

## TRAFFICKING: WHEN AWARENESS IS NOT ENOUGH

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### INTRODUCTION

Stealing is a bad thing, and is something that we are all made aware of as children. What if someone is stealing food out of hunger? Does it solve the issue of hunger by making someone aware that stealing is bad? No. Awareness also does not solve the problem of trafficking because it does not solve the core issues behind trafficking: the lack of enforcement of laws, poverty, illiteracy, unemployment, and gender discrimination. This paper will show that by enforcing the laws currently in place, with combined efforts of the Nepalese government and the international community, the Nepal will be further along in combating trafficking. This includes the enforcement of border control between India and Nepal. The lack of border patrol enforcement has resulted in the increase of trafficking between the two countries. Most importantly this paper will show that in order to combat trafficking, the core issues mentioned above need to be resolved. In addition, this paper will show that by helping girls and women become financially stable and able to receive an education, their chances of falling victim to trafficking by the lure of financial gain and a better life will decrease.

The paper will focus on three main areas. The first section will give an overview of the history of trafficking in Nepal, the international and domestic laws against trafficking and the Catholic

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Church's view on trafficking. The second section will discuss the various reasons for why trafficking of girls and women occur. The discussion is based on the Trafficking In Person (Especially On Women and Children) In Nepal 2008-2009, National Report by the Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), the National Human Rights Commission (NHRC), and the Report on Trafficking by Terre des Homes, an international organization that advocates for children's rights. The second section will focus on women and families choosing trafficking for their children as a way to provide financial stability for the family. The desire to become independent from one's community and family is also a reason why some women may choose to go with the trafficker. Lastly, the paper will talk about the efforts currently in place to prevent trafficking and the solutions such as: giving women sufficient funds to start their own businesses or assisting them in furthering their education, and tighter border control efforts between India and Nepal.

## I. THE HISTORY OF TRAFFICKING IN NEPAL

Nepal is a country rich in history and culture. Present day Nepal was created in the second half of the eighteenth century.<sup>1</sup> The history of sex slavery (including trafficking) in Nepal dates back to the Rana regime, which began in 1846 A.D. and lasted for a 104 years.<sup>2</sup> During the Rana rule, the Ranas had an unlimited number of wives and concubines.<sup>3</sup> Many times if the Ranas saw a beautiful girl on the street, they forced the girl to serve them in their palaces.<sup>4</sup>

When the Rana dynasty fell in the 1950s, many of the Ranas escaped to India taking their concubines with them.<sup>5</sup> When the Ranas were no longer able to afford their lavish lifestyles in India, they forced their women to sell themselves outside of their own homes

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1. U.S. Department of State Diplomacy in Action, Bureau of South and Central Asian Affairs: *Background Note: Nepal*, <http://www.state.gov/r/pa/ei/bgn/5283.htm>.

2. NEPAL MONITOR: The National Online Journal on Media and Public Affairs, *Combating Girl-Trafficking and Sex Slavery*, [http://www.nepalmonitor.com/2007/06/combating\\_girltraffi.html](http://www.nepalmonitor.com/2007/06/combating_girltraffi.html). (last visited Mar. 23, 2012); see also, Terre des homes, *CHILD TRAFFICKING IN NEPAL: An Assessment of the Present Situation*, <http://reliefweb.int/sites/reliefweb.int/files/resources/90D747F199783971C1256D48005FAF36-tdh-nep-2jun.pdf>. (last visited Mar. 23, 2012).

3. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

4. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

5. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

(sex for money).<sup>6</sup> Some started to run brothels and to recruit women from their villages in Nepal.<sup>7</sup> This was the start of trafficking of girls and women from Nepal to India.<sup>8</sup> Cultural systems in some communities also helped create the environment for sex slavery to flourish.<sup>9</sup> These communities made “sexual subservience” a way of life.<sup>10</sup> Even today young girls from these communities are forced to serve other groups.<sup>11</sup>

After the fall of the monarchy in 2008, Nepal held an election to create the Constituent Assembly (CA).<sup>12</sup> The primary purpose of the CA is to draft a new constitution for Nepal; furthermore it serves as a parliament.<sup>13</sup> The interim constitution was adopted in 2007 and articulated full commitment to democratic ideals and norms, including fundamental human rights.<sup>14</sup> Seven years earlier the government had created the National Human Rights Commission (NHRC), a government appointed commission with a mandate to investigate human rights violations.<sup>15</sup> However, the government continues to delay the implementation of the commission’s recommendations.<sup>16</sup> Despite some improvements, human trafficking in women remains a serious problem.<sup>17</sup> The United States Department’s 2008 Trafficking in Persons Report indicated that 5,000 to 7,000 girls have been trafficked from rural parts of the country to Kathmandu.<sup>18</sup> The large numbers are indicative of the seriousness of the issue of trafficking in Nepal.

