CHILD TRAFFICKING IN NEPAL
An Assessment of the Present Situation

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FOREWORD

Child trafficking is a Human Rights issue. Child trafficking is not a new phenomenon, but in recent years it has re-emerged as a global problem, and is becoming a serious challenge in Asia, home to more than one billion of the world’s poor people who are also being considered as very vulnerable. “Trafficking in women and children for sexual exploitation has victimized more than 30 million in Asia alone. It is one of the most devastating and fastest growing problems in the region. Legal provisions, such as criminal laws and procedure, and regulations for law enforcement and immigration controls vary greatly among jurisdictions, resulting in safe havens for traffickers. However, there has been little coordination between states to meet the exigencies of the reality. Due to the absence or limited legal restrictions and acquiescence, or even facilitation in some cases, by law enforcement and immigration officials, thousands, or presumably tens of thousands, of persons are trafficked across borders every month. Compounding their abuse at the hands of traffickers, victims are often criminalized and treated without due respect to their basic human rights and dignity in the country of exploitation as well as their country of origin.”

There are alarming reports indicating that around 500,000 women and children in Asia are sold into prostitution every year and the numbers of victims are on the rise. It is also estimated that the global trafficking industry generates more than five billion USD each year, thus being the third biggest illegal industry after drugs and arms smuggling. “Combating child trafficking forms a growing part of Terre des hommes’s work. More and more information is emerging about these modern forms of slavery, which is no longer a monopoly of poor countries; Europe and the so-called ‘emerging’ countries are directly affected by these trends, which 20 years ago were still considered to belong to the “Third World.”

The UN-Economic and Social Council writes in one of its reports that “one of the most serious challenges facing human rights today is the crime of human trafficking and its various dimensions, including organised crime, prostitution, security, migration, labour and health. The complexity of trafficking is increased by, inter alia, the different political contexts and geographical dimensions of the problem; ideological and conceptual differences of approach; inadequate legal frameworks; and insufficient research and coordination on the part of actors involved – at the national, regional and international levels.”

INTRODUCTION

It is feared that the problem of trafficking has to be considered to be particularly acute in Nepal. The exploitation of women and children by forcing them by one way or another into the sex industry is a very troubling issue. People estimate that the number of women and girls trafficked from Nepal to India is between the ranges of 5000 to 8000 each year, but some reports indicate that the numbers are even higher. The largest proportion is trafficked across the border from Nepal to India, but the whole trafficking business has diversified nowadays – including new destinations like Hong Kong, Singapore, Bangkok and the Gulf states. Over the past couple of years also a new trend developed, namely the internal trafficking from rural to urban sex markets for prostitution.

Many factors such as widespread poverty and related marginalisation, vulnerability, discrimination, deep-rooted gender discrimination, disempowerment of women, deep-
rooted patriarchal norms, domestic violence, social disparities due to caste and ethnic groupings, political apathy, lack of law enforcement, dysfunctional family structures, restrictions in mobility, limited social interaction, cultural as well as social restrictions, are considered to be the major causes for increased trends in trafficking of women and children in Nepal.

DEFINITION
For the purpose of this assessment report, we have taken the definition of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It states that:

a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

d) “Child” shall mean any person under eighteen years of age.

In addition, the Convention of the Rights of the Child defines clearly children as human beings under the age of 18, unless there are national laws to decide differently. Article 11 of the Convention makes it an obligation for State Parties to ‘take measures to combat the illicit transfer and non-return of children abroad through bilateral or multilateral agreements or accession to existing agreements’. Article 35 of the Convention clearly says that ‘States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form’ and Article 39 of the Convention requires State Parties ‘to promote physical and psychological recovery and social reintegration of a child victim’.

PRESENT SITUATION
There are no reliable data how many women and children are trafficked every year. Estimates vary between 5’000 to 6’000 as given by many NGOs, and government officials indicate that the number could be up to 8000 victims a year. ILO puts the number up to 12,000 while some believe it could be even in the range of 20,000 victims, mainly children, every year.
However, there is general agreement that trafficking is on the rise and the majority of women and girls are being trafficked into the sex industry. “Trafficking of young girls and women has plagued this Himalayan Kingdom of Nepal for many decades. It is estimated by some scholars that over 140,000 to 200,000 young girls and women continue to be grinded in the sex market of Indian brothels in Calcutta, Siliguri, Kanpur, Gorakhpur, Lucknow, New Delhi and Bombay.”5 ILO-IPEC reported6 in 2002, that there is only limited research on child trafficking, and the circulated figures are at best rough estimates. ILO-IPEC stated in the same report that in 1999 “between 5,000 – 7,000 Nepali girls were trafficked into India for sexual exploitation annually and that 26 of a total of 75 districts were affected. The recently concluded RA by ILO, 2001 puts the figure at 12,000 girls trafficked annually to India and identifies 11 additional districts. Many NGOs currently feel that the entire nation is now affected by trafficking. These figures are for trans-border trafficking for sexual exploitation only and there is no present information or data neither on internal trafficking nor for trafficking for other purposes. It is also stated that 20% of the sex workers in Nepal are under the age of 16 years though there is no information on the element of trafficking among sex workers generally.”7 Due to the clandestine nature of trafficking and due to the prevailing conflictive situation within Nepal quantitative research seems to be impossible.

A study of the Asia Foundation “indicated that all women of all ethnic castes and communities were involved in the sex trade, thus dispelling the existing belief that entry into prostitution is limited to a few communities that have been identified as vulnerable to trafficking.”8

SCOPE OF PROBLEM

After almost two decades of seminars, research and workshops it is still not known, how many girls are trafficked, where they go and who is responsible. “At least hundreds of thousands, and probably more than a million women and children are employed in Indian brothels. Many are victims of the increasingly widespread practice of trafficking in persons across international borders. In India, a large percentage of the victims are women and girls from Nepal. This report focuses on the trafficking of girls and women from Nepal to brothels in Bombay, where nongovernmental organizations say they comprise up to half of the city's estimated 100,000 brothel workers. Twenty percent of Bombay's brothel population is thought to be girls under the age of eighteen, and half of that population may be infected with the human immunodeficiency virus (HIV).

Trafficking victims in India are subjected to conditions tantamount to slavery and to serious physical abuse. Held in debt bondage for years at a time, they are raped and subjected to other forms of torture, to severe beatings, exposure to AIDS, and arbitrary imprisonment. Many are young women from remote hill villages and poor border communities of Nepal who are lured from their villages by local recruiters, relatives or neighbours promising jobs or marriage, and sold for amounts as small as Nepali Rs.200 [$4.00] to brokers who deliver them to brothel owners in India for anywhere from Rs.15,000 to Rs.40,000 [$500-$1,333]. This purchase price, plus interest (reported to be ten percent of the total), becomes the "debt" that the women must work to pay off -- a process that can stretch on indefinitely. Only the brothel owner knows the terms of the debt, and most women have no idea how much they owe or the terms for repayment. Brothels are tightly controlled, and the girls are under constant surveillance. Escape is virtually impossible. Owners use threats and severe beatings to keep inmates in line. In
addition, women fear capture by other brothel agents and arrest by the police if they are
found on the streets; some of these police are the brothel owner’s best clients. Many of
the girls and women are brought to India as virgins; many return to Nepal with the HIV
virus.”

DISCOURSE

Unfortunately it seems that there has always been a strong tendency among all parties to
simplify. Journalists want a strong, but simple story, one that touches the reader; and
many NGOs want to keep the whole issue of trafficking simple, because it helps them in
donor shopping - it is much easier to set up trafficking centres at border posts and to
conduct various awareness workshops than to confront the whole issue in a more
holistic approach. Donor agencies may simplify the issue because of cultural ignorance,
and because they themselves must raise the funds in a world whose funds for social
issues are increasingly diminishing.

