

~ LITIGATION REPORT ~

GIRL TRAFFICKING IN NEPAL

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The globalization of sexual slavery has created a multibillion-dollar business, riding on the tender bodies of young women...But prostitution is more than a matter of money; it is more than simply work, providing slave work for poor girls and women. It is largely a manifestation and direct product of sexual power relations, relations in which men are dominant and women debased.

(Shrestha, 1997: 147)

Girl trafficking is the selling of young girls into prostitution. According to the United Nations, approximately 4 million women, children, and men are victims of international trafficking each year (UN, 2000). Trafficking occurs under the guise of false employment, marriage "brokers," as well as through the direct selling of children into prostitution by their families. "Trafficking arises in a variety of situations such as commercial sexual exploitation, forced labour, begging, arranged marriages, adoption and crime" (Benninger-Budel and Laurence Lacroix, 1999 p. 185). Although the trafficking of women and children can occur within national borders, international trafficking routes are well established. Border officials either ignore or assist the traffickers while governments remain ineffectual. As a result, the sexual trafficking industry is not only lucrative but also is unlikely to be punished. In Nepal, young girls are sold across the border to brothels in India, where prostitution is legal.

The prevalence of girl trafficking in Nepal is astounding. It is estimated that between 7,000 and 10,000 girls, between the ages of 9-16, are trafficked each year from Nepal to India. More than 200,000 Nepalese girls are involved in the Indian sex trade¹. Efforts to stop girl trafficking have been seriously constrained by both cultural taboos (see page 4 and 5) and the government's reluctance to address girl trafficking. The Nepali

¹ Tim McGirk, "Nepal's Lost Daughters, India's soiled goods," *Nepal/India:News*, 27 January 1997

government has ignored girl trafficking, while local villagers often pretend that it doesn't exist. Due to the clandestine nature of the girl trafficking industry, even international organizations (such as the United Nations, Human Rights Watch and Amnesty International) have had difficulty in knowing the full scope of the trafficking of girls and women.

BRIEF DEMOGRAPHIC INFO ABOUT NEPAL:

Geography:

Nepal is a small central Asian country bordered by China to the north and India to the south, with a population of 22.8 million people.² The country is divided into three geographic regions (the high Himalayan Mountains, the central highlands, and the southern Tarai), which run laterally across the country. The majority of the population lives in the Tarai (44%) and the central highlands (48%), while only 9 percent live in the high Himalaya. Only 20 percent of the total land area is cultivable. In addition, the rate of deforestation in Nepal is serious; by 1988, forests covered only 30 percent of the land area.

Religion and Ethnic Groups:

Nepal is the only official Hindu State in the world³. The majority (89.5%) of Nepalis are Hindu, with the remainder Buddhist (5.3%), Muslim (2.7%), and Christian (less than .8%).

Ethnic groups in Nepal evolve out of the following three groups: Indo-Nepalese, Tibeto-Nepalese, and indigenous Nepalese. The main ethnic groups include the

² UNDP's Human Development Report-2000 (1998 statistic)

following: Newar, Bhote, Rai, Limbu, Sherpa, Gurung, Tamang, Magar, Thakali, and Brahmans. Nepali is the national language, though there are at least twelve other languages used within Nepal.

Economy:

Most of Nepal's economy is based upon farming—industries are limited both by geography and by limited development. Yet, the tourist industry has been hugely successful since the 1990s, accounting for the majority of the foreign exchange.

A brief history:

The kingdom of Nepal has existed for the last 1,500 years. The rule of the Ranas, an aristocratic system of prime-minister dictatorships, lasted from 1846-1950. During this time, Nepal was considered to be a parliamentary government. Yet, political parties were not even formed until the mid 1900s.

In 1951, the Rana rule collapsed and the monarchy was restored. King Mahendra Bir Bikram Shah Dev established the *panchayat* system in 1962. The *panchayat* system was not based on any political parties, was centrally controlled, and was considered by the royalty to be democratic. Yet, political parties were banned under the *panchayat* system and a system of absolute monarchy prevailed in reality. The *panchayat* system was incorporated into the 1962 constitution and lasted until the 1980s.

During the 1980s, Nepalis began to protest the *panchayat* system and began to mobilize a pro-democracy movement. The early 1990s were characterized by demonstrations and political unrest. Once the ban on political parties was removed in

³ Library of Congress Country Report – Nepal, 1991

April 1990, the Nepali government was radically restructured. The Rashtriya Panchayat (National Panchayat) and the Council of Ministers were disbanded. In November of 1990, King Birendra approved a new, more democratic constitution, which ended the *panchayat* system of absolute monarchy.