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6. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

7. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

8. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

9. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

10. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

11. Nepal Monitor, *supra* note 2; Terre des homes, *supra* note 2.

12. U.S. Department of State Diplomacy in Action, *Background Note: Nepal*, <http://www.state.gov/r/pa/ei/bgn/5283.htm>. (last visited Apr. 09, 2012).

13. *Id.*

14. *Id.*

15. INTERIM CONSTITUTION OF NEPAL 2063 (2007), available at [http://www.worldstatesmen.org/Nepal\\_Interim\\_Constitution2007.pdf](http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf).

16. *Id.*

17. *Id.*

18. INTERIM CONSTITUTION OF NEPAL (hereinafter “Interim Constitution”); see also Factbook on Global Sexual Exploitation: Nepal, available at <http://www.uri.edu/artsci/wms/hughes/nepal.htm>. (last visited Mar. 22, 2012).

A. *What is Trafficking?*

1. *International Law*

The United Nations has defined trafficking as:

the recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of placing or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described.<sup>19</sup>

According to the United Nations' Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, in order to prevent, suppress, and punish trafficking in persons, countries have to create and implement criminal offences for trafficking.<sup>20</sup> Furthermore, Article 9 of the Protocol calls for State parties to create social and economic initiatives to stop and fight trafficking.<sup>21</sup>

Trafficking for sexual exploitation remains the number one purpose for trafficking.<sup>22</sup> Trafficking is generally categorized into two models: hard trafficking and soft trafficking.<sup>23</sup> In hard trafficking, trafficking occurs because of force, blackmail, deception, and kidnapping.<sup>24</sup> In soft trafficking, girls in particular are seen as a commodity that can be purchased and sold.<sup>25</sup> The latter form of trafficking appears to take place in some instance with the approval

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19. UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, (hereinafter "Preamble"), art. 3 pg. 2, available at <http://www.unhcr.org/refworld/docid/4720706c0.html>. (last visited Mar. 23, 2012).

20. Preamble, at 3.

21. *Id.* at 5-6.

22. World Bank: Social Development Notes, *Human Trafficking: A Brief Overview (hereinafter "World Bank")*, at 6, available at [http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/60127631239905793229/Human\\_Trafficking.pdf](http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/60127631239905793229/Human_Trafficking.pdf).

23. Terre des homes, *supra* note 2, at 12.

24. *Id.*

25. *Id.*

or participation of parents from rural villages.<sup>26</sup> In both models, women have almost no power over the choices made for them.<sup>27</sup>

## 2. *Nepalese Domestic Laws*

The Nepalese government is striving to make progress in the prosecution of trafficking. The 2007 Interim Constitution of Nepal states that “no one shall be trafficked.”<sup>28</sup> Human trafficking has been criminalized several times in Nepal.<sup>29</sup> Most recently in 2007, the 1986 Human Trafficking Act was replaced by the Human Trafficking and Transportation (Control) Act 2007 (HTT ACT).<sup>30</sup> The HTT ACT defines the meaning of human trafficking and criminalizes the act.<sup>31</sup> According to the HTT ACT, the “sale or purchase of persons, enforced prostitution, and participating in prostitution both for internal and cross-border trafficking” are all trafficking offenses.<sup>32</sup> Regulation was enacted in 2008 to expedite execution of the law against these offenses.<sup>33</sup> The HTT ACT includes measures to award the informants and trafficked person who report trafficking offenses as a way to strengthen the investigation and prosecution of trafficking.<sup>34</sup> Penalties are proportional and more severe, and judicial discretion is limited during sentencing.<sup>35</sup> The purpose of the HTT ACT is to protect the rights of the victims and provide them assistance by establishing measures such as privacy and security rights, allowing property of offenders to be seized and sold with the money going to the victims, and bringing criminal charges against anyone committing such an offense against a Nepali citizen.<sup>36</sup>

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26. *Id.*

27. *Id.*

28. Interim Constitution, para. 28. “Rights against exploitation. (3) No one shall be trafficked in nor shall one be held in slavery or in servitude.”

29. National Report 2008-2009, at 90.

30. Nepal Law Commission, *Human Trafficking and Transportation (Control) Act, 2064* (hereinafter “HTT ACT”), at 1, available at <http://www.lawcommission.gov.np/en/documents/prevailing-laws/prevailing-acts/func-startdown/137>.

31. HTT ACT, at 1.

32. *Id.* at 2.

33. National Report 2008-2009, at 90.

34. *Id.* at 9.

35. National Report 2008-2009, at 90.

36. *Id.* at 91; see also HTT ACT, at 1.

