission (2020) Helpline Service-mapping. Government of Nepal, Kathmandu.

290 Sharma Jaya (2020) In Nepal, A Helpline Serves As a Lifeline for Survivors During COVID-19 Lockdown. World Bank Blogs, Kathmandu. Retrieved from: <https://blogs.worldbank.org/endpovertyinsouthasia/nepal-helpline-serves-lifeline-survivors-during-covid-19-lockdown>. Accessed: 28 January 2021.

291 National Women's Commission (NWC) (2020) NWC Factsheet.

292 National Women's Commission (2019).

293 While not under the scope of this paper, it is important to point out that most literature on civil society produced after 1990 is largely embedded in line with liberal civil society ideals that approach civil society as development actors and which advocate for curtailment of the state. They uncritically herald but do not support or substantiate with any concrete evidence the important democratizing activities of civil society and the media in reference to the post 1990 period.

294 Thapa Deepak et al. (forthcoming). Negotiating Gender Equitable Change in Nepal. ESID Working Paper. The University of Manchester, United Kingdom.

295 See, for instance, National Planning Commission, The Eighth Plan (1992-97).

4.2.1 National Organizations and Networks

4.2.1.1 Human Trafficking and Smuggling Prevention

As the name itself suggests, the Alliance against Trafficking in Women and Children in Nepal (AATWIN), a national-level network of NGOs formed in June 1997, is the most prominent group working in this sector.²⁹⁶ At present, the membership of AATWIN consists of 40 NGOs. Some of the AATWIN members with extensive ground networks include the Women's Rehabilitation Centre (WOREC Nepal), Shakti Samuha, Children-Women in Social Service and Human Rights (CWISH), Opportunity Village Nepal (OVN), and Chhori. Several organizations affiliated with AATWIN, such as Maiti Nepal, Saathi ABC Nepal, Himalayan Human Rights Monitors (HimRights), Common Platform for Common Goal (CoCoN), and Social Service Centre Nepal (SOSEC Nepal), have units that assist officials of the Armed Police Force at the border crossings in surveilling checkpoints for possible cases of trafficking.

Many of these also work with the government to establish tracking mechanisms across the Nepal-India border and work with local stakeholders to strengthen women and children protection systems and carry out advocacy and capacity building. Among others, prevention and protection of women and children vulnerable to trafficking are key areas of support provided by organizations under AATWIN. These include community-led education and awareness programs, trainings, and emergency helplines.

4.1.1.2 Rehabilitation/Shelter Homes

The HITCA provides for the establishment of rehabilitation centres for the 'physical and mental treatment, social rehabilitation and family reconciliation' of victims of offences. Accordingly, 10 rehabilitation centres have been established in various districts for the protection and rehabilitation of victims of human trafficking. While these are monitored by the MoWCSC, they are operated by NGOs on a contractual basis with victims provided residential facilities for up to six months.²⁹⁷ (See Annex IV for details of the NGOs managing these centres.)

The rehabilitation centres provide various essential services according to the needs of the victims, including housing, food, health treatment, counselling services and legal aid. Along with victims of trafficking and smuggled migrants these centres have also been providing services to victims of various forms of GBV.²⁹⁸ A total of 10,246 victims have received services between 2011 and 2019.

Apart from these, there are shelter homes run by the non-government sector providing similar services to TIP and GBV victims. The MoWCSC's National Report for 2019 states that shelter homes operated with the help of the government are generally called 'rehabilitation centres' while those run by NGOs are called 'safe houses', without any explanation for the difference in nomenclature.²⁹⁹

As mentioned earlier, ABC Nepal has been operating the Mangala Sahana Long-term Rehabilitation Centre since 2016. Several NGOs such as Maiti Nepal, WOREC Nepal, Shakti Samuha, Pourakhi,

296 AATWIN (2020) About AATWIN: AATWIN Member Organisations. Retrieved from: <https://www.aatwin.org.np/index.php/who-we-are/aatwin-member-organisations>. Accessed: 16 September 2020.

297 MoWCSC (2020).

298 MoWCSC (2019).

299 Ibid.

Chhori, Saathi, and Gramin Mahila Sirjansheel Pariwar have been operating emergency and transit rehabilitation homes. Furthermore, child-specific shelter homes and child centers are being run by NGOs such as Child Workers in Nepal (CWIN), CWISH, OVN, Centre for Awareness Promotion Nepal (CAP Nepal) and Saathi. Like all NGOs in Nepal, those seeking to run shelter homes are registered with the District Administration Office. There is, however, no standard approach to monitoring the shelter homes, and varies from place to place although none seem to be very effective.³⁰⁰

Many of the long-term shelter homes are supported by funding from international agencies and provide services aimed at the rehabilitation and reintegration of victims, including psycho-social counselling, paralegal services, capacity development, education, and other community-based activities. Many of the rehabilitation programs include self-reliant and sustainable development strategies such as vocational training, entrepreneurship development, sustainable livelihood programs, savings and credit financial groups and community-support groups. Services available in the shelter homes also include health services.

4.2.1.3 Rescue and repatriation

The NGOs, Shakti Samuha and Maiti Nepal, work in coordination with the police in Nepal and India for the repatriation of Nepali nationals trafficked to India and other countries. Another NGO, KIN Nepal, works closely in India with the Delhi Police and the Delhi Commission for Women rescuing and repatriating victims. As for foreign nationals who have been trafficked to Nepal, there are no organizations dedicated solely to work with them. However, NGOs coordinate with their local ground staff, the Nepal Police, and the Government of Nepal to refer foreign nationals to the appropriate organizations for repatriation.

4.2.1.4 Service Centers

Service centres operated by NGOs function mainly as providers of immediate health care for TIP and GBV victims, primarily in the border towns where the victims are intercepted. They also provide various other services (legal support and psycho-social counselling, among others) while victims wait to be taken into rehabilitation homes.

Maiti Nepal has been operating the Sonja Jeevan Kendra Clinic, equipped with 38 beds and a full-time doctor. Legal aid services are also provided at the clinic. In addition, it also has service centres along the Nepal-India border that act as rescue/interception centres. Similarly, Shakti Samuha also has a protection centre for TIP-victims that aims to identify, rescue, and rehabilitate victims into their families or communities. Saathi has been running a ‘drop-in centre’ and cross-border transit centres. WOREC has 25 ‘women health resource counselling centres that also act as one-stop service providers. Other NGOs with service centres that provide medical, psychosocial and legal services include the Centre for Victims of Torture (CVICT), Pourakhi and Asha Nepal. Shakti Milan Samaj and Feminist Dalit Organization (FEDO) have also been operating service centres for specific target groups, the former for women migrants with HIV/AIDS and the latter for Dalit women.

300 Interviews with NGO official, female, Kathmandu on 15 February 2021; and NGO official, female, Morang, 15 February 2021.

4.2.1.5 Legal Aid

While legal aid is also provided in rehabilitation service centres, several NGOs have also been working independently to provide legal aid services to victims of TIP and GBV. These include Advocacy Forum, Centre for Legal Research and Resource Development (CeLRRD), FWLD (Forum for Women, Law and Development), and LACC (Legal Aid and Consultancy Centre).

4.2.1.6 Psycho-social Counselling

Psycho-social counselling is also provided in rehabilitation and service centres. Concurrently, several NGOs have been working independently to provide psycho-social counselling services to victims of TIP and GBV. Some of these include the Centre for Mental Health and Counselling (CMC-Nepal), Koshish Nepal, Kopila Nepal, Manav Sewa Ashram, and Transcultural Psychosocial Organization Nepal (TPO Nepal).

A comprehensive list of relevant NGOs providing various services to TIP and GBV victims is provided in Annex V.

4.2.2 International Organizations

Several INGOs (such as Winrock International, The Asia Foundation, Plan International, Terre des Hommes Netherlands, AEIN Luxembourg), foreign governments (government of Japan); and UN specialized agencies (World Bank Group) work in partnership with the Government of Nepal and Nepal-based NGOs to promote advocacy and implementation of anti-human trafficking initiatives.³⁰¹ Organizations that have been providing assistance with the rehabilitation of TIP and GBV victims include PeaceWin, Australia's Department of Foreign Affairs and Trade (DFAT) (previously, Aus-Aid), Human Rights Treaty Monitoring Coordination Centre (HRTMCC), Save the Children, Plan Nepal, Planete Enfants & Development, Freedom Fund, Helvetas, United Nations Population Fund (UNFPA), International Labor Organization (ILO), AWO International and CARE Nepal. In addition, INGOs like Winrock International, Langata Project and NoVo Foundation have also been providing funding for the operation of various shelter homes. UNFPA has been supporting hospital-based OCMCs run by MoHP,³⁰² while service centres run by NGOs have received support from UN Women, the United Nations Children's Fund (UNICEF), AEIN Luxembourg, Terre Des Hommes Germany, and the World Bank.

4.3 Frameworks for Delivering Service

A number of government agencies have drawn up documents to provide guidance while dealing with different aspects of TIP and GB from investigation and prosecution to operation of shelter homes. It should be noted though that many of those interviewed in the course of the study and involved in various capacities in either the TIP or the GBV sector or both did not demonstrate knowledge of more than a few of the guidelines and protocols discussed below. The research

301 This information was derived from the websites of organizations associated with AATWIN. AATWIN (2020) About AATWIN: AATWIN Member Organisations. Retrieved from: <https://www.aatwin.org.np/index.php/who-we-are/aatwin-member-organisations>. Accessed: 16 September 2020.

302 United Nations Population Fund (2020) Gender-based Violence Prevention and Response Project II: Embarking on a new chapter in ending gender-based violence. UNFPA, Kathmandu. Retrieved from: https://nepal.unfpa.org/sites/default/files/pub-pdf/final_brochure-english.pdf. Accessed: 30 January 2021.

team became aware of these while conducting the literature review, and it took a fair amount to locate copies of the same. There is the possibility that there are others that have been issued or published over the years but forgotten through disuse. While some of the guidelines/SOPs discussed below can be found on the official websites of the issuing institutions, not all are readily available. Given the situation where such guiding documents have been issued but not used along with a dearth of references to them in the literature, it was not possible to provide a detailed examination of how well these guidelines/SOPs have worked.

It was encouraging to note that a majority of both GBV and TIP victims reported receiving most of the basic services listed under the Guidelines for the Operation of Rehabilitation Centre (2011) and the National Minimum Standard for the Care and Protection of the Victims of Human Trafficking and Transportation (2011). Victims were provided with accommodation and food; clothing; psychotherapy and psycho-social counselling services; legal services; health care services; education and vocational training; rehabilitation and family reunion; and repatriation. That was not necessarily because of the existence of these guidance documents.

'The Government of Nepal has issued guidelines. We also have our own guidelines. We also have to follow the laws of the Government of Nepal, so we follow the guidelines made by the government... But sometimes these guidelines are inapplicable in practice. For instance, when operating a safe house, we are required to have many staff members, including health workers, guards, cooks, etc, but due to lack of budget, we have to work with fewer staff. When we can't hire employees, we have to hire volunteers. The government has made policies and guidelines but does not provide us with even one rupee...' (NGO official, female, Morang District, 15 February 2021)

'We have our own guidelines for operating the shelter home. There are guidelines (issued by the government) for children's shelter homes, but I don't think there are any guidelines governing shelter homes for GBV victims. But it might be the case that I am unaware of it. At the time we registered the organization, we made our own guidelines because there were no government-issued guidelines on the operation of shelter homes.' (NGO official, male, Morang District, 15 February 2021)

Besides the ones discussed below, there were three main documents that could not be found despite the research team's best efforts, including reaching out to organizations that would have been the likely ones to implement these guidelines, namely, Operation Guidelines for Border Surveillance Centres, 2073,³⁰³ Guidelines for the Investigation and Prosecution of Fraud Cases in Foreign Employment (2010), and Guidelines for the Operation of the Rehabilitation Fund (2011).

4.3.1 Investigation and Prosecution of Cases Concerning TIP and GBV

4.3.1.1 Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases (2007)

Issued by the Supreme Court, these Guidelines identify criminal cases that require protection of privacy based on the nature of the case and the impact they can have on the victims, in the case of rape, abortion, sexual abuse, transactions in human beings, trafficking in human beings, incest and violence against women, among others. The Guidelines further stipulate that all bodies concerned, including the investigating agency, the agency trying the case, and the one

303 Corresponding to 2016-17 in the Common Era.

implementing the verdict, must protect the privacy of individuals appearing as a party in such cases.³⁰⁴

With reference to the Guidelines, one of the service providers said:

'Based on the guidelines relating to privacy issued by the Supreme Court, we have also developed and implemented our own privacy guidelines in consultation with other organizations regarding what they are doing and what practices are being followed at the international level.' (NGO official, male, Kathmandu, 15 February 2021)

Another said:

'Victims have the right to privacy. We never disclose their real name or address. We use pseudonyms even when we have to make documents. We only provide the necessary data [without details such as names] when information is requested. If the privacy of the victim is violated, we also stand the risk of a defamation suit.' (NGO official, female, Morang District, 15 February 2021)

A third service provider said,

'We take great care of the privacy of victims. We give them code numbers. During conversations we use these code numbers when referring to them.' (NGO official, male, Morang District, 15 February 2021)

4.3.1.2 Standard Operating Procedure on the Protection of the Right to Confidentiality in Special Cases (2012), National Judicial Academy

Building on the Procedural Guidelines issued by the Supreme Court in 2007, this SOP provides that, in order to protect the victims' right to confidentiality, the following information must not be divulged:

- name and nationality of the victim,
- names and nationalities of the parents of the victim,
- name and nationality of the husband of the victim, if married,
- information that the victim is infected with HIV/AIDS if that is the case, and
- any other information that might disclose the victim's identity.

The SOP applies to institutions as well as individuals, including the courts and other agencies and officials dealing with court cases; public prosecutors; bodies that receive complaints and conduct investigations, including the police; law practitioners; persons in the communication sector; laboratories and other organizations involved in cases that require the aforementioned details to be kept confidential; experts and witnesses present in court proceedings in cases that require the aforementioned details to be kept confidential; and parents, guardians or other organizations and individuals who know details regarding the victim's identity. Further, the SOP provides detailed steps to be followed during various stages of investigation, prosecution and trial in order to protect the right to confidentiality of victims.