Currently, Nepal is recognized as a constitutional monarchy, whose executive powers lie with the King and the Council of Ministers (the Prime Minister, Deputy Prime Minister, etc). The Council of Ministers are chosen through democratic election process.

Culture:

Hinduism defines the culture of Nepal—social order is determined by caste. The status of certain ethnic groups and women are easily identified as being subordinate through the social interactions of different castes. Despite the Constitution's guarantee of equality between men and women, women have a low position within Nepali society.

Although women in Nepal have a subordinate position within society, certain ethnic groups are much more egalitarian. For example, Tibetan women do not follow the caste system and thus do not face the same constraints as Hindu women.

Women's role in society:

The status of Nepali women depends upon the social and economic positions of the men in their household—fathers and husbands. The majority of Nepali women live according to traditional roles. Thus, they are expected to do all the household chores, fetch water, do farm work, and raise the children. Although women work much longer than men do, their economic contributions go largely unnoticed. Employed women receive wages that are twenty-five percent less than that of men.

The lack of economic alternatives for girls and ingrained cultural beliefs regarding gender roles makes young girls particularly vulnerable to trafficking. Whereas men often leave the rural areas for the city in search of better job opportunities, young girls do not have that same opportunity. According to cultural mores, young unmarried girls would not consider traveling alone to find work. Furthermore, since there is a cultural preference for boy children, girls are considered an additional economic burden, as parents must provide a dowry. Also, girls have limited access to education and health care and are more susceptible to malnutrition, poverty, and illiteracy (Benninger-Budel, Carin and Laurence Lacroix, Anne).

Violations of Women’s Human Rights--How Trafficking happens:

The trafficking of young girls and women is linked to their low cultural status. Since they have limited economic opportunities, girls are especially vulnerable to being trafficked unknowingly and unwillingly. The two types of trafficking, “soft” and “hard,” commonly occur in rural villages in the southern Tarai region of Nepal. “Soft” trafficking is when a young girl goes to India under the pretense of finding employment or arranging a marriage. “Hard” trafficking is when a girl’s parents knowingly sell their daughter to a trafficker, garnering a price anywhere from US\$200 to \$600.

The most common areas used by traffickers are in the districts of Sindhupalchow, Makwanpur, Dhading and Khavre (Wadhwa, 1998). Girl trafficking is especially prevalent in the border villages of Ramnechap and Nawalparasi (Maiti Nepal). Both villages are located in the central hill district of Sindhupalchow, where the villagers are dependent upon subsistence agriculture. Yet agriculture is rarely profitable. Village

markets are far from the urban markets, the tillable land is owned by high caste families, and there are few crops at the beginning and end of the growing seasons.

Due to the illegality of prostitution in Nepal, traffickers bring Nepali girls across the border into India, where prostitution is legal. Border officials either ignore the traffickers or are bribed to help them avoid punishment. Once the girls are placed in a brothel, the traffickers charge the girls for their room, board, and all other living expenses. As a result, the girls live in a cycle of perpetual debt, unable to free themselves from servitude.

Escape is virtually impossible without repaying the 'debt,' since leaving the brothel puts the woman at risk of punishment by the brothel owner, his employees or the police, retribution against her parents and other relatives for defaulting on her debt, and/or arrest as an illegal immigrant.

(Human Rights Watch-99)

Girls in the Indian brothels are continually abused (psychologically, sexually, and physically) and live in constant fear of arrests and imprisonment. Yet, Nepali girls and women are more likely to be arrested than rescued by the police.

Women are brought into a country illegally so their employment, as well as the particular nature of their employment, is illegal. The ambiguous legal status of victims is one of the traffickers' most powerful protections against prosecution.

(Gender Matters Quarterly, p. 2)

In addition to arrests, girls are likely to become infected with HIV while working in the brothels. In a 1996 police raid on a Bombay brothel, 70% of the 218 Nepali girls were HIV positive. According to Jill Hannum, author of AIDS in Nepal: Communities

Confronting An Emerging Epidemic, fifty percent of sex workers in the Katmandu valley (Nepal) are under age 21 and 72 percent already had some type of sexually transmitted disease (STD).

Ironically, the fear of AIDS has led to the ongoing search for younger girls, who are thought to be more pure and thus more safe. “Awareness of AIDS among potential customers has driven the sex industry to supply more and more young girls, who can be sold as virgins and therefore AIDS-free” (Rape for Profit, p. 66). As a result, younger girls (ages 8-12) are being forced into trafficking in India. Another reason for the demand for younger girls is prevalent cultural myths. For example, many Indian and Nepali men believe that sleeping with a virgin will cure them of STDs.