If this approach to simplify is not challenged and not revised, the strategies to fight
trafficking will continue to fail.

Poverty discourse

“In the western media, there have been so many stories published about the
problem of trafficking, which portray poverty as the main cause inducing ‘girls
and women’ to volunteer to a life of sex providers. They often sensitise the issue
with quixotic stories stating that parents sell their daughters for their greed of
wealth. There have been research reports written by people repeating the same
stories.” But poverty is by itself not the cause of trafficking. It is the visible
manifestation of a much deeper misery, linked to unequal distribution of land,
lack of proper land reforms, food insecurity, globalisation with its resulting gap
between the rich and the poor, lack of access to universal and free education, to
name some of the reasons.

“The problem of trafficking does not simply arise because women get involved
in the sex market because their families are poor. The assumption that parents
are selling girls into prostitution because of poverty is for the most part untrue,
and that is why many interventions are meaningless, as they are based on false
assumptions.”

Myths of forced abduction

“Recently, a challenge has been raised to the traditional girl trafficking
discourse. John Frederick (1999) asserts that much of the current discourse is, in
fact, myth. The consensus view, he contends, is that a majority of women
trafficked to India, are abducted and sold into sexual slavery as prostitutes
mainly in the brothels of Bombay. Frederick terms this sort of trafficking “hard
trafficking.” The reality, he suggests, that much of Nepal’s girl trafficking is
actually done with the families’ own complicity. He terms this form of
trafficking “soft trafficking” and suggests that in most cases of girl trafficking,
the families’ own agency is involved. Many more women actually go of their
own free will; or at least with their families’ firm encouragement and
blessing.” “Like everyone else, governments like the prevalent trafficking
myths because they can be sold easily. Trafficked Gita makes for good sound
bite on the podium, and the myth of the “evil trafficker” lays blame on the other guy – for Nepal, it’s India; for Bangladesh, Pakistan; for Sri Lanka, the Gulf states. Governments tend to reinforce the present discourse because it diverts attention from the underlying causes of prostitution that the government are unable to address: rural and urban poverty, caste and gender discrimination, debt servitude, domestic sexual abuse, and unguided urban growth. Lastly, no politician is going to accuse his constituents of sending their own kids to the brothels.”

Myths of voluntarism

“Following the 1970s, with a larger number of girls being preyed upon every year, Nepalese intellectuals, the press and social workers began to recognise the seriousness of the problem. Some studies emerged strongly suggesting that rampant poverty in the hills was the major cause behind increasing incidents of trafficking. People concluded that poverty drove girls and women to seek employment in prostitution. However, this conclusion had no factual base. It was essentially erroneous to assume that many girls and women voluntarily enter prostitution to gain a livelihood. These studies also presented another factually unfounded conclusion: that many parents intentionally and knowingly sold their girls into the Indian sex market. Many people also denied the existence of an organized network involved in the trafficking of girls and women.”

“My assumption that “voluntary trafficking” with the collusion of parents happens frequently is also negated by countless stories told by victims of trafficking. Many tell stories of severe torture they underwent while resisting prostitution. Many women and girls have returned with unremovable scars of cigarette burns and other types of mutilation. They are frequently raped by gangsters and pimps to force them into submission.”

Research work indicates that false marriages, misleading information, lack of information leads to trafficking of girls. They are lured away from the village by being told that they will get a better job, or will find better employment opportunities, and are finally sold. “If somebody comes to our house and says that he will find employment for our daughters in the circus and also pays first month’s salary, we wouldn’t call it trafficking. We would do so out of compulsion for livelihood.”

ROOT CAUSES OF TRAFFICKING

Migration

In Nepal the trend of leaving for India in search for a better life and in search for work to feed the children and to maintain a family back home is a very old cause of migration. The first waves of migration started right after the Treaty of Sugauli in 1816, mainly with hill ethnic groups. Although trafficking and migration are two different activities and processes, trafficking is quite often a direct result of migration. “When women migrate from one place to another for better job opportunities, they may become vulnerable to abuse and trafficking that can take place within the migratory process. Within and across borders, trafficking is one of the most lucrative and profitable businesses, in which girls and women are taken from villages to cities, and from poorer countries to richer countries. There are no completely reliable data or figures because
accurate quantitative research is very difficult to conduct, but from the available qualitative research, it is claimed that children are increasingly being trapped in this trade.” This statement is also supported by the fact that “92 per cent porters, 87 per cent tempo helpers, 95 per cent child domestic servants, 93 per cent shoe shiners, and 97 per cent carpet weavers are reported to be child migrants in Kathmandu valley.” This data are especially serious considering the fact that about 1.9 million children in Nepal (from six to 14 years) are economically active, thus representing the highest rate in the South Asian Region. The same document says that at least 127,000 children aged 5-18 years involved in child labour, out of them 80 percent are migrants.

Migration to other destinations, from the village to urban centres, from the rural areas to other countries is on the rise. “This increase in migration is viewed to be associated with increased risk for trafficking. Thus, trafficking is viewed as an offshoot of the need for out-migration of people in Nepal.” WOREC found out “that when villagers, particularly young girls and women, migrate with no information or with misinformation, there exists a high chance that they will fall victims to trafficking.”

**Armed conflict**

The armed conflict between the Maoists and the state of Nepal is another cause of forced migration from the hill villages to the urban centres in Nepal and beyond. “The possibility of youths being engaged in traditional agriculture is largely diminished due to insurgency resulted crisis, the threat of coming into cross fire, suspicion of fighting groups and resulting actions and compulsion to inform the government of rebels in the one hand and to join the rebellion armed forces on the other being the major causes.”

There is growing evidence “that in response to the insurgency, children have been forced to flee to neighbouring India, as migrant workers and others have been ‘internally displaced’ within Nepal – usually with other members of the family. These children are in need of special attention. At a crucial and vulnerable time in their lives, these children are brutally uprooted and exposed to danger and insecurity. Such children are at the state of vulnerability of trafficking and child labour. While refugees benefit from the specific attention of a number of international organisations, those who are displaced internally receive less protection even though they tend to be at greater risk.” A recent research paper estimates the number of IDPs in Nepal “somewhere between 100,000 and 150,000.” But a survey conducted by Save the Children UK found out that “despite alarming press articles on ‘war orphans’ and children victims of the conflict, there is not an overwhelming number of separated children as a result of the conflict.”