304 With regard to investigation and prosecution of cases concerning TIP, a 2020 report by the USDOS points out that the witness protection mechanisms and practices in Nepal's judicial and police system remains weak.

4.3.1.3 Standard Operating Procedure on Prosecution and Adjudication in Trafficking in Persons (TIP) Cases (2011), National Judicial Academy

This SOP outlines the legal framework governing TIP and discusses in detail the role of public prosecutors from investigation through post-prosecution; the trial process; and the relevant provisions regarding the protection of human rights of TIP victims. It also:

- lists the functions, duties and responsibilities of law enforcements bodies in a systematic and orderly manner,
- lists the duties of the public prosecutor in order to make the prosecution process effective,
- outlines the procedure to be followed in the court for the effective administration of justice, and
- establishes coordination among government lawyers, courts, legal practitioners and civil society actors as needed in order to ensure fulfilment of the duties and responsibilities by each stakeholder.

4.3.2 Frameworks and Guidelines Governing TIP

4.3.2.1 Guidelines for the Operation of Rehabilitation Centre (2011), MoWCSC

The Guidelines apply to all rehabilitation centres operating in Nepal with the objective of protecting and rehabilitating TIP victims. As per the Guidelines, the following services are to be provided free of cost to victims of TIP:

- safe accommodation and food,
- clothing,
- psychotherapy and psycho-social counselling services,
- legal services,
- education and vocational training,
- rehabilitation and family reunion, and
- repatriation.

In addition, the Guidelines provide detailed specifications on various aspects pertaining to the establishment, operation and management of rehabilitation centres, including the minimum standards for physical infrastructure and the provision of various services. Also included are procedural Guidelines for the inspection, monitoring and evaluation of rehabilitation centres.

The Guidelines specify the procedure for the selection of NGOs that are to operate the centres for TIP victims established by the government pursuant to the HTTCA as mentioned earlier. The First Amendment to the Guidelines for the Operation of Rehabilitation Centre (2015) provides additional details regarding the budget to be allocated by the District Committees for the provision of services.

4.3.2.2 National Minimum Standard for the Care and Protection of the Victims of Human Trafficking and Transportation (2011), MoWCSC

The Standard aims to control and combat TIP through a three-pronged approach—prevention, protection and prosecution—and has the following specific objectives:

- to set the minimum standard for the care and protection services provided to victims of human trafficking by various service providers,
- to maintain uniformity in the services provided to victims,
- to ensure the protection of the rights of victims while providing care and protection services to them,
- to encourage mutual coordination, cooperation and collaboration among the stakeholders providing care and protection services to victims,
- to ensure transparency, accountability, simplicity, agility and effectiveness in the care and protection services provided by service providers, and
- to increase the effectiveness of services by mobilizing national, district and local committees to monitor the care and protection services being provided to victims.

The Standard outlines that service providers should provide care and protection services to victims in two stages, depending on their condition and needs. The first is ensuring provision of primary care services such as first aid; legal aid; psychological counselling; provision of food and shelter; ensuring safety of victims; and testing victims for various infections (such as HIV, tuberculosis, sexually transmitted diseases, including communicable diseases/infections, etc.). The second stage is to provide additional services such as education, skills-based training, income generation/employment opportunities, seed capital and loan concessions. Notably, the Standard also stipulates that service providers involved in the rescue and repatriation of victims/affected persons should duly inform such persons about the entire process and obtain informed consent. One of the service providers said that even as they follow the Standard they had also formulated their own guidelines and code of conduct.³⁰⁵

4.3.2.3 Guidelines on Local Committee and Municipality Committee against Human Trafficking (Formation and Mobilization) (2013), MoWCSC

The Guidelines are aimed at bringing uniformity in how committees are to be formed and mobilized at the local level, in accordance with the Human Trafficking and Transportation (Control) Rules (2008). The Guidelines provide for the Committees formed at the local level to have the following functions, duties and powers:

- recommend concerned bodies to issue the required documents if there are no official documents certifying the identity of victims rescued in accordance with the HTTCA,
- to assist in the monitoring of any rehabilitation centers operating at the local level, as directed by the District Committee,
- raise public awareness against human trafficking and smuggling,
- to implement programs, policies and plans formulated by the District Committee,
- rescue people at risk of being trafficked in the concerned area,
- coordinating between organizations working against human trafficking and smuggling at the local level,
- to maintain updated records of data related to human trafficking and smuggling in the concerned area and to submit such report to the District Committee every three months, and

³⁰⁵ Interview with NGO official, male, Kathmandu, 15 February 2021.

- to establish and operate a relief fund for those affected by trafficking, in coordination with local bodies.

4.3.2.4 Guidelines for Psychosocial Counselling for Stakeholders Involved in the Campaign against Human Trafficking (2012), MoWCSC

These Guidelines are meant to serve as a guidance tool for stakeholders providing psycho-social counselling to TIP victims. The Guidelines primarily aim to:

- maintain uniformity in the working style and conduct of the stakeholders working against human trafficking and ensure that they are sensitive towards the human rights of victims,
- increase awareness regarding the possibility of re-victimizing victims,
- increase awareness regarding the appropriate treatment towards victims in the course of providing assistance, and
- prevent victims from being revictimized because of the way they are treated by the stakeholders.

The Guidelines also detail the qualifications and training required in order to serve as psycho-social counsellors to TIP victims; the qualities counsellors are required to have; and the dos and don'ts for counsellors at the various stages of providing counselling.

4.3.2.5 Standard Operating Procedures to Counter Cross Border Trafficking in Persons: India-Nepal, for First Responders (2017), United Nations Office on Drugs and Crime (UNODC)

This SOP outlines detailed indicators for the identification of a trafficked victim 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.

There have, however, been some challenges in implementing the SOP. The first is the inadequate knowledge on the changing trends in cross-border TIP. The government also lacks enough data on trafficked victims and those repatriated. Nepal also lacks a platform for case-sharing between the countries as well as the means to confront the illegal migration issues.³⁰⁶

4.3.3 Frameworks and Guidelines Governing GBV

4.3.3.1 Clinical Protocol on Gender-Based Violence (2015), MoHP

This Protocol is meant to serve as a guidance tool for the effective management of health care services provided to GBV victims, for health care service providers—mainly, doctors, nurses, health assistants and other workers—and other stakeholders. Its objective is to enable health care service providers to provide quality services to victims; and to set the standard for the provision of holistic health care services to victims, including both medical services and psycho-social services. Although the Protocol covers sexual, physical, psycho-social, and emotional violence against women, men, and children, it focuses primarily on gender-based violence against women.

306 United Nations Office on Drugs and Crime (2017) Countering Human Trafficking: Strengthening cross-border cooperation between Bangladesh, India and Nepal. UNODC. Retrieved from: <https://bit.ly/39sx1zR>. Accessed: 22 January 2021.

The Protocol provides specific guidelines for providing health care services to children and elderly victims. It also details the procedures for proper clinical examination of victims and the procedure for examination and collection of physical evidence.

4.3.3.2 Guidelines for the Elimination of the *Chhaupadi* System (2007), MoWCSC

The Guidelines detail the short- and long-term programs to be conducted by the government towards the elimination of the *chhaupadi* system, including raising awareness against it in the communities concerned; and increasing awareness about health services and nutritional requirements among women and girls directly affected. Since the enforcement of the Guidelines, awareness programs have been held in different parts of rural Nepal by various organizations in alliance with the local governments and organizations. These programs are targeted towards the youth, the community leaders, educators, traditional healers and local government officials.³⁰⁷

4.3.3.3 Guidelines on the Control of Sexual Abuse and Violence against Women Workers in Dance Restaurants, Dance Bars and other Workplaces in the Entertainment Sector (2008), Supreme Court, Nepal

The Guidelines were issued by the Supreme Court given the lack of relevant laws to control abuse and exploitation of women workers in the entertainment sector as a means of ensuring their safety and creating an environment where women and other workers can work in a dignified and respectful manner. Among other provisions, the Guidelines impose restrictions on operating businesses such as massage parlours and dance restaurants without formal registration; and on making employees work without pay. Further, the Guidelines require such businesses to submit detailed information about employees to the Chief District Officer (CDO),³⁰⁸ as and when requested.

The Guidelines provide that the following activities, among others, shall be deemed sexual harassment:

- offering or demanding sexual intercourse,
- use of sexually provocative language or provocative gestures, dances, songs, etc., and
- placing, pasting, or displaying obscene literature, posters, pamphlets, etc., in a way visible to women workers.

In addition, the Guidelines outline that the following activities, among others, shall be deemed sexual abuse:

- luring a woman employee into having sexual intercourse by offering financial benefits, job-related promotions, etc.,
- forcing a woman employee into having sexual intercourse with someone with or without offering financial benefits,

307 UN WOMEN (2017) Abolishing Chhaupadi, Breaking the Stigma of Menstruation in Rural Kathmandu. UN WOMEN, Nepal. Retrieved from: <https://www.unwomen.org/en/news/stories/2017/4/feature-abolishing-chhaupadi-breaking-the-stigma-of-menstruation-in-rural-nepal>. Accessed: 22 January 2021; United Nations Resident and Humanitarian Coordinator's Office (2011) Field Bulletin – Chhaupadi in The Far-West. UNRHC, Kathmandu. Retrieved from: [https://www.ohchr.org/Documents/Issues/Water/Contributions Stigma/others/field_bulletin_-_issue1_april_2011_-_chhaupadi_in_far-west.pdf](https://www.ohchr.org/Documents/Issues/Water/Contributions%20Stigma/others/field_bulletin_-_issue1_april_2011_-_chhaupadi_in_far-west.pdf). Accessed: 22 January 2020.

308 The Chief District Officer is the chief administrative officer of a district.

- touching any part(s) of the body of a woman employee or forcing her to touch one's own body parts with or without the intention of engaging in sexual intercourse, and
- engaging in sexual intercourse with a woman employee without her consent.

In order to implement it, the Guidelines provisions for a three-member District Monitoring and Prosecution Committee headed by the CDO with the District Police Chief and the Women Development Officer as members to supervise places of entertainment such as dance bars.³⁰⁹ Although the registration of workplaces such as dance bars and dance restaurants has been made mandatory, the industry has grown as an informal sector where a majority of the businesses operating are not registered. The Guidelines require the resolution of workplace grievances within the workplace itself, leading to more cases of abuse and exploitation.³¹⁰

With regard to the Guidelines, an officer at the NHRC rued that despite a 2008 Supreme Court directive order to make the entertainment sector dignified, there still is no law to govern this sector.³¹¹

4.3.3.4 Hospital Based One-stop Crisis Management Centre (OCMC) Operational Manual (2011), MoHP

The Operational Manual is meant to serve as a guidance tool for OCMC implementing hospitals; health centers; district attorney's offices; district police offices; women and children's offices; as well as related organizations responsible for the management, monitoring and evaluation of OCMCs. The Manual provides guidelines on the preliminary services to be provided to GBV victims—health services; psycho-social counselling; information, education and empowerment; safe home services; rehabilitation. The Manual details specifications regarding various aspects of organizational management of OCMCs, including the required physical infrastructure, human resources, and management of financial resources.

4.3.4 Frameworks and Guidelines Concerning Child Victims of GBV and TIP

4.3.4.1 Standards for Operation and Management of Residential Child Care Homes (2012), MoWCSC

This Standard stipulates that all stakeholders providing services to children have to respect cross-cutting international human rights principles concerning the rights of children, namely, dignity; non-discrimination; best interests of the child, protection and harmonious development; and right to expression and participation. It also details the procedures and minimum standards for various aspects of the operation and management of residential care homes and the services provided to children, including the entry and admission of children into shelter homes; provision of residential-care facilities, the required infrastructure and environment; realization of basic rights of children living in residential care homes; promotion of child rights and

309 National Human Rights Commission (2010) Trafficking in Persons, Especially on Women and Children in Nepal. National Report 2008-9. Lalitpur: National Human Rights Commission Nepal.

310 Maiti Nepal (2010) Youth-Led Study on Vulnerability of Young Girls Working in Restaurants, Bars and Massage Parlours in Kathmandu. Maiti Nepal, Kathmandu. Retrieved from: https://www.ecpat.org/wp-content/uploads/2016/04/YPP_Research_Nepal.pdf. Accessed: 22 January 2020; Aryal Kapil (2020) New and Emerging Trends of Human Trafficking in Entertainment Sectors in Nepal. Nepal Institute for Training and Research, Kathmandu. Retrieved from: <https://winrock.org/wp-content/uploads/2020/10/2.-New-and-Emerging-Trends-of-Human-Trafficking-in-Entertainment-Sector-in-Nepal.pdf>. Accessed: 22 January 2021.

311 Interview with TIP Officer, female, National Human Rights Commission, Kathmandu, 27 June 2020.

child protection-related provisions; pre-requisites for operating a child care home and the management of financial and human resources; children's departure from residential care homes and reintegration or reunification plans; and the mechanisms and procedures for monitoring residential care homes.

According to a 2015 report, many childcare homes did not meet the minimum prescribed standards.³¹² Some of the children were also sexually abused in the homes. Child care homes did not have financial transparency. In addition, there are unregistered child care homes that remain unregulated³¹³ and unregistered orphanages that reportedly exploit and abuse children.³¹⁴

4.3.4.2 Child Home Operation Procedures (2018), MoWCSC

These Operation Procedures build on the Standards for the Operation and Management of Residential Child Care Homes (2012) and outline specific procedures for the establishment, overall operation and management of shelter homes for children. More specifically, they stipulate that shelter homes for children:

- provide shelter, food, care and education to helpless children,
- provide children with additional facilities for physical and mental development including sports and entertainment facilities,
- make arrangements for providing children with formal education,
- conduct activities and programs in accordance with the best interests of orphans and helpless children,
- ensure protection of rights of the children in the shelter home as per the provisions of the Children's Act, 2018, and
- maintain uniformity in all services provided by the shelter home.

4.3.4.3 Child Search Helpline No. 104 Operation Guidelines (2019), MoWCSC

These Guidelines aim to help guide the efforts to search for, rescue, and protect child victims, and offer guidance for the management of services provided through the Helpline to children who are missing, abducted or abandoned, and to child victims of TIP and GBV. The Guidelines stipulate that the following services are to be provided through the Helpline:

- communication, information dissemination and registering of complaints received,
- search for missing or abducted children,
- immediate rescue of children in distress,
- immediate short-term shelter arrangements for rescued children,
- medical treatment and psychotherapy,
- legal consultation and legal action,
- family reunification,

312 MoWCSC (2015) State of the Child Care Homes in Nepal. Central Child Welfare Board. Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/3qQ0nyu>. Accessed: 22 February 2021.

