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PROSECUTING HUMAN TRAFFICKERS BY MOBILIZING HUMAN RIGHTS DEFENDERS AS VICTIMS' ADVOCATES[†]

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ABSTRACT

Freed from brick kilns, organ transplant clinics, and brothels, survivors of human trafficking are re-victimized by a “justice” system in Nepal that has been entrenched for decades in legitimized prejudice against the marginalized. As a consequence, former victims of human trafficking find it nearly impossible to navigate through Nepal’s opaque judicial system to a successful prosecution of their traffickers. To turn around the laughable conviction rate, the justice system needs articulate and courageous witnesses for the prosecution. This Article proposes a framework to meet this goal.

An under-utilized cadre of foot soldiers—working to expose human rights violations, known as “Human Rights Defenders” (HRDs)—should be mobilized as court advocates in every district of Nepal, to advise victims from police intake through sentencing. Strategically placed and trained, HRDs would provide a cost effective oversight in a legal system that cries out for accountability and change, as well as serve as the eyes of the international community.

[†] I dedicate this Article to a brave HRD, Indira Ghale, who fights relentlessly on behalf of the least of these in Nepal and who inspired many of us. Special thanks to colleague Andrea Panjwani, co-chair of Immigrant Defense Fund, and law clerks Julia Pham, and Teresa Messer.

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I. INTRODUCTION

Freed from red-hot brick kilns, nefarious organ transplant clinics, seedy brothels, and dangerous construction projects, survivors of human trafficking are re-victimized by a “justice” system in Nepal that is rampant with corruption and entrenched in legitimized prejudice against the marginalized. As a consequence, former victims of human trafficking are unable to navigate through Nepal’s opaque judicial system to successfully prosecute their offenders and vindicate their rights. To turn around the laughable conviction rate of human traffickers, the Nepalese justice system needs strong, articulate, and courageous witnesses for the prosecution. This Article proposes a framework to meet this goal. Human trafficking is “about people being bought and sold as chattel,”¹ and the Nepalese people are especially vulnerable.

Although the “Muluko Ain,” Nepal’s law, recognized human trafficking as a crime as far back as 1963,² and the government publically expresses its strong intent to combat trafficking,³ approximately 200,000 Nepalese women and girls were still found to have been forced into prostitution in India more than a decade ago in 1999.⁴ More recently, there was a 60% increase in sex trafficking during the 18 months from May

1. *Counter-Trafficking In Persons Policy*, USAID 9 (2012), http://pdf.usaid.gov/pdf_docs/PDACT111.pdf (last visited May 22, 2015) [hereinafter COUNTER-TRAFFICKING IN PERSONS POLICY].

2. “No person shall lure or take another person outside the territory of Nepal with intention to sell him or her nor shall sell another person outside the territory of Nepal.” The Muluki Ain (General Code) Ch.11 No. 1 at 381.

3. U.S. Dept. of State, *Trafficking in Persons Report* (July 2015), <http://www.state.gov/documents/organization/245365.pdf>.

4. Barbara Cochrane Alexander, *Women in Nepal: Human Rights in Theory, Human Rights in Practice*, 7 HUM. RTS. BRIEF (2000), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1543&context=hrbrief>.

2013 to September 2014.⁵ Nepal is home to the district of Kavre, known as the “kidney bank of Nepal,”⁶ one of the most notorious black markets for organ trafficking in the region. Daily, 1,600 Nepali men are whisked away to Qatar to work under excruciating conditions to build glistening tower hotels and state of the art soccer stadiums for the 2022 World Cup.⁷ Young girls, born into lower castes and extreme poverty, are targeted at birth by traffickers and even betrayed by their own communities, some of which believe that their children are fated to lives of sex work.⁸

An undeveloped judicial system with little tried avenues of redress and protection for victims discourages meaningful prosecutions of traffickers.⁹ The rampant corruption and absence of judicial enforcement further contribute to the rising growth of human trafficking in Nepal.¹⁰ “[L]ocal level political apathy, and the chronic lack of law enforcement and political will to address [the] problem”¹¹ have long been roadblocks to meaningful change in fighting human trafficking, and are reflected in the rapidly increasing statistics of human trafficking victims in Nepal. Over the past decade, many well-meaning experts have painstakingly researched and written exposes about Nepal’s fledging and corrupt judicial system, calling for more transparency, monitoring, and training.¹² However, little has improved.

In light of the dire need for immediate advocacy and protection of human trafficking victims, this Article urgently proposes a stand-alone and easily implementable solution that can gain traction in a poor nation, one that utilizes and expands upon current resources to provide effective

5. Nirmala Adhikari, *NHRC Reports Alarming Rise in Trafficking Rate: 60.34 Pc Growth in Human Trafficking in One-And-Half Yrs*, THE KATHMANDU POST, Sept. 2, 2014, <http://www.ekantipur.com/2014/09/02/top-story/nhrc-reports-alarming-rise-in-trafficking-rate/394449.html> (last visited May 22, 2015).

6. Sugam Pokharel, *Nepal’s Organ Trail: How Traffickers Steal Kidneys*, CNN/US EDITION, June 30 2014, <http://www.cnn.com/2014/06/26/world/asia/freedom-project-nepals-organ-trail/> (last visited May 22, 2015).

7. *The Dark Side of Migration*, AMNESTY INTERNATIONAL 9, 108 (2013), <https://www.amnesty.org/en/documents/MDE22/010/2013/en/> (last visited Jan. 15, 2016).

8. See HUMAN RIGHTS WATCH, *CASTE DISCRIMINATION: A GLOBAL CONCERN* 21 (2011), available at <http://www.hrw.org/reports/2001/08/29/caste-discrimination> (last visited May 22, 2015).

9. *Human Trafficking Assessment Tool Report for Nepal*, AMERICAN BAR ASSOCIATION, 9 (2011) [hereinafter ABA], http://www.americanbar.org/content/dam/aba/directories/roli/nepal/nepal_human_trafficking_assessment_report_2011.authcheckdam.pdf (last visited May 22, 2015).

10. *Id.* at 52.

11. Jyoti Sanghera & Ratna Kapur, *An Assessment of Laws and Policies for the Prevention and Control of Human Trafficking in Nepal* 19 (2000), http://asiafoundation.org/resources/pdfs/nepal_traffickingassessment.pdf (last visited May 22, 2015).

12. Development for computerized monitoring and tracking system for human trafficking cases has been developed as well as extensive coverage through the media. See ABA, *supra* note 9, at 108.

representation to victims of human trafficking, and shines a light into an ineffective judicial system.¹³ An under-utilized cadre of foot soldiers, tirelessly working to expose human rights violations, known as the “Human Rights Defenders,” (HRDs) should be mobilized to stand beside these brave survivors—from police intake through sentencing of the trafficker. The current judicial system should be pressured to hire and train defenders to serve as victims’ advocates for survivors of human trafficking. After these defenders are trained, they should be appointed to seek justice on behalf of victims of human trafficking in every region of Nepal.

This Article boldly and aggressively calls the Nepalese and international communities to immediately identify and build upon the existing human rights defenders in all the districts of the country, mobilize them, and provide practical technical assistance to launch a new breed of human rights defenders in the justice system to serve as victim advocates for victims of human trafficking. In this novel capacity, these advocates could assist victims report to the police, monitor court proceedings, help relocate victims who are being threatened by their traffickers to safe houses and assist prosecutors to gather evidence and locate witnesses, providing a cost effective layer of oversight over a legal system that cries out for accountability and change. With some focused training and coordination, these “barefoot” advocates could impact the judicial process by not only empowering victims in meaningful and personal ways, but also serving as the ever-present “eyes” in the international community.

Part II of this Article highlights unique factors in Nepal’s political, religious, and socio-economic landscape that contribute to Nepal’s reputation as a fertile source country for the exploitation of its people into sex trafficking and forced labor.

Part III of this Article sets forth an overview of the relevant international and national treaties, laws, strategic plans and protocols that negatively and positively affect avenues of relief for human trafficking victims in Nepal’s justice system.

Part IV of this Article summarizes the current framework and process for prosecuting a Human Trafficking case through the Nepalese judicial system, examining the existing procedures that human trafficking victims must currently navigate.