Nepal has also adopted several international laws against trafficking. Nepal joined the United Nations in 1955.<sup>37</sup> As of April 2009 Nepal's government has ratified nineteen Human Rights treaties and covenants, four of which are international humanitarian laws.<sup>38</sup> Nepal is also a party to three anti-trafficking conventions: the 1926 Slavery Convention, the 1956 Supplementary Convention on the Abolition of Slavery, and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others.<sup>39</sup> The Nepalese government ratified the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child Optional Protocols in 2002.<sup>40</sup> That same year, the government signed but has not ratified the U.N. Convention against Transnational Organized Crime.<sup>41</sup> Despite being a party to all of these Conventions, Nepal has yet to become a party to the 2000 U.N. TIP Protocol.<sup>42</sup> Nepal is a dualistic system with regard to international law.<sup>43</sup> The "ratification of, accession to, acceptance of or approval of treaties or agreements" is accomplished "by a two-thirds majority of the total number of members of the Legislature-Parliament present in the House."<sup>44</sup> Unless such a procedure has occurred, no treaty or agreement is binding against the Government of Nepal or the State of Nepal.<sup>45</sup> Moreover, Nepal is also a party to the South Asian Association for Regional Cooperation's (SAARC) Trafficking Convention.<sup>46</sup> The Nepalese government has complied with the general principles set forth in the SAARC Convention, especially by recognizing trafficking as a serious crime and making legal and policy commitments to suppress it.<sup>47</sup> Furthermore, the government has complied with the SAARC Convention by adopting

37. U.S. Department of State Diplomacy in Action, *Background Note: Nepal*.

38. National Report on Trafficking 2008-2009, pg. 89.

39. *Id.*

40. *Id.*

41. *Id.*

42. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTIONS AGAINST TRANSNATIONAL ORGANIZED CRIME, Nov. 15, 2000, G.A. res. 55/25, Annex II, 54 U.N. GAOR Supp. U.N. Doc. A/55/383 (2000) *entered in force on 12 December 2002*. [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en)

43. Interim Constitution, at 83.

44. *Id.* at 83-84.

45. Interim Constitution, at 84.

46. National Report on Trafficking, at 7.

47. *Id.*

the National Place of Action against trafficking and sexual exploitation; making the Ministry of Women, Children and Social Welfare a focal Ministry for the creation, implementation and monitoring of anti-trafficking programs.<sup>48</sup> Nonetheless, Nepal lacks in the progress of creating and/or implementing agreements to combat trafficking with other member states.<sup>49</sup> This is a problem because the HTT ACT does not plainly state that trafficking and transportation are extraditable offenses.<sup>50</sup> Furthermore, the 1953 India-Nepal Extradition Treaty states that extradition is allowed in relations to seventeen offenses, however, human trafficking or transportation are not included on the list.<sup>51</sup>

### B. *The Catholic Church's View on Trafficking*

In a letter to Archbishop Jean-Louis Tauran, Secretary for Relations with States, Pope John Paul II wrote that human trafficking is an outrageous offense against human dignity and a grave violation of fundamental human rights.<sup>52</sup> The Second Vatican Council pointed to the selling of women and children, as 'infamies' which 'poison human society debase their perpetrators' and constitute 'a supreme dishonour to the Creator' (*Gaudium et Specs*, 27).<sup>53</sup> According to the Church, selling women and children is an offense to fundamental values, which are shared by all cultures and people.<sup>54</sup> Archbishop Agostino Marchetto, Secretary of the Dicastery, emphasized the necessity for the universal Church to get involved in recognizing victims and helping them return to their "human dignity."<sup>55</sup>

## II. WHY TRAFFICKING IN GIRLS AND WOMEN OCCUR

The reasons trafficking occur has changed little since the Rana regime. The National Reports on the Trafficking in Persons have been published since 2005.<sup>56</sup> The 2008-2009 Report (Report) is a

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48. *Id.* at 91.

49. *Id.* at 7.

50. *Id.* at 92.

51. *Id.*

52. Catholic Church fights human trafficking & slavery, at 2, <http://www.renewamerica.com/columns/kralis/060804> (last visited Mar. 23, 2012).

53. *Id.*

54. *Id.*

55. *Id.*

56. National Report on Trafficking.

continuation of the earlier reports and it traces the evolution of trafficking.<sup>57</sup> During the Rana Regime, from 1846 to 1950, girls and women were trafficked internally for servitude, slavery, and exploitation.<sup>58</sup> Trafficking for sex work cross-border started with India during the Post Rana period and Panchayat Regime from 1950 to 1990. It continues today extending to the Middle East, South East Asia, and other developed countries.<sup>59</sup> During the armed conflict between the Maoists rebel and the Nepalese government from 1996 to 2006, many girls and women were forced to leave their villages in search of security and livelihood. As they left, females became increasingly exposed to trafficking because they lacked necessary skills, education and resources.<sup>60</sup> The danger of trafficking continues in the post-conflict state.<sup>61</sup> It is estimated that from 2008 to 2009, 3,500 girls and women were intercepted from different border points and rescued from India and Gulf countries.<sup>62</sup> Due to the lack of accurate statistics, it is difficult to analyze the exact magnitude of harm that trafficking has caused.<sup>63</sup>