313 MoWCSC (2019) State of the Children in Nepal. National Child Rights Council, Government of Nepal, Kathmandu. Retrieved from: <https://bit.ly/3qNBny4>. Accessed: 20 February 2021.

314 United States Department of State (2020).

- short- and long-term rehabilitation management,
- increase awareness regarding child rights, and
- coordination, co-operation and facilitation with the stakeholders.

4.3.4.4 Child Helpline No. 1098 Operation Procedures (2019), MoWCSC

The Operation Procedures aim to provide children in distress with immediate rescue and relief through the Helpline operated on following principles:

- immediate rescue and protection,
- best interests of the child,
- non-discrimination,
- right to confidentiality,
- promoting child-friendly language and behaviour,
- increasing coordination, cooperation and facilitation between stakeholders including the private sector,
- implementation of child rights in accordance with international obligations, and
- family reunification; social and organization-based rehabilitation.

The Operation Procedures further stipulate that the children have to be provided with 24-hour rescue, ambulance and counselling services, among others.

4.3.4.5 Terms and Conditions and Process for Granting Approval for Adoption of Nepali Child by Aliens (2008), MoWCSC

The document aims to regulate and monitor inter-country adoption of Nepali children. Among others, the document stipulates that any child welfare home, orphanage or children's home, seeking to 'work in the field of inter-country adoption', must be registered formally and must have worked in the field of child protection for at least six years prior to commencing work. The document provides that all organizations are required to submit an application to MoWCSC for approval before they can facilitate inter-country adoption.

With the enforcement of the guidelines in 2008 and its subsequent amendment in 2011, there has been a decline in the number of inter-country adoptions even though an NHRC report from a few years ago posits a link between inter-country adoption and trafficking.³¹⁵ A recent report claims there are major discrepancies between the records of the Nepali government and of other countries regarding the number of Nepali children adopted in North America and Europe.³¹⁶ That points to the possible involvement of a major trafficking ring consisting of various child welfare agencies in Kathmandu.

315 NHRC (2018). Accordingly, in 2009/10 there were 52 international adoptions, whereas in 2016/17 the number had decreased to 13.

316 Chhetri Akash (2020) Nepal's Baby Export. Inter Press Service News Agency. Retrieved from: <http://www.ipsnews.net/2020/02/nepals-baby-export/#:~:text=The%20discrepancy%20of%20HCCH%20>. Accessed: 22 January 2021.

4.3.5 Frameworks and Guidelines Governing Foreign Employment

4.3.5.1 Guidelines for Management of Domestic Workers in Foreign Employment (2015)

The Guidelines stipulate that the government can issue approvals to persons seeking to travel for foreign employment as domestic workers only if a bilateral labour agreement has been concluded with the country of destination. Further, the Guidelines stipulate that if a domestic worker in distress has to be transferred to a safe house abroad or repatriated to Nepal, the cost has to be borne by the employing agency.

4.3.5.2 Guidelines for the Legal Protection of Nepali Workers in Foreign Employment (2018)

The Guidelines provide that if a Nepali worker, who has left the country for foreign employment in accordance with prevailing laws, is found guilty of a criminal offence during the contract period, such a worker is to be provided with legal representation. In order to receive legal support, workers or their family members are required to submit an application with the concerned diplomatic mission if the worker is still in a foreign country and with the Foreign Employment Board if the worker has returned to Nepal.

4.3.6 Miscellaneous

4.3.6.1 Standard Operating Procedure for the Operation of Shelter Homes during the Coronavirus (Covid-19) Pandemic (2020), MoWCSC

In the context of the Covid-19 pandemic, this SOP aims to provide safe and orderly services to victims in service and rehabilitation centres and other shelter homes by adopting appropriate safety measures to prevent victims from being infected. Among others, the SOP includes specifications regarding compulsory 14-day quarantining of persons newly admitted into shelter homes; compulsory isolation of infected persons; and other preventative guidelines on handwashing techniques, mask usage, and appropriate social distancing measures.

4.4 Services Available to GBV and TIP Victims

4.4.1 Services Available in Shelter Homes

All the 10 shelter homes included in the study asserted that shelter; psycho-social support services; physical health care services; services related to vocational training and economic security; and legal and counselling services were available in-house. Additionally, nine also claimed that life skills and education-related services were also made available to victims in the shelter homes. As for identity documents, only six of the shelter homes said they provide any assistance towards getting those. None of them dealt with repatriation and two stated they conduct rescue operations in coordination with law enforcement officials. A common refrain was that resource constraints posed significant challenges to effective long-term service provision to victims. As one of the service providers said:

‘It is a challenge for organizations like us to work as we rely on help from foreign donors. If they stop funding us, services cannot be continued. There is no financial support from the government. It would have been better if the government had allocated a separate budget for the construction of long-term shelters.’
(NGO official, male, Banke District, 11 July 2020)

Elaborating on other challenges faced in providing services to victims, several service providers reported being subjected to political pressure and threats from perpetrators, and expressed concern about their own safety as well as that of the victims.

‘These days we are increasingly dealing with threats from political parties. They tell us to conceal the details of cases and try to bribe us with money. They even ask us to let them meet the victims discreetly.’
(FGD with service providers, 12 September 2020)

‘There is a lack of public awareness. The community tends to view us negatively and does not support us.’
(NGO official, female, Banke District, 9 June 2020)

Table 6-1: Services Available in Shelter Homes³¹⁷

SN	Shelter Home	Shelter	Psycho-social Support	Physical Health Care	Nutrition	Life Skills	Vocational training & Economic Security	Education	Assistance with Identity Documents	Legal Information & Counseling	Rehabilitation	Repatriation	Rescue
1	ABC Nepal, Kathmandu	X	X	X	X	X	X	X		X	X		
2	ABC Nepal, Morang	X	X	X	X	X	X	X	X	X	X		
3	AMKAS, Kathmandu	X	X	X	X	X	X	X		X	X		X
4	Maya Ghar, Sunsari	X	X	X	X	X	X	X	X	X	X		
5	Saathi, Banke	X	X		X		X						
6	Safe House operated by Itahari Sub-Metropolitan City, Sunsari	X	X	X	X	X		X		X	X		
7	Shakti Samuha, Kathmandu	X	X	X	X	X	X	X	X	X	X		X
8	Shramik Mahila Manch, Sunsari	X	X	X	X	X	X	X	X	X	X		
9	WOREC Nepal, Kathmandu	X	X	X	X	X	X	X	X	X	X		
10	WOREC Nepal, Morang	X	X	X	X	X	X	X	X	X	X		

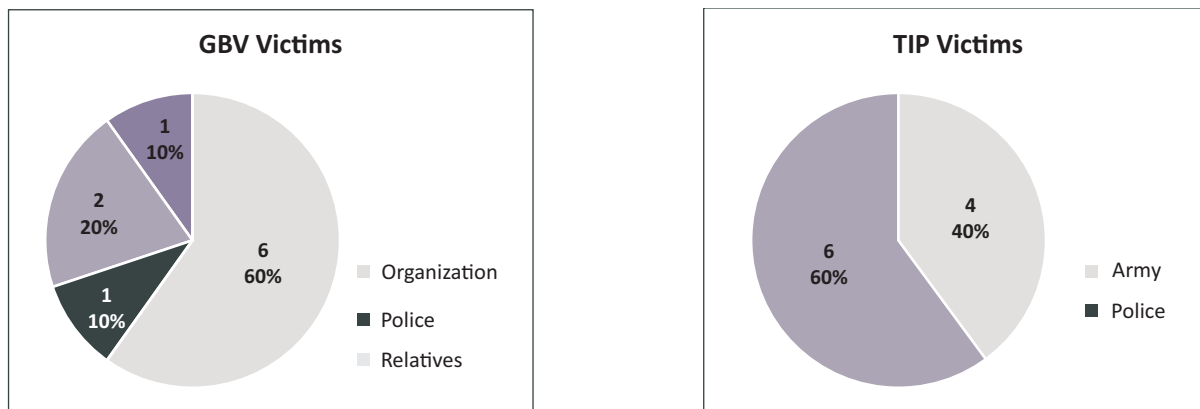
4.4.2 Victim Referrals to Shelter Homes

Of the 10 GBV victims interviewed, six reported having arrived at the shelter home through an organization working in the sector. With respect to TIP victims, however, all respondents reported having been referred to the shelter home by law enforcement officials. Six of the respondents reported having been referred to the shelter home through the police. The other four reported having come to Nepal in the wake of the Covid-19 pandemic, and after being taken directly to ‘holding centres’ operated by the Nepal Army upon arrival,³¹⁸ they were referred to the shelter homes by the officers in charge.

³¹⁷ The table was derived from responses to the interviews conducted with shelter homes and victims.

³¹⁸ The Nepal Army has been operating holding centers for screening individuals coming into the country from foreign countries in the wake of the Covid-19 pandemic. This is a one-time measure and under normal circumstances, TIP victims are referred mostly by police officers only. See - Poudel Arjun (2020) People rescued from abroad and placed in holding centers are coming out and moving freely. The Kathmandu Post. Retrieved from: <https://tkpo.st/2VSzUD4>. Accessed: 28 January 2021.

Figure 4-1: How Victims Were Referred to the Shelter Homes



When asked how victims are referred to them, all 10 shelter homes reported that victims are mostly referred to the shelter homes by law enforcement officials. A majority of the homes also claimed that they receive cases through the local government and organizations working in the sector. However, only two shelter homes reported receiving referrals from friends or relatives of victims or from their communities. Only one of the organizations interviewed claimed that that it sometimes gets referrals through embassies and social media. In the case of GBV victims, the service providers said that most cases that are referred to them involve rape, attempt to rape, and physical or other forms of abuse by husbands and other family members. Some of the service providers interviewed stated that they also sometimes receive cases concerning witchcraft-related accusations.³¹⁹

Table 6-2: Mode of Victim Referrals

SN	Shelter Home	Government Local	Police	Organizations	Friends/Relatives	Self	Community	Embassies/Social Media
1	ABC Nepal, Kathmandu	X	X	X				
2	ABC Nepal, Morang	X	X	X			X	
3	AMKAS, Kathmandu		X	X				X
4	Maya Ghar, Sunsari	X	X					
5	Saathi, Banke	X	X	X				
6	Safe House operated by Itahari Sub-Metropolitan City, Sunsari	X	X					
7	Shakti Samuha, Kathmandu		X	X				
8	Shramik Mahila Manch, Sunsari	X	X	X	X	X	X	
9	WOREC Nepal, Kathmandu		X	X	X	X		
10	WOREC Nepal, Morang	X	X	X		X		

319 Interviews with Representative, male, Shelter Home, Morang District, 1 July 2020; Staff member, female, OCMC, Koshi Hospital, Morang District, 7 July 2020; Representative, female, NGO, Sunsari District, 2 July 2020; and Supervisor, female, Shelter Home, Banke District, 9 July 2020.

4.4.3 Differential Access to Services: Gender and Geography

Nine of the 10 shelter homes reported that they only provide services to women, while one mentioned that they sometimes provide services to men as well. In addition, one of the Sunsari-based shelter homes interviewed stated:

'In the past, we served women, men and children. Now, we have started providing services only to women. The Ministry [MoWCSC] told us not to put men and women in the same place. They said that if kept in the same place, there could be a risk of gender-based violence within the shelter premises. That's why we stopped providing services to men.' (NGO official, female, Sunsari District, 22 June 2020)

While services in the shelter homes are mostly available only to women and female minors, many of the service providers providing psycho-social counselling and legal services in particular stated that they also provide services to men and persons of other genders. Several service providers were of the view that the government has not prioritized providing services to men. One of the service providers interviewed said:

'There are no services for men because the government believes that only women are vulnerable to violence.' (Government official, female, Sunsari District, 7 July 2020)

When asked whether the services available to victims mostly cater to women, one of the government officials interviewed said,

'Our experience is that more and more women and children are being trafficked, so the services are more women-centric. But in recent times, people of all genders are going for foreign employment, so men are also being trafficked. However, we do not look into such cases. We only deal with cases concerning women and children. The issue of men is looked into by the Department of Labour.' (Government official, female, Morang, 1 July 2020)

With regard to differential access to services on the basis of location, a majority of the victims and service providers interviewed stated that services are not easily available in the rural areas and are mostly concentrated in the cities and the border regions. In the words of one of the TIP victims:

'I have come here after having been through a lot of violence. This is common in remote areas like mine. Now that I am here, I am getting various services and facilities. If such services were to be available in my village, other victims like me would not be in pain. There are no facilities in my village and it takes four or five hours to go to the city and even then, services may not be available. There is no justice in that place where I come from.' (TIP victim, female, Kathmandu, 4 September 2020)

Many of the service providers interviewed noted that victims can file complaints at the community level or at the nearest police station, after which they can be referred to various organizations. One of them said, "There may not be shelters everywhere but victims do have a place to go to at the community level in order to lodge their grievances and complaints. At the district headquarters, victims can get services from shelters run by various organizations."³²⁰

320 Interview with NGO official, female, Kathmandu, 1 July 2020.

Highlighting the difficulties of seeking help at the local level, one of the victims said, “There are ward offices and municipalities in the villages but there is no safety. There is no environment where we can go and speak to the authorities in confidence and take our case forward.”³²¹

4.4.4 Barriers to Accessing Services

An overwhelming majority of the interviewees were of the view that a major barrier hindering access to services is the reluctance on the part of victims to openly seek services. As a police officer deployed at a Women, Children and Senior Citizen Service Centre said,

‘The main problem is that the victims are not open due to our social structure. They fear that they will not be able to reintegrate themselves into the society after coming out openly. If they come to the police with their problem, they fear being re-victimized.’ (Police official, male, Morang District, 23 September 2020)

Echoing the police official, many of the GBV victims interviewed mentioned that they refrain from reaching out to service providers because of fear of revenge and retaliation by offenders or out of shame and embarrassment. One said:

‘We do not seek out services because of fear of tarnished reputation. We think to ourselves, “If I bring out this incident, what will the society say? I have to go and live in the same society. I won’t be able to walk in the society with my head held high.” There are many questions that arise in the mind of the victim after an incident.’ (GBV victim, female, Morang District, 6 September 2020)

With GBV victims, several service providers emphasized that ‘victims tend to think that gender-based violence is something to be endured’.³²² However, they also point out that victims who are financially independent are able to open up about their sufferings unlike those who have to depend on others since ‘they will have nowhere to go and that they won’t have a secure future if they open up’.³²³ Highlighting the institutional constraints victims face from seeking out services openly, a law enforcement official deployed at the Women, Children and Senior Citizen Service Centre in Banke District said:

‘GBV cases are being increasingly reported to us even though victims are able to file applications at local bodies. Victims say that they don’t want to go to the local bodies because the authorities in the local judicial committees are politically influenced and do not administer justice properly.’ (Police official, female, Banke District, 22 September 2020)

It was also pointed out that the country’s transition into a federal system has complicated matters further. As one service provider said:

‘The roles of the local government and the central government are still not clear and there is confusion as to who will do what. This seems to be the reason why services have not been provided effectively at the community level.’ (NGO official, male, Kathmandu, 7 July 2020)

Emphasizing the point, a law enforcement official said,

³²¹ Interview with a GBV victim, female, 8 September 2020.