**Psychosocial situation, discrimination and violence**

The dominating effect of a patriarchal social structure on women in Nepal cannot be underestimated. Women are seen as inferior citizens, and subordinate to their husbands, fathers and sons. “Boldness in decision making, strength of expression, opinion formation, participation in public forums and assertion of needs and interests are discouraged during the socialisation process of girl children.” Females in Nepal are discriminated due a deep-rooted social culture since very early childhood and discrimination is institutionalised in every aspect of life. They live their daily lives confined to the family environment, but surely do not move beyond the village, and are very restricted due to the prevailing gender roles. Disempowerment and discrimination at all levels is prevailing especially in education, work opportunities, marriage arrangements and socialisation. “Although a daughter is a ‘member’ of her natal lineage
to the extent that this linkage is important in determining whom she can marry, she can never become a full member"\textsuperscript{26} of her own natal family, despite her strong emotional attachment. For the young Nepalese girls it is clear that their stay with their own family is only an interim period. “They [parents] kept my brothers even when they were well grown up, but me – as soon as I was fourteen they began to say that I was grown up and that it wouldn’t do for me to grow older at home.”\textsuperscript{27} Literacy rates in Nepal for women and girls are quite low and investments in a girl’s future are limited. “To a women living in an environment of restricted rights and freedom with few employment opportunities, a trafficker offering a chance for economic independence may be seen as the only opportunity to improve her situation”\textsuperscript{28} Research findings also indicate that there is a very close link between the emotional situation of village girls and mobility: “At times we feel so depressed, that we think if someone comes and persuades us to go to the city with them, we will willingly go along with them.”\textsuperscript{29} Psychosocial studies in many parts of the world also show that victims of abuse often come from dysfunctional or broken family. Nepal is most probably no exception in this regard as some studies already indicate: “Nearly 40 percent of them did not have either one or both parent alive when they were forced into the sex trade.”\textsuperscript{30} “Interviews with victim girls and women reveal that a considerable number come from broken homes, the stepmother or stepfather often being the source of violence. In such conditions, the loss of a sense of self-worth, of trust, of belief in a better personal future away from their current living conditions render these women extremely vulnerable. Such girls and women may be trafficked and engaged in prostitution more easily than other girls and women.”\textsuperscript{31} In addition it is believed that “while girls are being exposed increasingly to modern media, the importance given to sexual purity of women in higher castes does not seem to be declining. With small mistakes on sexual behaviour, they are socially ostracized and left with no alternative but sex work.”\textsuperscript{32}

“Alcohol related physical and mental torture, gender-based beating of wives and daughters or daughter-in-law, dedication to gods or goddess, burning, maiming, murder of wives or daughters-in-law, intimidation, humiliating, verbal abuse, dowry related physical and mental torture, emotional insult and economic deprivation i.e. denial of right to property or opportunity of earning or destruction of property owned by women, family coercion to abide by certain forms of conduct or behaviour, discrimination in treatment, i.e. less health care, inadequate food, excessive workload, restriction on social relations, education and entrepreneurship\textsuperscript{33} by husbands, uncles, brothers, and other household members form all different aspects of domestic violence – with the dire consequences of pushing girls into the sex trade.

“The socialisation process in all communities and ethnicities which emphasizes marriage as the one and only means of livelihood for women, seems to be at the root of large scale sex trade in Nepal. Although the majority of commercial sex workers CWS respondents identified poverty and need for money as the primary cause as to why they were in this business, looking through their stories, what comes out clearly as the underlying factor pushing girls into this activity is the way girls are raised.”\textsuperscript{34}

**Poverty and indebtedness**

According to the World Bank Report\textsuperscript{35} Nepal is, with a per capita income of US$220 per annum, the 12\textsuperscript{th} poorest country in the world and the poorest in South Asia, and in purchasing power parity terms, the country’s per capita income makes it the 30\textsuperscript{th} poorest country. With more than 50% of children under five malnourished, literacy rates of 58%
for men and 23% for women respectively, and an infant mortality rate of 72.36 deaths/1,000 live births (2002 est.) “a staggering 71 percent of the 23 million Nepalis live under the poverty line, which is defined as an annual income less than USD 150.”

The deep and severe poverty levels in Nepal create an environment, in which people “barely scratch out a living in fragile ecosystems; their vulnerability to natural and economic shocks is heightened by the fact that even the most basic infrastructure has so far failed to reach them.” Poverty and unemployment in rural Nepal are important factors that force people to migrate to urban centres in search for jobs and income, “and the villagers described these economic reasons in different ways, including lack of food, lack of employment, and lack of land.” John Frederick points out “it can be safely said that debt obligation plays a significant role in the soft trafficking of children here. What is interesting is that the question of family indebtedness does not form any part of the present trafficking discourse in any of the regional countries.”

This is supported by research findings, which says “more than half (of commercial sex workers) in Nepal and a quarter in India said their families were indebted when they were children.” “In an organized sex market, someone else makes a profit from the exploitation, not by the women themselves. In such an obviously exploitative circumstance, to argue that poverty is the driving force behind trafficking of increasing numbers of girls and women for prostitution is an attempt to explain and thus justify the sex market. It helps the sex traders promote the market for their financial benefit. There are no benefits for girls and women.”

THE MAGNITUDE OF CHILD TRAFFICKING

Due to the clandestine operation required and the crime-related issue of trafficking there are no quantitative data available concerning the magnitude of the problem. But it is even feared that the scale of trafficking and commercial sex work is bigger than it is usually believed. “The study findings estimate that 12,000 children are trafficked every year from Nepal. The local history implies that trafficking has long been associated with poverty, social exclusion, and ignorance, as well as with the practice of slavery and the bonded labour system. Trafficking crosses many caste/ethnic groups of Nepal, but most at risk are members of the hill ethnic group and lower castes. Trafficking of girls seldom takes place before the onset of puberty, about age thirteen; about one quarter of the study sample was trafficked when under the age of 14, and more than half were under 16.”

But a recent paper of ILO says that “most trafficked girls end up in brothels in urban centres across the border in India, where as many as 30,000 Nepalese girls can be found at any given time. Nearly 40 percent are trafficked before the age of 14 years.”

The Nepalese NGO ‘Child Workers in Nepal’ CWIN is reporting that except for the sex trade also thousands of Nepalese children are trafficked to carpet factories in India, to circus agencies, agricultural projects, road construction sites and to forced beggary in the bigger cities like Delhi, Bombay etc. “Trafficking of boys, as evident from the sampled respondents, has been rampant since 1987. Of the total respondents thirty-one percent of them were trafficked in 1999 to 2000. It indicates that trafficking is not only continuing but also increasing at an alarming rate.”
HISTORICAL ASPECTS

The Rana period

“Trafficking in Nepalese girls and women for sexual exploitation began as early as the Rana regime (1846-1951)… The Ranas drew many young girls from the hills surrounding the Kathmandu Valley to their palaces as servants and objects of sexual exploitation… After the overthrow of the Rana regime, the Rana class could no longer support hundreds of women servants… With the downfall of the Rana, the market for hill girls decreased in Kathmandu. The traders involved in supplying young girls to Rana palaces subsequently established connections with brothels in Indian cities. Indian brothels have a high demand for Nepalese girls for many reasons. Firstly, there have long been many Nepalese workers in India, providing a source of ‘buyers of sex’. Secondly, the fairer complexion of the Nepalese girls is attractive to most Indian native ‘buyers’. Thirdly, importing Nepalese girls has been safer than selling local Indian girls into prostitution. Ignorance of local customs, procedures and languages make Nepalese girls less likely to complain to the police. Trafficking in Nepalese girls and women to the Indian brothels became fully established in the 1960s, and increased tremendously in the 1980s. By the 1970s, criminal links between Indian sex traders and the Nepalese pimps were well established.”