The data that does exist shows that progress is occurring. Furthermore, the average number of trafficking cases registered with the Nepalese police between 2004 and 2009 was 109.<sup>64</sup> This is a low number of cases, illustrated by the fact that 421 out of the 463 trafficking survivors interviewed in 2008 did not file a complaint against their traffickers. This occurred because they lacked knowledge about filing complaints, feared social stigma, were threatened by traffickers not to file a complaint, feared family hatred, or because they lack proof.<sup>65</sup> The average number of trafficking cases registered in the courts of Nepal during this five year period was 410.<sup>66</sup> Despite the low number of complaints, there has been a twenty-nine percent increase in the number of trafficking related cases registered in the courts from 2003 to 2004 and 2007 to 2008.<sup>67</sup>

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57. *Id.* at 17

58. *Id.* at 18, Box 2.1 (Changing dynamics of trafficking in Nepal).

59. *Id.*

60. National Report on Trafficking, at 18.

61. *Id.*

62. *Id.* at 21.

63. *Id.* at 20.

64. *Id.* at 22.

65. *Id.*

66. *Id.*

67. *Id.* at 23.

The root causes of trafficking in many regions are poverty, illiteracy, unemployment, and gender discrimination.<sup>68</sup> Other causes may include, "poor governance, lack of rule of law, political conflict and war, violence, and social and cultural structures (power, hierarchy and social order)."<sup>69</sup> Furthermore, in their assessment report (Child Trafficking in Nepal) Terre des Homes states that migration is also a root cause of trafficking.<sup>70</sup> This report stated that trafficking is often a "direct result" of migration.<sup>71</sup> As young girls and women travel to other regions looking for better employment prospects, their chances of being trafficked increase.<sup>72</sup> Furthermore, many times they migrate with little or no information about what they are going to be doing.<sup>73</sup> Border villages are one of the most lucrative and profitable places for trafficking.<sup>74</sup>

Gender discrimination begins at home in Nepal. The ill-treatment of girls and women starts at an early age. Culturally women are treated as second class citizens and inferior to their husbands, fathers and sons.<sup>75</sup> Girls are constrained to the family environment and generally do not leave their villages.<sup>76</sup> Educating and investing in a girl's future are extremely limited.<sup>77</sup> Female literacy rate is quite low in Nepal.<sup>78</sup> For women who have limited rights and freedom and few employment opportunities, the offer of economic independence by traffickers may be seen as the only opportunity to improve their situations.<sup>79</sup> The Terre des Homes report states that there is a close correlation between the emotional situation of village girls and mobility. Some girls interviewed in the report stated that "at times we feel so depressed, that we think if someone comes and persuades us to go to the city with them, we will willingly go along with them."<sup>80</sup> The desperate feeling of helplessness leads these girls right into the traffickers' hands.

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68. National Report on Trafficking, at 37.

69. World Bank, at 11.

70. Terre des homes, at 7.

71. *Id.*

72. *Id.*

73. *Id.* at 8.

74. *Id.* at 7.

75. Terre des homes, at 8.

76. *Id.*

77. *Id.*

78. *Id.* at 9.

79. *Id.*

80. Terre de Homes, *supra* note 77.

Research shows that about forty percent of the victims were either orphans, or forced into the sex trade by stepparents.<sup>81</sup> In such circumstances, the lack of self-worth, trust, or belief in a better personal future away from their current living conditions make these women particularly susceptible to trafficking.<sup>82</sup> Additionally, economic deprivation such as “denial of right to property or opportunity of earning or destruction of property owned by women” are other reasons women gravitate towards the sex trade industry.<sup>83</sup> Inequality in treatment is yet another reason women turn towards the industry. For example, women receive less health care than men, have a more excessive workload, and they are restricted in having social relations, getting an education and starting their own businesses.<sup>84</sup> Poverty and the desire to earn money may be the reasons commercial sex workers turn to this profession; however, the root cause of girls and women turning towards this industry may be the way they are raised.<sup>85</sup>

A. *Who are the Traffickers?*

Traffickers have a variety of faces. Aside from professional agents and local recruiters, family members (uncles, cousins, stepfathers) also act as trafficking agents.<sup>86</sup> Most female traffickers are former prostitutes who return to the villages during the peak trafficking months of June and late August, and partake in local festivals to recruit girls for trafficking.<sup>87</sup> It is easier for the traffickers to get the girls to come with them during this time because it precedes the harvest, when poverty is felt most deeply.<sup>88</sup> These recruiters are told that the only way they can secure their release is by providing a substitute.<sup>89</sup> Other times trafficking happens through deceptions:<sup>90</sup> young men enter villages, claim they are from Kathmandu and offer

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81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. Rape For Profit (Trafficking of Nepali Girls and Women to India’s Brothels), by HUMAN RIGHTS WATCH, October 1995, Vol. 12, No. 5(A), at 9, available at <http://www.hrw.org/news/1995/06/15/indianepal-rape-profit>.