³²² Information received during FGD with service providers, 12 September 2020.

³²³ Ibid.

Now that the local government is in place, victims tend to deal with incidents through political party channels and use intermediaries because they think going to the police will be more difficult. This has created problems. In some cases, we have seen that the compensation money meant to be given to the victims is taken by intermediaries and not given to the victim.’ (Police official, female, Sunsari District, 11 September 2020)

4.4.5 Victims’ Perception of Services

Most of the victims interviewed said they were generally satisfied with the services they were receiving and grateful to the service providers. They also said that they communicated regularly with other victims in the shelter homes as well as with caretakers and shelter home staff. One of them said:

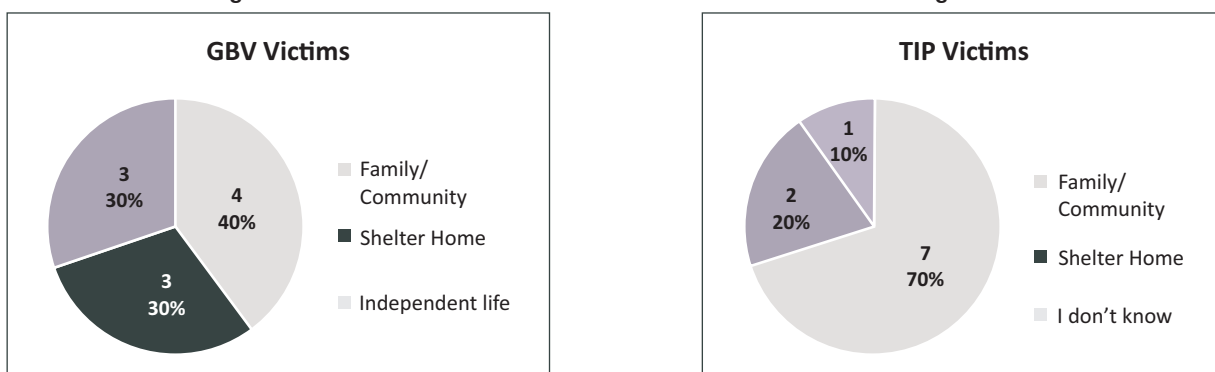
‘We are living here like one family in every respect. I don’t miss my family much here. They take care of everything. They take care of us like our parents. They pay a lot of attention to everything, including matters such as the legal procedure to take our case forward.’ (GBV victim, female, Morang District, 6 September 2020)

Most of the service providers stated that they carry out periodic assessments of the services provided, mostly through feedback received from the victims themselves. Several shelter homes stated that in addition to talking to victims about how they feel about the services, they ask victims to fill out ‘feedback forms’, evaluating the services received and providing recommendations for improvement.³²⁴

4.4.6 Reintegration and Rehabilitation of Victims

When asked if they would prefer to stay on in the shelter home or be rehabilitated into the community in future, a majority of TIP victims expressed preference for the latter. As for GBV victims, their responses were mixed, with some even expressing a desire to start an independent life outside the shelter home, away from their own families and communities.

Figure 4-2: Victims’ Preference for Rehabilitation/Reintegration



A fresh start was what the majority of the service providers endorsed as well. Highlighting the challenges of rehabilitation, an official from one of the shelter homes interviewed said:

³²⁴ Interviews with NGO official, female, Kathmandu, 10 July 2020; NGO official, female, Kathmandu, 10 July 2020; NGO official, female, Kathmandu, 10 July 2020; and NGO official, male, Morang District, 1 July 2020.

'Rehabilitation can be a challenge. It is very difficult to change the mentality of people. Even after being rehabilitated, victims keep coming back to the city again and again. It is difficult for them because the financial situation of their family is weak and no one from the community supports them.' (NGO official, female, Sunsari District, 19 June 2020)

Similarly, with regard to the rehabilitation of TIP victims, one of the law enforcement officials said:

*'When trafficked victims are repatriated, it is very difficult to rehabilitate them into their homes and communities because their **own families and** society look at them with contempt and discriminate against them.'* (Police official, female, Banke District, 22 September 2020)

Asked how they decide whether or not to rehabilitate victims into the community, most of the shelter homes stated that they first conduct an assessment to ensure that there is no risk to the victim from their family and community. Shelter homes also noted that the family members of the victims are called and counselled before the victims are released into their care.³²⁵ Rehabilitation is initiated 'only after ensuring that the victim is physically, mentally and socially' prepared.³²⁶

'We have a protocol for this. We make a decision based on a comparative evaluation of the kind of state the victim was in at the beginning and assess the changes that have developed over time. We take a decision based on what the victim wants. Even after we send the victims with their families, we conduct routine follow-ups and keep in touch with the rehabilitated victims over the phone. So far, there have not been any problems with the victims we have rehabilitated.' (NGO official, female, Kathmandu, 10 July 2020)

4.4.7 Service Provision during Covid-19

Many service providers reported that they had been providing services in the wake of the pandemic as well. In response to the challenges of providing services during the pandemic, several service providers reported that they had been distributing relief to victims outside of the shelter homes and working on disseminating information through online portals and social media. One of them described what they had been doing:

*'Our team of consultants **is currently** providing consultation services through the telephone. We, the shelter home staff, collected money by ourselves and distributed relief packages to victims. We also distributed 'dignity kits' to women. Among others, sanitary pads and clothes were included in the kits we distributed.'* (Representative, male, Shelter Home, Morang District, 1 July 2020)

'We are holding online meetings with other organizations working in the sector and with the local and central governments to discuss how to move forward and provide services effectively,' said a service provider from Kathmandu.³²⁷

The challenges due to the pandemic have other dimensions as well, as exemplified by a law enforcement official:

³²⁵ Interview with NGO official, female, Kathmandu, 4 July 2020.

³²⁶ Interview with INGO official, female, Kathmandu, 15 July 2020.

³²⁷ Interview with NGO official, female, Kathmandu, 24 July 2020.

'Before Covid-19, there was no problem in referring victims to shelter homes run by organizations. Now, because of Covid-19, we are facing problems because NGOs don't accept victims without PCR test reports.' (Police official female, Morang District, 11 September 2020)

With reference to the Standard Operating Procedure for the Operation of Shelter Homes during the Coronavirus (Covid-19) Pandemic (2020), one of the service providers said:

'We were affected by Covid-19. Our lawyer, security guard and five or six other staff members and victims had to go to the court and they became infected with the coronavirus. I was also involved in the formulation of the Guidelines [governing the operation of shelter homes during the Covid-19 pandemic]. We brought in new victims into our shelter home only after conducting PCR tests. Three rooms were reserved as quarantine rooms where the victims were placed while they awaited their PCR test results. We had also made separate toilets and bathrooms for them.' (NGO official, male, Morang District, 15 February 2021)

4.5 Integration/Separation of Services for GBV and TIP Victims

There was greater convergence on some aspects than in others in terms of services provided to TIP and GBV victims. Shelter homes and rehabilitation centres offer protection to victims of both TIP and GBV. The OCMCs receive both kinds of cases (albeit only if TIP cases are recognized as GBV as well), but they only provide limited services to women and instead refer them to shelter homes or to law enforcement agencies. Anti-human trafficking units and repatriation services can deal with either issue depending on the nature of the case. Convergence with human trafficking largely involves NGOs like Maiti Nepal which have a multinational workforce base deployed not only in Nepali shelter homes and border points, but also in India where their regional and local networks are utilized in preventing human trafficking activities.³²⁸

In light of the expansive list of government and non-government bodies providing services to TIP and GBV victims, it has been argued that duplication of efforts and structures should be avoided to ensure better outreach and coverage.³²⁹ Similarly, service delivery stakeholders need to look for exit strategies that promote sustainability from the beginning so that communities continue activities on their own when donor-funded projects end.

While national-level policies need to include initiatives to make laws gender-sensitive and empowering for women, programs that deal with livelihoods, health and sanitation, education, and infrastructure on non-GBV and TIP related programs also need to incorporate social norms and gender perspectives.³³⁰ Critics also say the lack of coordination among the MoWCSC, judicial bodies, the police, I/NGOs and other government bodies is a major factor in preventing effective delivery of services.³³¹

328 Maiti Nepal (2018).

329 Ghimire Anita and Samuels Fiona (2017) Understanding Intimate Partner Violence in Nepal through a Male Lens. Overseas Development Institute, London. Retrieved from: <https://bit.ly/3k3ttHm>. Accessed: 28 January 2021.

330 Sorensen Jennifer et al. (2012) Addressing Inter-Linkages Between Gender Based Violence and Trafficking In Persons To Prevent Reinforcement of Inequalities. Winrock International. Retrieved from: <https://bit.ly/31143ST>. Accessed: 28 January 2021.

331 Ibid.

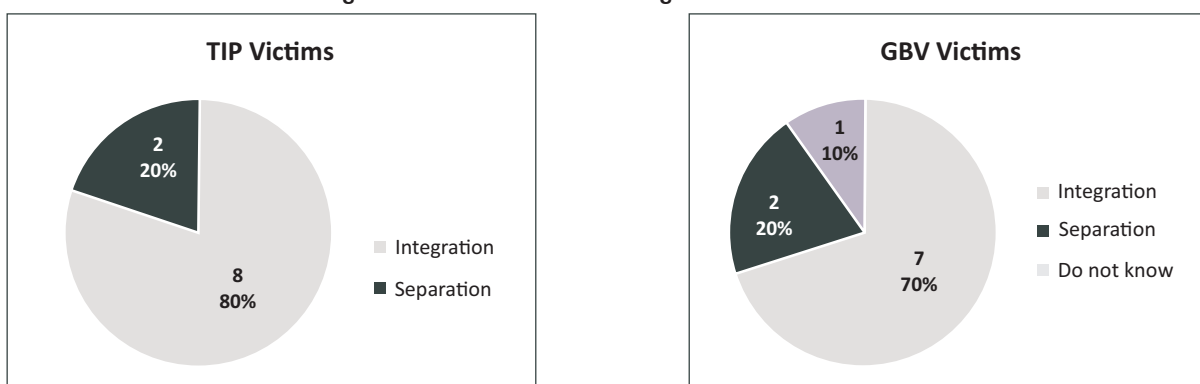
4.5.1 Stakeholders' views on integration/separation of services

When asked if, in their opinion, service delivery to victims of TIP and GBV, should be provided at a common location, a majority of TIP and GBV victims believed that services should be integrated.³³² In fact, one of the GBV victims interviewed emphasized that integration can be particularly beneficial for GBV victims:

'Trafficking is often viewed as a more heinous crime in comparison to gender-based violence and cases concerning trafficking tend to be prioritized over those concerning gender-based violence... Pain is pain, no matter what the source of the pain is. When we are together, we can sit and talk and support each other... If both trafficking and gender-based violence victims are placed together, both types of victims will get the same services. In addition, it would also help boost the morale of gender-based violence victims. They would feel that what they have endured is also a serious offence and that they should also take a stand against the offenders.' (GBV victim, female, Morang District, 6 September 2020)

A few of the victims, however, seemed to feel strongly about services being kept separately. One of the GBV victims said: 'Services should definitely not be provided from the same place. The two groups of victims are likely to humiliate each other and even discriminate against each other.'

Figure 4-3: Victims on Integration of Services

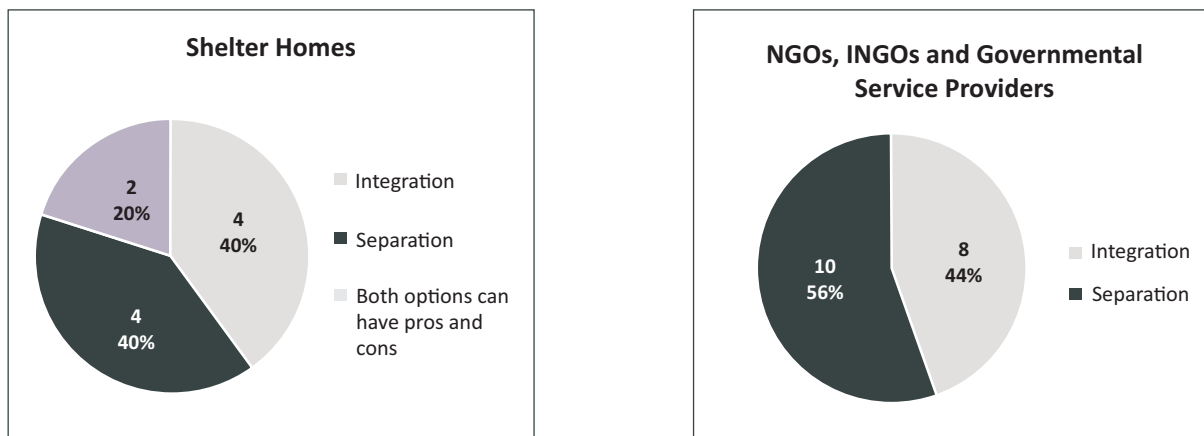


Service providers, however, were more or less evenly divided. Among those who thought integration would be better, many cited budgetary and resource constraints in providing separate services to be one of the major reasons why this would be more feasible. As stated by a staff member at an OCMC in a District Hospital in Sunsari District, 'Integration would allow providing more services with less resources.'³³³

332 Interviews with TIP and GBV victims, September 2020.

333 Interview with Hospital official, female, OCMC, District Hospital, Sunsari District, 13 July 2020.

Figure 4-4: Service Providers on Integration of Services



In addition, some of the service providers interviewed also emphasized that providing services under the same roof would allow victims to bond and support each other. One of them said:

‘Since both these forms of violence are inter-related, victims of gender-based violence are at risk of being trafficked in the future. Likewise, victims of trafficking are also at risk of being subjected to gender-based violence. When the two types of victims are placed together, they can share their personal experiences with each other. This will help increase awareness, among both types of victims, about the risks of being exposed to the other type of violence.’ (FGD with service providers, 12 September 2020)

Case Study II: Advantages of Integrating Services

This case study is based on the testimonial of a staff member of a Kathmandu-based NGO from an interview conducted as a part of this study during field research in July 2020. The facts as mentioned in the case study were narrated by the respondent, and are being presented hereunder without substantiating all the claims made.