Young girls are particularly at risk for HIV/AIDS transmission for two main reasons. First, they are often intimidated by the clients and will not insist on using condom protection. Second, young girls are more physically susceptible to contracting HIV/AIDS.

When HIV infected girls return to Nepal, they are often shunned by their villages. According to Shanti Chaudary, author of “Every Young Girl’s Nightmare,” Nepali girls who have AIDS often end up prostituting themselves in Nepal.

Girls who test positive for AIDS are immediately dismissed and, visibly sick and without money, are either ostracized by their families or unwilling to go home. Some of them stay in India to die, while many of them come home to work in the streets and brothels of Katmandu and other Nepalese cities.

Some Nepali girls do manage to escape the brothels and may return to Nepal when there are police raids on Indian brothels. Sometimes, the girls will be taken in by a women’s

organization in Katmandu or their family will take them back.³ Although there are a few organizations that address girl trafficking and provide “safe houses” for returning girls in Katmandu, none exist in the rural villages.

³ ABC Nepal, Path Foundation, Maiti

PART 2: LEGAL OPTIONS

The constitution:

The Constitution is the fundamental law of Nepal. Part one of the document outlines that Nepal's governmental status (as a constitutional monarchy with a parliamentary system of government) while part three of the Constitution relates to the fundamental rights of all citizens of Nepal. These rights include right to equality, right to freedom, right to property, and right to religion. The Right against Exploitation (article 20) specifically prohibits any trafficking in persons: "Traffic in human beings, slavery, serfdom or forced labor in any form is prohibited. Any contravention of this provision shall be punishable by law."

Judiciary:

The judiciary in Nepal is based upon the Mulaki Ain code, which is a combination of Hindu traditions and English common law. The court system is composed of the Supreme Court, appellate courts, and district courts. With the exception of military courts, the Supreme Court has the highest jurisdiction.

A new judicial system was established with the 1990 constitution. Since 1990, the courts have had more autonomy due to the gradual expansion of basic judicial principles (i.e. independence of the Judiciary). Yet, the inefficiency of Nepal's judicial system has been an ongoing problem. "The independence and integrity of the judiciary were repeatedly questioned in the press; intervention of political figures and government

officials in the judicial process was a frequent occurrence; and caste and economic status were important determinants of the availability of justice.⁴

Domestic laws:

There are three domestic laws in place that address girl trafficking and forced child labor. These include the Labor Act of 1992, the Human Trafficking Control Act of Nepal (1986), and the National Human Rights Commission Act.

The 1992 Labor Act prohibits the employment of minors, who are considered to be less than 14 years old. Children's groups, such as Child Workers in Nepal (CWIN), estimate that approximately 50% of Nepal's children (under age 12) work, mostly with forced/bonded labor. Although there are laws against forced labor in the formal sector, it is difficult for the Department of Labor and domestic courts to enforce these laws.

The Human Trafficking Control Act of Nepal was passed in 1986, which prohibits the trafficking of girls and women. Trafficking is defined as "an act of threat, incitement, and sale of women for the purpose of prostitution." Those found guilty of trafficking face 5-20 years imprisonment.

In 1996, the Parliament created the National Human Rights Commission Act. This commission was established to investigate human rights violations within Nepal. So far, the Commission has not come together to address girl trafficking.

A major problem with Nepal's domestic laws is lack of enforcement. Corruption in the legal system is prevalent. Despite the formal recognition of girl trafficking as a major problem and the existence of laws to curtail it, trafficking continues.

⁴ Library of Congress – 1991 country report - Nepal

Even fundamental rights guaranteed by the constitution like that of equality of all citizens have not even legally been realized after ten years. Corruption and selfishness of the politicians and traditional ways of thinking must be regarded as the main reasons for such shortcomings. The poor state of affairs is reflected by the instability of governments.

(Heinz Krämer, Karl, par 5)

Regional system:

Although there is no formal legal system for Asia, there is the regional system of SAARC. The South Asian Association for Regional Cooperation (SAARC) is made up of the countries of Nepal, India, Pakistan, Bangladesh, Sri Lanka, Bhutan, and the Maldives.

Recently, SAARC has started to draft the first regional treaty on trafficking, known as the South Asian Federation Against the Trafficking of Women. However, as the Federation has not been constituted as a formal SAARC instrument, its legal powers will only be known once it has gone into effect.

