

**Prevention of Human Trafficking in Nepal:
Protecting Economic and Social Rights of the Most Vulnerable**

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Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
HDI	Human Development Index
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
OHCHR	Office of the High Commissioner for Human Rights
SAARC	South Asian Association for Regional Cooperation
UNODC	United Nations Office on Drugs and Crime

Introduction

Trafficking of human beings is a growing problem in the international community today. The problem is further growing in the global context today where movement of people – both across and within borders – has increased more than any time due to economic activities, security, and tourism. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) defines human trafficking as follows:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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 exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹

The United Nations Office on Drugs and Crime (UNODC) has documented “the trafficking of human beings from 127 countries to be exploited in 137 countries,”² and the U.S. Department of State has analyzed trafficking situations in 149 countries in its 2006 report.³ Estimated number of the victims varies depending on sources, and the data changes every year as it is the second largest and fastest growing criminal industry today.⁴ The U.S. Department of State indicates “800,000 people are trafficked across national borders, which does not include millions trafficked within their own countries.”⁵ Trafficking is practiced in relation to the massive web of organized crime networks and other illicit activities, generating approximately 9.5 billion annual revenues.⁶ Involving millions of individuals in almost all countries, human trafficking is a transnational crime which requires a comprehensive response from the international community.

¹ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000.

² United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (Vienna, Austria: United Nations Office on Drugs and Crime, 2006), 17.

³ U.S. Department of State, *Trafficking in Persons Report 2006* (Washington, DC: U.S. Department of State, 2006), 27.

⁴ U.S. Department of Health and Human Services, *About Human Trafficking*, Washington, DC: Department of Health and Human Services, 2007, <http://www.acf.hhs.gov/trafficking/about/index.html>

⁵ U.S. Department of State, *Trafficking in Persons Report 2007* (Washington, DC: U.S. Department of State, 2007), 8.

⁶ *Ibid.*, 13.

Human trafficking violates the rights of trafficked persons at multiple levels. Forced to perform labor and sexual acts, victims of human trafficking suffer from violence, economic exploitation, and trauma during the process of control and abuse. Human rights violations often continue even after the victims are being freed, as they are likely to face discrimination from the communities to which they return. In many cases, the rights of the victims are violated by police officers or NGO workers, whose responsibility is to protect trafficked persons, not to abuse them. Thus, although anti-trafficking initiatives necessarily involve various actors, such as government, law enforcement, NGOs and the local communities, it is crucial that the process is human rights-based, thereby requiring that the victims are the focus.

Kevin Bales, a leading expert in the field of human trafficking and modern slavery, claims there is no single, silver bullet to end slavery,⁷ and that a context of trafficking – including causal factors – varies from one country to another. However, in many cases, socio-economic status of individuals strongly determines vulnerability. Nepal is one of the countries where a number of individuals are trafficked internally and internationally to engage in various forms of forced labor. The majority of victims are women and children, who are trafficked to work in brothels in Kathmandu or in major cities of India. As a source country where victims originate, Nepal has a role to prevent trafficking of individuals through protecting economic and social rights of those who are at risk.

Furthermore, as human trafficking demands a multi-sector approach, the part played by NGOs should not be overlooked. Marius Pieterse, in his discussion on the usefulness of rights-discourse in alleviating social and economic hardship, points out the role of grassroots movements: “Litigants, activists, and social movements have an important role to play in ensuring that

⁷ Kevin Bales, “eUpdate Archive - October 2007,” Free the Slaves, <http://www.freetheslaves.net/NETCOMMUNITY/Page.aspx?pid=433&srcid=208>.

conceptually empty socioeconomic rights are awarded content ‘from the bottom up,’ so as to resonate with the experiences and needs of those for whom their effective vindication matters most.”⁸ Given the essential role of NGOs in protecting economic and social rights of individuals, this advocacy report aims at providing relevant information and recommendations to the NGOs through which they can use the international and domestic legal schemes to cause the implementation of anti-trafficking measures. The next section first provides an overview of trafficking issues in Nepal. The section is followed by the introduction of a relevant legal framework, which involves domestic, regional, and international legislation related to the problem. Finally, the report concludes with recommendations directed to local and international NGOs and other institutions, which may pressure the government of Nepal to take action against the severe violation of human rights.

Background: An Overview of Human Trafficking in Nepal

Magnitude of the Problem

Despite the common recognition that trafficking involves a high number of individuals – men, women, and children – in Nepal, estimated number of victims in the country varies from one source to another, and all of them indicate that there is no accurate information, in particular on internal trafficking. ECPAT International, an NGO focusing on the issue of child exploitation, reported, “it is estimated that 5,000-7,000 Nepalese girls are annually trafficked out of Nepal to India, and increasingly, to the Gulf States for prostitution purposes.”⁹ It was further indicated that 200,000 of the prostitutes in India are Nepalese, of which twenty percent are thought to be under sixteen

⁸ Marius Pieterse, “Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited,” *Human Rights Quarterly* 29 (2007): 821.

⁹ ECPAT International, “Nepal,” in *Monitoring the Stockholm Agenda for Action: Online Database* (Bangkok, Thailand: ECPAT International, n.d.).

years old,¹⁰ yet the information is most likely outdated. The U.S. Department of State estimated in 2006 the number of Nepalese women and children trafficked to India to be 12,000 per year.¹¹ The number of internal trafficking victims is unknown as indicated earlier.

As the national border between Nepal and India remains virtually open and unregulated, a number of women and children are trafficked to Indian brothels. Mumbai is one of the major destinations of trafficking victims, due to the city's rapid economic growth and increasing population caused by migration. Brothel business further has a long history in Mumbai, and other major cities in India. "The brothel area of Kamathipura...was first established in Mumbai in the late 17th century to service British troops."¹² The sex industry around the city has lately grown at a rapid rate, especially over the past twenty years, as a result of urbanization and industrialization.