When asked if services should be integrated for GBV and TIP victims, he stated that he strongly felt that integration of services can have many advantages for both groups of victims and since ‘both GBV and TIP are inter-related, integration would not be an issue’. ‘Human trafficking is also a form of gender-based violence. Domestic violence is often the root cause of human trafficking. GBV increases the risk of human trafficking and human trafficking also increases the risk of GBV,’ he said.

Citing an example of how integration of services can help victims support each other, he stated, ‘Victims tend to take care of each other when they are placed together. In a shelter home with many victims, some may be minors and some adults. Some may be mothers and some pregnant. In our shelter home, we currently have a victim who has just given birth to a baby. Everyone takes care of the baby together and the baby is showered with love.’

‘When the two types of victims interact with one another, they share their experiences with each other. This allows them to think that they are not the only ones who have endured suffering. They understand that there are others who have been through worse. They feel motivated to fight back and reinvent their lives.’

He was of the view that integration can also have benefits for service-providers since costs are reduced. But many of the services can be provided under the same roof to both groups of victims. 'It is best to provide shelter, psycho-social counselling and legal services from the same place. Also, while the victims may need different kinds of health-care services, it can still be provided from the same place. When many services are provided to both types of victims in an integrated manner, victims can open up more easily and this would, eventually, help towards creating a violence-free society.'

The reflections of the respondent lay out the many advantages of integration of services for both GBV and TIP victims, as well as for service providers.

But there were also concerns over the possibility of GBV victims being subjected to stigma if placed together with victims of trafficking.³³⁴ Several service providers felt that services should be kept separate as far as possible, given the many challenges of integration. One shelter home supervisor said:

'Victims of trafficking tend to have mental issues that are more grave in comparison to victims of gender-based violence. They tend to get angry, jealous and upset when others try to talk to them; they need a lot of privacy.' (NGO official, female, Banke District, 9 July 2020)

As for law enforcement officials, most thought integration of services would be better as this would make the best use of resources.

'It would be good to keep people affected by human trafficking and GBV in separate shelters, but the reality is such that it would be difficult to imagine separate shelters for the two types of victims, given the resource constraints. We are unable to provide services to all victims even now when most of the shelters are providing integrated services to both types of victims.' (FGD with law enforcement officers, 7 November 2020)

However, at least two of the officials interviewed pointed out that there could be significant advantages if services were to be provided separately. As stated by an officer deployed in Banke:

'Along with drug trafficking, human trafficking is among the top five crimes in Nepal. There is a lot of workload with regard to cases concerning human trafficking. If services are provided separately, I think we can handle the complaints received more effectively. Evidence collection can also be done well.' (Police official, male, Morang District, 11 September 2020)

Among the judges and the prosecutors interviewed, a majority felt that integration would be better although they also seemed cognizant of the related challenges. As elaborated by one of the judges:

'I think integrating services will help provide speedy justice to victims. While it is important to ensure that the privacy of victims is protected, particularly when they testify against offenders, I think integrating services will help build the victims' self-esteem. In so many cases, victims are discouraged from filing a case and are forced to make monetary settlements with the perpetrators in exchange for withdrawing the case. Victims do not want to deal with the hassles of a trial. Oftentimes, victims initiate the legal procedure

334 Information received during FGD with service providers, 12 September 2020.

but then turn hostile later. Perhaps this can be prevented if services are integrated for TIP and GBV victims.’ (Judge, female, High Court, 3 October 2020).

Case Study III: Unintended consequences

This case study is based on the testimonial of a staff member of a Banke-based NGO from an interview conducted as a part of this study during field research in June 2020. The facts as mentioned in the case study were narrated by the respondent, and are being presented hereunder without substantiating all the claims made.

When asked if services should be integrated for GBV and TIP victims, she said that having worked with GBV victims for 22 years, she was of the view that services should be kept separate as far as possible. Citing differences in the needs of the two types of victims, she said: ‘The suffering of a GBV victim is different from that of a TIP victim. Most GBV victims experience violence in their homes. They desire to go back to their homes and earn the respect of their families. TIP victims, on the other hand, tend to think differently.’

She added that placing the two types of victims together can create unforeseen challenges. Citing an example from personal experience, she elaborated:

There was an incident that took place about four years ago. There was a young girl who had fled to Nepal from an Indian village, about 35 kilometers away from the Nepalgunj border. Some Nepali police officers found her roaming the streets of Nepalgunj and handed her over to us. She was referred to a shelter home operated by one of the organizations working to support TIP and GBV victims. Subsequently, three other young girls, who had been rescued after being trafficked internally, were also placed in the same shelter home. Sometime later, when we tried to rehabilitate the young girl from India into her family, she refused to go back and tried to trick us by giving us the wrong home address, even though she had been wanting to go home earlier.

We were able to find her parents later but she refused to go back home even after her father came to pick her up. Upon investigation, we discovered later that she had changed her mind about going back home after talking to the three young TIP victims. They had convinced her that she could earn good money from sex work and that they could help her find work. The psycho-social counsellor who had been counselling her also confirmed that she had been completely brainwashed and that she had changed her mind all of a sudden because of what she was led to believe. This incident made us realize that when victims are placed together, they talk to each other, and this can impact victims negatively.

The reflections of the respondent and the sequence of events in the incident narrated clearly show some of the challenges in integrating services for TIP and GBV victims and elucidate how integration can sometimes result in unforeseen consequences that can have a negative impact on the victims.

Similarly, one of the prosecutors interviewed stated that while there may be challenges it is possible to integrate the services. He elaborated:

‘In my experience, working with women from Muslim communities can be difficult because of cultural barriers. But, in a shelter where both GBV and TIP victims are placed together, they are all vulnerable and have all suffered. Hence, they can all come together to tackle their problems.’ (Prosecutor, male, District Court, 15 September 2020)

With regard to services that could be integrated, many interviewees noted that medical and health care can be provided from the same place. As for psycho-social counselling, most interviewees felt that such services can also be provided from the same place, while ensuring the privacy of victims. Interviewees said that the counsellor would, however, have to be skilled and competent to provide specialized counselling services to both types of victims.³³⁵ Livelihood and capacity development trainings, including skills trainings and literacy skills were also identified by many interviewees to be among services that could be provided in an integrated manner.³³⁶

335 Interview with NGO official, female, Kathmandu, 1 July 2020.

336 Information received during FGD with service providers, 12 September 2020.

CHAPTER 5

Findings and Recommendations

The findings and recommendations in this Chapter are based on the primary data collected during interviews and focus group discussions with stakeholders as well as secondary literature available on trafficking in persons (TIP) and gender-based violence (GBV).

5.1 Findings

5.1.1 Understanding of concepts and the prevalence of TIP and GBV

5.1.1.1 GBV and TIP: Situational Analysis³³⁷

While the issue of GBV covers a wide spectrum of issues, almost all the focus in Nepal is on physical violence against women. This could be due to the high incidence of violence against women, particularly in the domestic sphere, a fact borne out by the high number of complaints received by the National Women's Commission. Data available from the Nepal Police also shows that reporting on GBV has increased significantly over the last quarter century with domestic violence accounting for three fourths of the cases reported in recent years. Data on GBV in Nepal is rife with various shortcomings, collected as it is by a myriad of agencies. There is, however, no reliable data available on violence faced by men and people of other genders.

TIP is mostly seen by stakeholders as affecting women and girls whereas men and persons of other genders are not considered to be as affected. There is growing understanding though of TIP for forced labour affecting men, especially those migrating to the Gulf Cooperation Council (GCC) countries. Information on TIP is sparse, scattered, and incomplete. That is because it is difficult to track trafficking; the victims do not have many incentives to be truthful; and the number of contending definitions of trafficking can skew the information collected.

Despite the rise in the number of GBV cases reported due to heightened awareness, there still remains the challenge of under-reporting, arising mainly out of fear of retaliation and stigma. There is also under-reporting of TIP cases for fear of retaliation among victims since the witness protection mechanism in the country is feeble. Even when information is available, there is an innate unwillingness to share it with relevant agencies. There are discrepancies in the figures made available by the government and NGOs working in the TIP and GBV sectors, indicating the possibility of TIP cases being overlooked.

A sector which has seen a rise in GBV-incidents and internal human trafficking is the entertainment sector. Internal trafficking in Nepal is especially prevalent in the entertainment sector pushing women into forced prostitution and labour.

³³⁷ See Section 2.1

5.1.1.2 Vulnerabilities Contributing to GBV and TIP³³⁸

Violence against women in Nepal is pervasive in both the private and public sphere. It is compounded by entrenched patriarchal attitudes, gender stereotypes and harmful practices. Trafficking, on the other hand, is facilitated by factors such as domestic violence, dysfunctional family, separation from family, critical poverty, and traditional practices such as child and forced marriages.

The push factors are much more pronounced than the pull factors. Unemployment and poverty are the primary causes of migration for vulnerable women, which also increases their chances of being trafficked. Nepali women migrant workers also experience a continuum of GBV and harassment before, during, and after their migration. Instances of exploitation and abuse of women in countries of destination, particularly the GCC countries, has led to state restrictions on their movement forcing them to use irregular channels to migrate, rendering them even more vulnerable. Aspirational migration is a major factor that places individuals at risk of being trafficked while women also fall victim to trafficking due to absence of knowledge about the foreign employment process.

5.1.1.3 Intersections of GBV, Trafficking, Migration and Human Smuggling³³⁹

There is a growing understanding about the need for clarity regarding the mutually reinforcing intersections between migration, trafficking, and smuggling. GBV is a leading cause of TIP in Nepal since GBV makes women more vulnerable to being trafficked. The sequence of events that takes a person from being a victim of GBV to a victim of TIP is a common one, with traffickers preying on victims of GBV who come from an unstable home environment. In Nepal, human trafficking takes place in the name of child adoption, foreign employment, education, international marriage, tourism, and cultural programs. But the different scales of domestic trafficking and transnational trafficking are not known owing to the lack of disaggregated data. Human smuggling is often conflated with human trafficking as is irregular migration. In the past, those working in the field of human trafficking considered only women sold across the Nepal border as trafficked; they have begun to increasingly consider the issue of selling of women within the boundaries of the country.

A majority of the victims interviewed were of the view that GBV increases vulnerability to TIP. A majority of the service providers noted the inter-relationship between GBV and TIP emphasizing how GBV renders victims all the more vulnerable to TIP and vice versa. The intersections between GBV and TIP were also noted by other stakeholders. While a majority of the TIP victims stated that they were aware that women were sometimes subjected to travel restrictions, many felt that such restrictions do little to keep women safe.

5.1.1.4 Conceptual Clarity on Different Categories of TIP Victims³⁴⁰

Authorities lack the human resources, finances and training required to systematically track potential victims given that government and NGO checkpoint inspections at Nepal's open border with India focus almost exclusively on female travellers. Anti-trafficking efforts are also

338 See Section 2.2

339 See Section 2.3

340 See Section 2.4

hampered by the failure of the law to reflect the changes taking place on the ground. Because of the lack of legal guidelines and procedures related to the definition of high-risk groups, victim identification, rescue, legal aid, repatriation and family reunification and rehabilitation, most victims and those facing potential risks are entirely dependent on the work of NGOs. In the absence of implementation of bilateral and multilateral agreements dealing with the rescue and repatriation processes, most of the rescue and repatriation efforts take place without responsible participation of and monitoring by the state.

5.1.2 Screening and Identification of Victims

5.1.2.1 Collaborative Effort³⁴¹

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, working alongside immigration officials. They are supported by various NGOs particularly at checkpoints along the border with India. As victim identification is a complex task, NGOs collaborate with the police, border and immigration officials for screening and identifying victims of GBV and TIP. Women (and men) are also trafficked through Kathmandu's international airport to destination countries where they become victims of TIP. In order to screen victims effectively, law enforcement officials rely on information gathered from all available sources.

5.1.2.2 Location of Screening³⁴²

All the law enforcement officials interviewed said that they conduct screening at the various checkpoints along the Nepal-India border. They target border areas since they are popular gateways to India, from where people travel to various parts of the world. They also conduct screening in hotels in the border areas along with bus stands, bus parks and dance bars.

Internal trafficking in Nepal is especially prevalent in the entertainment sector through women in prostitution, forced prostitution, and forced labour. However, the focus of the law is mainly on trafficking across borders, leading to a lack of attention on internal trafficking.

5.1.2.3 Challenges in Correct Screening/Identification of Victims³⁴³

As identification of potential victims and their traffickers requires coordination with legal and state mechanisms, there are a range of challenges. Visual and non-procedural approaches to identifying victims are among the major factors that pose difficulties in the screening of TIP victims, and also affect the legal process of seeking justice for victims and punishment for perpetrators.

Nepal does not have any kind of SOP or protocol for the identification of victims of trafficking or GBV. In almost all cases, government officials said they rely on 'hunches' and long experience to spot something amiss. Also, interceptions, particularly those done by NGOs, may affect travellers—particularly women who are often mistaken for potential victims—hindering the right to free movement.