13. Judicial system includes the collaboration of the police force although defined as separate entities. *Id.* at 108.

Part V introduces the Human Rights Defenders (HRDs), their history, current roles, functions and abilities, and sets forth a comprehensive rationale of why mobilizing and training these front-line workers dovetails perfectly and efficiently within the existing justice system (described in Part IV) to enhance chances of success for victims of human trafficking.

Part VI sets forth this Article's vision of casting Human Rights Defenders as human trafficking victims' advocates into the Nepalese justice system.

Part VII sets forth some proposed parameters for the implementation of the training of HRDs.

Part VIII will set forth the conclusions.

II. COUNTRY BACKGROUND AND RELEVANT CONDITIONS

A. *History and Geo-Politics*

In order to understand Nepal's present-day epidemic of human trafficking, the violence against the marginalized men, women and children, and the flaws in its legal and political system, one must study the remnants of its unique, dysfunctional, yet colorful geo-political past and recent history and landscape.

First, eight of the ten highest mountain peaks in the world are located in Nepal, including Mount Everest.¹⁴ These massive snow-capped mountains¹⁵ serve as jaw dropping backdrops for majestic photos, but also render extreme challenges for communication—particularly in attempts to raise awareness to prevent human trafficking to potential victims living in remote areas. The country also straddles two modern day political and economic giants, India and China.¹⁶ Due to its close proximity to India and the open border that connects these two countries, human trafficking from Nepal into India is an ever-growing trade. The 22 established trade routes used to transport goods have also been used to traffic people. Victims of poverty, unemployment, and gender discrimination are targeted for sexual exploitation and labor in India.¹⁷ The Nepal-India border is 1,850km long and also finds itself amongst mountainous terrain. While attempts to patrol the borders have been set in place, transit of people and goods continues

14. *The World Factbook: Nepal*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html> (last visited Oct. 6, 2015).

15. *Nepal Himalayas*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/place/Nepal-Himalayas> (last visited Oct. 6, 2015).

16. ABA, *supra* note 9, at 13.

17. *Id.* at 13–17.

freely and can be difficult to restrict. This includes the freedom to conduct human trafficking ploys. The “cross-border cooperation in relation to trafficking in persons is neither institutionalized nor treated as a priority.”¹⁸

Second, the modern state of Nepal only emerged as a state in its present form in the late eighteenth century, when the political center of power—the kingdom of the Shah Dynasty—moved to the Kathmandu Valley.¹⁹ The founder of the nation, King Prithvi Narayan Shah, was the ruler of a tiny hilltop known as the Kingdom of Gorkha. After various conquests, he was able to unify Nepal.²⁰ In 1792, the Chinese in Tibet halted Nepalese expansion²¹ due to trade disputes. Initially, Nepal was successful in overriding Tibet, but its expansion came to a halt at the end of the war in 1792 when Nepal was driven out from the occupied territory and forced to sign a peace treaty with Tibet.²²

From the mid-eighteenth century, Nepal had a hereditary feudal monarchy embodied in the Shah family that lasted 240 years.²³ This period also included one hundred years of the monarch sharing power with hereditary prime ministers, called Ranas,²⁴ some of whom possessed more governing authority than the monarch.²⁵ Thereafter, the British conquered Nepal in the first Anglo–Nepal war, which lasted from 1814 to 1816.²⁶ The British were so impressed with their enemy that they integrated the Gurkha mercenaries into their own army.²⁷ Thereafter, Nepal cut itself off from all foreign contact until 1951, other than the British residents in Kathmandu. The kingdom of Nepal continued to grow from 1950 under a strict monarchical system.²⁸

In 1996, fed up with the dictatorship of power, the Peoples’ Movement for Democracy unsuccessfully attempted a democratic state, which ended

18. *Id.* at 110.

19. See JOHN WHELPTON, *A HISTORY OF NEPAL* 10 (Cambridge Univ. Press 2005).

20. *Nepal History*, LONELY PLANET, <http://www.lonelyplanet.com/nepal/history#ixzz3npibNCdb> (last visited Oct. 6, 2015).

21. *Nepal Profile: A Chronology of Events*, BBC NEWS, Sept. 27, 2015, <http://www.bbc.com/news/world-south-asia-12499391>.

22. John W. Killigrew, *Some Aspects of the Sino-Nepalese War of 1792*, 13 J. OF ASIAN HISTORY 42–63 (1979).

23. Matthew F. Putorti, *The International Legal Right to Individual Compensation in Nepal and the Transitional Justice Context*, 34 FORDHAM INT’L L.J. 1131, 1188 (2011).

24. *Nepal Profile: A Chronology of Events*, *supra* note 21.

25. Putorti, *supra* note 23, at 1135.

26. Lara L. Manzione, *Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?*, 27 BROOKLYN J. INT’L L. 193, 198 (2001).

27. *Nepal History*, *supra* note 20.

28. *Nepal Profile: A Chronology of Events*, *supra* note 21.

up spawning an era of political infighting and rapid government turnover—visibly symbolized by thirteen progressively unstable governments marked by political feuds and corruption.²⁹ Democracy did not enter the scene in Nepal until 1990.³⁰ Until this time, the autocratic king ran the country under a system known as “panchayat.”³¹ Although deemed a representative system, all parties except for the National Democratic Party (called the “Rastriya Prajatantra Party” in Nepalese) were banned.³² In 1990, there was a glimpse of hope for democracy, as the ban on political parties was lifted, a new constitution was drafted, and a free election was held.³³ Prime Minister Girija Prasad Koirala was elected but struggled to maintain power.³⁴ As a result, his own party turned against him. The political turmoil was soon followed by the Nepalese civil war.³⁵

For years the political and intellectual elites paid little attention to the Maoists,³⁶ who were considered a breakaway party from the Communist Party of Nepal. After a failed attempt at democracy, the Maoists launched attacks on six different parts of the country.³⁷ On February 4, 1996, the Communist Party Nepal-Maoists (“CPN-M” or “Maoists”) released its “Forty-Point Demands”³⁸ calling for the expulsion of foreign influences, establishment of a secular democracy, end of discrimination, and economic reforms to benefit the poor and marginalized. The government’s rejection of this platform launched the “People’s War,”³⁹ which marked the next ten years with tremendous unrest and civil strife, as the Maoists were transformed from a small scale domestic uprising to a national-level conflict. After unheard-of internal political violence, including the massacre of members of the royal family,⁴⁰ and the engagement of the

29. See Brad Adams, *Nepal at the Precipice*, FOREIGN AFFAIRS, Sept.–Oct. 2005, at 125.

30. *Id.*

31. *Id.* at 122.

32. *Id.* at 124.

33. *Id.*

34. *Id.* at 125.

35. *Id.*

36. *Id.*

37. *Id.*

38. Putorti, *supra* note 23, at 1188 (citing MICHAEL HUTT, HIMALAYAN PEOPLE’S WAR 1–2 (Ind. Univ. Press 2004)).

39. S.D. Muni, *The Maoist Insurgency of Nepal, Origins and Evolution* 3 (Inst. of South Asian Studies, Working Paper No. 111, 2010), http://www.isas.nus.edu.sg/Attachments/Publisher Attachment/ISAS_Working_Paper_111-Email-The_Maoist_Insurgency_of_Nepal-Origin_and_Evolution_28072010180455.pdf (last visited May 22, 2015).