The carpet industry

The carpet industry developed with the first arrival of Tibetan refugees in the 50s, strongly supported by the International Red Cross and the Swiss Government in 1960 with the establishment of the “Jawalakhel Handicraft Centre” in Kathmandu. The carpet industry flourished soon with an estimated profit of 126 million USD only in 1992 and became surely one of the biggest success stories regarding economic development in Nepal. But there is also another side of the coin: The carpet industry was notorious for using child labour and is most probably one of the main reasons how trafficking networks became established. “Generally, every carpet factory has an intimate link with the labour contractor, or naike, who will roam around the mountain and terrai [lowland] villages and motivate the people to go to Kathmandu to work in the carpet factories in the city. They bring the people in flocks, thus receiving a fat commission from the factory owners.” Due to their nimble fingers, which can tie very small knots, there was right from the beginning a strong preference to employ children. “But it is also true that the employers prefer children because they are easily available, naive, willing, and easy to control and exploit.” In its study (1993) CWIN also found out “that the number of children currently working in the carpet industry in Nepal is more than 150,000,” with an age group between 5-16 years - 38% of children were girls. “In 1995, the Nepal office of the Asian-American Free Labour Institute (AAFLI) conducted a comprehensive landmark survey of child workers in 819 of 1,300 Nepal carpet factories, then registered with the government of Nepal. A total of 2,891 children were found, of whom 1,852 were male and 1,039 female, with the majority (30%) hailing from Sindhupalchowk [it is interesting to note that this district is nowadays the most severely affected in terms of child trafficking in Nepal] and Makwanpur districts alone. Of the total, 1,822 had no formal education and were illiterate, while the remaining 1,069 had some formal education, but had discontinued their studies to work full-time. The children of 12 and 13 years of age comprised 81% of the total, which meant that the majority of child workers were only a year or two shy of the legal working age, 14. In general, the plight of the children working in carpet factories was heart-rending to say...
the least. Hailing from poor, salt of the earth, illiterate families, they had to work in congested, dusty places with poor lighting system and poor ventilation. Not only that, they also faced problems of low payment, long working hours, substandard shelter, job insecurity, exploitation by adults, deprivation of education and medical facilities. “Labour brokers, moneylenders, factory owners and managers took away much of the girls already low wages in various ways. The problem of girl workers were not limited to exploitation within the carpet factories. They were also vulnerable to be used for prostitution because of the relationship between the unregulated carpet business and sex trafficking, the availability of often unsupervised girls in unpleasant low paying carpet jobs provided an opportunity to Indian brothels. The exploitative conditions in carpet factories were supportive for traffickers to prey on girl carpet workers by promising them better jobs in India which in fact turned out to be forced prostitution.” The strong link between the carpet factories and child trafficking is also given by the fact, that “there are [in 1993] more than 25,000 children working in carpet factories in different parts of India, particularly in Bhadohi and Mirjapur of Benaras district. Most of these children have been trafficked by the naikes [labour contractor] from the carpet factories in Kathmandu and some of them have migrated with their families and relatives in search of work.”

Religious prostitution

If religious prostitution in Nepal, particularly in the western parts of the country, known as badini and jhuma, is also contributing to century old child exploitation is not yet assessed. Although little is known about these practices, they may vary from devadasi cults in India.

“Devadasi” cults are found in Southern India and also practised in other parts of the country such as Uttar Pradesh and Orissa. They derive customary sanction from oppressive upper-caste temple traditions. Pre-pubertal girls, aged between five and nine years, from poor, low-caste homes, are dedicated by an initiation rite to the deity in the local temple during full moon. After a girl is married to the deity by the tali rite, she is branded with a hot iron on both shoulders and her breast. She is then employed by the temple priest. Sometimes, even before menarche, she is auctioned for her virginity; the deflowering ceremony known as udilumbuvadu becomes the privilege of the highest bidder. The market value of a girl falls after she attains puberty, when she is said to have no recourse other than prostitution. Yellama is represented as the principal goddess who is worshipped but, as recent research has shown, the practice of devadasi is prevalent in many other temple towns and other deities such as Meenakshi, Jaganath and Hanuman are also propitiated. Religious prostitution is known by different names such as venkatasani, jogini, nailis, muralis and theradiyan.”

TWO MODELS OF TRAFFICKING

“Two models can explain the complex processes of trafficking: ‘hard trafficking’ and ‘soft trafficking.’ In the former model, trafficking takes place due to coercion, fraud, abduction and deception, largely from working places of children in the worst forms of child labour. In the later model, children, girls in particular, are seen as commodity that can be bought and sold. ‘Soft trafficking’ seems to take place with the consent or complicity of parents from some remote and poor localities.” But it is also clear that daughters or women have almost no control over decisions affecting them. Reports
indicate that very often parent are forced to send their daughters to work somewhere else in order to make her help to repay family debts: “If our parents/husbands ask us to go and work somewhere, we will definitely agree to it even if we do not like the job or place (participant in a FGD of adolescent girls)”55 A situational analysis of the Nepalese NGO WOREC documents that “eighty-three percent of respondents said that the trafficking girls were betrayed or deceived into leaving their villages, while about one-tenth (9%) said that the girls left their villages of their own will. Respondents also pointed out that often family members and relatives are involved in persuading or convincing girls to leave.”56 These circumstances demonstrate the involuntary ways how girls and women are becoming a commodity of organized or loosely organised criminal traffickers. Trafficking networks perform three types of actions: They recruit women and children in Nepal and traffic women and children to India for exploiting them in brothels. Different people perform each of these actions based on division of labour that guarantees the smooth running of the operation. “The promise of a good job is the most commonly practiced form of deception used to entice girls and women across the border of Nepal. The traffickers have established good linkages between Indian cities and Nepal. There are many examples indicating the emergence of a strongly organized network of local suppliers, pimps and brothel owners. There are plenty of stories supporting the organized network behind trafficking.”57 Criminal networks in Nepal do not seem to function like the mafia in Sicily with a powerful ‘godfather’ on top. It seems that trafficking networks are small, informal and highly decentralized. “The big shots, cops and politicians may get a piece of the brothel profits after the girls are installed, but large networks probably account for only a small percentage of trafficked women and children.”58

THE VICTIM

Trafficking of women and children are different issues. But women are not children. Women need to be empowered and children need to be protected. “Still, many initiatives focus on the fight against trafficking in women and children at the same time, as both are considered to be most vulnerable to becoming victims of trafficking. Such equalisation of the situation of women and children has, however, provoked reactions against an uncritical generalisation of the trafficking of children and adults. It not only disregards the special situation, needs and developments relevant for minors, but is also reductionism towards women when they are treated like children.”59

After more than a decade of seminars, research, reports etc there is still no clear picture about trafficking and the victims of traffic. There is limited information about where the girls have originated, there are no quantitative reliable data about the numbers of victims, neither where they go nor who is in fact responsible. “The average age of the thousands of Nepali girls recruited every year for prostitution in brothels in India has reportedly dropped in the past decade from fourteen to sixteen years in the 1980s, to ten to fourteen in 1991, despite new laws promulgated in both countries in 1986 designed to stem trafficking and child prostitution. Police in areas with a high incidence of trafficking state that the average age of new trafficking victims is about thirteen. However, trafficking victims are frequently coached by captors to conceal their true ages. Girls forced into prostitution in Bombay’s brothels may remain in the brothel system for more than ten years, during which time they may be sold from one brothel to another many times.”60 “At the point of destination, bonded labour relations were said
to exist, and girls reported that they were severely tortured, mentally as well as physically.”

“It was found that many trafficked girls who have returned home have died or have been affected by HIV/AIDS.” “Obscure beliefs like ‘sex with virgin’ will cure STDs and sexual dysfunctions etc increase the vulnerability of children, especially the girl child. Children are trafficked for sexual exploitation because of the belief that they have lesser chances of being HIV/AIDS carriers. Studies point out that the age of the girls being trafficked to India is declining and the demand for virgin girls is increasing, since clients seem to believe that children have fewer chances to contract this disease.

The victims are sold as merchandise for around 60,000 rupees. A brothel owner can earn up to two million rupees from one girl within a period of five to six years. A girl’s working period is generally up to six years, those girls wanting to stay can still use the brothel as long as they pay fifty percent of their earnings to the brothel ‘madam’. According to a brothel owner, clients are less attracted to girls who were five or six years servicing clients. “The girl children interviewed for the ILO-IPEC rapid assessment describe their experiences as ‘hell’. The majority of girls in the study were forced into prostitution within one day of their arrival, and the average duration of stay at a brothel was 24 months. On average, girls were forced to serve 14 clients per day, with a minimum of three and a maximum of forty persons. Three-fifths of the respondents reported that their clients used condoms sometimes, rarely, or not at all, putting the girls at high risk of contracting HIV/AIDS or other sexually transmitted diseases. Those who return home face severe social stigma and exclusion, and many are HIV positive.”