341 See Section 2.5.1.

342 See Section 2.5.2.

343 See Section 2.6.

The police do not have specific set of indicators to identify the victims either. They rely on their experience, training and interrogation skills. The basic indicators were visual cues such as body language and the details in the answers or statements the person provides that include contradictory answers and other discrepancies along with ‘suspicious behavior’.

Lack of awareness among victims as well as service providers, complicity on the part of government officials, and scarce financial resources were some of the barriers in the identification of victims. Absence of coordination between different organizations and the lack of expertise to deal with sensitive matters also served to hamper their efforts. All the police officers interviewed said that they had undergone some form of training as have other government officials with the exception of immigration officials. Some of the service providers had also received training related to TIP/GBV.

5.1.2.4 Impact of Covid-19 on TIP and GBV³⁴⁴

Many of the stakeholders interviewed were of the view that the incidence of GBV had increased after the outbreak of Covid-19 and that the rate of reporting of GBV cases had also increased. Several media reports also documented the rise of GBV during the lockdowns in the wake of the pandemic. In contrast to GBV, many of the stakeholders interviewed noted that the incidence of trafficking had gone down during the pandemic, owing mainly to the closing of international borders and restrictions on movement. However, given the Covid-19-induced reverse migration of Nepali migrant workers and loss of employment, the impacted population groups have been rendered more vulnerable to TIP.

5.1.3 Legal Framework

5.1.3.1 Laws Governing TIP and GBV³⁴⁵

There are several laws governing GBV and TIP in Nepal, starting with the Constitution of Nepal (2015), which safeguards the rights of women in the form of the rights to live with dignity; freedom; equality; and privacy; as well as through the rights of victims of crimes; right against torture; right against exploitation; and right to health. The Constitution also has a separate Article dealing with the rights of women. The Constitution specifically refers to trafficking in persons and slavery under the right against exploitation, while the Article on rights of children prohibits the ‘illegal trafficking’ of children.

The major laws pertaining to the prevention of GBV include the Social Practice Reform Act (1976); the Act Amending Some Nepal Acts to Maintain Gender Equality (2006); the Domestic Violence (Crime and Punishment) Act (2009); the Some Public (Crime and Punishment) Act (1970); the Sexual Harassment at the Workplace (Elimination) Act (2015); the Witchcraft Allegation (Offence and Punishment) Act (2016); the Safe Motherhood and Reproductive Health Right Act (2018); and the National Penal (Code) Act (2017) which includes laws on abortion, sexual offences, marital rape, child marriage, dowry and menstrual violence.

The primary piece of legislation governing TIP in Nepal is the the Human Trafficking and Transportation Control Act (2007). Other relevant laws include the Foreign Employment Act

344 See Section 2.7

345 See Section 3.1

(2007); the Extradition Act (2014); the Labour Act (2018); the Immigration Act (1992) and the Mutual Legal Assistance Act (2015).

5.1.3.2 International Obligations³⁴⁶

Nepal is not party to a number of international agreements which could provide protection to vulnerable groups such as the Convention on the Protection of the Rights of All Migrants and Members of Their Families; 1951 Refugee Convention and its 1967 Protocol; and the Convention for the Protection of all Persons from Enforced Disappearance (2007). Having acceded to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) in June 2020, existing national laws, including the National Penal (Code) Act (2017), the Human Trafficking and Transportation Control Act (2007), and the Foreign Employment Act (2007) require amendments to fulfil the legal obligations under the Palermo Protocol.

5.1.3.3 National Plans to Combat TIP and GBV³⁴⁷

There are also several National Plans to combat TIP and GBV, including the National Action Plan on Trafficking in Persons, especially Trafficking in Women and Children (2012-2022); the National Plan of Action for Year Against Gender-based Violence (2010); and the National Action Plan for Children 2004/5–2014/15, among others.

In addition, several landmark judgements in relation to GVB and TIP have been made by the higher courts. Case laws point to an incremental push towards ending gender discrimination in Nepal.

5.1.3.4 Gaps and Challenges in Laws and Legal Procedures and Their Implementation³⁴⁸

With regard to the implementation of laws and legal procedures, there are several gaps and challenges. There remains a lack of a common understanding of the different issues that arise when dealing with TIP and GBV such as fraudulent labour, human smuggling and trafficking, and victims engaged in commercial sex. In addition, certain laws—including those on rape, citizenship and foreign employment—still discriminate against women. As pointed out by many of the stakeholders interviewed, legal procedures also tend to be ‘women-centric’.

While most of the law enforcement officials and government officials interviewed seemed to think that the definitions of TIP and GBV were clear in the law, many of the service providers raised doubts regarding the clarity of the laws on TIP and GBV and the difficulty the general public faced in understanding the provisions they contain. Most of the law enforcement officials and the judges interviewed, however, felt that the laws were clear. There are also many contradictory existing laws as well as provisions between the Civil and Criminal Codes which affords scope for manipulation. The issue of ‘consent’ in the National Penal Code (2017) also needs clarification.

Many stakeholders felt that while the legal definition of TIP was clear, the HTTCA does not differentiate between the many types of TIP. There is no legislation dealing with the smuggling

346 See Section 3.5

347 See Section 3.6

348 See Section 3.7

of migrants which is often conflated with trafficking. In addition, the issue of consent in the context of labour trafficking is addressed inadequately. Also, the HTTCA does not discuss labour exploitation in situations such as forced or bonded labour.

5.1.3.5 Barriers to Accessing Legal Redress³⁴⁹

Among others, complex legal proceedings act as a barrier in accessing legal redress for victims such as ambiguities regarding the appropriate body for filing complaints. There is also a marked gap in dissemination of information and duties and limitations of each agency in handling the complaint process. Prosecution of cases is also marked by procedural gaps such as poor investigations, hurried prosecutions, lack of trained investigators and prosecutors, and frequent turnover of personnel. Further, it is difficult for victims to receive compensation.

Gaps are also evident in the manner law enforcement officials handle TIP and GBV situations. Several service providers noted that the attitude and behaviour of the police towards the victims are not always positive. Further, the perception of judges and the interpretation of laws in cases relating to human trafficking and GBV affect the administration of justice and the availability of evidence determines the fate of the justice received by the victim as does the chance of corruption and misjudgment by the courts.

5.2 Services and Service Delivery

5.2.1.1 Service Delivery Stakeholders³⁵⁰

The major government stakeholders providing services in the GBV and TIP sectors include the Human Trafficking Investigation Bureau (HTIB), WCSCSD and the Cyber Bureau under Nepal Police; NCHT, the Human Trafficking, Transportation Control Division, the Gender Based Violence Prevention Section and the National Child Rights Council under the MoWCSC; MoLESS; MoFA; MoHP; NHRC and the NWC. Several NGOs are also working to provide services such as shelter and rehabilitation, rescue and repatriation, legal aid and psycho-social counselling, to both GBV and TIP victims. In addition, various INGOs are also working with the government and Nepal-based NGOs to provide funding for and support the programs and services provided to GBV and TIP victims.

5.2.1.2 Frameworks for Delivering Service³⁵¹

Different government agencies have drawn up documents in the form of Guidelines and SOPs, to help provide guidance to difference aspects related to TIP and GBV, covering areas as diverse as investigation and prosecution to operation of shelter homes. Not all these documents are followed in letter and in some cases were not known to the stakeholders involved in the sector. There is a dearth of available literature on the implementation and the effectiveness of the Guidelines and SOPs.

349 See Section 3.8

350 See Section 4.1

351 See Section 4.3

5.2.1.3 Services Available to GBV and TIP victims³⁵²

Victims of TIP and GBV are provided with a number of services by various government bodies; and national/ international organizations and networks. These services include rescue (including interception); investigation and prosecution; rehabilitation (including shelter home facilities and the provision of essentials such as food and clothing; health care services; formal and non-formal education; legal aid; psycho-social counselling; capacity development and life skills training, such as vocational training; and financial/monetary assistance); and reintegration, repatriation and family reunification. With regard to convergence in services, there was greater convergence in some aspects than in others. Shelter homes and rehabilitation centres offer protection to victims of both TIP and GBV. The OCMCs receive both kinds of cases (albeit only if TIP cases are recognized as GBV as well), but they only provide limited services to women and instead refer them to shelter homes or to law enforcement agencies. Anti-human trafficking units and repatriation services can deal with either issue depending on the nature of the case. Convergence with human trafficking largely involves NGOs like Maiti Nepal which have a multinational workforce base deployed not only in Nepali shelter homes and border points, but also in India where their regional and local networks are utilized in preventing human trafficking activities.

With regard to services available to victims at the shelter homes, a majority of shelter home representatives interviewed said that shelter; psycho-social support services; physical health care services; services related to vocational training and economic security; legal and counselling services; and life skills and education-related services were available in-house to victims. However, most of the service providers pointed out that lack of adequate funding and resource constraints pose significant challenges against effective long-term service provision to victims. In addition, several service providers reported being subjected to political pressure and threats from offenders.

A majority of the shelter home representatives reported that victims are mostly referred to the shelter homes through law enforcement officials. Many also claimed that they get cases through local governments and organizations working in the sector. Most of the victims interviewed claimed that they are generally satisfied with the services and are grateful to the service providers. Many service providers reported that they had been providing services in the wake of the Covid-19 pandemic, despite the challenges. With regard to assessment of services provided to victims, most of the service providers interviewed said that they carry out periodic assessments, mostly through feedback received from the victims.

Notably, gender disparity in access to services is evident. While shelter services are available mostly to women and female minors and there are no shelter homes for men and other genders, many of the service providers working to provide psycho-social counselling and legal services stated that they also provide services to the latter groups.

Access to services is also affected by geographical location. A majority of the victims and service providers stated that services are not easily available in the villages and that they are mostly concentrated in the cities and in border regions. One of the major barriers to accessing services is the unwillingness, on the part of victims to seek services openly.

³⁵² See Section 4.4

Regarding reintegration of victims into their homes and societies, a majority of the TIP victims claimed that they would want to be rehabilitated into the community when asked if they would prefer to continue staying in the shelter home or be rehabilitated in the future. The preferences of GBV victims were, however, varied. A majority of the shelter homes stated that they first conduct risk assessments to ensure that there is no danger to the victim from their family and community, before initiating reintegration.

5.2.1 Integration or Separation of Services

Most of the GBV and TIP victims were of the view that integrating services would be better owing mainly to the emotional support the two groups of victims were likely to provide each other when placed together. In addition, some victims were also of the view that integration of services would ensure parity in the kind of services both groups get, with neither prioritized over the other. Service providers, however, were divided in their views on whether services should be integrated for the two types of victims. Of the service providers who seemed to think integration was better, many cited budgetary and resource constraints in providing separate services to be one of the major reasons why integration would be more feasible. Some of the service providers interviewed also emphasized that providing services under the same roof would allow victims to bond and support each other. In contrast, a few were of the view that the two types of victims have different needs and that services should be provided separately.

Similarly, half the law enforcement officials interviewed thought integration of services would be better than providing services separately. The government officials interviewed felt providing separate and specialized services would be better than integrating services for the two types of victims. A majority of the judges and prosecutors felt that integration would be better although they seemed cognizant of the related challenges.

With regard to services that could possibly be integrated, many interviewees noted that medical and health care services; psycho-social counselling services; livelihood and capacity development trainings, including skills trainings, could be provided from the same place.

5.3 Recommendations

The recommendations presented here are based on the findings above and also include inputs from virtual meetings with relevant stakeholders convened by the research team. A total of four district-level events were held with a view to disseminating key research findings and seek validation from a different set of individuals representing the groups interviewed for the study, namely, service providers, government officials and law enforcement officials.

5.3.1 For the Government

- *Enforce existing laws* in place to protect people from becoming victims of TIP or GBV. That includes making arrangements for the protection of victims while the case is ongoing, but also supporting victims who are unable seek justice against powerful perpetrators.
- *Amend existing laws* to reflect new developments in the respective sectors as well as to meet Nepal's international commitments.
- *Implement and monitor standardized protocols* for all operations relating to TIP and GBV across all the bodies involved, both government and non-government. Since many of these protocols

have already been developed, it is only a matter of ensuring that the stakeholders are made aware of their existence and provided proper guidance on how these can be followed.

- *Monitor the functioning* of various government and non-government institutions mandated to support GBV and TIP victims in terms of their adherence not only to the law but also various guidelines issued or adopted by the government.
- *Streamline collection and dissemination of information* to make it easier to move ahead with identification and other processes. Document the cases properly with more sensitivity regarding follow-ups and timely updates.
- *Establish an information system* to enable foreign employment seekers to learn everything about the companies they are going to work for. Provide genuine, inexpensive and simplified processing services to prospective migrant workers so that they do not fall victim to brokers.
- *Specify functions, roles and duties of the federal, provincial and local governments* towards meeting their obligations of effective service provision in the GBV and TIP sector. Since local bodies are well placed to take this up, all information on TIP and GBV should be collected and fed into a national database.
- *Increase the number of shelter houses* across Nepal and near the border areas as well in order to provide services to victims of TIP. The safety of victims inside shelter homes will also have to be ensured while such homes should have the provision for catering to the needs of men and gender minorities.
- *Allocate an annual budget* to support shelter homes and organizations providing services to GBV and TIP victims. The funds should go to both government institutions and NGOs.
- *Establish long-term shelter homes at the community level* in all 77 districts. Expand the reach of the Mangala Sahana Long-term Shelter Home to provide services to more victims. In the interim, local governments can use their own funds under the Gender-Based Violence Prevention Fund to establish shelter homes.
- *Carry out periodic monitoring* of shelter homes and service providers to assess the quality of the services and offer recommendations for improvement.
- *Ensure coordination among various stakeholders* providing services to GBV and TIP victims.
- *Provide timely training* to government officials to enable them to understand changes on the ground such as what has happened in the TIP sector.
- *Conduct public awareness programs* for uninformed or misinformed and vulnerable people especially in the rural areas to help them understand what constitutes TIP and GBV, and on the provisions in relevant laws as well as to inform the victims of their rights and the process for accessing justice. Provide such information beginning at the school level to reduce TIP and GBV.
- *Raise public awareness* regarding services available to GBV and TIP victims and places where victims can seek services, particularly in remote areas. Similarly, raise awareness to eliminate social stigma and discrimination against victims.

5.3.1.1 For Law Enforcement Agencies

- *Ensure no infringement on the right to free movement* of individuals when screening for potential victims. This can be done by following proper protocols that include indicators that assist in the identification of victims instead of relying on subjective hunches and visual cues.