The International system:

The lack of enforcement of Nepal's laws leads us to use the international system. There is only one specific UN instrument that addresses girl trafficking— the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which Nepal has not ratified. Other UN conventions (ICCPR, ICESCR, the Rights of the Child, CEDAW), ECOSOC procedures, and working groups/special rapporteurs are all additional avenues that can be utilized on an international level.

The main difficulty with anti-trafficking legislation is that there is no clear definition of trafficking. The 1994 General Assembly Resolution on the Trafficking in Women and Girls defines trafficking as the:

illicit and clandestine movement of persons across national and international border slavery from developing countries and some countries with economies in transition, with the end goal of forcing women and children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption.

(G.A Resolution 49/166, 23 December 1994)

This definition is incomplete because it overlooks two basic aspects of trafficking. First, men can be trafficking as well as women. Second, sometimes there is no coercion at the time of trafficking. According to the 2000 report from the Special Rapporteur of Violence Against Women, trafficking is defined as the following:

Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including abuse of authority), or debt bondage, for the purposes of; (ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).

(UN report, 2000 p. 4)

The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others is a compilation of four previous international conventions [the International Agreement for the Suppression of the White Slave Trade (1904), the International Convention for the Suppression of the White Slave Trade (1910), The Convention for the Suppression of Traffic in Women and Children (1921), and the International Convention for the Suppression of the Traffic in Women of Full Age

(1933)]. These four previous conventions, as well as the 1949 Convention, are based upon the idea that women are especially vulnerable to trafficking.

The relationship between prostitution and trafficking is the crux of the difficulty with anti-trafficking legislation. Whether prostitution is criminalized, legalized, or regulated influences how individual countries respond to international trafficking conventions. The 1949 Convention is based upon a prohibitionist stance, which tries to abolish prostitution entirely through criminalizing all acts associated with prostitution. "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'" (UN report, p. 11). There is little distinction in the document between women who are trafficked and those who are prostitutes.

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...under the treaty, trafficking is not a distinct, cognizable offense; the treaty equates trafficking with the exploitation of prostitution.

(UN report, 2000, p. 11)

The definition of trafficking is limited to trafficking for prostitution. Trafficking of women for domestic help and marriage brokering is not included. As a result, many women are excluded from the protections of the convention.

The 1949 Convention equates anti-trafficking legislation with anti-prostitution legislation. As a result, countries which oppose trafficking but still have legal prostitution are caught in a double bind with respect to the Convention. Unless they change their laws to make prostitution illegal, they cannot ratify the convention. As a result of the

Convention's definition, only 70 countries have ratified the Convention since the Convention has been in force. The Convention itself is poorly enforced. No independent treaty body has been established to monitor the enforcement of the Convention. Even though prostitution is illegal in Nepal, the government of Nepal has still not adopted the 1949 Convention.

Ratification or accession of UN treaties is the primary way to hold countries accountable for their actions. Ratification requires that the country deposit an instrument of ratification with the Secretary General or another UN government body. Ratification is when a country consents to a treaty prior to the convention going into effect. Accession is when a country agrees to be bound by a convention that has already come to force.

There are four UN conventions that Nepal has ratified which have provisions related to girl trafficking. These are: the Convention on Civil and Political Rights (ICCPR), the Convention on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women (CEDAW).

The Convention on Civil and Political Rights (ICCPR):

Nepal signed the Convention on Civil and Political Rights (ICCPR) on May 14, 1991. The advantages of the ICCPR are that civil/political rights are clearly defined, as well as being strongly enforced by the Human Rights Committee. The practice of girl trafficking is in violation of articles 8 and 24. Article 8 states: "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.... No one shall be required to perform forced or compulsory labour." Article 24 outlines the rights of

children. “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”

First Optional Protocol for the ICCPR:

The optional protocol is the mechanism that allows the Human Rights Committee to review individual complaints. Optional protocols allow individual victims the right to challenge human rights violations by a state party. There are currently three conventions that have optional protocols: the ICCPR (International Covenant on Civil and Political Rights), the ICESCR (International Covenant on Economic, Social and Cultural Rights), and CEDAW (Convention on the Elimination of Discrimination Against Women). The UN is currently in the process of creating an additional Optional Protocol for the Convention on the Rights of the Child. This Optional Protocol (a.k.a. the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) will deal explicitly with the trafficking of children. However, it will not enter into force until three months after ten States have either ratified or acceded to it.