87. *Id.*

88. *Id.*

89. *Id.*

90. Rape For Profit, supra note 86.

marriage and modern comforts to young girls;<sup>91</sup> older men offer the girls jobs in the city;<sup>92</sup> a distant relative or friend pretends to arrange a marriage, then kidnaps the girl, and sends her to India;<sup>93</sup> or someone promises the opportunity for an education.<sup>94</sup>

### III. SOLUTIONS

#### A. Education

Currently, education about trafficking and awareness programs are the main methods in place to address the issue of trafficking in Nepal.<sup>95</sup> The Asia Foundation and Horizons Research Summary states the findings of prevention activities currently in place:<sup>96</sup>

Prevention Activities	Findings
Awareness raising, advice giving, and social mobilization (rallies, IEC materials, peer education, organization of women's groups, etc.)	Few interventions provide relevant, realistic messages about trafficking; information and support systems for safe migration also lacking.
Improvement of livelihood opportunities (income generation, vocational training, micro-credit)	Most programs offer training only in traditional, low-income skills, such as sewing; the aim is primarily to keep girls from leaving the village.
Interception of suspected trafficking victims (community surveillance and border-based rescue)	The accuracy of the methods used to identify trafficked persons as opposed to legitimate migrants/travelers is unclear and needs evaluation.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. The Asian Foundation and Horizons, "Trafficking and Human Rights in Nepal (Community Perceptions and Policy and Program Response)", at 5, <http://www.popcouncil.org/pdfs/horizons/traffickingsum1.pdf>

96. *Id.*

These prevention activities are a start. The aforementioned findings show that these activities alone will not solve the issue of trafficking. Relevant and realistic messages about trafficking are vital in showing the dangers of trafficking. In the United States 2011 Report on Trafficking in Persons, the U.S. government made the following recommendations:

increase law enforcement efforts against all types of trafficking, including labor trafficking, and against government officials who are found to be complicit in trafficking, while respecting the rights of victims and defendants; institute a formal procedure to identify victims of trafficking and refer them to protection services; ensure that sex trafficking victims are not punished for involvement in prostitution; improve protection services available for victims of all forms of trafficking; promote legal awareness programs to potential trafficking victims and government officials; work with Indian officials to establish a procedure to repatriate Nepali victims of trafficking in India; and provide disaggregated data under the Human Trafficking and Transportation Control Act.<sup>97</sup>

These recommendations are mainly geared toward stabilizing the situation after trafficking has occurred.<sup>98</sup> Abusive home life and poverty are two major causes of trafficking that need to be addressed before resolving post trafficking issues.<sup>99</sup> In order to help these girls and women escape their abusive homes, it is necessary to help them become financially stable.<sup>100</sup> The Nepali government created the National Plan of Action against Trafficking in Children and Women for Sexual and Labor Exploitation which identified several action areas to address; one of which is the income and employment generation area.<sup>101</sup> In these particular areas, ministry groups and departments have created programs for income and employment generation.<sup>102</sup>

The Nepali government has also implemented programs such as the Poverty Alleviation Program and Women Empowerment Program to decrease poverty and increase the income of poor and

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97. U.S. Department of State: Trafficking in Persons Report 2011, <http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm>. (last visited Apr. 09, 2012).

98. *Id.*

99. National Report on Trafficking, at 96.

100. Interview with Mr. Nirajan Thapa, Former Home Minister (Oct. 2011).

101. National Report on Trafficking, at 96.

102. *Id.*

disadvantaged groups in the country.<sup>103</sup> However, many of these programs do not sufficiently provide coverage for the most vulnerable groups such as the Dalit, dissertated women, abandoned women, single women, and the very poor.<sup>104</sup> Many of the programs focus on awareness campaigns and not enough on income generating and employment programs.<sup>105</sup>

The National Human Rights Commission and the Office of the Special Rapporteur provides guidance on trafficking to Ministries, Constitution Assembly Members, and human rights defenders. These groups work as decision-makers, implementers and activists for combating trafficking through the lenses of policy and legal response.<sup>106</sup> These key members made commitments to fight trafficking using various methods.<sup>107</sup> Mr. Bhim Bahadur Rawal, Honorable Minister of Home Affairs, expressed that it is important to enforce the laws that have been created in order to combat trafficking in persons.<sup>108</sup> He further stated that teamwork between the government and local community organizations is also vital.<sup>109</sup> More importantly Mr. Rawal emphasized that “awareness and development of sense of accountability among the populace can contribute to reducing the malaise of trafficking in human beings.”<sup>110</sup> Arzu Rana Deuba, Honorable Member of the Constitutional Assembly, also emphasized awareness campaigns and the need to work together with countries that are trafficking hubs.<sup>111</sup> Mr. Mohamad Atab Aalam, Honorable Minister of Labor and Transport Management, acknowledged that poverty, illiteracy, and unemployment in villages are some of the root causes of trafficking.<sup>112</sup> He suggested creating programs that targeted specific groups such as women and children, enable the community members to fight against

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103. *Id.*

104. *Id.* at 101.