40. On June 1, 2001, King Birendra, Queen Aishwarya and other close relatives were killed in shooting spree by drunken Crown Prince Dipendra, who then shot himself. *Nepal Profile: A Chronology of Events*, *supra* note 21; see also Adams, *supra* note 29, at 126.

military against the Maoists,⁴¹ who were now classified as a terrorist association, war crimes and human rights violations dramatically increased on both sides.⁴² This lasted about ten years, from February 13, 1996 to November 21, 2006.⁴³

King Gyanendra dissolved Parliament in May 2002,⁴⁴ and declared another state of emergency, imprisoned politicians and leaders of political parties, and suppressed the media.⁴⁵ In unexpected response, these actions prompted the divided factions including the Maoists to come together and conclude a twelve-point agreement in November 2005, to restore peace and democracy to Nepal.⁴⁶ After pressure from India prompted King Gyanendra to step down,⁴⁷ Nepal's government and the Maoists signed a Comprehensive Peace Agreement on November 21, 2006,⁴⁸ officially ending the ten-year conflict in Nepal and setting up an interim constitution.⁴⁹

After numerous transitions in government parties, including a withdrawal and re-participation of the Maoists, Sushil Koirala of the Nepali Congress was elected Prime Minister in February 2014 with parliamentary support.⁵⁰ Since 2008, Nepal has had seven prime ministers and representation from three different political parties including: Nepali Congress, Unified Communist Party of Nepal, and Communist Party of Nepal.⁵¹

41. Adams, *supra* note 29, at 126.

42. *Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict*, Advocacy Forum & Human Rights Watch, 9 (2008), http://www.hrw.org/sites/default/files/reports/nepal0908web_0.pdf.

43. Nat'l Action Plan On Implementation of the UN Security Council Res. 1325 & 1820, GOVERNMENT OF NEPAL 1 (2011), http://www.peacewomen.org/assets/file/nepal_-_nap.pdf (last visited May 22, 2015) [hereinafter NAP].

44. Teresa Whitfield, *Nepal's Masala Peacemaking*, in NEPAL IN TRANSITION 157 (Cambridge Univ. Press 2012).

45. Adams, *supra* note 29, at 126.

46. Putorti, *supra* note 23, at 1188 (2011) (citing ADVOCACY FORUM & HUMAN RIGHTS WATCH, *supra* note 42, at 11).

47. Tilak P. Pokharel, *Maoist Sign Peace Deal in Nepal*, N.Y. TIMES, Nov. 22, 2006, <http://www.nytimes.com/2006/11/22/world/asia/22nepal.html>.

48. Comprehensive Peace Agreement, Nepal-Communist Party Nepal (Maoist), ¶ 7.1, Nov. 21, 2006, http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/nepal_cpa_20061121_en.pdf (unofficial translation) (last visited May 22, 2015) [hereinafter CPA].

49. *Id.* ¶ 3.2, 6.1.

50. *Nepal Profile: A Chronology of Key Events*, *supra* note 21.

51. Anuradha Sharma, *After Successful Visit, Modi Must Deliver on India-Nepal Relations*, WORLD POLITICAL REVIEW (Aug. 7, 2014), <http://www.worldpoliticsreview.com/articles/13985/after-successful-visit-modi-must-deliver-on-india-nepal-relations> (last visited May 22, 2015), archived at <http://perma.cc/G44J-WH4R>.

After 240 years under the monarchical system, the Constituent Assembly was formed under the parliamentary election in 2008,⁵² swiftly transitioning the country into a Federal Democratic Republic (FDR). Under this new system, the leader of the party winning the majority seats would become the Prime Minister of Nepal.⁵³ In the 2008 election, over fifty-five parties competed for 601 seats in the Constituent Assembly.⁵⁴ Over 17.6 million voters participated in the election, making the Communist Party of Nepal the most represented of all the parties.⁵⁵ The FDR aimed to be more representative of ethnic, economic, and regional communities and has shown progress in doing so.⁵⁶

Currently, post war stresses—after a decade long internal revolution—have left disfiguring remnants that play a large role in the country, including a legacy of “violence and trauma; social, political, and economic inequality; youth unemployment; corruption; human rights abuses; rising expectations of formerly unrepresented,”⁵⁷ contributing to the people’s distrust in the political powers and the judicial system. In fact, some legal experts note that “there have been recent developments in the transitional justice process which actually signify a step backwards . . . [in that a] government ordinance which proposes to establish a transitional justice mechanism, . . . confers wide powers to provide amnesties to perpetrators, including those who have committed gross human rights violations, including sexual violence.”⁵⁸

52. *Id.*

53. *U.S. Relations with Nepal*, U.S. DEP’T STATE, Feb. 10, 2016, <http://www.state.gov/r/pa/ei/bgn/5283.htm>.

54. *Id.*

55. Matthew Rosenberg, *Millions Turn Out in Nepal for Historical Vote*, THE WASHINGTON POST, Apr. 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/10/AR2008041000489.html> (last visited May 22, 2015).

56. Keshav Bhattara, *Political Parties in Nepal: Opportunities and Challenges*, 8 J. INST. JUSTICE & INT’L STUD. 75, 76 (2008).

57. The WORLD BANK, WORLD DEVELOPMENT REPORT 2011135, *available at* http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf (last visited May 22, 2015).

58. Press Release, Mandira Sharma, Promoting Access to Justice for the Victims of Sexual Violence Requires a Real Commitment from the Government (Mar. 8, 2013), *available at* http://nepelconflictreport.ohchr.org/files/docs/2013-03-08_press-release_af_eng.pdf (last visited Mar. 24, 2016).

B. Social Cultural Factors Affecting Human Trafficking in Nepal

Nepal is a multiracial, multilingual, multicultural, and multi-religious country with an estimated population of 27 million.⁵⁹ The 2009 Nepal Handbook census estimated that about 18,330,000 or 80.6% of the population was Hindu,⁶⁰ with the next largest segment being 2,442,520 Buddhists or 9%.⁶¹ The ethnic make-up is divided between Indo-Nepalese, which make up 80% of the country's population, and Tibeto-Nepalese, which make up the other 20%.⁶² However, within these groupings there are over 61 distinct ethnic groups in Nepal.⁶³ Many of these groups use their own languages to communicate.⁶⁴ The country's harsh terrain makes communication throughout the country challenging.⁶⁵ Home of some of the world's highest peaks, this has created linguistic as well as cultural diversity throughout the country.⁶⁶

The recent aftermath of the Maoist insurgency and distrust coupled with the underrepresentation of Nepal's marginalized groups have created a fragile nation that was and still is at high risk for violent outbreaks.⁶⁷ Furthermore, the lack of government protection and law enforcement led to an increase in illegal trade of opium and an expansion of human trafficking.⁶⁸

1. The Caste System and Discrimination

In addition to Nepal's tumultuous history and unstable political past, unique social factors such as caste, ethnicity, gender, and geographic origin have unintended negative impacts on an individual's access to power⁶⁹—particularly victims coming from marginalized communities.

59. Kanak Bikram Thapa, *Religion and Law in Nepal*, 2010 B.Y.U. L. REV. 921, 921 (2010).

60. POPULATION CENSUS, CENTRAL BUREAU OF STATISTICS 25 (2001), available at http://cbs.gov.np/wp-content/uploads/2012/Pocket%20Book%202010/Chapter01/Chapter_1_4.pdf (last visited May 22, 2015).

61. *Id.* at 26.

62. Manzione, *supra* note 26, at 210.

63. *Id.* at 210.

64. *Id.* at 210–11.

65. *Id.* at 210.

66. *Id.* at 211.

67. Bhattara, *supra* note 56, at 76.

68. THE WORLD BANK, *supra* note 57, at 54.

69. Elisabeth Wickeri, *No Justice, No Peace: Conflict, Socio-Economic Rights, and the New Constitution in Nepal*, 2 DREXEL L. REV. 427, 439 (2010) (citing Rajendra Pradhan & Ava Shrestha, *Ethnic and Caste Diversity: Implications for Development* 16–19 (Asian Dev. Bank, Nepal Resident Mission, Working Paper No. 4, 2005), available at <http://adb.org/sites/default/files/pub/2005/wp4.pdf> (last visited May 22, 2015)).

The caste system “creates a social hierarchy at birth that individuals are unable to escape throughout their lives.”⁷⁰ Due to Hindu practice, Dalits—one of the lower castes—are still discriminated against. For instance, they are kept from certain Hindu rituals and forbidden from entering specified public places.⁷¹ The resulting poverty has made the Dalits especially vulnerable to “bonded labor, slavery, trafficking, and other forms of extreme exploitation.”⁷² Similarly, adults and children who belong to the Badi community were traditionally known as entertainment providers.⁷³ Due to lack of opportunities, many became prostitutes, which lead to social stigmatization, discrimination, and exclusion, making them easy prey for exploitation by traffickers. Other castes, such as the Deukis, are also stigmatized—and again, more vulnerable to human trafficking and prostitution—since men believe that fornicating with a Deuki would cleanse them of their sins and cure illnesses.⁷⁴ Today’s children of Deuki carry the stigma of their mothers and experience problems and abuses similar to that of the Badi.⁷⁵ Capitalizing on Nepal’s religious values, and manipulating the deeply inbred discriminatory beliefs drawn along caste lines, traffickers are able to trick scores of the country’s uneducated and impoverished community for their own evil ends.