The Optional Protocol to the ICCPR enables individuals to have access to the Human Rights Committee. As a result, isolated incidences of human rights violations, which could easily be overlooked, are addressed. However, the Optional Protocol of the ICCPR is limited to those civil and political rights which are laid out in the treaty. Furthermore, all possible remedies must have been already exhausted for the Human Rights Committee to even consider an individual complaint. Since Nepal has ratified both

the ICCPR and its Optional Protocol, there is the possibility that individual women victims could use this mechanism to confront girl trafficking.

The Convention on Economic, Social, and Cultural Rights (ICESCR):

Nepal ratified the Convention on Economic, Social, and Cultural Rights on May 14, 1991. Article 10 stipulates that States are responsible for protecting children from exploitation. “Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.” Clearly, the girl trafficking industry between Nepal and India is in violation of the ICESCR.

Convention on the Rights of the Child (CRC):

Nepal ratified the Convention on the Rights of the Child on January 26, 1990. The Convention on the Rights of the Child is designed to clarify what is and is not in the “best interests of the child.” The trafficking of girls and women is a violation of articles 11, 32, 34, 35, and 37.

Article 11 asserts that State parties must prevent the illicit transfer and “non-return of children abroad.” Article 32 stipulates: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the

child's health or physical, mental, spiritual, moral or social development.” Trafficking is certainly exploitive and harmful to children’s welfare.

Article 34 maintains that States are responsible for protecting children from sexual exploitation and sexual abuse. Thus, State parties must prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials

Article 35 regards the sale and trafficking of children. According to the Convention on the Rights of the Child, “State 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.” Finally, article 37 states that torture, inhumane, and degrading treatment is a violation of the CRC treaty.

In conclusion, the trafficking of young Nepali girls violates five articles of the CRC: the illicit transfer of children abroad (11), economic exploitation (32), sexual exploitation (34), sale and trafficking of children (35), and the torture, inhumane and degrading treatment (37).

Enforcement of the Convention on the Rights of the Child is based upon reporting mechanisms. State parties which have ratified the Convention on the Rights of the Child must submit periodic reports to the Committee on the Rights of the Child. Nepal has submitted one report since it ratified CRC: one was submitted three years late in 1995, and the second has been due since 1997. Other UN groups that can receive reports related to the CRC treaty include: the Working Group of the Committee on the Rights of the Child, the Commission on Human Rights, and the Sub-Commission on the Prevention of

Discrimination and Protection of Minorities. The only report drafted in response to child prostitution in Nepal was the 1993 report by the Special Rapporteur on the Sale of Children (see E/CN.4/1994/84/Add.1). Although non-state complaints (ex., reports from NGOs) can be used in reports, NGOs cannot file their own petition with the Committee.

The Convention on the Elimination of Discrimination Against Women (CEDAW)

Nepal ratified CEDAW on February 5, 1991. Article 6 is the only article within CEDAW which specifically addresses the trafficking of women. It states: “State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” The enforcement mechanism for CEDAW is the Committee on the Elimination of Discrimination Against Women which monitors the implementation of the Convention by states that have ratified it. Nepal has had three reports due to the Committee (in '92, '96, and '00) but has only submitted one report in 1998. There are no specific reports within the Committee on the Elimination of Discrimination Against Women about the status of women/girl trafficking in Nepal. Although there is an optional protocol with CEDAW, Nepal has not ratified it.

ECOSOC procedures:

There are three mechanisms set up by the Economic and Social Council (ECOSOC) which can be used to address girl trafficking—ECOSOC procedures 1235, 1503 and the Commission on the Status of Women.

The Commission on Human Rights, a subsidiary body of ECOSOC, hears grievances, makes recommendations, drafts international instruments and appoints

rapporteurs regarding human rights. There are two procedures within ECOSOC that allows the Commission on Human Rights to intervene in human rights violations: 1235 (public procedure) and 1503 (confidential procedure). There are two distinct advantages of the 1235 and 1503 procedures over U.N Conventions. The procedures apply to all states and can be used for any human rights situation. However, neither of these procedures can be used unless all domestic remedies have already been exhausted. Furthermore, there must be a consistent pattern of gross human rights violations for the Commission to actively intervene in human rights violations.

The public procedure (1235) uses the UN Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (a.k.a. Commission on Promotion and Protection of Minority Rights) to pursue alleged violations of human rights. The process begins when the Secretary General distributes a confidential document regarding the human rights violations to the Commission of Human Rights. This report is then distributed to member states, which can choose to respond. If member states do respond, the Commission can make further recommendations and send out special rapporteurs to investigate the human rights violations. The 1235 procedure can be an effective method when there is a need to have immediate publicity and continual monitoring of a human rights situation.

