

# Response to Human Trafficking: Situation and Analysis in Africa region (Particularly from Nepal to Africa)

Supriya Timilsina (Acharya)

Associate Protection Officer

United Nation High Commissioner for Refugee (UNHCR)

## Introduction:

“Human trafficking” today is a global phenomenon, affecting men, women and children in over 130 countries of the world<sup>1</sup>. Trafficking is a crime against individuals. As such, the consequences are most directly felt by trafficked persons at large. Trafficking also has broad economic, social and cultural consequences, leading more towards individual emotional, psychosocial or mental trauma. As such it is not an easy task to measure the impact of the trafficking at large, however many studies and speculation has been done in this regards and protective measures has been adopted by then and now via national and international laws.

The term trafficking in persons can be misleading: it places emphasis on the transaction aspects of a crime that is more accurately described as enslavement. However the literal meaning of the term trafficking connotes to “Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”<sup>2</sup>

Therefore based on the above definition of Trafficking in person, there should be three constituent elements and that is **The Act, The Means and The purpose**. The act basically consists of recruitment, transportation, transfer, harbouring or receipt of persons. “Means” consist of use of threat or force, coercion, abduction, fraud, deception, abuse of power or vulnerability or giving payments or benefits to a person in control of the victim and finally “purpose” should either be for the reason of

---

1 United Nations Office on Drugs and Crime, Trafficking in Persons: Global Patterns (Vienna, United Nations, 2006)

2 Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons

exploitation, 'sexual of forced labour' or slavery or removal of organs or any other whatsoever reasons.

Nepal being a developing nation has always been a hotspot for the traffickers. Vast majority of the population in Nepal being embedded in the abject poverty and high rate of unemployment, many innocent people easily falls as a prey of traffickers and get lured in the dream of good money, easy life, job placement etc. Initially even though the trafficking was limited only up to India and nearby boarding countries, today because of the rapid development of the technology and communication, it has extended its business so rigours that human being can be supplied to any part of the world from anywhere in the world and as such many Nepalese (both men and women) has also been found to be trafficked in the various part of the world for various reasons. The recent trend however indicates there has been an increased level of human trafficking in Africa regions. Basically it was noted that not only women/ girls are trafficked to work in various Mujra (a type of Indian dance basically done to entertain men) or sexual labour but men are also being trafficked in an exchange of getting good job and money and are abandoned in various part of Africa like Kenya, Tanzania, Uganda and so forth.

### **Consequences of Human Trafficking:**

The effects of trafficking have an impact on individuals in all areas of their lives. Victims of trafficking often experience abuse, exploitation, poverty and poor health prior to being trafficked. These conditions are only exacerbated by their experiences as victims of crime at each stage of the trafficking process can involve physical, sexual and psychological abuse and violence, deprivation and torture, the forced use of substances, manipulation, economic exploitation and abusive working and living conditions. All forms of trafficking, because of the abusive and exploitative nature of the crime, produce harmful effects on trafficked individuals.

However, in terms of global documentation, most is known about the impact of trafficking upon women and children for purposes of sexual exploitation and are forced to work in brothels, Mujra (especially in Kenya), hotels or as a call girls.

Increased likelihood of HIV infection is often cited as a risk among women trafficked for sexual exploitation owing notably to a lack of bargaining power concerning use of contraceptive and other potentially dangerous sexual practices. Lack of information about HIV/AIDS, as well as prevalent popular misconceptions, including that sexual intercourse with a virgin will cure the disease and that younger girls are disease-free, have increased the demand for younger victims and increased the vulnerability of children more towards trafficking.

Relentless anxiety, insecurity, fear and physical pain and injury will have significant effects on the mental health and well-being of trafficked victims. Symptoms of psychological trauma reported by trafficked persons include post-traumatic stress disorder, anxiety, depression, alienation and disorientation. These individuals report feelings of extreme sadness and hopelessness about the future. They may be suicidal, have cognitive impairment and memory loss, and may be withdrawn. They may also have difficulty concentrating and show aggression and anger. So, the longer victims remain under the control of their traffickers, the more severe and long-lasting are the effects of their trauma.