The women and children trafficked to the sex industry are often called *tsukeri*, or a person in debt. The word is used to describe an individual in debt-bondage or in enslavement. In debt-bondage, "labourers are forced to accept exploitative conditions of work until the 'debt' is repaid."¹³ Child Workers in Asia explains bonded labor as a system where "an advance is used as an instrument of coercion to force persons, and often their families and descendants, to work for an employer."¹⁴ Some women and children are sold to traffickers by their family members, and are forced to pay off the "debt" by working in the sex industry. Debts usually increase due to the expense of traveling to the destination cities and the costs of food; without clear contracts indicating how much they owe, bonded women and children are forced to work until their owners throw them out of brothels. A report by an NGO *Terre des hommes* indicated that brothel business utilizing *tsukeris*

¹⁰ ECPAT International, "Nepal."

¹¹ U.S. Department of State, *Trafficking in Persons Report 2006*, 186.

¹² Terre des hommes Foundation, *Summary of Findings: A Study of Trafficked Nepalese Girls and Women in Mumbai and Kolkata, India* (Lausanne, Switzerland: Terre des hommes Foundation, 2005), 13.

¹³ Krishna Upadhyaya, "Bonded Labour in South Asia: India, Nepal and Pakistan," in *The Political Economy of New Slavery*, edited by Christien van den Anker (New York: Palgrave MacMillan, 2004), 118.

¹⁴ Child Workers in Asia Task Force on Child Bonded Labour, *Understanding Bonded Child Labour in Asia: An Introduction to the Nature of the Problem and How to Address It* (Bangkok, Thailand: Child Workers in Asia, 2006), 4.

are more profitable because owners can retain all the fees for women's services. Purchasing a *tsukeri* is an investment – for instance, the cost of a Nepalese *tsukeri* in Mumbai in 2004 was approximately 100,000 to 120,000 Indian rupee (US\$ 2,270 to 2,720)¹⁵ – brothel owners can generate a considerable amount of profit during her two to ten years of enslavement, through selling her virginity, forcing her to perform oral and anal sex, and not giving her any payment.

Although sex trafficking attracts strong attention from the media and anti-trafficking organizations, other forms of abuse involved in human trafficking in Nepal deserve recognition as well. For instance:

[Nepali women] also migrate willingly — though sometimes illegally — to Malaysia, Israel, South Korea, the United States, Saudi Arabia, United Arab Emirates, Qatar, and other Gulf states to work as domestic servants, but some subsequently face conditions of involuntary servitude such as withholding of passports and other restrictions on movement, non-payment of wages, threats, and physical or sexual abuse.¹⁶

Nepali men are trafficked to the Middle East and other countries to engage in various types of forced labor. For instance, twelve Nepali men were brought in 2005 to Iraq to work on U.S. military bases. They were not informed of their destination and the type of work they would perform, and their passports were taken away.¹⁷ Moreover, Nepali children are forced to work in circuses in India, as children are physically more flexible, easy to train, and less likely to rebel against adults with whom they work.¹⁸ A study by the Esther Benjamins Trust revealed that the majority of children working in Indian circuses are from Nepal or are ethnically Nepali.¹⁹ These children face

¹⁵ Terre des hommes, *Summary of Findings*, 29.

¹⁶ U.S. Department of State, *Trafficking in Persons Report 2007*, 155.

¹⁷ Free the Slaves, "Secretary Gates, My Tax Dollars Should Not Fund Human Trafficking in Iraq," WarSlavery.org, <http://www.war-slavery.org/?more=1>. Also Cam Simpson, "Pipeline to Peril: Desperate for Work, Lured into Danger," *Chicago Tribune*, October 9, 2005, Special Reports.

¹⁸ Esther Benjamins Trust, *A Report on the Use and Abuse of Children in Circuses in India* (London, UK: Esther Benjamins Trust, 2003), 11.

¹⁹ *Ibid.*, 9.

exploitative work conditions involving high-risk performance, long working hours, and are paid poorly, if at all.²⁰

These are mere examples of various forms of exploitation suffered by the trafficked persons in Nepal. The issue of human trafficking hence affects different groups in the country. Given the magnitude of the problem, the government of Nepal is required to take necessary actions to properly address the issue, with the cooperation of NGOs and the international community.

A Context of Human Trafficking in Nepal

Multiple factors create a context where individuals become vulnerable, and lack of other economic opportunities is one of them. Nepal is one of the poorest and least developed countries in the world.²¹ Furthermore, “Prospects for foreign trade or investment in other sectors will remain poor, however, because of the small size of the economy, its technological backwardness, its remoteness, its landlocked geographic location, its civil strife, and its susceptibility to natural disaster.”²² Per capita Gross Domestic Product of the country is only \$1,500, and nearly thirty-eight percent of the population lives below poverty line.²³ Nepal also suffers from the high unemployment rate of forty-two percent.²⁴

Due to the extremely low level of income and lack of employment opportunities, women and children in Nepal especially become susceptible to human trafficking. Poverty is a factor that “leads women to respond to the lure of seemingly well-paid jobs in India” and “leads some women to agree to travel to India with the hope of sending money back to their families left behind.”²⁵ This role of poverty and lack of opportunities as a cause for women’s involvement in sex work is

²⁰ Esther Benjamins Trust, *A Report on the Use and Abuse of Children in Circuses in India*, 15.