**THE TRAFFICKERS**

Besides family members and people from the communities like friends, school teachers, local politicians, unemployed adults there are the members of the organised crime syndicates like employment agents, corrupt officials, pimps, labour contractors, paedophiles and local criminal gangs. In a recent study an effort was made to understand how girls are trafficked. “Most girls reported that family and community members were involved in the process of trafficking, and only 10.8 percent cited strangers.” “Both the stereotyped broker and middleman, represented by a neighbour, a massage parlor owner, a restaurant owner or a truck/bus driver as well as family members including parents are actively involved in the trafficking process.” “Brothel owners are another group of girl traffickers. These are mostly Nepalese women who migrated to India in search of jobs or who had been trafficked for prostitution themselves. These women, called “GHARWALI”, visit Nepal and smuggle a number of girls from Nepal to India. The parents or guardians of the girls are assured that the GHARWALI will help the girls get good jobs.”

“In one of the districts, community women in focus group discussions reported that these traffickers were often women because few people would suspect or even notice when two females talk with each other as compared to seeing a strange man talking to women or girls of the community: ‘It is women who are trafficking our daughters and sisters. People become suspicious if a man and woman or girl talk in private but they do not suspect a woman or a girl talking to a strange woman even for a long time. Thus it becomes easier for women to lure our girls away.’ (participant in a focus-group-discussion of community women)” But some also hinted that those involved in
trafficking do not necessarily work alone and indicated a collusion between those within the community and those outside of it: ‘We feel there is a gang of traffickers’ (participant in a FGD of adolescent girls). Trafficking is a coordinated activity where both villagers and outsiders are involved. The villagers take the girls from the village to the border and from there on the outsiders take over.’ (Participant in a focus-group-discussion of adolescent girls).”70

Although the study of ‘New ERA’ has been conducted in 1998, the findings concerning the traffickers are still valid: “Local men and women were identified as the main agents for trafficking. Close relatives and returned CWS also play a substantial role. Thus, traffickers, in which the escorts may also be included, as most of the girls are duped with promises of jobs and fake marriages even when going voluntarily, include many more kinds of people than the professional broker per se. It shows that in the villages, if people want to they can prevent most of the trafficking, as they know the traffickers. The problem arises when close relatives and parents sell girls to traffickers, knowingly or unknowingly. This finding contrasts with the general belief on overwhelming involvement of criminals in the sex trade. At grassroots level, it is the people the girl knows and trust who play a crucial role in their trafficking. Professional criminals seem to take over only afterwards.”71

THE CLIENT

If there is no client there would be no sex industry. Interestingly there are no information or studies found that deal with the men as the client and, therefore, criminal who is seeking sexual services by children in the sex industry. Clients have been given remarkably little attention in research work and campaigning policies against trafficking of women and children. Even though the transaction of a sex worker is impossible without two parties, a sex worker and a client, the bulk of social research has focused on the role of the sex worker only – an indication of biased gender preference in research work. “It is undeniable fact that ‘men’ are the main consumers in the sex market. It is thus essentially regulated by male behaviour. Why then is the ‘poverty’ or ‘ignorance’ of girls or women victimized always put in forefront as cause of trafficking? Why is men’s lust for the right to buy sex through the bodies of women and girls not considered as a cause of trafficking? Why is the State’s insensitivity to the problem of women’s exploitation not taken into account when examining the cause behind the problem?”72 If there would be no market, women and children would definitely not be taken into the business. Patriarchal domination of the society allows double standards for sexual behaviour of men and women. The plight of women and children in prostitution is never a matter of concern for the clients.

“If mentioned at all, the client is faceless, even if generally foul. On the one hand, when a girl returns to Kerala or Nepal from Bombay with AIDS, the blame is once again put on her for bringing AIDS home. Those primarily responsible for HIV movement, migrant mobile males, are off the hook. On the other hand, the discourse masks the real identities of the clients – stereotyping them as greasy old men with STD or as ignorant, sex-starved construction workers. Denying the fact that clients are just regular guys, and denying that prostitution is, in part, a male response to arranged marriage and South Asia mores take the men out of the equation – and makes enforcing measures against trafficking, child prostitution and HIV extremely difficult.”73
Although men are visiting brothels and are transmitting infections to wives and other women, they are not condemned but women and girls are ostracized, thus leading again to a double victimisation of women and girls who have been trafficked.

The procedure is that “the broker charges 100 percent extra for a Nepali girl. An additional fifty percent is charged for a fresh Nepali girl. After payment the client can spend half an hour with the girl. If the client wants more than half an hour, he has to pay extra according to prior arrangement with the madam. The charge varies from 150 to 300 Indian rupees for half an hour and 1000 to 2000 rupees for a full night.”

“Finally, we should note that where societies are hierarchically stratified along ethnic, racial or caste lines, and/or are deeply xenophobic, then it is possible for adults from dominant groups to sexually exploit children from inferiorised groups without this interfering with their view of themselves as moral and good. Research shows that historically and cross-culturally, a large percentage of clients seek prostitutes whose racial, ethnic, caste or national identities are different from their own. Thus we find that women and children in prostitution serving local demand are often migrants, and that men’s prostitute-use increases when they are abroad.”

### PATTERN OF MOVEMENT

It seems that Kathmandu has become the transit place for sex traders according to migration patterns in Nepal. With its rapid urbanisation, with its extended transportation network facilities of road and air connections and its linkages to many parts of the world, especially to India, it has become the ideal place to trap the poor and innocent from the villages. “It is speculated that in most cases girls from rural Nepal end in urban areas (dance restaurants, garment and carpet factories, massage parlors) before being trafficked into India. It is also reported that Nepali girls are now being trafficked to the Gulf region and South East Asia (Hongkong, Bangkok and Singapore).”

“Most trafficking incidents take place in cities where rural girls and women have migrated. Although some do travel voluntarily, many are seduced by false promises of legal employment or false marriages: “I first met my husband at my working place and soon got married and went to live in his town. After five days he sent me back to my parent’s place saying that he will come to fetch me the next day. The following day he came with a man and a middle aged woman whom he introduced as his friend and mother, respectively, and told me that we are all going to go to Kathmandu but took me to Bombay instead. They left me in a room saying that they were going to get food but never returned after that. When I asked the people in whose house I was left by my husband, I was informed that my husband had sold me to them and was not coming back.”

The open border between India and Nepal is another factor, which makes trafficking so easy. No passports or visas are required for Nepali citizens to cross the border into India. People from both countries can move freely for work, shopping and business and it is impossible or at least extremely difficult for police or other agencies to check any illegal activities. “Border towns on both sides are bustling markets, catering to residents from both countries seeking jobs and bargains. They also provide a natural market for smuggling and prostitution, serving as a nexus for brokers and agents who take advantage of the crowds of anonymous travellers, the guest lodges, and the easy access to transportation.”
REINTEGRATION

Reintegration is seen as the most difficult effort within anti-trafficking programs and project. Reintegration of girls at the family or community level is in many instances even impossible or even not desirable: Especially in cases where the child came from a broken or dysfunctional family or from a community environment, which has already abused it before.