- *Do not limit screening and identification to official border crossings* but also cover other points in the open border with India that allows for easy passage.
- *Do not limit screening and identification to potential female victims only* but also cover potential male victims and victims belonging to gender and sexual minorities.
- *Establish a system to report crimes* such as 24-hour hotline services, for easy access to the law enforcement, for the victims. The Khabar Garaun (Let's Report) helpline for GBV victims being operated by the National Women's Commission could provide the template for a hotline for TIP victims also.
- *Ensure witness protection of victims* at all stages of the trial, including before and after. That is the only way in which victims of GBV and TIP will feel empowered enough to take a stand against the perpetrators.
- *Practise victim-centric investigation procedures and victim participative criminal justice processes* to encourage reporting of crimes. Such an approach will enable victims feel they are operating from a position of strength.
- *Use trauma-informed language with the victims* while interrogating them. Besides putting victims at ease, it will also allow them to recall and report incidents more clearly.
- *Provide intensive GBV and TIP-specific training* to all law enforcement personnel, including training on effective screening and identification of victims, and dealing with them. With both acts now criminalized by law, the police have to be ready to deal with both types of cases.

5.3.2 For Shelter Homes and Service Providers

- *Ensure effective screening and identification of victims* in coordination with law enforcement agencies, by following proper protocol with the aid of indicators to identify victims as opposed to relying on hunches and visual cues.
- *Set up shelter homes that cater to the needs of men* alongside other gender and sexual minorities.
- *Avoid clustering of services* in cities and border areas.
- *Establish long-term shelter homes* at the community level in all 77 districts while trying to ensure that victims can access all the services available at the time.
- *Develop mechanisms for effective referral as well as for systematic and uniform feedback* that allow victims to access services at the nearest location possible and also assess the quality of services provided.
- *Ensure that interactions between victims do not impact them negatively* when providing integrated services to GBV and TIP victims.
- *Raise public awareness regarding services* available to GBV and TIP victims and places where they can seek services, particularly in the remote regions.
- *Raise public awareness to eliminate social stigma* and discrimination against GBV and TIP victims.

5.3.3 On Integration or Separation of Services

Based on the findings of the study dealing specifically with the issue of integration or separation of services for GBV and TIP victims, the research team has concluded the pros and cons of such a step.

The main advantage to having a facility that caters to both groups is that it will:

- require less financial and human resources,
- provide a common platform for victims of both groups to support and motivate each other, and
- encourage interaction between TIP and GBV victims which can help raise awareness of the types of violence women face in Nepal.

There were also some valid points made with regard to keeping the services separate. These include the possibility of:

- provision of specialized services to both groups of victims, according to their respective needs, and
- avoidance of situations whereby one group of victims can humiliate/discriminate the other for slights known and unknown.

5.3.4 On potential topics/areas for further research

- Impact of COVID-19 on the incidence of GBV and TIP in Nepal as well as general impact caused by pandemics/natural disasters/conflicts on the incidence of GBV and TIP in Nepal/South Asia.
- GBV among males and gender and sexual minorities in Nepal and access to justice
- Changing routes and destinations in relation to human trafficking from Nepal

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Terms and Conditions and Process for Granting Approval for Adoption of Nepali Child by Aliens (2008), MoWCSC

Annexures

Annex I: List of stakeholders interviewed

Shelter Homes

1. Director, Agroforestry Basic Health and Cooperative (ABC) Nepal, Kathmandu
2. District Coordinator, Women's Rehabilitation Centre (WOREC), Morang
3. Executive Director, Shramik Mahila Manch, Itahari, Sunsari
4. President, ABC Nepal, Morang
5. President, Maya Ghar, Sunsari
6. Shelter Home Supervisor, Aprabasi Mahila Kamdar Samuha (AMKAS), Kathmandu
7. Shelter Home Supervisor, Saathi, Banke
8. Shelter Home Supervisor, Safe House, Itahari Sub-Metropolitan City, Sunsari
9. Shelter Home Supervisor, Shakti Samuha, Kathmandu
10. Shelter Home Supervisor, WOREC, Kathmandu

Service Providers (NGOs, INGOs and Government Service Providers)

1. Chairperson, Freed Kamlari Development Forum , Banke
2. Chairperson, Pravasi Nepali Coordination Committee (PNCC), Kathmandu
3. Counsellor, Transcultural Psychosocial Organization (TPO) Nepal, Kathmandu
4. Counsellor, WOREC, Morang
5. Democracy and Governance Specialist, United States Agency for International Development (USAID)
6. Deputy Chief of Party, Hamro Samman
7. Deputy president, Fatima Foundation, Banke, Nepalgunj
8. District Coordinator, WOREC, Sunsari
9. Executive Director, Biswas Nepal, Kathmandu
10. Executive Director, Pourakhi Nepal, Kathmandu
11. Focal Person, One-stop Crisis Management Centre (OCMC), Koshi Hospital, Morang
12. Gender Program Manager, United Nations Population Fund (UNFPA)
13. General Secretary, Feminist Dalit Organization (FEDO), Kathmandu
14. Legal and Training Coordinator, Shakti Samuha, Kathmandu
15. Program Coordinator, Global Action Nepal (GAN), Banke
16. Program Coordinator, Terres Des Hommes (TDH) Lausanne, Kathmandu
17. Program Coordinator, WOREC Nepal, Kathmandu
18. Program Manager, JHPIEGO
19. Project Officer, Anti- Slavery International

20. Project Officer, United Nations Office on Drugs and Crime (UNODC)
21. Staff, OCMC, District Hospital, Sunsari

Armed Police Force Officials (Border Officials)

1. In-charge, Bhantabari Border, Sunsari
2. In-charge, Rani Border, Biratnagar, Morang

Government Agencies

1. Focal Person, Women, Children and Senior Citizens Branch, Ministry of Social Development, Province 1, Biratnagar, Morang
2. TIP Officer, National Human Rights Commission, Kathmandu

Immigration Officials

1. Deputy Head, Immigration Office, Banke, Nepalgunj
2. Deputy Head, Immigration Office, Biratnagar, Morang
3. Immigration Officer, Tribhuvan International Airport, Kathmandu

Judges

1. Judge, District Court, Morang
2. Judge, District Court, Sunsari
3. Judge, Patan High Court, Lalitpur
4. Judge, Patan High Court, Lalitpur

Prosecutors

1. Prosecutor, District Court, Nepalgunj
2. Prosecutor, District Court, Sunsari

Police

1. Head, District Police, Banke
2. In-charge, Women, Children and Senior Citizen Service Centre, Province 1 Police Office, Morang
3. In-charge, Area Police Office, Jamuna Border, Banke, Nepalgunj
4. In-charge, Women, Children and Senior Citizen Service Centre, District Police Office, Sunsari
5. In-charge, Women, Children and Senior Citizen Service Centre, District Police Office, Nepalgunj
6. In-charge, Women, Children and Senior Citizen Service Centre, District Police Office, Morang
7. In-charge, Women, Children and Senior Citizen Service Centre, District Police Office, Itahari, Sunsari
8. Officer, Police Headquarters, Naxal, Kathmandu

Victims

Type of Victim	Interviewing Shelter Home	Number of Interviews Conducted
TIP	AMKAS	5
	Shakti Samuha	5
GBV	WOREC Nepal	10

List of participants in Focus Group Discussion with service providers

1. Counsellor, Shakti Samuha, Kathmandu
2. Counsellor, WOREC Nepal, Kathmandu
3. Executive Director, Shramik Mahila Manch, Itahari, Sunsari
4. Founding member, Pourakhi Nepal, Kathmandu
5. President, ABC Nepal, Morang
6. Project Officer, GAN, Banke
7. Shelter Home Supervisor, Safe House, Itahari Sub-Metropolitan City, Sunsari

List of participants in Focus Group Discussion with law enforcement officers

1. Head, Armed Police Force (APF), Border Out- Post, Bhandabari Koshi, Village Council, Sunsari
2. Head, APF, Border Out-Post, Kalabajar Hirmaniya, Banke
3. Head, APF, Border Out-Post, Laukahi, Sunsari
4. Head, APF, Border Out-Post, Rangeli, Morang
5. Head, APF, Border Out-Post, Rani, Biratnagar, Morang
6. Special Operation Officer, APF, 30 No. Bahini Bageshwari Gan, Banke

Annex II: OCMCs in operation in Nepal, 2019/20

S.N.	Province	OCMCs in operation in Nepal, 2019/20	Additional OCMCs the government plans to establish by July 2021
	Province 1	Inaruwa Hospital, Inaruwa Municipality, Sunsari	Terathum Hospital, Terathum
		Panchthar Hospital, Fidim Municipality, Panchthar	Bhojpur Hospital, Bhojpur
		Faplu Hospital, Solududhkunda Municipality, Solukhumbu	Khotang Hospital, Khotang
		Rumjatar Hospital, Siddhicharan Municipality, Okhaldhunga	
		Dhankuta Hospital, Dhankuta Municipality, Dhankuta	
		B.P. Koirala Institute of Health Sciences, Dharan	
		Udayapur Hospital, Triyuga Municipality, Gaighat, Udayapur	
		Koshi Hospital, Biratnagar, Morang	
		Ilam Hospital, Ilam	
		Mechi Hospital, Bhadrapur	
		Taplejung Hospital, Taplejung	
		Sankhuwasabha Hospital, Sankhuwasabha	
	Province 2	Sarlahi Hospital, Malangawa Municipality, Sarlahi	
		Sagarmatha Hospital, Rajbiraj, Saptari	
		Gaur Hospital, Gaur Municipality, Rautahat	
		Kalaiyya Hospital, Kalaiyya Sub-Metropolitan City, Bara	
		Narayani Hospital, Birgunj	
		Janakpur Hospital, Janakpur	
		Mahottari Hospital, Mahottari	
		Siraha Hospital, Siraha	
	Bagmati	Paropakar Stri tatha Prasuti Rog Hospital, Kathmandu	Rasuwa Hospital, Rasuwa
		Patan Institute of Health Sciences, Patan Hospital, Lalitpur	Kanti Bal Hospital, Kathmandu
		National Academy of Medical Sciences, Bir Hospital, Kathmandu	
		Dhulikhel Community Hospital, Dhulikhel Municipality, Kavre	
		Bharatpur Hospital, Bharatpur, Chitwan	

S.N.	Province	OCMCs in operation in Nepal, 2019/20	Additional OCMCs the government plans to establish by July 2021
		Hetauda Hospital, Hetauda Metropolitan City, Makwanpur	
		Dhading Hospital, Nilkanth Municipality, Sindhupalchowk	
		Chautara Hospital, Chautara Municipality, Sindhupalchowk	
		Charikot Primary Health Centre, Bhimeshwar Municipality, Dolakha	
		Manthali Primary Health Centre, Manthali Municipality, Ramechhap	
		Sindhuli Hospital, Kamalimai Municipality, Sindhuli	
		Bhaktapur Hospital, Bhaktapur	
		Trishuli Hospital, Bidur Municipality, Nuwakot	
	Gandaki	Pokhara Hospital, Pokhara Institute of Health Sciences, Kaski	Manang Hospital, Manang
		Damauli Hospital, Vyas Municipality, Tanahu	Mustang Hospital, Mustang
		Dhaulagiri Hospital, Baglung	Lamjung Hospital, Lamjung
		Gorkha Hospital, Gorkha Nagarpalika, Gorkha	Nawalparasi East Hospital
		Syangja Hospital, Syangja	
		Parbat Hospital, Parbat	
		Myagdi Hospital, Myagdi	
	Lumbini	Rapti Hospital, Ghorahi, Dang	
		Bheri Hospital, Nepalgunj	Rolpa Hospital, Rolpa
		Lumbini Hospital, Butwal	Rukum East Hospital
		Prithvichand Hospital, Ramgram Nagarpalika, Nawalparasi	
		Pyuthan Hospital, Pyuthan Municipality, Pyuthan	
		Palpa Hospital, Tansen Municipality, Palpa	
		Tamghas Hospital, Resunga Municipality, Gulmi	
		Sandhikharka Hospital, Sandhikharka Municipality, Arghakhachi	
		Taulihawa Hospital, Kapilvastu Municipality, Kapilvastu	

S.N.	Province	OCMCs in operation in Nepal, 2019/20	Additional OCMCs the government plans to establish by July 2021
		Gulariya Hospital, Gulariya Municipality, Bardiya	
	Karnali	Karnali Institute of Health Sciences, Jumla	
		Provincial Hospital, Birendranagar, Surkhet	
		Dailekh Hospital, Dailekh	
		Jajarkot Hospital, Jajarkot	
		Humla Hospital, Humla	
		Mugu Hospital, Mugu	
		Dolpa Hospital, Dolpa	
		Kalikot Hospital, Kalikot	
		Salyan Hospital, Salyan	
		Rukum Hospital, Musikot Municipality, West Rukum	
	Sudurpaschim	Doti Hospital, Dipayal Municipality, Doti	
		Mahakali Hospital, Kanchanpur	
		Mangalsen Hospital, Mangalsen Municipality, Achham	
		Baitadi Hospital, Dashrathchand Municipality, Bajura	
		Bajura Hospital, Badimalika Municipality, Bajura	
		Seti Hospital, Dhangadi	
		Bajhang Hospital, Bajhang	
		Dadeldhura Hospital, Dadeldhura	
		Darchula Hospital, Darchula	

Source: Ministry of Health and Population, 'Guidelines for the Operation of Hospital-based One-Stop Crisis Management Centers, 2019/20' (Kathmandu: MoHP, 2019).

Annex III: Distribution of GBV victims who have received integrated services from OCMCs through 2011/12–2016/17

	Particulars	Number	Percentage
Gender	Male	634	7.3
	Female	8,056	93.0
Nature of Violence	Rape/sexual assault	2,520	29.1
	Physical/domestic violence	3,240	37.4
	Mental Torture	2,522	29.5
	Others	352	4.1
	Total	8,664	100.0

Source: National Human Rights Commission (NHRC), 'Manav Bechbikhan Sambandhi Rastriya Prativedan (National Report on Trafficking in Persons)' (Kathmandu: NHRC, 2018), <https://bit.ly/36Xu4qa>.