105. *Id.* at 101.

106. NHRC e-Bullentin: EXHUMATION CONCLUDED: REMAINS OF ALL FIVE VICTIMS FOUND, available at [http://www.pdfdownload.org/pdf2html/view\\_online.php?url=http%3A%2F%2Fwww.nhrcnepal.org%2Fbulletin%2Fdoc%2FE-bulletin-Vol6-8.pdf](http://www.pdfdownload.org/pdf2html/view_online.php?url=http%3A%2F%2Fwww.nhrcnepal.org%2Fbulletin%2Fdoc%2FE-bulletin-Vol6-8.pdf); see also National Report on Trafficking.

107. National Report on Trafficking, at 105.

108. *Id.* at 109.

109. *Id.*

110. *Id.*

111. *Id.* at 113.

112. *Id.* at 110.

trafficking in their villages and develop coordination mechanisms among the government and NGOs and civil society.<sup>113</sup>

Sapana Pradhan-Malla, Honorable Member of Constitutional Assembly, stated that the root cause of trafficking must be fought first.<sup>114</sup> She also stated that enactment of law is not enough unless law is disseminated.<sup>115</sup> Ms. Pradhan-Malla emphasized that support systems need to be created along with counseling, legal aid, shelter for victims, justice, and *more importantly economic programs*.<sup>116</sup> Mr. Sushil Pykuryal, Human Rights Defender and Ex-Commissioner, NHRC, stated that in his opinion trafficking is a regional problem that cannot be combated without a united front.<sup>117</sup> Mandira Sharma, Humans Rights Defender of the Advocacy Forum, stated that creating laws are not enough when the laws are not sufficiently enforced.<sup>118</sup> He also stated that the education policies of the government need an overhaul to promote not only receiving primary education, but higher-level education as well.<sup>119</sup> Overall, these commitments show that these key activists know that the root causes of trafficking have to do with the “rigid patriarchal system” making women second class citizens in families and society.<sup>120</sup>

Some of the commitments focus on awareness as a way of battling trafficking, while others state that the government and NGOs have to work together.<sup>121</sup> The National Report on Trafficking 2008-2009 identified the following “key words” that emerged from the commitments on combining efforts:

- Need coordination between Ministries and Departments
- Ensure budget and resources allocated
- For prevention Ministry of WoCSW, NWC, NGOs play proactive role
- For protection, the Ministry of Home, Police Department, Attorney General Office and the Judiciary play an important role

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113. *Id.*

114. *Id.* at 113.

115. *Id.* at 114.

116. *Id.* (Emphasis added).

117. *Id.* at 117.

118. *Id.*

119. *Id.* at 118.

120. *Id.* at 121.

121. *See*, National Report on Trafficking.

- Civil society work for rehabilitation and reintegration in society.<sup>122</sup>

Still some see education as one of the main ways of combating trafficking.<sup>123</sup> Girls and women need to be encouraged to seek a higher education.<sup>124</sup> Which means it is up to the government to give girls and women an opportunity to receive such an education.<sup>125</sup> Other commitments focus on obtaining the justice victims deserve.<sup>126</sup>

Padma Mathema, of the National HRC of Nepal, is responsible for monitoring, coordinating and building partnerships to counter human trafficking in Nepal. In a personal email she stated that bringing income to the families that are vulnerable to trafficking is a concern of the Nepalese government and NGOs.<sup>127</sup> Both groups are implementing micro level income generating programs in the local villages; however, she states that these general programs are not targeting the vulnerable population.<sup>128</sup> Additionally, Ms. Mathema affirms that there is foreign aid being given to programs in Nepal, however, she says that those programs are “happy with awareness raising for its comfortable implementation.”<sup>129</sup> Ms. Mathema states, “I feel that the problem of combating trafficking is addressed in policy and acts but not in deed.”<sup>130</sup> She goes on to say “targeted income based [programs] need[] to be launched in addition to awareness programme.”<sup>131</sup> The issue is not the lack of funds but that the organizations have become complacent in structuring activities other than raising awareness.<sup>132</sup>

Lack of awareness is not the problem in Nepal.<sup>133</sup> There is a willingness among girls and women to listen to these traffickers who tell them that they will make a lot of money and become wealthy.<sup>134</sup> Many of the girls and women are aware that they may become victims to trafficking, but nevertheless, they still move to the cities

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122. *Id.* at 123.

123. *See*, National Report on Trafficking.

124. *Id.* at 118.

125. *Id.*

126. *Id.* at 123.