“High levels of stigma and discrimination were associated with returned trafficked persons. Nearly all (94.0 percent) adolescent girls reported that the community looked upon the returnees with hate.”79 This is also well documented by many stories like that: “How can such a person be kept in the village just because she has returned. If she stays in the same village then the whole place will stink – she should be asked to leave.”80 According to the same study identified returnees experienced similar situations and they mentioned that they have been treated with hatred because they came back from India. “One of them, who was 17 years old, stated that her ‘life was destroyed’ as she was trafficked at the age of 12 years and the society blamed only her for what happened and consequently treated her with contempt.”81

But many girls and women will not return home. Of course, after arriving at ‘working place’ in one of the numerous brothels in India, most of them want to escape, but cannot. “But as time goes by and they spend two or three years inside the brothel, some lose any desire to return at all. When these girls were questioned about why they did not want to go home, they replied that this was their fate and that they were afraid to go back since society would not be willing to accept them.”82

Rescue operations with little regard to the wishes of the victims of trafficking, but aimed at reintegrating victims, overenthusiastically carried out by some NGOs, were sometimes nothing else than the incarceration of the victim from a brothel to a shelter, thus again a human rights violation.

AWARENESS LEVELS

The awareness levels have significantly changed over the past five years, and are meanwhile relatively high thanks to the numerous awareness programmes of NGOs in the past.

A study of the Asia Foundation (December 2001) in three different districts namely Jhapa (Eastern), Parsa (Central) and Palpa (Western) revealed that “nearly three-fourth of the adolescent girls reported that they had heard of trafficking. Most adolescent girls and community members associated trafficking with prostitution and cross-border travel, particularly to India.” 83

Another study of WOREC (2002) revealed “with respect to awareness on trafficking, a great majority of the respondents (63%) reported that they had heard or knew about girls from Nepal being sold in Indian cities, and about one-third (31%) of them knew of trafficking cases that occurred in their villages. Of the respondents who were aware of Nepali girls being trafficked to Indian brothels, 65 percent perceived that when migrants from their village had access to job information prior to migration, there were no incidences of trafficking in their villages. This result indicates that when girls and women out-migrate with little or no prior job information, they may be at higher risk of being trafficked.”84 The same study further says that “eighty-eight percent of respondents said that the trafficked victims come back home sometimes. About 43
percent of them said that they come back by their own, and the remaining 57 percent said that the trafficked girls come back with the help of police, institutions or some other individuals. Eighty-four percent of the total respondents had heard about AIDS through multiple sources.

**MEDIA**

Nepal’s media have been unable so far to undertake ground-breaking investigative journalism on trafficking. It seems to be obvious that the media, like most of the NGOs, are focusing more on the tormented rather than the tormentor. But it is generally agreed that media in Nepal played a very important role in creating some sort of public awareness. “Based on a review of more than 300 newspapers and magazines published within the last two years, some representative pictures of the trafficking situation for women and children emerge. Although the estimates of trafficked girls differ widely, in most reports it is agreed that sexually exploited and abused children suffer from mental problems leading to depression, suicidal tendencies, and substance abuse (The Kathmandu Post, 2000, September 16:3). Perpetrators and sexual predators are often drug abusers themselves, who trade in child sex to fund their habits (The Kathmandu Post, 2000: 2). Other newspaper reports are related to traffickers enjoying political protection and to the nexus between political leaders and criminals. A Kathmandu Post report quotes from the address made by Stuart McNab, United Nations Children's Fund (UNICEF) Representative at a workshop on sexual abuse, "There are teachers, child care workers, health professionals, police officers and politicians who use their prestige and authority to sexually exploit children" (The Kathmandu Post, 2000 December 7:1). A growing number of journalists, believing that seminars and workshops alone will not solve the problem, criticize the government and urge action at the grassroots level (Kantipur Reporter, 2057 Kartik 26: 5)."

**THE CIVIL SOCIETY**

Between 50 and 100 NGOs, INGOS and UN agencies are presently involved in various ways to fight against trafficking. Their major areas of intervention is awareness raising, prevention, rescue and reintegration, advocacy, lobbying, legal and paralegal training. Many of them are involved in income generating projects, education, research, surveillance activities and health, and very few in HIV/AIDS treatment. Activities of NGOs are described such as training, pamphlet distribution, street theatre, launching income generating activities etc. Some NGOs established so-called ‘hot lines’ for immediate help of victims.

Many NGOs are organised in national and district-level networks like the ‘National Network against Girls Trafficking’ NNAGT, or ‘Action against Trafficking in Women’ AATWIN, to mention some. It is interesting to note that INGOS cannot join local networks. It is also worthwhile to note that some of the networks are perceived to be clients of or allied to political parties in Nepal. And it is generally agreed that there is a serious lack of coordination, collaboration and networking. A national campaign network against trafficking does not exist.

Most of the activities against trafficking are purely issue focused, therefore, the impact on the field level is considered to be minimal.
THE GOVERNMENT

The responsibility of preventing and combating trafficking rests on the State of Nepal. However, it seems that the laws, the law enforcement, policies and programs are not adequate or up-to-date to effectively address the issue.

There are several actors involved: The Ministry of Labour and Transport is in charge to protect girls from being victims of trafficking.

The Nepal Police, Police Head Quarter, is mandated to strengthen the Women Police Cell, to organize workshops, to increase awareness against trafficking, to conduct training and to establish a data base system, to mention a few. A ‘Women Cell in the Police Department’ has been established to deal specifically with the crime against women and children.

The Ministry of Women and Social Welfare (MOWSW) is quite a relatively new government institution, founded 1995, with the mandate to develop policies and programs to fight trafficking of children. It also develops action plans, mechanisms and coordinates governmental organisations, UN agencies, INGOs and national NGOs for combating child trafficking, etc. One of its prime tasks is also to strengthen legislation and enforcement procedures.

Under the chairmanship of the Honorable Minister of the Ministry of Women and Social Welfare (MOWSW) a committee (National Coordination Committee) has been constituted to combat the problem of trafficking.

In addition, a ‘National Task Force on Trafficking’ has been established with representatives of the Ministry of Women and Social Welfare, Ministry of Home Affairs, Ministry of Labour and Transport, Ministry of Health, Education and Sports, Law and Justice, representatives from the parliamentary management, National Planning commission, Police Headquarters, NGOs, ILO and UNICEF.

The implementation of district task forces is seen by some experts quite critical. “The Ministry of Women and Social Welfare has begun to organize committees at the district and village levels. The committees in the districts include the Chief District Officer (CDO) and other government employees such as the land reform officer, the education officer, the tax officer, etc. They hold meetings at district level. The meetings are prompted by the allowances they receive, but not by sensitivity to the seriousness of the trafficking problem. These officers frequently get transferred from district to district and, as such, are unaware of the problems of any given district in particular. Taking into account the nature of the problem, the mechanism developed to combat the problem is inconsistent and inefficient.”

But setting up committees is by far not enough as it is pointed out by one leading representative of the Kathmandu School of Law: “It is regrettable that the Government of Nepal has failed to take the problem of trafficking seriously enough. The government recognizes that the problem exists but does almost nothing to prevent more girls and women from being victimized. The government’s lack of seriousness and inaction are visible from the following facts:

No regulations exist to safeguard the rights of thousands of female workers in cities. These workers have no access to any type of governmental support.

There has been little attempt to regulate the Nepal-India border to prevent trafficking of the Nepalese girls.
The Government of Nepal has no plan or policy to encourage or press India to develop strategies to protect the Nepalese girls and women from being trafficked to brothels in India. The government of Nepal has shown no interest to set up a system of ‘extruding the traffickers’ for judicial action.

Nothing is done to prevent the political protection of criminals. Corruption in the major political parties has encouraged and sometimes even benefited from organized crime including trafficking for prostitution.

It seems that the government has done hardly anything but to pay a lip service to the prevention of the trafficking. The government has done no research for identifying the magnitude of the problem of trafficking. Like many people from Nepal and abroad, the government officials view, that, due to poverty, the Nepalese girls and women volunteer to prostitution. Only little interest is shown to curb the organized racket of traffickers.”