Annex IV: Shelter Homes operated by NGOs in coordination with the MoWCSC

SN	Rehabilitation centre location district	NGO managing rehabilitation centre	Coverage area
1.	Jhapa	Maiti Nepal	Taplejung, Panchthar, Ilam, Jhapa, Morang, Sunsari, Dhankuta, Terathum, Sankhuwasabha, Bhojpur
2.	Sindhupalchowk	Shakti Samuha	Sindhupalchowk, Kavre, Ramechhap, Dolakha
3.	Kathmandu	ABC Nepal	Rasuwa, Nuwakot, Dhading, Solukhumbu, Bhaktapur, Kathmandu, Lalitpur, Okhaldhunga, Khotang
4.	Parsa	Maiti Nepal	Bara, Rautahat, Parsa, Sarlahi, Mahottari, Dhanusha, Sindhuli, Udaipur, Siraha, Saptari
5.	Chitwan	Adarsh Nari Vikas Kendra	Chitwan, Manang, Mustang, Tanahu, Lamjung, Gorkha, Makwanpur
6.	Rupandehi	Maiti Nepal	Gulmi, Arghakhanchi, Rupandehi, Kapilvastu, Palpa, Syangja, Nawalparasi, Myagdi, Baglung, Parbat
7.	Banke	Saathi	Salyan, Bardiya, Banke, Jajarkot, Humla, Jumla, Mugu, Dolpa, Rukum, Rolpa, Dang, Pyuthan
8.	Kailali	Sirjansheel Samaj	Darchula, Baitadi, Dadeldhura, Bajhang, Kailali, Kanchanpur, Bajura, Achham, Doti, Dailekh, Kalikot
9.	Kaski	Three Angels	Bagmati Province, Gandaki Province, Province No. 5, Karnali Province, Far West Province
10.	Surkhet	Aawaj	Kalikot, Dailekh, Bardiya, Surkhet

Source: Ministry of Women, Children and Senior Citizens, 'Rastriya Pratiwedan 2076 (National Report 2019)', (Kathmandu: MoWCSC, 2020), <https://mowcsc.gov.np/uploads/uploads/pLpTS3XVnCM3SGuWyVQbWcX2Q2HbWCCwoxc6He7i.pdf>.

Annex V: NGOs providing services to TIP and GBV victims

S.N.	Service Provided	NGO
1.	Shelter Home	<ul style="list-style-type: none"> • ABC Nepal (Agroforestry, Basic Health and Cooperative Nepal) <ul style="list-style-type: none"> ◦ Mangala Sahana long term rehabilitation home in collaboration with MoWCSC • Centre for Awareness Promotion (CAP) Nepal <ul style="list-style-type: none"> ◦ ‘Angels Home’ that provides family assessment and reintegration, psychosocial counselling, meditation and self-realization, community visit and community work • Chhori <ul style="list-style-type: none"> ◦ One Shelter home for 18 people ◦ Provides not just physical, but emotional and relational space • Child Workers in Nepal Concerned Centre (CWIN) <ul style="list-style-type: none"> ◦ Bal Kendra: Centre for Migrant Children at risk • Kin Nepal <ul style="list-style-type: none"> ◦ Safe Home in Bharatpur, Chitwan • Maiti Nepal <ul style="list-style-type: none"> ◦ 11 Transit Homes (Ilam, Bhairahawa, Kakarbhitta, Kodari, Mahendranagar, Maheshpur, Thankot, Dhangadi, Nepalgunj, Birgunj, Biratnagar) and two Rehabilitation Homes – 318 children and women (as of Dec 2017) • Opportunity Village Nepal (OVN) <ul style="list-style-type: none"> ◦ Child Protection Home in Pokhara with 26 girls (TIP and GBV) • Pourakhi <ul style="list-style-type: none"> ◦ One Emergency Shelter Home – Kathmandu • Rakshya Nepal • Saathi <ul style="list-style-type: none"> ◦ Women Shelter in Kathmandu – 1,063 women and their children ◦ Saathi Children Programme – five ◦ Ashreya Shivar – Kathmandu, Banke, Kapilvastu, provides accommodation for six months for TIP and armed conflict victims. ◦ Working Actively Together for Children, Children shelter – Balshram Bal Kendra, • Shakti Samuha <ul style="list-style-type: none"> ◦ Transit shelter home for TIP, GBV and Modern Day Slavery victims in Kathmandu ◦ Pokhara Emergency Shelter for TIP children

S.N.	Service Provided	NGO
		<ul style="list-style-type: none"> • Women’s Rehabilitation Centre (WOREC) <ul style="list-style-type: none"> o Safe shelters in Kathmandu, Kailali, Dang, Udayapur, Morang, Butwal and Dhanusha. o Counselling service and legal support, o Basic necessities like food, clothing and medications
2.	Anti-human trafficking units	<ul style="list-style-type: none"> • Alliance Against Trafficking in Women and Children (AATWIN) <ul style="list-style-type: none"> o ‘Hamro Samman’ project: To reduce the prevalence of TIP in 10 strategically selected districts of Nepal. Using the ‘4Ps’ framework- Prevention, Protection, Prosecution and Partnership. o Interaction programs and seminars on Commercial Sexual Exploitation of Children (CSEC) o Orientation Program on Provisions of Human Trafficking and Slavery in New Laws • ABC Nepal <ul style="list-style-type: none"> o Cross-border program and anti-trafficking project in Morang, Dhanusha, Siraha and Rupandehi • CWIN <ul style="list-style-type: none"> o Child Helpline 1098 (in Kathmandu, Hetauda, Nepalgunj, Pokhara and Biratnagar) with ambulance service, counselling, emergency shelter, medical and legal services. • Kin Nepal <ul style="list-style-type: none"> o Border patrol and surveillance program in eight major cross border points, four-six staff in each border. • Maiti Nepal <ul style="list-style-type: none"> o Coordination with Indian Police and the Sashastra Seema Bal o Local networks • Rural Reconstruction Nepal (RRN) <ul style="list-style-type: none"> o Campaign and advocacy on TIP children with programs. • Saathi <ul style="list-style-type: none"> o Border units in Banke and a Transit-Centre in Kanchanpur for cross-border anti-trafficking. o Promote YCAs (Youth Change Agents – 180) in both districts and build their advocacy capacities o Work with the GoN to establish tracking mechanisms of foreign migration. o Community mobilization to prevent children and women from human trafficking o Developing effective coordination with local stakeholders on strengthening child protection system and anti-human trafficking issues.

S.N.	Service Provided	NGO
		<ul style="list-style-type: none"> o Cooperation of Stakeholders at Indo Nepal border areas to provide appropriate and comprehensive direct assistance to TIP o Coordination with National and International Governmental and Nongovernmental stakeholders
3.	Service Centers	<ul style="list-style-type: none"> • Centre for Victims of Torture (CVICT) <ul style="list-style-type: none"> o CVICT provides professional medical, psychosocial and legal services to Nepalese men, women and children who are victims of torture, trauma associated with torture or inhuman treatment at its centre in Kathmandu • Gramin Mahila Srijanshil Pariwar (GMSP) <ul style="list-style-type: none"> o Upcoming rehabilitation centre to provide temporary rehabilitation assistance to survivors, mostly of GBV and children. • Maiti Nepal <ul style="list-style-type: none"> o Sonja Jeevan Kendra (clinic) – 38 beds and a full time doctor o Legal Aid Section/Prosecution services o Border Patrol/Rescue/Interception centers • Saathi <ul style="list-style-type: none"> o TIP and GBV victims are provided services in the shelter home. o Saathi Drop-In Centre o Cross-Border transit centers: Banke, Kanchanpur • Shakti Milan Samaj <ul style="list-style-type: none"> o Health care centre in Kathmandu that ensures access to resources, human rights of women and their children living with HIV/AIDS. • Shakti Samuha <ul style="list-style-type: none"> o TIP victims’ protection centre – identification, rescue, rehabilitation and restoration with the family or community o Training service centers o Women Rehabilitation Centre in Sindhupalchowk • WOREC <ul style="list-style-type: none"> o 25 women health resource counselling centers—five in Salyan, five in Dang, two in Siraha, three in Dhanusha, three in Morang, one in Sunsari and six in Udayapur district. o Community health centers in Udaypur and Dang

S.N.	Service Provided	NGO
4.	Rehabilitation Services	<ul style="list-style-type: none"> • ABC Nepal <ul style="list-style-type: none"> ○ Community-based Interventions for the Empowerment of Women and Prevention of Labor (Work in Freedom Project) based in Rupandehi • Asha Nepal <ul style="list-style-type: none"> ○ Family Group Homes provides safe homes for children for their holistic development – three homes with six to seven members ○ Secondary Education Exam (SEE) Centre aimed to help survivors/victims with their SEE exams ○ Keeping Family Safe in Community project helps with TIP people in their rehabilitation • CAP Nepal <ul style="list-style-type: none"> ○ Awareness and interaction mobile programs on Control Mechanism of Commercial Sexual Exploitation to the Children
		<ul style="list-style-type: none"> ○ Advocacy on GBV, cultural malpractices and Adult Entertainment Sector (AES). ○ ‘Sankalpa’ magazine as media outreach on the issue of CSEC in the AES in Nepal. ○ Cafeteria/Café to provide employment for victims of AES • Chhori <ul style="list-style-type: none"> ○ First response and intake ○ Psychosocial counselling (individual and group) ○ Medical support Case management ○ Healing trauma through holistic intervention such as expressive art therapy, utilizing dance, movement, rituals, visual art and poetry. ○ Reintegrating process • CVICT <ul style="list-style-type: none"> ○ TIP project with Verified Minors and Late Recruits , Children Associated with Armed Forces and Armed Groups in 27 districts with UNICEF. • Feminist Dalit Organization (FEDO) <ul style="list-style-type: none"> ○ Non-formal education program, awareness raising activities, and formation and mobilization of saving and credit groups from Dalit women. • Gramin Mahila Srijanshil Pariwar (GMSP) <ul style="list-style-type: none"> ○ Counselling and awareness of TIP activities for women of two villages in Sindhupalchowk

S.N.	Service Provided	NGO
		<ul style="list-style-type: none"> • Kin Nepal <ul style="list-style-type: none"> o Skills-based livelihood development and training program for women and girls' empowerment. • Maiti Nepal <ul style="list-style-type: none"> o Safe shelter o Psychosocial counselling o Medical services o Legal services o Non-formal education and training. o Job Placements • Pourakhi <ul style="list-style-type: none"> o Awareness raising, capacity building, psychological support, post arrival support, child education, reintegration and empowerment program. o Radio Program o Hotline Services o Post-Arrival Support o Study and Research • Saathi <ul style="list-style-type: none"> o Support in accommodation, psychosocial, legal, education, training, financial, protection, employment support.
		<ul style="list-style-type: none"> o Vocational training and classes o Extracurricular activities • Shakti Milan Samaj, <ul style="list-style-type: none"> o HIV/AIDS affected women and children community care centre and community care program in Kathmandu • Shakti Samuha <ul style="list-style-type: none"> o To address the immediate need of trafficking survivors through rehabilitation centers o Recovery cum rehabilitation services (incl. psychological, social, skill development, educational, and legal support) o Self-defence training o Dance, reading, life skill class o Other income generating support • Women Acting Together for Change (WATCH) <ul style="list-style-type: none"> o Literacy classes, health services, health camps, saving and credit scheme programs, income generation, scholarship for girls, etc.

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		<ul style="list-style-type: none"> o supporting self-reliant and sustainable development through organizing women at the grassroots level. • Women Forum for Women in Nepal (WOFOWON) <ul style="list-style-type: none"> o Awareness raising campaigns on safe migration, human trafficking, women health, and violence against women, capacity building and advocacy, especially TIP in the entertainment sector. • WOREC Nepal <ul style="list-style-type: none"> o Violence against women o Human Rights and Justice o Sustainable Livelihood Program o Three livelihood-focused projects in six districts to build ‘Eco-village’ (16 villages; five in Udayapur, three in Siraha, three in Dang and five in Salyan districts) that includes bio-intensive farming system, new agricultural technology
5.	Repatriation	<ul style="list-style-type: none"> • Kin Nepal <ul style="list-style-type: none"> o Works closely with Delhi Police and Delhi Commission for Women in New Delhi. • Maiti Nepal <ul style="list-style-type: none"> o Repatriation and border patrol agents and centers • National Network Against Girls’ Trafficking (NNAGT) <ul style="list-style-type: none"> o Equal citizenship o Anti-trafficking programme in border areas • Shakti Samuha <ul style="list-style-type: none"> o Coordination with Indian Organizations for the repatriation of the trafficking survivors. o Formal Repatriation of the girls, who are rescued by Indian Organizations. o Conduct Exchange visits in Indian organizations. • Saathi <ul style="list-style-type: none"> o Rehabilitation Centre in Banke and a Transit Centre in Kanchanpur for cross-border anti-trafficking.
6.	Legal Aid	<ul style="list-style-type: none"> • Advocacy Forum • Centre for Legal Research and Resource Development (CeLLRD) • Forum for Women, Law and Development (FWLD) • Legal Aid and Consultancy Centre (LACC) • Nepal Mediator Society • Nepal Public Defender Society • People Forum for Human Rights • Pourakhi

S.N.	Service Provided	NGO
7.	Psychosocial Counselling	<ul style="list-style-type: none"> • Centre for Mental Health and Counselling (CMC Nepal) • Manav Sewa Ashram • Transcultural Psychosocial Organization (TPO Nepal)

Source: AATWIN (2020) About AATWIN: AATWIN Member Organisations. Retrieved from: <https://www.aatwin.org.np/index.php/who-we-are/aatwin-member-organisations>. Accessed: 16 September 2020.



The Asia Foundation

Improving Lives, Expanding Opportunities

The Asia Foundation is a nonprofit international development organization committed to improving lives across a dynamic and developing Asia. Working through offices in 18 Asian countries and informed by six decades of experience and deep local expertise, our work across the region addresses five overarching goals—strengthen governance, empower women, expand economic opportunity, increase environmental resilience, and regional and international relations.



Social Science Baha is an independent, non-profit organisation established in January 2002 with the objective of promoting and enhancing the study of and research in the social sciences in Nepal. Its activities include running a social science research library, conducting lectures, discussions, workshops, conferences, publishing books and other research papers as well as conducting research on a variety of subjects related to Nepal.