²¹ U.S. Central Intelligence Agency, “Nepal,” in *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Oxfam GB, *Not for Sale* (Oxford, UK: Oxfam GB, 2007), http://www.oxfam.org.uk/what_we_do/where_we_work/nepal/gender/traffic.htm.

identified by many women working for the sex industry in Kathmandu. In a study conducted by the International Labor Organization (ILO), 83.5 percent of 158 respondents (including twenty-eight girls who are younger than seventeen) indicated that their motivation or intention to migrate to the city – either voluntarily or not – was because they were told they would be able to get a good job. Nineteen percent also indicated that they were inspired by a glamorous, better life in Kathmandu.²⁶ Furthermore, many respondents “would be willing to leave the sex trade if other viable economic opportunities were available.”²⁷ Economic opportunities are less available for women, who have been culturally required to stay home. The situation has started to change recently, as individuals are forced to migrate to safe areas and the number of female-headed households has increased due to the war. However, for many women it is still hard to find a job, mainly due to their lack of education; adult female literacy rate is only 34.9 percent, fifty-six percent of that of males.²⁸

In relation to the statistics on literacy rate above, low values placed on women – and to an extent other marginalized groups – and consequent inequality further contribute to the vulnerability of women to human trafficking. “Girls experience discriminatory treatment from birth, and strict gender roles prevent women from cultivating economic independence and social autonomy. Girls are considered burdens to the family and less valuable than sons, who are expected to care for parents in their old age.”²⁹ Seen as burdens, female children are more likely to be sent to work outside of the households to support their parents. Such a family value pressures women and children to find well-paying jobs, and the promise of good payment in India, used by traffickers, lures the victims to the trap of human trafficking.

²⁶ Bhim R. Suwal and Tulasa Lata Amatya, *Internal Trafficking among Children and Youth Engaged in Prostitution* (Kathmandu, Nepal: International Labour Organization, 2002), 21.

²⁷ *Ibid.*, 39.

²⁸ United Nations Development Programme, *Human Development Report 2006*, 373.

²⁹ Human Rights Watch, *Trapped by Inequality: Bhutanese Refugee Women in Nepal*, (New York: Human Rights Watch, 2003), 27.

Moreover, socio-cultural values deeply rooted in the history of the country work as a reinforcing factor of the practice, making modern-day slavery socially acceptable. In Nepal, the system of debt-bondage is found in various sectors of the economy. “In addition to the poor, bonded labourers come from excluded groups, such as *dalits* or ‘low castes.’”³⁰ One example is the *kamaiya* system, where patron-client relationship between two individuals is established through debt; the system is utilized in various sectors, especially in agriculture.³¹ The *kamaiya* system was outlawed in 2000, yet the system still has strong effects on the Nepalese economy and livelihood of the people. More specifically related to the sexual exploitation of women are the practices in the Badi and Deuki communities. Save the Children Norway explains the wide acceptance of body trade by women in these two customs as follows:

The Badi society is an example of a culturally accepted model – where daughters are brought up with the notion they earn their living by trading their bodies. Another example is the Deuki culture – which marries off a girl child to the temple Gods, expecting her to make a living by visiting houses, performing cultural shows and pleasing the hosts by selling her body. These are manifestations of culturally accepted trade where oftentimes girls are compelled to follow their mothers’ footsteps.³²

Thus, in these cultural communities where the practice of bondage and enslavement has been continued for generations, sales of human beings and forced labor becomes an acceptable way of living. Among the most vulnerable populations are the poor, the low castes, and considerably, women and children.

To worsen the situation, the government of Nepal provides only limited supports to anti-trafficking initiatives within the country. With years of internal conflict and insurgency, as well as the delayed election process, the government surely lacks enough resources and political will to make prevention of human trafficking a priority. In addition, corruption within the country allows

³⁰ Upadhyaya, Krishna, “Bonded Labour in South Asia: India, Nepal and Pakistan,” in *The Political Economy of New Slavery*, edited by Christien van den Anker (New York: Palgrave MacMillan, 2004), 119.

³¹ Upadhyaya, “Bonded Labour in South Asia: India, Nepal and Pakistan,” 125–126.

³² Save the Children Norway, *A Study on Impacts of Armed Conflict Pushing Girls and Women into Sexual Abuse and Sex Trade*, (Kathmandu, Nepal: Save the Children Norway, 2005), 11.

the problem to continue growing. According to the Corruption Perception Index published by Transparency International in 2007, Nepal, with the score of 2.5, ranked at 131 out of 179 countries examined, indicating that the country is highly corrupt. Human Rights Watch reported in 1995 that border police in Nepal were bribed to allow trafficking of girls to India.³³

The lack of governmental support is further seen in the economic disparity between Kathmandu and other areas of the country. Shyam Thapa, who computed the Human Development Index (HDI)³⁴ for each of Nepal's seventy-five districts, claimed that the differences between Kathmandu (the score of 1.0) and other districts were significant. The national average was 0.334, and the lowest was Mugu district, with the score of 0.012.³⁵ Thapa further indicated that there are strong positive correlations between HDI and communication, roads, urbanization, and other important economic and social factors for development.³⁶ From the study, it is clear that skewed development plans and unequal distribution of resources within Nepal cause economic inequality among its people.

As seen above, violation of socio-economic rights – including the right to an adequate standard of living, and right to education, as well as inequality between men and women – are highly prevalent in Nepal. Such violations, as reflected in, *inter alia*, the country's extreme poverty and lack of economic opportunities, unequal income distribution, low social status of women, and the gender gap in literacy rates, makes the people of Nepal, especially women and children, susceptible to human trafficking and forced labor. Protecting these economic and social rights is hence a key to preventing the serious problem. The following section provides a legal framework related to both

³³ Human Rights Watch, *Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels* (Human Rights Watch, 1995), <http://www.hrw.org/reports/1995/India.htm>.

³⁴ HDI is "a new way of measuring development by combining indicators of life expectancy, educational attainment and income into a composite human development index" (United Nations Development Programme, <http://hdr.undp.org/en/statistics/indices/hdi/>).

³⁵ Shyam Thapa, "The Human Development Index: A Portrait of the 75 Districts in Nepal," *Asia-Pacific Population Journal* 10, no. 2 (1995), <http://www.un.org/Depts/escap/pop/journal/v10n2a1.htm>.

³⁶ *Ibid.*

human trafficking and socio-economic rights, exploring relevant domestic, regional, and international legal schemes.