THE HUMAN RIGHTS FRAMEWORK

There are several international treaties and agreements within the framework of international human rights laws, which constitute useful legal frameworks for addressing the problem and crime of trafficking:

- International Convention for the Suppression of the Traffic in Women and Children (1921)
- International Convention for the Suppression of the Traffic in Women in Full Age (1933)
- Slavery Convention, (1963)
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practises similar to Slavery, 1963
- Convention on the Suppression of Trafficking and the Exploitation of the Prostitution of Others (1949)
- Convention on the Elimination of Discrimination of Women (CEDAW) 1979
- Convention on the Rights of the Child (CRC) 1989 – Nepal was one of the signatories.
- Convention on the Protection of All Migrants and their Families (1990)
- International Labour Convention No. 182 Concerning The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)
THE LAW IN NEPAL

The Constitution of the Kingdom of Nepal from 1990 (guarantees the right against exploitation, Art. 20), the Human Trafficking (Control) Act from 1986 (for the purpose to combat growing trafficking of women and girls), the Civil Code ‘Muluki Ain’ from 1963 (defined trafficking of humans out of the country as a crime; it also prohibits the separation of minors from their legal guardians without consent), the State Cases Act from 1993 (defines the crime of trafficking in women and girls as an offence against the state of Nepal), Convention for the Suppression of the Traffic Person and of the Exploitation of the Prostitution of Others, the Convention of the Rights of Child, the Convention on the Elimination of all Form of Discrimination against Women, and the SAARC Convention on Prevention and Combating Trafficking in Women and Children, signed 2002 provide the general legal framework for combating child trafficking. On 14th of March 2002 the Parliament passed the Country Code Eleventh Amendment Bill which significantly improves the rights of women including a bill dealing with paedophilia which is now considered as rape.89

“The human Trafficking (Control) Act, 1986, is one of the few statutes which recognizes extra-territorial jurisdiction. The Act extends its jurisdiction over any crime, which it includes beyond the frontiers of Nepal. As such, any crime relating to trafficking taking place in foreign territories is cognisable in the courts of Nepal.”90

Critical Review:

“The Human Trafficking (Control) Act, 1986, suffers from a serious weakness in terms of its definition as it fails to bring within its ambit the act of separating any person from their legal guardian with the intention of selling them into prostitution. Hence no crime is established against someone engaging in separating women or girls from their guardians, but not having taken the victim out of the country. Similarly, the Act has no provision for punishing a person involved in the purchase of women and girls for prostitution.”91

CRIMINAL JUSTICE SYSTEM

The Constitution of Nepal guarantees a fair access to justice irrespective of sex, economic standard, political belief, caste and other differences. “The criminal justice system of Nepal is a largely confession-oriented system. The investigation process does not attempt to ascertain objective and scientific evidence, and thus there is tremendous potential for violations of human rights to occur.”92

“Victims of crimes, especially women, are subjected to extreme vulnerability. Acts of torture in custody are still a problem, and generally occur in order to extract a forced confession from suspects. This practice can lead to two consequences, either; 1. The confession oriented investigation ignores discovery of objective evidence, which increases the likelihood of the prosecution of wrong or innocent persons and affects the credibility of the justice system as a whole, or 2. Offenders may escape the course of justice, as confessions are not always accepted as independent evidence for conviction and courts are obliged to give the benefit of doubt to the accused.”93
LAW ENFORCEMENT
The Ministry of Home Affairs is the direct and immediate line ministry of the police forces in Nepal. The judiciary does not have different courts for civil and criminal cases. The same judges preside over both, while the Attorney General has the constitutional responsibility of prosecution of crimes.

The numbers of traffickers brought to court are extremely low without any improvement over the years. Recently in an article of a daily newspaper it was stated that “only 150 cases were registered in the court last year when the number of women trafficked in a year is more than 5000.”94 It seems nothing has changed since 1994/1995, when “only 150 cases were reportedly investigated by the enforcement agency in the fiscal year of 1994-95. This number has decreased in subsequent years where only 133 cases were investigated in 1995-96 and 107 cases in 1996-1997.”95

VICTIM JUSTICE SYSTEM
Victims are not protected by the laws of the State of Nepal. “The victim of trafficking is an important witness of the prosecution during the trial. However, the State has no means of protecting such witnesses. The victim is often exposed to the danger of being threatened or forced by the accused to change their statement or become indifferent to the case.”96

The existing laws in Nepal clearly state “the victim, his/her relatives or any other person knowing about a crime must report it to the Police immediately.”97 But it is obvious that the ordinary people do not positively respond to this very law, and communities do not cooperate very much in investigation of crimes. “Despite the fact that the Constitution of the Kingdom of Nepal, like all other good constitutions, enshrines social justice system as one of its distinguishing features, it is indifferent to victim justice system. In the constitution, much is said in favour of criminal justice system almost without a word in favour of the victim justice system.”98 Therefore, it is also only consequent that ‘victims’ rehabilitation has not been a concern of the State. For example, fines paid by offenders go to the State’s exchequer rather than victims. Thus, crime is a source of revenue for the State, and the State’s responsibility is confined to declaring a judgement rather than dispensing justice; hence, no further investigation is further carried out if a person prosecuted is not found guilty.”99

There are many factors, which prevent victims, especially girls, to file complaints against traffickers. The majority of victims have no access to lawyers who could represent their interest or concerns. The victims are also left vulnerable to revenge from offenders, since they are not protected by law. They are unwilling to file a case because it takes too much time until the case will be taken up by a court or the procedure is too intimidating.

“In particular, the harassment caused by long, tedious and treacherous cross-examination is something that is most beautifully entertained by the defense counsels, the court clerks, the witnesses of the accused, the press and the public in general. As discovered by the interviews of 12 victims, who had been cross-examined, 3 of them had severely been screwed with the following kind of sexually harassing questions without any objections of the courts and prosecutors:
How many people did you sleep with a day in the brothel?
Answer: Silence

Does your silence mean you have not been in the brothel?
Answer: No. I was.

Then why don’t you answer the question?
Answer: Three/four people a day.

Could you tell us in detail what happened to you the first day, and how many years you spent in the brothel?
Answer: The victim cries out.

“Very few victims come forward to vent their grievances let alone lodge a complaint to the police station. Consequently, few cases end up in the court. Even if they do, very few verdicts go in favour of the victims.”

“A careful study of 51 cases in three districts of Nepal mainly Sindupalchowk, Kathmandu and Nuwakot revealed that only 26 per cent of the accused were prosecuted. Out of 41 per cent cases, it was found that only in 4 per cent cases, the government prosecutors had ordered the police for further investigations. While in 59 per cent cases, adequate evidences were not collected. This is a clear reminder of insensitivity of police and prosecutors on the plight of the victims. Similarly, only 36 per cent of victims reported prompt acceptance of complaints by the police. While 54 per cent complaint of harassment and obstruction by the police while lodging the complaint. The victims also claimed incidents of police setting free the accused in 4 per cent cases after taking bribe. This shows the callous nature on the part of police. Similarly in 41 cases, judges were found to be absent. Interviews with 83 people involved in the prosecution processes such as judges, police and government prosecutors were taken to gauge the effectiveness of criminal justice system in Nepal. Ironically, only 3.61 per cent expressed satisfaction with the present state in the system. While the majority of 54.22 per cent expressed misgivings about the system.”

“Participation of victims during trials is not considered important. There is a belief among judges that the absence of victims during trials makes no difference to judgment. Often, victims know nothing of decisions made by the courts. Obviously, victims are simply forgotten during the trial.