Fortunately, caste discrimination was acknowledged and prohibitions against such in national legislation began to surface in the 1950s.⁷⁶ Protection against discrimination first appeared in Nepal’s second constitution in 1951.⁷⁷ In 1990, Nepal’s constitution made it punishable by law to discriminate against “untouchables.” National codes that discriminated against the Dalits, the untouchables, were deemed invalid, and Dalits were guaranteed certain fundamental rights.⁷⁸ Nevertheless,

70. *Id.*

71. HUMAN RIGHTS WATCH, CASTE DISCRIMINATION: A GLOBAL CONCERN 7 (2011), available at <http://www.hrw.org/reports/2001/08/29/caste-discrimination> (last visited May 22, 2015).

72. CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE OF N.Y. UNIV. SCH. OF LAW, THE MISSING PIECE OF THE PUZZLE: CASTE DISCRIMINATION AND THE CONFLICT IN NEPAL 3 (2005), available at http://www.kopke.org/cnsp.ca/public_html/pdf%20files/Missing_Piece_of_the_Puzzle_UNTOUCHABLES_Nepal.pdf (last visited May 22, 2015) [hereinafter CTR. FOR HUMAN RIGHTS, THE MISSING PIECE OF THE PUZZLE].

73. ABA, *supra* note 9, at 19.

74. *Id.* at 19.

75. *Id.*

76. Wickeri, *supra* note 69, at 441 (citing Civil Rights Act of 1955, Act. No. 12 of 2010, art. 4 (Nov. 4. 1955)).

77. THE INTERIM GOVERNMENT OF NEPAL ACT [THE INTERIM ACT], 1951, art. 15(1) (Nepal) (“His Majesty’s Government shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”).

78. HUMAN RIGHTS WATCH, *supra* note 71, at 34.

even as late as 2000, for example, one non-governmental organization (NGO) identified more than one hundred provisions in Nepali laws and regulations that still carried facially discriminatory provisions.⁷⁹ Some have been superseded by provisions in the Interim Constitution, which includes the strongest constitutional provisions prohibiting discrimination to date.⁸⁰ Other non-governmental organizations, U.N. bodies, and the Nepali government have also expressed concern over the extent of discrimination resulting in the denial of fundamental economic and social rights to these vulnerable groups.⁸¹

2. Gender Issues

Women in Nepal also suffer disproportionately, as a result of the decade-long civil war, which destroyed traditional social and economic networks and forced many of them to become reluctant and un-experienced heads of households due to the absence of fathers and husbands in war or through death, further reducing their opportunities to be educated.⁸² Despite Nepal's consistent ratification of human rights instruments, women continue to face legal discrimination. One of the consequences of gender inequality is limited educational opportunities and a high level of illiteracy. Although females are legally permitted to attend school, it is not compulsory.⁸³ Therefore, many young girls either never attend or drop out in order to assist with household chores and family needs.⁸⁴

While limited opportunities are available for women, the patriarchal attitude undermining gender equality also encourages discrimination against women to flourish in Nepal. Furthermore, although the government criminalizes trafficking of girls and women, over 200,000

79. Wickeri, *supra* note 69, at 441 (citing Jane Aiken, *Lessons from Nepal: Partnership, Privilege, and Potential*, 2 WASH. U. GLOBAL STUD. L. REV. 391, 402 (2003); see also CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE OF N.Y. UNIV. SCH. OF LAW, RIGHTS WITHIN REACH: SECURING EQUALITY AND HUMAN RIGHTS IN NEPAL'S NEW CONSTITUTION 13–14 (2010), available at <http://www.chrgj.org/projects/docs/rightswithinreach.pdf> (last visited May 22, 2015) [hereinafter CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH].

80. Wickeri, *supra* note 69, at 441; see also CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH, *supra* note 79.

81. See, e.g., ECOSOC, Consideration of Reports Under Articles 16 and 17, *supra* note 18, ¶¶ 7, 8, 32, 43; U.N. Human Rights Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, ¶ 8, U.N. Doc. CCPR/C/79/Add.42 (Nov. 10, 1994).

82. THE WORLD BANK, *supra* note 57, at 163.

83. ALEXANDER, *supra* note 4, at 6.

84. *Id.*

Nepalese women have been enslaved in brothels in India.⁸⁵ Approximately 65% of trafficked women now suffer from HIV and other sexual transmitted diseases.⁸⁶ Therefore, in light of the above, it is not surprising, then, that these particular sub-groups—women and those of lower castes—are highly vulnerable to human trafficking and comprise a majority of the victims.⁸⁷

This is seen in the high prevalence of human trafficking in Nepal that is found in six particular areas:

- (1) sexual exploitation of Nepali women and girls abroad (particularly in India) and domestically (particularly within the hospitality and entertainment industries);
- (2) exploitation of Nepali migrant workers (particularly in the Gulf States and Malaysia);
- (3) exploitation of Nepali children in Indian circuses;
- (4) child labor with in Nepal;
- (5) generational bonded labor and other forms of servitude; and
- (6) illicit organ transplantation.⁸⁸

According to Nepal's Population Census 2011, there were 1.92 million absentees in the population.⁸⁹ This figure reflects a nearly three-fold increase from 2001.⁹⁰ "Among the absentees population, 85% originated from the rural areas."⁹¹

Experts have identified three major hurdles that are important to overcome in order to effectively combat human trafficking.⁹² Therefore there is a need for unified institutional mechanisms to collect reliable statistical information on the scope of trafficking in persons, and corresponding efforts to address the lack of knowledge and awareness about laws designed to combat trafficking, including related issues such as how to promote safe migration between borders.⁹³

85. *Id.* at 8.

86. *Id.*

87. *Id.*

88. ABA, *supra* note 9, at 1–2.

89. Census 2011: Nepal, Population Growth Rate At 1.40 Percent Females Outnumber Males (2011), *available at* <http://knicnepal.com/2011/09/28/census-2011-nepal/> (last visited May 22, 2015).

90. *Id.*

91. NAT'L HUMAN RIGHTS COMMISSION, TRAFFICKING IN PERSONS ESPECIALLY ON WOMEN AND CHILDREN IN NEPAL: NATIONAL REPORT 2012 TO 2013 6 (2014), *available at* [http://www.nhrcnepal.org/nhrc_new/doc/newsletter/1289900699Report%20of%20Trafficking%20in%20Persons%20\(Especially%20on%20Women%20and%20Child](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/1289900699Report%20of%20Trafficking%20in%20Persons%20(Especially%20on%20Women%20and%20Child) (last visited May 22, 2015).

92. *Id.*

93. *Id.*

III. OVERVIEW OF RELEVANT LAWS AND ACTORS IN THE HUMAN TRAFFICKING FIELD

A. *International Treaties, National Laws, Constitution, and Strategic Plans*

1. *International Treaties*

Nepal is a party to eleven international treaties⁹⁴ that are relevant to the fight against human trafficking and the protection of victims of violence and crime. These include the International Covenant on Economic, Social and Cultural Rights (“ICESCR”);⁹⁵ the International Covenant on Civil and Political Rights (“ICCPR”);⁹⁶ the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”);⁹⁷ the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”);⁹⁸ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;⁹⁹ the Convention on the Rights of the Child;¹⁰⁰ and the Convention on the Rights of Persons with Disabilities.¹⁰¹ Nepal is also bound to fundamental provisions of international human rights law that have obtained customary international law status.¹⁰²

Although Nepal has the “duty to combat impunity and to ensure effective investigation and prosecution of those responsible for serious violations of international law,” through international organizations,¹⁰³ it

94. GOV'T OF NEPAL MINISTRY OF WOMEN, CHILDREN AND SOCIAL WELFARE, A REPORT ON ANTI-HUMAN TRAFFICKING INITIATIVES LED BY GOV'T OF NEPAL 2 (2013), *available at* [http://asiafoundation.org/resources/pdfs/GONreporton antihumantraffickinginitiativesFY20122013.pdf](http://asiafoundation.org/resources/pdfs/GONreporton%20antihumantraffickinginitiativesFY20122013.pdf) (last visited May 22, 2015) [hereinafter GOV'T OF NEPAL].