Legal Framework: Preventing Human Trafficking and Protecting Socio-Economic Rights

Domestic Law

There are several domestic laws that directly or indirectly pertain to the issue of human trafficking. **The Interim Constitution** (2007), in its Article 20(3), provides, “No physical, mental or any other form of violence shall be inflicted to any woman, and such an act shall be punishable by law.” Furthermore, in Article 29(3) and (4) states, respectively, that “Traffic in human beings, slavery or serfdom is prohibited,” and that “Forced labour in any form is prohibited.” In addition, the Interim Constitution declares that the State has a responsibility “[t]o adopt a policy of providing economic and social security including lands to economically and socially backward classes including the landless, bonded labourers, tillers and shepherds.”³⁷

The Fundamental Features of the Trafficking of Persons (Control and Punishment) Act (1986) is a law “promulgated primarily in order to combat the growing menace of trafficking in women and girls for prostitution,”³⁸ an issue that became salient in the 1980s. This law is supplemental to the *Muluki Ain* (Code of Law) of 1964, which “prohibits the taking of persons out of the country, by fraud or incitement, for the purpose of selling them, and imposes penalties of 10-20 years.”³⁹ Section 4 of the 1986 Act defines trafficking as follows:

- Selling of human being for any purposes;
- Taking any person to foreign territory with an intention of selling;

³⁷ The Government of Nepal, *The Interim Constitution of Nepal* (2007), Article 33(i).

³⁸ South Asian Law School Forum, *Regional Study for the Harmonization of Anti-Trafficking Legal Framework in India, Bangladesh and Nepal with International Standards* (Kathmandu, Nepal: Kathmandu School of Law, 2007), 56.

³⁹ Eugenia McGill, *Asian Development Bank Regional Technical Assistance No. 5948: Combating Trafficking Of Women And Children In South Asia* (Asian Development Bank, 2002), 37.

- Involving any woman in prostitution by enticement or allurements or fraud, or threat or coercion, or by any other way or means; and
- Abetting or assisting or conspiring and making attempt to carry out any of the above mentioned acts.

The act requires punishment, i.e., five to twenty years of imprisonment and fine (depending on the type of activity conducted by the trafficker), to those who commit the crime.⁴⁰ The Act further applies extraterritorially as per Section 3:

An individual performing a crime deserving punishment according to this act while residing outside the Kingdom of Nepal will be treated as if she or he had performed such crime while residing inside Nepal and action will be taken in accord with this law. No Permission to do act of Women Trafficking: No body is allowed to perform an act of women trafficking.⁴¹

More recently, the **Children's Act** (1992) "contains a number of provisions on child labour, and it has recently been amended to make the Act more abuse-specific, especially in relation to sexual abuse."⁴² Thus, the Act prohibits any form of labor that engages a child in immoral behavior (Section 16), thereby striving to ensure physical, mental and intellectual development of children.⁴³ Similarly, the **Child Labor (Prohibition and Control) Act** (2000) prohibits work performed by children under the age of fourteen. Section 4 of the Act further forbids the engagement of a child as a laborer "against his/her will in a way of persuasion, misrepresentation, false promise or fear of undue influence."⁴⁴

It is questionable how much these domestic laws are being enforced by the Nepali government. According to the 2007 U.S. Department of State Trafficking in Persons Report, "From July 15, 2005 through July 14, 2006, Nepal filed a total of 393 sex trafficking cases at the

⁴⁰ Fundamental Features of the Trafficking of Persons (Control and Punishment) Act, Section 8, 1986.

⁴¹ Ibid., Section 3.

⁴² IPEC Subregional Information System on Child Labour, "National Legislation and Policies Against Child Labour in Nepal," International Labour Organization, <http://www.ilo.org/public/english/region/asro/newdelhi/ipcc/responses/nepal/national.htm>

⁴³ South Asian Law School Forum, *Regional Study for the Harmonization of Anti-Trafficking Legal Framework in India, Bangladesh and Nepal with International Standards*, 58.

⁴⁴ Ibid., 59.

district, appellate and Supreme Court levels. Of these cases, 87 were prosecuted to conviction, 60 persons were acquitted, and 246 cases are pending.”⁴⁵ Explaining the low level of enforcement, the Asian Development Bank points out the limited resources and capacity of the Department of Labor, which is mainly responsible for implementing the laws and conventions related to human trafficking in Nepal.⁴⁶ Furthermore, “it is extremely expensive and burdensome for prosecutors to bring evidence and witnesses to Kathmandu from other parts of the country. As a consequence, it appears that many trafficking cases are being registered under the Code of Law [The *Muluki Ain* of 1964] rather than the 1986 [Trafficking] Act.”⁴⁷ Thus, unfortunately, the establishment of domestic laws has not been translated to effective protection of victims or prosecution of traffickers in Nepal.

South Asian Regional Framework

At the regional level, the South Asian Association for Regional Cooperation (SAARC), composed of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, has attempted to create a legal framework to challenge social and economic issues in the region and enhance cooperation for development. Two of the SAARC’s conventions – both signed at the eleventh SAARC Summit, held January 2002 in Kathmandu – are highly relevant to the issue of human trafficking in Nepal, and further in South Asia:

- **The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution**, which strives “to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children.”⁴⁸ The Convention urges the States Parties to employ

⁴⁵ U.S. Department of State, *Trafficking in Persons Report 2007*, 155.

⁴⁶ Eugenia McGill, *Asian Development Bank Regional Technical Assistance No. 5948*, 38.

⁴⁷ *Ibid.*, 39.

⁴⁸ The South Asian Association for Regional Cooperation, *The SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution*, (Kathmandu, 2002).

measures to prevent and interdict trafficking of women and children, including sensitizing law enforcement agencies and making preventive and development efforts.