Prolonged physical and mental abuse affects victims' behaviour in negative ways, having an impact on both physical and emotional responses. Because trafficked persons often experience extreme forms of trauma over long periods of time, their capacities both to understand what has happened to them and to describe their experiences are directly impaired as a result of such abuse. Therefore the trafficked person may be reluctant or unable to disclose any information to other when they are interviewed and even if they do answer they might become irritable or hostile and aggressive towards others, sometime even to the support persons. They may seem to be complaining, uncooperative or ungrateful. As a result, they may not be identified as victims of crime, further compounding the injustice they have experienced.

In many instances, failure to identify a person as a trafficking victim commonly results in deportation from the country of transit or destination without access to legal, medical or social services. Such behaviour, however, may manifest in individuals for many year.

Upon return to the country of origin, assistance to trafficked persons will depend on existing economic, political and social conditions. As such the trafficked victim might not be able to get the adequate support to overcome that trauma and penalize the perpetrator even though she saw him moving freely in the society. That makes the survivor more prone towards psychosocial disorder leading sometime towards, suicide and again being fall into the same profession as she became helpless and is totally rejected by the society.

In Nepal, service programmes and providers limit a victim's right to determine what is best for them. Where "assistance" is perceived as placing unnecessary or unwanted restrictions on victims, trafficked individuals may respond through various forms of uncooperative behaviour. Worst case examples are those which impose a "victim" status on a trafficking person that further victimizes, rather than rehabilitates, that individual.

## **International and National legal instrument to combat trafficking:**

### **1: International legal instruments**

Instruments that deal with human trafficking could be dated back to the abolition of slavery which includes provisions within the Slavery Convention (1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). However the recent development for the particular purpose of combatting trafficking after the evolution of UN system can be listed as below.

### **Specific Conventions and Protocols:**

- i. United Nations Convention against Transnational Organized Crime
- ii. United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children
- iii. The United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which entered into force in 2003-2004
- iv. The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949),

### **General Human Rights Documents:**

- i. Universal Declaration of Human Rights (1948), (Regarded as the father and mother of all human rights instruments)
- ii. The International Covenants on Civil and Political Rights (1966),
- iii. The Convention on the Elimination of all Forms of Discrimination against Women (1979)
- iv. Convention against torture,

All these instruments have substantially laid the foundation for the contemporary conventions and efforts to eliminating trafficking thereby promoting the human rights of all at all sphere of life. However the fundamental challenges in implementing these international convention and protocol is that, the compliance of these treaties requires signature, ratification and enforcement of the international agreements by the particular countries. It is only after the country ratifies or sign the convention then they can be subjected to monitor under UN committees. Hence the whole procedure itself is lengthy and requires continues lobby from UN system.

## **2: Nepalese law**

### **1: Interim Constitution of Nepal, 2007**

Art 29 of the interim constitution of Nepal, 2007 explicitly deals with the notion of trafficking which says that “No one shall be trafficked in nor shall one be held in slavery or in servitude” and “No one shall be required to perform forced labor”

### **2: Human Trafficking and Transportation (Control) Act, 2007**

As per our laws human trafficking has been defined as ‘If anyone commits any of the following acts that shall be deemed to have committed human trafficking<sup>3</sup>

- To sell or purchase a person for any purpose,
- To use someone into prostitution, with or without any benefit,
- To extract human organ except otherwise determined by law,
- To go for in prostitution

If anyone commits any of the following acts that shall be deemed to have committed human transportation<sup>4</sup>:-

- To take a person out of the country for the purpose of buying and selling,
- To take anyone from his /her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurements, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.

### **3: Others**

#### **A: Children Act, 1991**

Section 16& 18, of the Act prohibits and punishes in involving the children in an immoral profession and also prohibits employing the child in work which may have an adverse impact on the life/health of a child.

#### **B: Foreign Employment Act, 1998**

The foreign employment Act has generally prescribed a number of safeguards and restriction that should be fulfilled before leaving the country. (The restriction is more on women, which has been placed there with the intention to protect the women more from the risk of being trafficked).