95. International Covenant on Economic, Social and Cultural Rights, art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

96. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

97. International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICEFRD].

98. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEFDW].

99. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

100. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

101. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex, U.N. Doc. A/RES/61/106 (Jan. 24, 2007) [hereinafter CRPD].

102. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1987).

103. ANJA SEIBERT-FOHR, PROSECUTING SERIOUS HUMAN RIGHTS VIOLATIONS 190 (Oxford Univ. Press ed. 2009) (citing U.N. Human Rights Council, Annual Report of the United Nations High

has yet to ratify the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).¹⁰⁴ The Protocol would yield benefits, such as the recognition of border protection measures and training and information exchange with other states to further enable them to strengthen skills for law enforcement, immigration, and other relevant officials in the prevention of trafficking in persons.¹⁰⁵ Although there has been much discussion about the value of ratifying the UN Trafficking Protocol, no formal action has been taken to adopt it as of the writing of this Article.¹⁰⁶

2. *Nepal's Domestic Human Trafficking Laws*

The practical impact and protections of the above-listed international treaties only materialize when those provisions are incorporated into a country's domestic laws. In Nepal, the mechanism is through the Nepal Treaty Act¹⁰⁷ that stipulates the international treaties, to which Nepal is a party, are enforceable as domestic law.¹⁰⁸ The Interim Constitution of 2007 also specifically directs the government to effectively implement international treaties to which Nepal is a party,¹⁰⁹ including those protecting minorities and addressing the discriminatory caste system.¹¹⁰ The Constitution sets forth the government's responsibility to adopt a political system that fully aligns with fundamental human rights, the rule of law, and the establishment of a system of impunity.¹¹¹ Specifically, Nepali citizens are guaranteed basic human rights that include protection from human trafficking, exploitation, forced labor, slavery, and servitude.¹¹²

Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, ¶ 55, U.N. Doc. A/HRC/12/18 (Aug. 6, 2009).

104. ABA, *supra* note 9, at 1.

105. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319, ¶ 6, *available at* http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.

106. ABA, *supra* note 9; Interview with Indira Ghale, Human Rights Defender (Jan. 19, 2015).

107. Wickeri, *supra* note 69, at 480 (citing Nepal Treaty Act, Act No. 16 of 2047, § 9(1) (Nov. 11, 1990), *available at* <http://www.unhcr.org/refworld/docid/3ae6b51724.html>).

108. *Id.*

109. NEPAL INTERIM CONSTITUTION, art. 33(m) (2007) (Interim Constitution), *available at* <http://www.lawcommission.gov.np/en/documents/prevailing-laws/constitution.html>.

110. THE WORLD BANK, *supra* note 57, at 92.

111. NEPAL INTERIM CONSTITUTION, *supra* note 109, art. 33, 34. As of the date of this writing, no permanent constitution has been adopted.

112. ABA, *supra* note 9, at 2.

Interestingly, by the time that the United States promulgated its anti-trafficking law in 2000,¹¹³ Nepal had already recognized the crime of trafficking in persons for almost four decades, since 1963—and added it to its national legal framework, in the General Code (Muluki Ain), that year.¹¹⁴ That provision specifically prohibits any person being taken out of the country for sale, which was a common practice known as “deukis” where poor families in rural parts of the country would sell their daughters to rich families for purposes of prostitution.¹¹⁵ Bonded labor¹¹⁶ is also prohibited *in toto* under the Bonded Labor (Prohibition) Act of 2002¹¹⁷ and prohibits debt bondage, prescribing penalties for employing bonded laborers, and provides for the rehabilitation of former Kamaiyas.¹¹⁸ In Nepal, a special clan called the Tharu people are commonly exploited and used for unpaid labor.¹¹⁹ They are referred to as Kamiyas, which simply means “worker.”¹²⁰ This system of bonded labor is modern day slavery.¹²¹

Nepal’s most important promulgated stand-alone anti-human trafficking laws are the Human Trafficking and Transportation (Control) Act of 2007¹²² (HTTCA) and the Human Trafficking and Transportation (Control) Rules of 2008¹²³ (HTTCR), which supplemented the gaps and flaws in a previous statute called the Traffic in Human Beings Control Act of 1986.¹²⁴ The HTTCR of 2008 was hailed as a victory since it compiled all the relevant human trafficking laws under one umbrella and expanded the definitions for trafficking, transportation and exploitation, consistent with the UN optional protocol,¹²⁵ and therefore is perceived to be a more

113. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044; Trafficking Victims Protection Reauthorization Act of 2013, H.R. 898, 113th Cong. (2013).

114. “No person shall lure or take another person outside the territory of Nepal with intention to sell him or her nor shall sell another person outside the territory of Nepal.” The Muluki Ain (General Code) Ch.11 No. 1 at 381.

115. *Id.*

116. Bonded labour is labour without compensation. See Sherab Posel, *Kamaiya: Bonded Labour in Western Nepal*, 27 COLUM. HUMAN RTS. L. REV. 123 (1995).

117. Bonded Labor (Prohibition) Act, 2058 (Nov. 15, 2002).

118. ABA, *supra* note 9, at 32.

119. Posel, *supra* note 116, at 3–4.

120. *Id.*

121. *Id.*

122. Human Trafficking and Transportation (Control) Act, 2064, *Act Number 5 of the Year 2064(2007)*, available at <http://www.hsph.harvard.edu/population/trafficking/nepal.trafficking.07.pdf>.

123. Nepal Law Commission, available at http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=2&func=startdown&id=1585&lang=en.

124. GOV’T OF NEPAL, *supra* note 94, at 3.

125. *Id.* at 4.

progressive and complete law.¹²⁶ The HTTCR also set in place a national committee that monitors and oversees the reporting process and implements policies regarding human trafficking.¹²⁷

Nevertheless, vital areas are still lacking under the HTTCA law—such as the lack of sufficient witness protection, repatriation of victims from overseas, international counter-trafficking cooperation, and border measures aimed at combating trafficking in persons.¹²⁸ For instance, security provisions for witness protection are vague, simply stating that if an individual provides reasonable grounds and requests security, the police office *should* provide it.¹²⁹ Security protections also seem restricted to cover only travel to and from court hearings, with minimal fees for travel costs.¹³⁰ Many critics are alarmed by the provision of the HTTCA that places the burden of proof on the accused to provide evidence proving he/she did not commit the offense,¹³¹ creating a confession-centric system of justice in violation of the internationally recognized rights.¹³²

While this Article deals with circumstances in which the human trafficking victim is the complaining witness, trafficking victims are also frequently detained and charged with offenses, such as prostitution and related offenses. In those cases, the application of this burden-shifting provision would prove especially egregious and be tantamount to punishing the victim. In any case, the burden of proof being on the accused strikes at the heart of the United Nations Universal Declaration of Human Rights: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”¹³³

On March 6, 2012, the government also implemented the National Plan of Action (NAP) against Trafficking in Persons, especially in Women and Children,¹³⁴ which incorporates UNSCR 1325 & 1820 to be implemented

126. *Id.* at 3.

127. Human Trafficking and Transportation (Control) Rules of 2008 § 4 (Nov. 24, 2008) (Nepal) [hereinafter HTTCR].

128. ABA, *supra* note 9, at 29–30.

129. HTTCR, *supra* note 127, § 4.

130. Interviews with Indira Ghale, Human Rights Defender, building on previous in-person interviews and communications from Sept. 17 to Sept. 27, 2014 during travels to villages in Nepal with Ms. Ghale (and follow up by Skype on Dec. 16, 2014 and Jan. 19, 2015).