Confidential hearing of cases concerning private matters is so far not a practice in Nepal. Even the most heinous crimes such as rape, which are most deserving of sensitivity, are tried in open court, subjecting victims to terrible sexual harassment. Closed camera courts are never used in the trial of cases where the issue of sexual relations is a matter for decision. In such circumstances, victims are shy to talk about what happened to them, and unfortunately their reticence is used against them. This situation is evidence of gender biases in justice, and denies women access to criminal proceedings. Their situation alone prevents the realization of impartial justice.”

“Under the Nepalese criminal judicial system, a victim can make no access to appeal independently. If the State do not want to proceed the case in appellate level, the victim can do nothing of her own. If the Government intends to withdraw the charges, it can do so without consent of victim. Her disagreement to withdrawal has neither force nor remedy.

In the past, the Nepali Congress [Party] and Communist Party of Nepal (United Marxist-Leninist) governments withdraw 500 criminal cases without notifying the victims. A majority of cases was related to crimes related to trafficking. Indeed, under the present circumstance in Nepal, criminal justice means nothing
for the victims: they are neither compensated for suffering nor are involved in the criminal proceeding as an essential witness.”

In addition there is a series of weaknesses in the criminal justice system, which might also contribute to low or even falling numbers of crimes reported to the police and prosecuted, as stated in CeLRRd’s research paper:

- During investigations there is “the tendency of delegating or shifting the responsibility for investigation over to inexperienced and minor Police personnel, Police personnel are largely insensitive to the human rights of both victims and detainees, the common practice of ignoring victims as important witnesses of the prosecution is widespread, the interests and rights of victims are rarely considered while prosecution is made, courts are unconcerned with the situation of victims, victims lack of representation does not bother judges when dispensing justice, delays in justice are a common phenomenon.”

- “Corruption in the law enforcement bodies as well as in judiciary has resulted in extensive distrust of the police and the criminal justice system. Gender-based discrimination exists at every stage of the criminal proceedings. For example, police do not consider an offence against a woman a crime that poses a serious threat to the security of the society. A common perception among both law enforcement and members of the community is that women who are victimized deserve it because of their own ‘immodest’ dress, or BAINSE (acting seductively). Moreover, failure on the part of the lawyers and courts to scrutinize all available evidence and investigate all relevant documents seriously hinders the attainment of a just result. Consequently, many women see no reason to bother with the humiliating process of reporting an assault, allowing thousands of incidents of rape, violence and trafficking to be committed without redress.”

ILLEGALITY FACTOR OF VICTIMS

Due to their illegal status in the host country victims of trafficking are further criminalized and victimized. The extreme vulnerability of trafficked persons is due to the fact that almost everything regarding their status is illegal, which forces them to live hidden and invisible lives in shadow economies and which is further victimizing them:

- Without valid travel documents their status of living is illegal
- Their age is often below the legally stipulated age of employment
- The conditions of work are illegal
- The brothels in which they reside are illegal
- The ‘business’ environment like pimps, brothel owners, and co-sex workers are illegal

The illegality factor prevents victims of trafficking not only to access their basic human rights, but forces them to avoid any law enforcement on them. In addition it strengthens the ability of their employers or exploiters to further exploit them.

- “She wondered why the Nepali government did nothing to rescue them since there were so many Nepali girls in Mumbai brothels.”
TWO APPROACHES

Presently there are two major schools of thoughts regarding combating child trafficking, namely the crime prevention approach which identifies the whole issue as a problem of law and order and the human rights approach which is focusing on empowering women and enhancing the rights of children.

One school of thought is following the crime prevention approach, calling for better participation of law enforcement, stricter border controls, watchdog committees and community surveillance programs. Its strategies are based on the assumption that the crime prevention approach will alleviate the crime; therefore, rescue and repatriation operations, as well as interception at the Indian border are applied. This bears the danger that with further criminalization of brothels etc the criminals will operate more in underground and as a result the victims will be again more invisible and inaccessible. In addition, community members and money-lenders who make profit from the sale of children are not touched. It also considers women and girls as objects.

The human rights approach is campaigning for more effective and non-discriminatory enforcement of laws, calling for clearer criminal codes, and protection, support and assistance to the victims. It focuses on participation, and promotes self-representation to enable the members of a vulnerable community to identify, claim and realize their interests in self-determination with the aim to eliminate the root causes.

CONCLUSION

For the development of a successful strategy to combat trafficking, it is necessary to have a clearer overview of the processes of trafficking involved. It is evident that the problem has to be confronted at several levels, including the development of programs for children immediately at risk. Particularly important are the lessons learned that could be drawn from past experiences. It can be safely said there is a growing need for concerted actions at national, regional and international level. It is nowadays widely agreed that the complexity of the causes of trafficking, its push and pull factors, requires a comprehensive program of action. In order to achieve positive results an integrated approach must be used to combine prevention of trafficking, prosecution of traffickers and protection of human rights.

The problem of trafficking is not only the problem of the country of origin. The recipient country is equally responsible to the plight of victims, since trafficking is mainly a demand driven phenomenon.

The added value of the Swiss Foundation of Terre des hommes is the presence of various delegation offices in Kabul, Pakistan, Nepal, Bangladesh, Vietnam and Sri Lanka. In addition the partner terre des hommes Germany is not only present in India in various major cities with project offices, but also the driving force behind the Indian based ‘Campaign against Child Trafficking’ CACT.

On international level Terre des hommes could coordinate its efforts to train and promote investigative journalism as a strong advocacy tool. Considering the different causes of trafficking and the different tragedies behind in the different countries of the region, coordinated advocacy could immensely contribute to shed some light on that matter, and also address the problem of complicity of
government and government officials regarding weak implementation of the CRC and weak law enforcement – especially Article 11 of CRC which obliges State Parties to take measures to combat the illicit transfer and non-return of children abroad through the promotion of bilateral and multilateral agreements. Also Article 35 and 39 are subject of a widespread amnesia within different government agencies in the region.

On regional level concerted action could be planned in collaboration with agencies, which are regionally present. Regional campaigns against child trafficking could be implemented and coordinated research activities undertaken in order to get a much clearer picture of migration, trafficking and prostitution which are different issues but treated as the same. E.g. Trafficking must be de-linked from migration and prostitution. Again advocacy would be one of the strongest tools. In addition there is an urgent need to strengthen the horizontal collaboration between different NGOs in the different countries of the region, with the aim to coordinate activities and harmonize different efforts.

On national level Terre des hommes could use its experiences, and its networks programming approach in nutrition projects and disability for children programs to develop a holistic approach in order to address prevention of trafficking, prosecution of traffickers and protection of human rights through participation and empowerment of vulnerable communities. One major intervention strategy could be the development of a rural-based legal education project, which is not issue focused but an empowerment tool in order to enable the communities to claim their political, economical and social interests, and rights against the state (so far as the political framework allows for the necessary freedom). Legal education is about facilitating the involvement of a community or group in the acquisition of knowledge about rights. If each individual and the community as a whole is expected to internalize legal rights and obligations and the benefits of changing their conducts towards others, they must see themselves as part of the process of learning. In this sense legal education is necessary to push forward the process of empowerment of women. Therefore, the status of women is supposed to be improved decisively, and women’s participation in and their benefit of the development process are to be increased.

In addition the collaboration between Nepali and Indian NGOs should be strengthened whereas in the country Terre des hommes must assist in the formation of concerted actions and campaigning against child trafficking as well as promoting horizontal and vertical networking structures.

Appropriate advocacy and prevention tools could be developed like the production of an anti-trafficking film, which could be shown in all cinemas as a leader, before the usual Indian soap operas are displayed. In many small towns of the country the small movie theatres are the windows to the outside world for all adolescents (but for adults too) who are due to their own aspirations and restrictions quite vulnerable to trafficking. Terre des hommes Nepal has a proven experience in film documentary already.

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