#### **C: The Country Code of Nepal (Muluki Ain)**

Chapter 11 of the country code of Nepal explicitly mentions and prohibits anyone from being taken out of the country for the purpose of selling. Especially it prohibits separation of minor and the lunatic person to travel without the consent and presence of guardian. And finally section 11(3) mentions that no one should be kept as servant/Slave or bonded labour for what so ever reason and these act have been made punishable under law.

---

<sup>3</sup> Human Trafficking and Transportation (Control) Act, 2007, art 4 (part 2)

<sup>4</sup> Ibid 3

### **Human trafficking pattern in Africa regions:**

Fundamentally when seen the trafficking pattern from Nepal to various African region it has been seen mainly the girls of ages between 16 to 30 has been trafficked either knowingly or unknowingly basically to work as a bar dancer (Mujra). Various initiatives has been taken by the NRNA Kenya, ranging up to meeting with those girls who works in mujra to explore if they are being subjected to any kind sexual and gender based violence. However it has been noticed that those girls are very reluctant to share any kind of information. Probably because there is a vicious circle of people engaged in trafficking them and they fear that any kind of exposure of the facts will put their life in danger or their might be some population of the girls who come to work in that sector knowingly to evaporate their poverty situation back their in Nepal.

### **Story shared from Tanzania:**

The whole story is 6 of them left Nepal on October 29, 2013 to New Delhi, India with the assurance from the agent in Nepal that they will be placed in security job in UN either in Syria or Libya. They have already paid USD 3,000 each to agent in Nepal. They stayed in Delhi for one month with the hope to get a job but later on agent in Delhi told them that situation in Syria and Libya is worst and they will be placed in Security Job in UN in Uganda. They were told that they will be going Uganda via Kenya so all of them flew to Nairobi Kenya from New Delhi, India and received by one of the agent at Nairobi Kenya. In Nairobi after spending one month they were told that job in Uganda couldn't be arranged but they assured them that they can arrange security job in Tanzania and salary will be USD , per month. So all of them were sent via Namanga border (between Kenya and Tanzania) to Dar es Salaam, Tanzania by Bus. One of the victim mentioned that agent with the help of local police threatened them and did some drama and took them inside Central Jail in police van and ask them to give remaining USD 3,000 each which they are supposed to give after getting the job. As they rejected to give money, police said they will put them inside custody, to avoid the trouble they had no options other than giving the money.

In Namanga border, agent arranged tourist visa for all of them and bought bus ticket to Dar es Salaam, Tanzania. One of the tanzanian received them in Dar es Salaam and arranged accommodation in Crystal Palace Hotel which is located in Illala, Dar es Salaam. When they asked about the job he said he was told to arrange accommodation only. When they called Nepalese agent in Kenya he said he will reach Dar es Salaam in 2 days. Time passed by agent didn't come and on 12th day immigration raid in hotel and asked them why they come to Tanzania, they pretend

themselves as a tourist but when immigration officer asked them to show return ticket they said they don't have it so people from immigration arrested all of them with Daniel and put them in custody.

## **Conclusion and Recommendations**

Over the past few years, the number of countries that have taken steps to implement the foremost international agreement in this area - the UN Protocol against Trafficking in Persons has doubled. However, there are still many countries, particularly in Africa, that lacks the necessary legal instruments to combat trafficking as such. However, no doubt that until their is demand in the market supply will keep on increasing so a number of factor can be considered to combat the trafficking of human in particular of women for sexual violence.

- 1: The government of Nepal should have the strict immigration policy for the people going on foreign employment.
- 2: Government of Nepal should place a hotline number via particular embassy/consulate where their is higher reporting of human trafficking so that effective remedy can be taken in particular.
- 3: General awareness program should be increased among the girls and women so that they do not fall as a pery in the hand of wrong men.
- 4: The department of foreign employment should place a strict rules thereby having all detailed information of the one going for foreign employment. This will help the government to conduct the safe and quick rescue operation in case of need.