131. Human Trafficking and Transportation (Control) Act 2064 § 9 (Jul. 24, 2007) (Nepal), available at <http://www.lawcommission.gov.np/site/sites/default/files/Documents/human-trafficking-and-transportation-control-act.pdf> (last visited May 22, 2015) [hereinafter HTTCA].

132. *See, e.g.*, ICCPR art. 1, *supra* note 96; ABA, *supra* note 9, at 30.

133. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810, art. 11.1 (Dec. 12, 1948) [hereinafter UDHR].

134. GOV'T OF NEPAL, *supra* note 94, at 7.

for five years from December 2011 to 2016.¹³⁵ The NAP specifically recognized that “children and women [were] most affected by the armed conflict,” and that the absence of men meant women “suffered from sexual violence during the conflict as well as the transition period due to a weak law and order situation,” which “displaced,” and “compelled [women] to work in risky and oppressive conditions making them vulnerable to sexual and other forms of violence.”¹³⁶ Nepal’s implementation of the NAP demonstrated the government’s push to address issues relating to women, peace, and security, as it was the first country in South Asia to adopt the plan.¹³⁷ The NAP was seen as “a welcome move, however, any real progress towards ending impunity for conflict-era sexual violence has so far not been extended beyond rhetoric.”¹³⁸

In reality, however, the NAP appears to marginally address issues related to human trafficking victims through mentioning gender-based violence and discrimination, which is often linked to sex trafficking.¹³⁹

B. Players in the Human Trafficking Justice System

1. Government Agencies and District Committees

The Government of Nepal formed National and District Coordination Committees against Trafficking in Persons under the Ministry of Women, Children, and Social Welfare (MoWCSW), the government agency which oversees the development of awareness raising programs and the rescue of trafficked victims.¹⁴⁰ The MoWCSW is the focal point for the government, responsible for formulating and implementing laws, plans, and policies pertaining to the trafficking in persons. This agency oversees the Women Development Offices in all 75 districts throughout the country.¹⁴¹ Each of the 75 District Coordination Committees is chaired by the CDO and consists of the WDO, district government attorney, Chief of District

135. Resolution 1325 was adopted by the UN Security Council on Oct. 21, 2000 to address the security concerns and participation of women and girls. The Security Council adopted Resolution 1820 in June 2008 to strengthen the mandate of UNSCR 1325. See NAP, *supra* note 43, at 1, 1222, 11.

136. *Id.* at 2.

137. *Nepal: Nepal Launches National Act Plan on Women Peace & Security Internationally*, PEACE WOMEN, Feb. 24, 2011, <http://www.peacewomen.org/content/nepal-nepal-launches-national-action-plan-women-peace-security-internationally>.

138. SHARMA, *supra* note 58.

139. NAP, *supra* note 43, at 3–5.

140. NAT’L HUMAN RIGHTS COMMISSION, *supra* note 91, at 124.

141. ABA, *supra* note 9, at 4.

Police, and three women nominees who are volunteers¹⁴² with anti-human trafficking expertise in the district, and a representative from the Federation of Nepali Journalists.¹⁴³ The District Coordination Committees are responsible for: (1) forming and operating anti-human trafficking committees at the local level; (2) raising public awareness about human trafficking; (3) inspecting rehabilitation centers; (4) enhancing multi-sector cooperation aimed at combating trafficking in persons; (5) rescuing trafficking victims within the district and obtaining documents that confirm their identity; and (6) maintaining district-level statistics about human trafficking.¹⁴⁴

There is also a broad-based, multi-sector National Task Force against Trafficking in Persons, comprised of District Task Forces in 26 districts,¹⁴⁵ which were identified in 1998 as particularly prone to trafficking in persons.¹⁴⁶ To date, however, these task forces have done little to reduce human trafficking in these districts.¹⁴⁷

In practice, rather, it appears that the Coordination Committees are not fully institutionalized or operational, and that the Task Forces are practically inactive,¹⁴⁸ substantially due to the fact that they have no legal or constitutional status.¹⁴⁹ Nilamber Acharya, chairman of the Constitutional Committee, notes that, “the task force is political and it has no constitutional validity.”¹⁵⁰ Nevertheless, although the district units at the present time may not be effective, this existing structure provides an invaluable base that human rights defenders can access to carry out their work of outreach, prevention, education, training and advocacy.

2. *The Judiciary*

According to the Second Five Year Strategic Plan of the Nepali Judiciary, 2009 to 2014, the “. . . Nepali judiciary is to establish a system

142. Interviews with Indira Ghale, *supra* note 130.

143. HTTCR, *supra* note 127, § 6.

144. *Id.* § 7.

145. ABA, *supra* note 9, at 4.

146. Districts included Nuwakot, Dhading, Sindhupalchowk, Kailali, Kavrepalanchowk, Makawanpur, Gorkha, Banke, Sindhuli, Udayapur, Rasuwa, Nawalparasi, Jhapa, Ramechhap, Sarlahi, Mahottari, Dhanusa, Chitawan, Lalitpur, Kaski, Morang, Sunsari, Rupandehi, Parsa, Kathmandu, and Dang. ABA, *supra* note 9, at 14.

147. Interviews with Indira Ghale, *supra* note 130.

148. *Id.*

149. ABA, *supra* note 9, at 4.

150. Nelamber Acharya, *The Task Force Has No Constitutional and Legal Status*, THE SPOTLIGHT, Oct. 9, 2010, <http://www.spotlightnepal.com/News/Article/-The-Task-Force-Has-No-Constitutional-And-Legal-S> (last visited May 22, 2015).

of justice which is independent, competent, inexpensive, speedy, effective and accessible to the public, worthy of public trust and thereby to transform the concept of the rule of law and human into a living reality and thus ensure justice for all whereas the mission is to impart fair and impartial justice in accordance with the provisions of the Constitution, the laws and the recognized principles of justice.”¹⁵¹ The presence of a strong, independent, competent judiciary is the hallmark of a healthy civil society that protects the rights of victims, especially human trafficking victims. The UN Department of Peacekeeping Operations stated that, “the work of the justice system . . . should be closely linked with efforts of other mission components to promote and protect human rights.”¹⁵² Nevertheless, as noted by numerous reports and evaluations, there are many issues looming over the Nepali judicial system that detrimentally affect human trafficking victims’ chances of success in court.

The first two of the following three classic indicators of corruption in a judicial system are found in Nepal: (1) delays in the disposal of cases; (2) low conviction rate; and (3) weaknesses in the overall system such as laws not meeting international standards,¹⁵³ all factors that can be manipulated by corrupt prosecutors and judges.

First, the pace of criminal case disposition in Nepal’s Supreme Court and District Courts is appalling. Compared to the other judiciaries of the world that resolve cases within three or six months from the date of registration on average,¹⁵⁴ the Nepali rates approximate closer to one to two years.¹⁵⁵ Moreover, the execution of judgments, sentences, and collection of fines is dismal. There is no effective mechanism for revenue recovery.¹⁵⁶ The “[f]ailure to recover . . . sentence[s] and fines levied through . . . the courts has created an atmosphere of distrust towards the judiciary.”¹⁵⁷ Second, the low conviction rate in Nepal can be linked to several factors. The lack of judicial independence in Nepal is one. When a

151. SUPREME COURT OF NEPAL, SECOND FIVE YEAR STRATEGIC PLAN OF THE NEPALI JUDICIARY 2 (2009), available at http://www.supremecourt.gov.np/download/2nd_plan_English.pdf (last visited May 22, 2015) [hereinafter STRATEGIC PLAN].

152. UN PEACEKEEPING OPERATIONS, UN PRIMER FOR JUSTICE COMPONENTS IN MULTIDIMENSIONAL PEACE OPERATIONS: STRENGTHENING THE RULE OF LAW 10 (2006), available at http://www.unrol.org/files/UNDPKO_justiceinmultidimensionalpeaceop.pdf (last visited May 22, 2015).

153. Surya Prasad Parajuli, *Criminal Justice Response to Corruption in Nepal*, in RESOURCE MATERIAL SERIES NO. 80 184, available at http://www.unafei.or.jp/english/pdf/RS_No80/No80_23PA_Parajuli.pdf (last visited May 22, 2015).