The private procedure (1503) is another approach to addressing a continuing pattern of gross human rights violations. Individuals and NGOs can invoke the 1503 procedure and send in reports to the UN. A five member working group of the Sub-Commission of Human Rights reviews and determines which claims will go to the Commission on Human Rights. After a report has been filed with the Commission, the

Secretary General contracts the governments concerned. The government can respond to the charges made and the Commission will keep the situation “under review.” These reports remain confidential unless the Commission reports the situation to ECOSOC. The Commission may appoint a special rapporteur to investigate the specific case. The advantage of the 1503 procedure is that it is not limited to countries which have ratified a treaty; furthermore, there is no restriction on who can submit a complaint. However, use of the 1503 procedure is slow, secretive, and vulnerable to political manipulation.

Both the 1235 and 1503 procedures are based upon the concept of “gross violations” of human rights. “Gross violations” include the following: torture, “disappearances,” extra-legal executions, arbitrary executions, arbitrary imprisonment without trial, etc. Hurst Hannum, author of Guide to International Human Rights Practice, states that “the more widespread the practice, the less may be the need for the violations to be gross” (p. 68). Girl trafficking in Nepal is certainly widespread. Although trafficking is not considered to be a “gross” violation, there is still a consistent pattern of trafficking girls and women across the border to India. Thus, girl trafficking is still sufficiently pervasive to warrant the use of 1235 or 1503.

The Commission on the Status of Women (CSW) is the third mechanism set up by ECOSOC that could be used to address girl trafficking. Established in 1946 by ECOSOC, the Commission on the Status of Women is an intergovernmental commission which reports directly to the Council. There are two confidential complaint procedures that can be utilized within the CSW, 728F (individual complaints) and 1503 (communications about consistent patterns). The main functions of the Commission are to take note of communications received, facilitate discussion, and draft program

proposals. Although awareness and attention to women's issues has grown within the UN, the Women's Commission itself is significantly limited in how it can respond to specific cases of violations of women's human rights. There has been no known case of the Commission taking up a specific case against a particular country.

Thematic procedures/working groups:

The most useful possibility within the United Nations system are the thematic procedures and working groups, established by the UN High Commissioner on Human Rights. Working groups gather information on a particular topic, draft annual reports, and make recommendations for domestic and international action. Working groups and special rapporteurs deal with individual cases of human rights abuse and can receive information from individuals, lawyers, NGOs, and INGOs. Country-specific Special Rapporteurs are appointed through the Commission on Human Rights; they visit specific locales and can appeal directly to the governments of countries where abuses occur. These rapporteurs investigate general situations, typically in one region. There are also additional thematic rapporteurs who research general topics, such as torture, arbitrary detention, internally displaced persons, and religious intolerance. The three thematic procedures that are relevant to girl trafficking are: the Special Rapporteur on the Sale of Children, Child Prostitution and Pornography (1992), the Special Rapporteur on Violence Against Women (1994), and the Working Group on Contemporary Forms of Slavery (1975).

The Special Rapporteur on the Sale of Children, Child Prostitution and Pornography has existed since 1992. In that time, there have been 23 reports and 14 resolutions drafted within the UN that specifically address girl trafficking. These reports

and resolutions were drafted within the Commission of Human Rights, ECOSOC, the General Assembly, and the Sub-Commission on Promotion and Protection of Human Rights, and are based upon the work of the Special Rapporteur.

The Special Rapporteur on Violence Against Women has specifically focused on the trafficking of girls and women. Although there have been more than 12 reports and resolutions drafted about trafficking, there has not yet been a country-specific regional report on the trafficking of Nepali girls/women to India.

The Working Group on Contemporary Forms of Slavery is the third thematic procedure that addresses girl trafficking. The current UN definition of “slavery” is comprehensive.

In addition to traditional slavery and the slave trade, these abuses include the sale of children, child prostitution, child pornography, the exploitation of child labour, the sexual mutilation of female children, the use of children in armed conflicts, debt bondage, the traffic in persons and in the sale of human organs, the exploitation of prostitution, and certain practices under *apartheid* and colonial regimes

(UN Fact Sheet No. 14, Contemporary Forms of Slavery)

The Working Group on Contemporary Forms of Slavery has three main functions: monitoring the application of slavery conventions, studying the situation of contemporary slavery in different regions of the world, and choosing a theme related to slavery for special attention each year. In 1989, the theme was the prevention of the sale of children, child prostitution and child pornography; in 1991, it was the prevention of the traffic of persons and the exploitation and the prostitution of others. Other topics cover “slavery-like” practices, such as forced marriage, the sale of women, and dowry killings.