127. Interview with Padma Mathema, National HRC of Nepal (Oct. 2011).

128. *Id.*

129. *Id.*

130. Interview with Padma Mathema, National HRC of Nepal (Oct. 2011).

131. *Id.*

132. *Id.*

133. National Report on Trafficking; The Asian Foundation and Horizons

134. National Report on Trafficking; The Asian Foundation and Horizons

and dream of becoming independent so that they no longer have to be in abusive homes.<sup>135</sup>

B. *Economic Stability*

In an interview with Niranjana Thapa, former Home Minister of Nepal, he spoke about distributing the funds for combating trafficking given by international organizations and other nations to women, so that they can start small businesses and have the ability to continue going to school.<sup>136</sup> Mr. Thapa spoke about creating small businesses that these women could do from home, such as knitting clothes, raising cows and selling their milk, and growing vegetables to sell in the market.<sup>137</sup> He says it is also necessary for us to pave the path for girls to continue their education and set goals toward going to college.<sup>138</sup> Many times girls are taken out of school to help with farming and taking care of the house.<sup>139</sup> The literacy rate for women in Nepal is forty-four half five percent.<sup>140</sup> Mr. Thapa states that lack of funds is no longer an issue because of the vast amount of donations being received by Nepal through international organizations and other nations.<sup>141</sup> The problem he says is how the funds are used once they are in the hands of the Nepalese organizations.<sup>142</sup> Many of the funds are used towards awareness programs.<sup>143</sup> Although in the beginning these programs were useful, now there needs to be more of an emphasis on helping these girls and women feel empowered and financially stable.<sup>144</sup> If these small businesses were to succeed, women would become financially stable. The problem remains that in many instances these girls and women are not educated.<sup>145</sup> Many do not have basic elementary education, which means that they are

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135. Terre des homes, at 9.

136. Interview with Mr. Niranjana Thapa.

137. *Id.*

138. *Id.*

139. *Id.*

140. UNESCO OFFICE IN KATHMANDU: UNESCO CELEBRATES INTERNATIONAL LITERACY DAY IN NEPAL, [http://www.unesco.org/new/en/kathmandu/about-this-office/single-view/news/unesco\\_celebrates\\_international\\_literacy\\_day\\_in\\_nepal/](http://www.unesco.org/new/en/kathmandu/about-this-office/single-view/news/unesco_celebrates_international_literacy_day_in_nepal/). (last visited Apr. 09, 2012).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

vulnerable to deceit and fraud when dealing with other businesses.<sup>146</sup> Furthermore, limiting these girls and women to a cottage industry is showing these girls and women that their abilities are limited to creating their products at home.<sup>147</sup> Funding a start-up business is a stepping stone but it should not be an end.<sup>148</sup> The girls and women should be nurtured and guided to become acclimated with the modern world.<sup>149</sup>

In an interview with Ms. Kriti Thapa, Legal and Policy Officer for The Asia Foundation-Nepal, she spoke of the solution being more legal oriented.<sup>150</sup> The best solution she says is to first develop a mechanism to bring the human trafficking criminal to justice.<sup>151</sup> Secondly, there are laws criminalizing human trafficking and transportation, but there needs to be an enforcement of these legal mechanisms.<sup>152</sup> Lastly, combating initiatives should be done in coordination with the Government of Nepal, Civil Societies and NGOs.<sup>153</sup> Schools from primary to higher level of education should focus on making girls aware of the effects of trafficking.<sup>154</sup> Furthermore, amending the India-Nepal Extradition Treaty to criminalize trafficking would help in the extradition of traffickers from India to Nepal so that they can be prosecuted.<sup>155</sup>

### C. *Border Policy Changes and Corruption Control*

The solution to combating trafficking does not stop at education and economic stability. A major obstacle in the fight against trafficking is the open border policy between the two countries.<sup>156</sup> A 1950 treaty between the two countries allows people to freely travel and trade across the borders.<sup>157</sup> Nationals of the two countries are not

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146. UNESCO, *supra* note 140.

147. *Id.*

148. *Id.*

149. *Id.*

150. Interview with Ms. Kriti Thapa, Legal and Policy Officer for The Asia Foundation of Nepal (Oct.2011).

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. Interview with Ms. Thapa

156. Rape For Profit, Trafficking of Nepali Girls and Women to India's Brothels, HUMAN RIGHTS WATCH, vol.12, No. 5(A), June 1995, pg. 5.