- **The Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia**, whose purpose is “to facilitate and help in the development and protection of the full potential of the south Asian child, promote understanding and awareness of the rights, duties and responsibilities of the children and others, and to set up appropriate regional arrangements to assist the member States in fulfilling the rights of the child, taking into account the changing needs of the child.”⁴⁹

The SAARC Convention on Trafficking calls for the establishment of a “Regional Task Force consisting of officials of the Member States to facilitate implementation of this Convention and to undertake periodic reviews.”⁵⁰ In addition, the Convention further encourages Member States to set up bilateral mechanisms to effectively implement the provisions.⁵¹

The two conventions certainly show a greater awareness on human trafficking in the region, thereby increasing the pressure on governments to prevent human trafficking. After Nepal’s ratification, the Convention on Trafficking entered into force in November 2005.⁵² However, the Regional Task Force did not meet until July 2007,⁵³ and no further activity is reported.

International Law

As the issue of human trafficking, by its nature, often involves international criminal networks and transfer of individuals across national borders, various international legal instruments have been adopted by the UN States Parties to address the problem. As one of the first attempts to

⁴⁹ The South Asian Association for Regional Cooperation, *The Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia*, (Kathmandu, 2002).

⁵⁰ The South Asian Association for Regional Cooperation, *The SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution*, Article VIII(3).

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⁵² South Asia Regional Initiative/Equity Support Program, “Archived Features,” SARI/Equity, <http://www.sariq.org/features.asp>.

⁵³ Lyonpo Chenkyab Dorji, SAARC Secretary General, Remarks at the Sixth South Asia Regional Ministerial Conference (January 17–19, 2008), http://www.unifem.org.in/PDF/SG's_statement_%20final.pdf.

combat human trafficking around the world, the **Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others** was adopted in 1949. As the title indicates, this Convention focuses on trafficking of human beings for the purpose of prostitution. Nepal became a State Party to the Convention in December 1995. The Convention was criticized by Radhika Coomaraswamy, the Special Rapporteur on violence against women, in her report to the Commission on Human Rights (CHR) in 2000:

The 1949 Convention has proved ineffective in protecting the rights of trafficked women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the “evils of prostitution”. As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women’s marginalization and vulnerability to human rights violations.⁵⁴

This Convention, like other domestic and international legal instruments, illustrates the difficulty in defining human trafficking, and suggests – wrongly – that trafficking necessarily involves prostitution.

At the very fundamental level, two of the covenants composing the International Bill of Human Rights have significant implications regarding human trafficking. **The International Covenant on Civil and Political Rights** (1966),⁵⁵ in its Article 8, proclaims that no one shall be “held in slavery,” “held in servitude,” or “required to perform forced or compulsory labour.”⁵⁶ The ICCPR established the Human Rights Committee, which is authorized to “receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.”⁵⁷ Furthermore, Nepal became a Party to the first Optional

⁵⁴ Commission on Human Rights, Fifty-Sixth Session, Agenda Item 12 (a) of the Provisional Agenda, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, prepared by Radhika Coomaraswamy in accordance with Commission on Human Rights resolution 1997/44, E/CN.4/2000/68 (2000).

⁵⁵ The Covenant is thereafter referred to as ICCPR.

⁵⁶ The United Nations, *International Covenant on Civil and Political Rights* (1966), Article 8.

⁵⁷ *Ibid.*, Article 41(1).

Protocol to the Covenant, whose Article 1 states, “A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.”⁵⁸ Thus, individuals can report human rights violations described in the ICCPR, on condition that: “(a) The same matter is not being examined under another procedure of international investigation or settlement,” and “(b) The individual has exhausted all available domestic remedies.”⁵⁹

The International Covenant on Economic, Social and Cultural Rights (1966)⁶⁰ similarly relates to the issue of human trafficking, in that the majority of the victims suffer violation of socio-economic rights, thereby increasing their vulnerability. Article 7 of the ICESCR urges the States Parties to “recognize the right of everyone to the enjoyment of just and favourable conditions of work,”⁶¹ which includes fair wages, a decent living condition, and safe and healthy working conditions. Article 11 refers to the standard of living, stating, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”⁶² Article 13 ensures “the right of everyone to education,”⁶³ without any discrimination. Most importantly, Article 3 claims “the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”⁶⁴ These rights are often violated among the Nepali people, as seen in the previous section.

Regarding the obligation of State Parties to protect economic, social, and cultural rights of the people, Article 2(1) states:

⁵⁸ The United Nations, *Optional Protocol to the International Covenant on Civil and Political Rights* (1966), Article 1.

⁵⁹ *Ibid.*, Article 5(2).

⁶⁰ The Covenant is thereafter referred to as ICESCR

⁶¹ The United Nations, *International Covenant on Economic, Social and Cultural Rights* (1966), Article 7.

⁶² *Ibid.*, Article 11.

⁶³ *Ibid.*, Article 13.

⁶⁴ The United Nations, *International Covenant on Economic, Social and Cultural Rights*, Article 3.

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.⁶⁵

According to the General Comments made by the Office of the High Commissioner for Human Rights (OHCHR), the state obligation to “take steps” is one of the most important aspects of this statement. The steps would involve adopting legislative measures addressing the issues and providing “judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.”⁶⁶ Furthermore, the Comments suggest that Articles 3 (the equal rights of men and women), Article 7 (the enjoyment of just and favorable conditions of work), and Article 13 (the right to education) are among the provisions “which would seem to be capable of immediate application by judicial and other organs,”⁶⁷ calling for state actions to protect such rights.

To supervise the implementation of the Covenant, the Committee on Economic, Social and Cultural Rights was established by Economic and Social Council (ECOSOC) resolution 1985/17:

States Parties to the Covenant are required by ECOSOC resolution 1988/4 to submit an initial report on the measures they have adopted and the progress made in achieving the observance of the rights recognized within the Covenant within two years of its entry into force for the State Party concerned and thereafter every five years.⁶⁸

Another scheme that can be used regarding the issue of human trafficking in Nepal is the **Economic and Social Council Resolution 1235 (XLII)** procedure. The Resolution “[a]uthorizes the CHR and the Sub- Commission on Prevention of Discrimination and Protection of Minorities, in conformity with the provisions of paragraph 1 of the CHR resolution 8 (XXIII), to examine

⁶⁵ The United Nations, *International Covenant on Economic, Social and Cultural Rights*, Article 2(1).