The Slavery Conventions (1927 Slavery Convention, 1953 Protocol to the Slavery Convention, and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery), are only partially useful for addressing girl trafficking. The only relevant aspects of the slavery conventions are the references to debt bondage and exploitation of child labor. Furthermore, Nepal has only ratified the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

Thematic procedures are the most effective method within the United Nations of addressing and confronting girl trafficking. Despite the limitations of special rapporteurs and working groups (lack of resources, reports being too broad, and possible overlaps), thematic procedures are a fast and effective method for highlighting human rights abuses.

Non-governmental Organizations (NGOs):

The role of NGOs has been significant in confronting girl trafficking. NGOs help us to understand the scope of the problem, have access to specific data, and draft reports which are later relied upon by the United Nations.

One of the most successful initiatives put together by a group of NGOs is the Coalition Against Trafficking in Women (CATW). The Coalition, a group of 140 NGOs, and the International Human Rights Network, recently created a new UN protocol. The *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, is the first international legislation to specifically address trafficking since the 1949 Convention on the Trafficking in Women and Girls. However, this new trafficking protocol is more comprehensive than the 1949 Convention. The definition of

trafficking has been expanded, the issue of consent of the victim is irrelevant, and trafficking is not considered to be separate from prostitution.

Both international NGOs and local Nepali NGOs have continually reported on the prevalence of girl trafficking, the status of women, and the factors that cause trafficking to happen. The United Nations Children's Fund (UNICEF), United Nations Development Fund for Women (UNIFEM), United Nations Educational, Scientific and Cultural Organization (UNESCO), The World Health Organization (WHO), and the International Labor Organization (ILO) have all had a role in exposing and reporting on the trafficking of Nepali women and girls to India. Primary Nepali NGOs include the following: Maiti Nepal, ABC Nepal, Prerana (India), Alliance Against Women Trafficking in Nepal (AATWIN), Children's Network Group, and CWIN - Child Workers in Nepal.

Conclusion:

The trafficking of Nepali girls and women to India happens because of particular conditions. Poverty, coupled with the low status of women, caste hierarchy, and the lack of women's rights all make Nepali girls/women vulnerable to being trafficked.

Trafficking in women flourishes in many less developed countries because the vulnerabilities arising from women's lack of access to resources, poverty and gender discrimination are maintained through the collusion of the market, the State, the community and the family unit.

(UN report, 2000 p. 20)

According to the 2000 report by the Special Rapporteur on Violence Against Women, the common elements found in all trafficking patterns are: "(i) the lack of consent; (ii) the

brokering of human beings; (iii) the transport; and (iv) the exploitative or servile conditions of the work or relationship.”

Girl trafficking can only happen when local, national, and international networks are interconnected. Unfortunately, the collusion and collaboration of politicians, police, and local and government authorities is commonplace, which enables trafficking to function. Furthermore, international conventions have been inconsistent in defining trafficking and are oftentimes not seriously enforced. Nepal is in violation of four major UN conventions: ICCPR, ICESCR, CEDAW, and CRC. Moreover, Nepal has not ratified the 1949 trafficking protocol, the slavery conventions, the Optional Protocol for CEDAW, and the upcoming Optional Protocol for the Rights of the Child.

Domestic remedies are generally preferable to working within the international system. However, Nepal’s domestic laws (the Human Trafficking Control Act and the Constitution) against trafficking are both limited and poorly enforced. Fortunately, Nepal has come a long way in the past 5 years in addressing and confronting girl trafficking. First, the government of Nepal has created a National Task Force Against Trafficking. Made up of HMG (His Majesty’s Government) officials and NGO representatives, this task force has started a dialogue with India about trafficking. The 1997 Nepal-India Cooperation Meeting Against Girl Trafficking and Prevention led to a joint statement between the two governments.

A second development in confronting girl trafficking has been the new legislation and educational initiatives. The Institute for Legal Research and Resource (ILRR) has helped to draft a new bill to control trafficking, which is now in the process of being integrated into Nepal’s legal system. In addition, the ILRR, UNICEF, and a group of law

students and lawyers have set up a grass roots approach to para-legal training for village women in Sindhupalchok, Nuwakot and Makwanpur. These women who receive legal training about their rights then provide education and training to other rural women.

A third action has been to educate both the rural community and the Nepali police about girl trafficking. Nepal's 1998 national plan was set up with the help of the ILO and the Ministry for Women and Social Affairs and specifically addressed the issue of girl trafficking. The government has established a special police unit that is designed to combat trafficking—these units work at the border and are trained to identify traffickers and rescue young girls. Also, the government has worked alongside local NGOs to set up community surveillance systems and community educational programs about trafficking.