157. *Id.*

required to carry passports, visas, or residence permits while travelling between India and Nepal.<sup>158</sup> It is estimated that nearly “12,000 girls are trafficked” from Nepal into India annually.<sup>159</sup> This mean close to “1,000 girls are taken across borders each month.”<sup>160</sup> The Nepalese police state that close to “100,000” people per day pass through one particular border for “work, shopping and business.”<sup>161</sup> Due to the large volume of traffic, it is quite difficult for the police to monitor illegal activities.<sup>162</sup> Therefore, traffickers are available to travel easily across the border with their victims.<sup>163</sup> It is left up to the border police to stop and question suspicious-looking travelers.<sup>164</sup> However, many times police corruption on either side of the border defeats the attempt to catch traffickers.<sup>165</sup> The governments of both countries should be thorough and neutral when investigating officials that may be involved in trafficking.<sup>166</sup> A hotline where witnesses would feel safe to call and report charges of official involvement in trafficking should be established.<sup>167</sup> Those officials that are involved in trafficking or are failing to enforce anti-trafficking laws should be prosecuted to the fullest extent of the law.<sup>168</sup> Merely suspending, transferring, or ordering these officials to give public apologies is not sufficient.<sup>169</sup>

Border monitoring stations is one way of addressing the border control problem.<sup>170</sup> The focal point of the border station program is to monitor individuals who are seen making multiple trips across the India/Nepal border.<sup>171</sup> Another component of the program is observing travelers and specifically looking for activity that may seem suspicious, and then interviewing those suspected to make sure a girl

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158. *Id.*

159. FreeforLife International: NEPAL-INDIA KRISHNANAGAR BORDER MONITORING STATION, <http://www.freeforlifeintl.org/safe-homes/nepal/nepal-india-border-monitoring-station/>. (Last visited Apr. 09, 2012).

160. *Id.*

161. Rape For Profit, Trafficking of Nepali Girls and Women to India’s Brothels, at 5.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. Rape for Profit, *supra* note 161, at 33.

167. *Id.*

168. *Id.*

169. *Id.*

170. FreeforLife, *supra* note 159.

171. *Id.*

is not in danger.<sup>172</sup> Free for Life International and the Peace Rehabilitation Center (P.R.C.) expects to rescue at least two hundred girls at the border stations from being sold into brothels.<sup>173</sup> The staffs at the border stations are expected to interview nearly two thousand individuals who cross the border each month.<sup>174</sup> Out of these individuals five to ten percent will be trafficking victims.<sup>175</sup> Border stations are effective because P.R.C. staffs have the expertise and ability to identify traffickers, keep them in custody, and arrest them while rescuing the girls that may be with them.<sup>176</sup> The initial purpose of the open border policy between India and Nepal was to encourage travel and trade between the two countries.<sup>177</sup> It is clear from the vast number of victims being trafficked that this policy needs to change. One way to better the open border policy is to use some of the funds the government of Nepal and NGOs receive towards establishing more border control stations.

Creating border control stations is the first part of solving this issue. Increasing manpower in these border stations is the second part. One way to increase the number of people working at the stations is to get the International Criminal Police Organization (INTERPOL) involved since Nepal is a member state.<sup>178</sup> INTERPOL is an international police organization with 190 member countries with a mission to prevent and fight crime through international police cooperation.<sup>179</sup> The organization works with police departments around the world to provide training, investigative support, and secure communication channels.<sup>180</sup> The INTERPOL National Central Bureau (NCB) for Kathmandu works in conjunction with NGOs to combat trafficking.<sup>181</sup> One of the services NCB-Kathmandu provides is "assisting with border security."<sup>182</sup> If NCB-Kathmandu joined

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172. *Id.*

173. *Id.*

174. *Id.*

175. FreeforLife, *supra* note 159.

176. *Id.*

177. *Id.*

178. INTERPOL: HISTORY, <http://www.interpol.int/About-INTERPOL/History>. (last visited Apr. 9, 2012).

179. INTERPOL: OVERVIEW, <http://www.interpol.int/About-INTERPOL/Overview>. (last visited Apr. 09, 2012).

180. *Id.*

181. *Id.*

182. Nepal Police: INTERPOL, <http://nepalpolice.gov.np/en/interpol.html>. (last visited Apr. 09, 2012).

forces with the NGOs that are establishing border control stations, it would mean more security at the stations, as well as more enforcement power.

#### CONCLUSION

To summarize, the world's spotlight is on Nepal because of its ever-increasing business of human trafficking. By creating national laws and being parties of international treaties, the government of Nepal has shown that it is committed to fighting and curbing trafficking. Awareness programs have educated the Nepalese about the dangers of trafficking. However, the strides made by awareness programs are diminished by the lack of enforcement of laws against trafficking. There is a need to show families that women are just as valuable as men. Furthermore, women should not be treated as second-class citizens. The outcome will be that girls and women would feel wanted, needed, and valuable, thereby making them less vulnerable to being trafficked. Giving these girls and women the opportunity to receive an education or start their own businesses would help them become independent and financially secure. Moreover, it is vital that traffickers are stopped at the border before they escape to other countries with these girls and women. If better border control enforcement between India and Nepal is established, the number of potential victims that are saved will rise. In conclusion, as Pope John Paul II stated, human trafficking is an outrageous offense against human dignity and a grave violation of fundamental human rights.