⁶⁶ Office of the High Commissioner for Human Rights, *The Nature of States Parties Obligations (Art. 2, par.1)*, CESCR General Comment no. 3, fifth session, 1990.

⁶⁷ Ibid.

⁶⁸ The United Nations Department of Public Information, “Human Rights,” United Nations Documentation: Research Guide, <http://www.un.org/depts/dhl/resguide/spechr.htm#social>.

information relevant to gross violations of human rights and fundamental freedoms,”⁶⁹ and “[d]ecides that the Commission on Human Rights may, in appropriate cases, and after careful consideration of the information thus made available to it...make a thorough study of situations which reveal a consistent pattern of violations of human rights.”⁷⁰ The violation of human rights in a country has to be widespread and have a consistent pattern, in order for this procedure to apply. Furthermore, the UN Department of Economic and Social Affairs explains: “The procedure is public and widely used. This procedure has allowed the establishment of Special Rapporteurs or Representatives to carry out fact-finding missions. Information can be received by any individual, group or state in any form.”⁷¹ Thus, NGOs in Nepal may use this procedure to file information on the issue of human trafficking, as long as the violation of human rights they claim – either the freedom from servitude or other socio-economic rights – is widespread.

In June 2006, the UN Human Rights Council (HRC) was established, and the Council, like its predecessor the CHR was authorized to review and examine the situations involving a consistent pattern of human rights violations.⁷² However, it is not clear if the mechanism is actively used in the Council due to the ongoing revision of its complaint procedure.

Another international instrument relevant to the issue is the **Convention on the Elimination of All Forms of Discrimination against Women** (1979).⁷³ Pursuing equality among men and women, the CEDAW challenges the practices that may contribute to the discrimination against women. Article 5(a) of the Convention does so through urging States Parties to take appropriate measures “[t]o modify the social and cultural patterns of conduct of men and women,

⁶⁹ The United Nations Economic and Social Council, *Economic and Social Council Resolution 1235 (XLII)*, 42 U.N. ESCOR Supp. (No. 1) at 17, *U.N. Doc. E/4393* (1967), Article 2.

⁷⁰ *Ibid.*, Article 3.

⁷¹ The UN Department of Economic and Social Affairs, “9. Other International Mechanisms,” United Nations enable, <http://www.un.org/esa/socdev/enable/comp209.htm>.

⁷² The United Nations General Assembly, Fifty-ninth session, Agenda items 45 and 55, *In Larger Freedom: Towards Development, Security and Human Rights for All, Addendum*, Report of the Secretary General, A/59/2005/Add.1.

⁷³ The Covenant is thereafter referred to as CEDAW.

with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁷⁴ The Convention has further provisions for ensuring equality in different realms such as work. Article 16 calls for the equality of men and women in marriage, a right usually violated in human trafficking cases for forced marriage. Article 6 is dedicated specifically to the issue of trafficking: “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁷⁵

Article 18 requires that each Party submit a report to the Committee on the Elimination of Discrimination against Women: (a) Within one year after the entry into force for the State concerned; and (b) Thereafter at least every four years and further whenever the Committee so requests.⁷⁶

Nepal submitted its initial report in 1998 after the country ratified the Convention in 1991. The report was examined in the Twenty-First Session in 1999. The report provided an overview of legislative measures related to trafficking and prostitution, and further pointed out the magnitude of the problem in the country:

A large number of girls and women, especially from poverty-stricken mountain districts, are being trafficked to Indian brothels every year. It is estimated that more than 100,000 Nepali women have been trafficked to Indian brothels.⁷⁷

Enforcement of the [1986 Fundamental Features of the Trafficking of Persons] act seems to be very weak, as only about 345 cases have been registered [against traffickers under the record of police headquarters] from 1992/93 to 1994/95. Apart from prosecutions filed through this act, the government has no other program for checking the problem.⁷⁸

In the Thirtieth Session in 2004, the Committee again reviewed Nepal’s combined second and third periodic reports. The new report, as compared to the initial one, reported on the progress the

⁷⁴ The United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* (1979), Article 5.

⁷⁵ *Ibid.*, Article 6.

⁷⁶ *Ibid.*, Article 18.

⁷⁷ Committee on the Elimination of Discrimination against Women, the Twenty-First session, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women – Initial Report: Kingdom of Nepal*, CEDAW/C/NPL/1 (1998), 23, ¶ 69.

⁷⁸ *Ibid.*, ¶ 71.

government of Nepal has made in its anti-trafficking initiatives, such as the establishment of a Coordination Committee and Task force against trafficking at the national level, as well as the Nepal Police Headquarter's initiative to create Women's Cells at the district level and to train and mobilize the police in awareness raising and preventing trafficking.⁷⁹ The report further emphasized that Nepal is implementing means to prevent human trafficking through education, poverty reduction, and regional cooperation.⁸⁰

Moreover, the Optional Protocol to the CEDAW “[p]rovides a Communications Procedure which allows either individuals or groups of individuals to submit individual complaints to the Committee [on the Elimination of Discrimination against Women].”⁸¹ All complaints have to be written and cannot be anonymous. Moreover, like other international mechanisms, all domestic remedies need to be exhausted before the Committee considers the complaints. In order for the Committee to receive complaints a State has to be a party to the Optional Protocol. Nepal ratified the Optional Protocol in June 2007.

Regarding trafficking of children, the **Convention on the Rights of the Child (CRC)** and its **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography** contain relevant provisions. Article 34 of the CRC requires States Parties to prevent all forms of child sexual exploitation, including the use of children in prostitution and pornography. Article 35 states, “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.”⁸² The Optional Protocol specially focuses on the sale and sexual exploitation of children, and urges States Parties to

⁷⁹ Committee on the Elimination of Discrimination against Women, the Thirtieth session, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women – Combined Second and Third Periodic Report of States Parties: Nepal*, CEDAW/C/NPL/2-3 (2003), 15, ¶ 31.