Recommendations:

The two most effective ways to confront girl trafficking are the use of the thematic procedures within the UN and the continual use of international pressure. The thematic procedures, particularly the use of special rapporteurs, have led to the increased attention within the United Nations to girl trafficking. Since NGOs have been significant in drawing attention of the UN to the problem of girl trafficking, thematic procedures are clearly the best choice within the UN system. Not only do working groups and special rapporteurs make use of NGO reports, but also NGOs can also regularly submit reports to the rapporteurs and working groups about specific cases.

Continued international pressure is perhaps the best method for influencing the Nepali governments' response to trafficking. Since 1995, there has been an enormous turn-around in the official position of the government to international reports of trafficking. Now, the government is actively working with NGOs and INGOs, as well as

attempting to create bilateral agreements with India. Continued international pressure regarding girl trafficking can only speed up progressive actions that are already in motion (i.e. the ILRR drafting a new domestic bill against trafficking, the creation of a special police regarding trafficking).

Possible Role for the Advocacy Clinic:

There may be a role for the University of Denver's Advocacy Clinic to address girl trafficking in Nepal. This report could be distributed to select NGOs within Nepal which focus on girl trafficking (specifically Maiti Nepal, ABC Nepal, Alliance Against Women Trafficking in Nepal – AATWIN, and Child Workers in Nepal – CWIN). As there is no legal advocacy clinic in place in Nepal, the two legal contacts would be the Institute for Legal Research and Resource (ILRR) and the law school at Tribuvan University.

Bibliography

Benninger-Budel, Carin and Laurence Lacroix, Anne. Violence Against Women: A Report. World Organization Against Torture (OMCT): Geneva: 1999.

Bhooshan, F.S. The Development Experience of Nepal. Concept Publishing Company: New Delhi, 1979.

Blaikie, Piers, Cameron, John and Seddon, David. Nepal in Crisis: Growth and Stagnation at the Periphery. Clarendon Press: Oxford, 1980.

Brock, Rita and Thistlethwaite, Susan. Casting Stones: Prostitution and Liberation in Asia and the United States. Fortress Press: Minneapolis, 1996.

Cleland, John and Benoit, Ferry. Sexual Behavior and AIDS in the Developing World. Taylor and Frances Publishers: London, 1995.

Hughes, Donna M, Sporcis, Laura Joy, Mendelson, Nadine Z. and Chirgwin, Vanessa. Factbook on Global Sexual Exploitation. Coalition Against Trafficking in Women (CATW), 1997.

Human Rights Watch/Asia. Rape for Profit: The Trafficking of Nepali Girls and Women to India's Brothels. Human Rights Watch: New York, 1995.

Matles Savada, Andrea. Library of Congress country report - Nepal. Federal Research Division, Library of Congress, 1991 (<http://lcweb2.loc.gov/frd/cs/nptoc.html>)

McGirk, Tim. "Nepal's Lost Daughters, 'India's soiled goods,'" *Nepal/India: News*, 27 January 1997.

Shrestha, Nanda R. In the Name of Development: A Reflection on Nepal. University Press of America, Inc.: New York, 1997.

USAID. "Women as Chattel: The Emerging Global Market in Trafficking." *Gender Matters Quarterly*, Issue No. 1, February 1999.

United Nations, "Economic and Social Council report: Report of the Special Rapporteur on violence against women, its causes and consequences," Special Rapporteur Radhika Coomaraswamy, "Integration of the Human Rights of Women and the Gender Perspective," 2000. Document: E/CN.4/2000/68, Feb. 29, 2000

United Nations, "Rights of the Child- Sale of children, child prostitution and child pornography," Special Rapporteur Vitit Muntarbhorn, 1993.

Watkins, Joanne C. Spirited Women: Gender, Religion and Cultural Identity in the Nepal Himalayas. Columbia University Press: New York, 1996.

WEB SITES:

Maiti: <http://www.nepalonline.net/maitinepal/>

PACT: <http://www.pactworld.org/Programs/!as-nep.html>

Prerana: <http://www.muohio.edu/~sisonej/Prerana.htm>

CEDPA: <http://www.cedpa.org/>

Foundation Against Trafficking in Women (STV)- The Netherlands

Global Alliance Against Traffic in Women-Bangkok

Global Survival Network- Washington D.C. (www.globalsurvival.net)

Human Rights Watch: www.hrw.org

Child Workers in Asia: http://lox2.loxinfo.co.th/~cwanet/c_v14n2.htm