154. STRATEGIC PLAN, *supra* note 151, at 50.

155. *Id.* at 50.

156. *Id.* at 51.

157. *Id.*

judge is appointed to his post, he can only be relieved pursuant to the Constitution on grounds of inefficiency or misconduct.¹⁵⁸ Further compounding the ability of courts to render decisions is the weak and inefficient infrastructure, procedure, and logistical support.”¹⁵⁹

Third, although Nepal may not have adopted the UN Trafficking Protocol, its laws do not egregiously conflict with, or lack protections compared to, international laws.¹⁶⁰ However, judges are hampered in their ability to administer justice for victims of human trafficking due to the shortage of competent and trained judicial assistants who are appointed by the courts to assist the judges. Their basic lack of legal knowledge detrimentally impacts justice.¹⁶¹ The fact that universities also are having to close down their certificate level programs for law students further compounds the dilemma for the judiciary since judicial assistants who wish to serve in the judiciary are required to possess a certificate in any discipline.¹⁶²

Finally, the role of the court is still hidden from the public in most parts of the country. Only the Supreme Court and three districts courts—Kathmandu, Lalitpur, and Bhaktapur—have rudimentary websites. Other courts only make occasional public announcements.¹⁶³

Therefore, most knowledge about policing and crime is based on personal experience, guesswork, or rumor.¹⁶⁴ Moreover, police, prosecutors, and courts do not routinely protect victims’ privacy. When officials or employees in the system sell or leak confidential information, this only reinforces the public perception that the legal/law enforcement systems serve personal or criminal interests, instead of justice, which further erodes trust and credibility.¹⁶⁵ As a result, witnesses (and victims) are reluctant to come forward because they know their identity will not be

158. *Id.* at 58; see also *Nepal*, FREEDOM HOUSE, available at <https://freedomhouse.org/report/countries-crossroads/2010/nepal#.VLBLmCcVgeI> (last visited May 22, 2015).

159. STRATEGIC PLAN, *supra* note 151, at 51.

160. *Signatories of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UNITED NATIONS OFFICE ON DRUG AND CRIME, available at <https://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited May 22, 2015).

161. *Id.* at 54.

162. *Id.*

163. Interviews with Indira Ghale, *supra* note 130.

164. USAID, A FIELD GUIDE: ASSISTANCE TO CIVILIAN LAW ENFORCEMENT IN DEVELOPING COUNTRIES 148–49 (2005), available at http://pdf.usaid.gov/pdf_docs/PNADU808.pdf.

165. *Id.*

protected.¹⁶⁶ These factors are discussed in more depth in Parts IV and V below.

3. *Public Prosecutors and Law Enforcement*

Prosecutors come under the supervision of the Office of the Attorney General (“OAG”), whose headquarters is located in capital city of Kathmandu.¹⁶⁷ The Attorney General (“AG”), who is appointed by the president of Nepal, oversees public prosecutors. Subordinate or assistant prosecutors are government employees in the judicial service.¹⁶⁸ They are selected and recruited through a nationwide examination administered by the Public Service Commission.¹⁶⁹

After receiving an investigation report with an opinion from the police, the prosecutor is the person who makes the decision whether to request additional evidence, investigate further, or issue additional questions to the accused, and, ultimately, whether to issue a charge-sheet to the relevant court.¹⁷⁰ If the prosecutor chooses not to prosecute a trafficker or those who have committed grave violations of human rights, there is no mechanism for the victim or their representative to file a complaint or appeal the decision.¹⁷¹

In Nepal, the prosecution—as with presiding judges—is also subject to political influences.¹⁷² Prosecutions of even atrocious criminals can be diverted through corrupt politics and dealings.¹⁷³ Similarly, in the case of allegations made against members of the government, charges are seldom brought. As a result, there have been calls by legal observers for independent investigative and prosecutorial units to investigate the way prosecutors handle allegations against government officials.¹⁷⁴

166. *Id.*

167. YUBA RAJ SUBEDI & SOORYA PRASAD POKHAREL, CRIMINAL JUSTICE SYSTEM OF NEPAL 5 (2010), available at http://www.ncf.org.np/upload/files/768_en_Criminal%20Justice%20System%20of%20Nepal.pdf (last visited May 22, 2015).

168. *Id.* at 6.

169. *Id.*

170. ANAND MOHAN BHATTARAI ET. AL, PREPARING TO IMPLEMENT THE ROME STATUTE: A STUDY OF THE LAWS AND PROCEDURES IN PLACE IN NEPAL AND NEED FOR REFORM 16 (2012), available at http://www.asf.be/wp-content/uploads/2013/01/ASF_NEP_Preparing-to-Implement-Rome-Statute.pdf (last visited May 22, 2015).

171. *Id.*

172. *Id.* at 118.

173. See Raj Kumar Siwakoti, *Nepal Must Strengthen Prosecution Against Impunity*, HUMAN RIGHTS AND DEMOCRATIC FORUM (Jan. 12, 2013), available at http://www.iccnw.org/documents/H-Nepal_must_strengthen_prosecution_against_impunity.pdf (last visited May 22, 2015).

174. MANDIRA SHARMA, CRIMINAL JUSTICE SYSTEM IN NEPAL 56, available at http://mercury.ethz.ch/serviceengine/Files/ISN/114920/ichaptersection_singledocument/db56a29a-63d2-

Prosecutors work closely on human trafficking cases with the Nepali police. The government plans to establish an anti-human trafficking unit within its elite Central Investigation Bureau under the Nepal Police. In fact, the 2012 OAG Action Plan for 2012–17 explicitly calls for the establishment of a specialized prosecutorial unit to deal with trafficking in persons.¹⁷⁵ To date, this has not been done.¹⁷⁶ The Nepal Police has formed the Women and Children Service Directorate (“WCSD”) in Kathmandu as well as Women and Children Service Centers (“WCSC”) in the districts.¹⁷⁷ The Human Rights Unit was established by the Nepal Police on January 16, 2003, with the goals of implementing necessary policy and planning for promotion and protection of human rights in coordination with the government. Their tasks include monitoring activities of the police personnel, investigating alleged human rights abuses including those perpetrated by police personnel, maintaining a database that contains information on human rights violations, and collaborating with and training national and international human rights organizations.¹⁷⁸ However, in reality, the Human Rights Unit of the Nepal Police has concentrated primarily on the collection of evidence, with little emphasis on protection of victims.¹⁷⁹

Observers have noted that “[v]iolations of legal protections of human rights happen because police investigators lack the expertise and resources needed to conduct adequate inquiries into alleged crimes.”¹⁸⁰ The lack of proper investigative skills, technologies needed to gather sufficient evidence, proper training and equipment and a deficient internal system of accountability leads to dependency on confessions and the testimony of witnesses,¹⁸¹ which further works against successful prosecutions of traffickers. If the testimony of the victim is discredited, the case is more apt to fail.

4e1d-acf8-04e01d984c51/en/17.pdf (last visited May 22, 2015).

175. ABA, *supra* note 9, at 65.

176. Interviews with Indira Ghale, *supra* note 130.

177. ABA, *supra* note 9, at 48.

178. *Human Rights Unit*, NEPAL POLICE, <http://www.nepalpolice.gov.np/human-rights.html> (last visited May 22, 2015).