⁸⁰ Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women – Combined Second and Third Periodic Report of States Parties: Nepal*, 15–16.

⁸¹ The United Nations, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (1999), Article 2.

⁸² The United Nations, *Convention on the Rights of the Child* (1989), Article 35.

adopt measures to protect the rights of child victims and implement law and other means to prevent such offences mentioned in the protocol. Both the Convention and Optional Protocols are monitored by the Committee on the Rights of the Child, through periodic reports submitted by states. Nepal has ratified both the CRD and the Optional Protocol, and its second periodic report was submitted in 2005. In response, the Committee issued Concluding Observations, in which it stated that “the Committee remains deeply concerned by the perversity of the phenomenon of trafficking and sale of children within Nepal and across the border for the purposes of sexual exploitation and bonded labour.”⁸³ The Concluding Observations further pointed out the inadequacy of anti-trafficking laws in Nepal, and made several recommendations, including development of a comprehensive legal framework to protect children from trafficking and provision of appropriate assistance to child victims.⁸⁴

The most recent international instrument related to the issue is the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children** (2000), which calls upon states to prevent human trafficking, assist the victims, and prosecute traffickers. “It is the first global legally binding instrument with an agreed definition on trafficking in persons.”⁸⁵ The adoption of the Protocol shows growing awareness among the UN member states on the issue of human trafficking. As of January 2008, Nepal has not signed or ratified the Protocol.

Furthermore, the CHR in 2004 decided to appoint a **Special Rapporteur on trafficking in persons, especially women and children** to focus on the human rights aspects of the victims of trafficking. Ms. Sigma Huda of Bangladesh started her three year term after her appointment in 2004, and still continues to work in the capacity. For the purpose of her work, the Special

⁸³ The United Nations Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child, Nepal*, U.N. Doc. CRC/C/15/Add.260 (2005), ¶ 95.

⁸⁴ *Ibid.*, ¶ 95–96.

⁸⁵ The United Nations Office on Drugs and Crime, “The United Nations Convention against Transnational Organized Crime and its Protocols,” The United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>.

Rapporteur uses the “Recommended Principles and Guidelines on Human Rights and Human Trafficking” developed by the OHCHR.

The Special Rapporteur, under the mandate, performs three functions. First, “[t]he Special Rapporteur takes action on violations committed against trafficked persons and on situations in which there has been a failure to protect their human rights, including ensuring adequate redress for the violations suffered and to provide adequate medical, psychological, social and other necessary assistance.”⁸⁶ For this purpose, the Special Rapporteur encourages all relevant actors and individuals to submit information with regard to situations of trafficking and related human rights violations, using the information sheet developed by the Rapporteur. “Subsequently, the Special Rapporteur may decide to raise situations with Governments to request their comments and observations on the matter.”⁸⁷ Second, the Special Rapporteur conducts country visits to examine the situations and formulate recommendations. As of today, she has visited five countries. The next visit to Thailand is scheduled in April or June 2008; Nepal is not on the list of countries where her visits are requested.⁸⁸ Lastly, the Special Rapporteur submits annual reports on the activities of the mandate, and separate reports on her country visits. Her reports were initially submitted to the CHR. After the UN reform in 2006, reports are turned in to the UN HRC.

Recommendations

As seen in the previous section, there are various legal instruments that are applicable to the issue of human trafficking in Nepal. Although domestic laws are in place, enforcing them still

⁸⁶ Office of the United Nations High Commissioner for Human Rights, “Special Rapporteur on Trafficking in Persons, Especially in Women and Children: Individual Complaints,” Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/trafficking/complaints.htm>.

⁸⁷ Office of the United Nations High Commissioner for Human Rights, “Special Rapporteur on Trafficking in Persons, Especially in Women and Children: Individual Complaints.”

⁸⁸ Ibid., “Special Rapporteur on Trafficking in Persons, Especially in Women and Children: Country Visits,” Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/trafficking/visits.htm>.

remains a challenge. However, given the broad legal scheme at the regional and international level, there are ways for NGOs in Nepal to utilize the rule of law to pressure the government to prevent human trafficking in the country through protecting economic and social rights of the vulnerable groups. This Advocacy Report, with its examination of the context of human trafficking in Nepal and relevant laws, makes six recommendations.

Recommendation 1: To petition to the UN Human Rights Council (HRC), under the ECOSOC Resolution 1235 procedure, to pressure the Nepali government to meet its obligations under international law, in particular the ICCPR and ICESCR, as well as CEDAW and “customary international law” as reflected in the UN Declaration of human rights. As the analysis above shows, human trafficking in Nepal is clearly a violation of human rights, identified, e.g., in Article 8 (prohibition of slavery and forced labor) of the ICCPR and Article 7 (the enjoyment of just and favorable conditions of work), Article 11 (the right of everyone to an adequate standard of living) and Article 13 (the right of everyone to education) of the ICESCR. Showing the high number of trafficking victims in the country will be the key to appeal to the HRC.

One challenge, however, is that the government of Nepal claims that “there is a slight decrease in the number of trafficking cases in the country.”⁸⁹ In response, it should be noted that the decrease in cases does not necessarily mean that the number of victims has declined. Instead, it may mean weak enforcement of the legal protections supposedly available in the country, as opposed to the improvement reported to the Committee on the Elimination of Discrimination against Women. Furthermore, by showing the unequal distribution of resources between Kathmandu and other districts, as well as the lack of government support in public sectors –

⁸⁹ Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women – Combined Second and Third Periodic Report of States Parties: Nepal*, 16

including health and education – that will benefit the vulnerable groups, NGOs may illustrate the widespread violation of human rights in the country, required under the 1235 procedure.

Recommendation 2: To petition the Committee on the Elimination of Discrimination against Women, using the Optional Protocol to CEDAW. As Nepal has ratified the Optional Protocol, the Committee shall receive complaints from individuals and groups regarding violation of provisions expressed in CEDAW. Arguably, Nepal has violated Article 5(a), requiring states to take appropriate measures to prohibit cultural norms and patterns that reinforce inequality between men and women. In relation to Article 5, the General Recommendation no. 19, adopted by the Committee, refers to gender-based violence:

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women....⁹⁰

These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.⁹¹

The comment applies to human trafficking cases in Nepal, which is closely related to forced marriage, dowry, family violence, and prostitution. To use this mechanism, NGOs may further claim the violation of Article 6, pointing out the lack of enforcement system within Nepal to protect victims of human trafficking and prosecute traffickers.

Recommendation 3: To file “shadow reports.” NGOs can file a report to the Committee on Economic, Social and Cultural Rights that Nepal is obliged to submit every five years. Through the report, NGOs can point out the violation of socio-economic rights in Nepal, which contributes

⁹⁰ The Committee on the Elimination of Discrimination against Women, “General Recommendations Made by the Committee on the Elimination of Discrimination against Women,” the United Nations Division for the Advancement of Women, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

⁹¹ The Committee on the Elimination of Discrimination against Women, “General Recommendations Made by the Committee on the Elimination of Discrimination against Women.”

to the increased vulnerability of Nepali people to human trafficking. NGOs may further address the points made in Recommendation 1 on unequal distribution of resources.

Similarly, a shadow report can be submitted to the Committee on the Elimination of Discrimination against Women. The report should focus especially on the recent government initiatives against trafficking as introduced by the Nepali government in its combined second and third report to the Committee. NGOs, through their connections with the local people and former victims of trafficking, should evaluate the effectiveness of such measures (e.g., national task force against trafficking) provided by the government. Furthermore, NGOs should explore why the trafficking cases have decreased over the years, and find out if the law enforcement is too weak to establish cases against traffickers under the current national legislation.

Lastly, a report can be submitted to the Committee on the Rights of the Child, with regard to the situation of child trafficking and prostitution in the country. NGOs should determine if the government of Nepal has effectively complied the recommendations made by the Committee in 2005.

Recommendation 4: To submit information to the Special Rapporteur on Trafficking in Persons. Individuals and NGOs can submit information on human trafficking situations in Nepal to the Special Rapporteur, using the information sheet provided in the OHCHR website, to call for her actions and communication with the government of Nepal. The submission should identify the characteristics of the victims, report the information on the alleged violation of human rights, and note steps taken by the victim. Furthermore, NGOs may request the Special Rapporteur to conduct country visit to examine the situations in Nepal and provide recommendations to the government. As of May 2008, Nepal is not on the list of countries to which the visits are requested.⁹²

⁹² Office of the United Nations High Commissioner for Human Rights, “Special Rapporteur on Trafficking in Persons, Especially in Women and Children: Country Visits.”

Recommendation 5: To lobby for Nepal's ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Protocol, as mentioned earlier, is the first attempt of the international community to adopt universal recognition and definition of human trafficking. Although controversy still remains around the appropriateness of the definition, it will be a significant step for the Nepali government to join the global effort to prevent human trafficking. Ratification of the Protocol may lead to a broader, yet more precise, definition of human trafficking at the national level.

Recommendation 6: To pressure the Regional Task Force, established under the SAARC Convention on Trafficking, to meet more regularly and accelerate its process of reviewing national actions against trafficking. The Regional Task Force was established in order to facilitate the implementation of provisions in the SAARC Convention on Trafficking, e.g., via periodic reviews. Furthermore, in the Eleventh SAARC Summit in January 2002, Member States expressed their plan to create a voluntary fund to rehabilitate and reintegrate the victims of human trafficking.⁹³ However, such provisions are still not being implemented, and no progress has been reported since the first meeting of the Task Force in July 2007.

NGOs in Nepal, in collaboration with groups in other countries in South Asia, should pressure SAARC to accelerate the process so that the Convention can be better used to prevent human trafficking in the region and protect the victims.

Conclusion

Human Trafficking in Nepal – and in many other countries – is a difficult case of human rights abuse. Violation of socio-economic rights is hard to claim, especially through the international legal scheme, as it is not clear who the violator is. Seeing lack of resources as a

⁹³ South Asian Association for Regional Cooperation, "Declaration of the Eleventh SAARC Summit," South Asian Association for Regional Cooperation, <http://www.saarc-sec.org/main.php?id=57&t=4>.

hindrance, national governments usually view socio-economic rights as “goals” to which they strive, rather than their obligation. In the emerging process to establish economic and social rights as human rights, thereby claiming poverty, lack of economic opportunities, and social constraints to fulfilling one’s potential, as a violation of rights, NGOs can play a leading role in protecting such rights and pressuring governments to meet their obligations to their people.

The aim of this report is to provide specific recommendations to NGOs in Nepal so that they can utilize the rule of law to prevent, or at least ameliorate, human trafficking in the country. NGOs in Nepal should utilize the international and regional instruments to draw attention on the issue of human trafficking in the country and protect the rights of the most vulnerable populations. In particular, NGOs – including the International Human Rights Advocacy Center at the University of Denver – should take advantage of the specialized bodies such as the Special Rapporteur on Trafficking in Persons as well as the SAARC Regional Task Force. Using such systems not only benefit the NGOs and the victims of human trafficking, but also help strengthen the anti-trafficking regime at national, regional, and international levels.

Given the lack of enforcement of the anti-trafficking laws in Nepal, the “bottom-up” approach, as suggested by Marius Pieterse, is much needed on this issue. Laws are ineffectual unless they are enforced. The NGO community in Nepal thus assumes an important role in filling a gap within the existing national, regional, and international legal schemes to vindicate socio-economic rights of the people and prevent trafficking of human beings in the country.