179. Interviews with Indira Ghale, *supra* note 130.

180. SHARMA, *supra* note 58.

181. *Id.*

4. Lawyers

Lawyers in Nepal are classified into three categories: (1) Senior Advocates who are lawyers with a minimum of fifteen years of experience, (2) Advocates who are law graduates or pleaders¹⁸² with a combination of experience with or without a law degree, retired judges and officers of Nepalese Judicial Service, and law teachers who pass the bar entry, and (3) Pleaders who hold an intermediate degree in law or have worked as an agent for a minimum of five years with a successful Bar entry test.¹⁸³ Pleaders are those with authority to direct and cross examine witnesses and the complaining witness and to address the court in terms of arguments and statements. The pleaders allowed to plead and practice in all the courts except the Supreme Court.¹⁸⁴

In the public sector, the current reality is a defense system “so woefully inadequate that the poor have little chance of receiving any meaningful access to a lawyer.”¹⁸⁵ Legal Aid in Nepal is based on a court appointed counsel (*Baitanik Wakill*) system where one lawyer is appointed to each court to represent all poor persons charged with felonies who appear before that court.¹⁸⁶ These lawyers are also grossly unqualified with scarce knowledge or experience in criminal defense.¹⁸⁷ Since legal aid lawyers do not enter the scene until indictment, involuntary confessions are usually already obtained and pre-trial detention is completed. This is distressing given the fact that many victims of human trafficking are frequently charged with criminal offenses.¹⁸⁸ Attorneys available to combat human trafficking are over worked and underpaid, often making it difficult for them to fully address the cases at hand and nearly impossible to handle cases in remote regions.¹⁸⁹

Nepal’s Five Year Strategic Plan¹⁹⁰ recognizes the need to institutionalize legal aid services to the poor and disadvantaged groups, providing logistical support to these lawyers by periodically evaluating

182. *Id.*

183. *Bar in Nepal*, SUPREME COURT OF NEPAL, <http://www.supremecourt.gov.np/main.php?d=general&f=bar> (last visited May 22, 2015).

184. *Id.*

185. *Background*, INTERNATIONAL LEGAL FOUNDATION, <http://theilf.org/our-programs/ilf-nepal> (last visited May 22, 2015).

186. *Id.*

187. *Id.*

188. ABA, *supra* note 9, at 69.

189. *Id.* at 83.

190. STRATEGIC PLAN, *supra* note 151, § 3.3.15.

and maintaining a record of their activities.¹⁹¹ As noted in Part I, because of the pervasiveness of Hindu culture and values imbedded in their caste system, even attorneys must be trained and educated against inherent discrimination towards their clients who come from these marginalized communities.¹⁹² “Poor, low-caste people who have been accused of crimes do not rate much effort from their more educated, high-caste lawyers,” but improvement is seen slowly “as defense attorneys visit their clients more regularly at the jails, and push for release or settlement of their cases within the time limits provided by law.”¹⁹³

A number of recommendations and suggestions, such as the creation of an appointment process of court appointed lawyers, which would include regulations governing practice standards, remuneration, conditions of service, and other privileges, were included in the Supreme Court and District Court Regulations.¹⁹⁴ Furthermore, guidelines had been submitted by the Plan Implementation Committee for discussion at the Full Court.¹⁹⁵ From this, it was decided to establish a Project Implementation Secretariat within the Supreme Court and develop a mechanism for implementing the plan in all courts in order to establish a judiciary capable of executing the obligations set forth in the Constitution.¹⁹⁶ There have also been some strides, mostly notably by NGOs¹⁹⁷ stepping in to provide implementation of these very necessary components to justice.

In the private sector, the Nepalese Bar has emerged as a relatively credible, strong organization since its beginnings in 1953, and is now administered by the Nepalese Bar Council and headed by the Attorney General of Nepal.¹⁹⁸ The Bar Council administers the bar exam and oversees the professional development of lawyers, including attorney discipline. A professional bar with ethics¹⁹⁹ is “an ornament of independent judiciary,” within a greater civil society network with media to disseminate positive aspects of the judiciary and build trust among the people.²⁰⁰

191. *Id.* at 40.

192. Madeline R. Vann, *Another Perspective: Indigent Defense in the Third World*, 56 LA. B.J. 16, 17 (2008).

193. *Id.* (quoting Angela Krueger).

194. STRATEGIC PLAN, *supra* note 151, at 40 (citing Honorable Justice Anup Raj Sharma).

195. *Id.* (citing Rule 111 (b) of Supreme Court Regulation, 2049 and Rule 95 (a) of District Court Regulation, 205).

196. *Id.* at 10.

197. *Background*, *supra* note 185.

198. *Bar in Nepal*, *supra* note 183.

199. STRATEGIC PLAN, *supra* note 151, at 59.

200. *Id.* at 58.

The Five Year Strategic Plan suggests that a mechanism be established where discussions and interactions between the Bar and Bench could be organized. Efforts have been made to ensure the plan is practical, implementable, and achievable by including the Bar in case management and coordination.²⁰¹ The Bar could serve as an effective legal model to the justice system to force it to abide by a code of professional conduct that is transparent and responsible.²⁰²

IV. PROSECUTION OF HUMAN TRAFFICKING CASES IN THE NEPAL JUSTICE SYSTEM

The two primary objectives of the HTTCA are to prevent/decrease the acts of trafficking-in-persons and to protect and rehabilitate the victims.²⁰³ Although the adoption of the HTTCA in 2007 created a momentum in Nepal's counter-trafficking efforts, the number of human trafficking prosecutions has been on the rise, with the most recent prosecution rates remaining low. "The core purpose of prosecuting violations of human rights abuses is to establish effective rule of law, and to deter future transgressions."²⁰⁴ In the 2009–10 fiscal year, only 299 human trafficking cases were prosecuted at the district level, i.e., on average, less than four cases per district. Reportedly, in the 2010–11 fiscal year, even less—only about 201 "First Information Reports ("FIRs") (the initial victim statement)²⁰⁵ were even taken for human trafficking cases.²⁰⁶ The court process for Human Trafficking cases in Nepal follows:

The victim or a third party, such as a victim's advocate, can initiate a complaint against a trafficker at the nearest police station.²⁰⁷ Not surprisingly, the level of reporting remains low since many victims fundamentally misunderstand the crime of human trafficking, and therefore fail to understand that they were exploited.²⁰⁸ Even among

201. *Id.* at 104.

202. *Id.* at 64.

203. ABA, *supra* note 9, at 29.

204. Frank Ginsbach, *The Prosecution of Human Rights Abuses in Nepal: A Himalayan Perspective on Truth and Reconciliation*, 5 CREIGHTON INT'L & COMP. L.J. 25, 41 (2014) (citing Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537, 2598 (1991)).

205. ABA, *supra* note 9, at 71.

206. *Id.* at 67–71.

207. HTTCA § 5(1).

208. The crime of HT is generally misunderstood by many victims who have been exploited. Many think that it is due to their socio economic position, their caste, even their parents selling them into the trade. Interviews with Indira Ghale, *supra* note 130; Interview with Mandira Sharma, Human Rights Defender Trainer, International Human Rights Attorney, and Founder of Advocacy Forum, a

victims with an awareness of legal protections, there is under-reporting because police stations are intimidating, and lack the interest to ensure and protect the victims' privacy and confidentiality.²⁰⁹ In fact, the fear and intimidation at police stations can be reminiscent of the situation from which the victim just escaped. The police structure also suffers from acute lack of resources and training, especially in light of the overwhelming number of cases—especially at the local level.²¹⁰

When victims arrive at the police station, they are to receive counseling from the Women and Children Service Centers (“WCSC”).²¹¹ The Nepal police has formed the Women and Children Service Directorate (“WCSD”) in Kathmandu as well as WCSCs in the districts. The WCSD and WCSCs are charged with controlling and preventing crimes against women and children, although they face several obstacles in fulfilling this mandate.²¹² Few to no victims receive counseling from WCSD, although it is mandated. Some victims have been able to receive counseling from independent NGOs.²¹³

Victims are then referred to the police department's case registration unit charged with taking and filing out the victims' statements or “first information reports,” (known as “FIRs”) in Nepal's crime registration book.²¹⁴ If the complainant is the victim, the police are obligated to take their statement immediately.²¹⁵ WCSCs may also be present and counsel female and child victims of crimes when they arrive at initial intake, but do not have the authority to file FIRs, and do not coordinate with the case registration units.²¹⁶ While there is no universal system of intake, some districts such as Kanchanpur, have created a uniform victim statement interview protocol with specific questions.²¹⁷ Victims can be accompanied to the police station by a person of their choice, e.g., a lawyer, NGO representative, parent, or guardian. If the victim wishes to stay anonymous, the police should maintain his or her confidentiality.²¹⁸

Nepal NGO dedicated to monitoring and investigating human rights violations in Nepal since 2001 (Dec. 17, 2014).

209. ABA, *supra* note 9, at 66.

210. *Id.*

211. *Id.* at 65.

212. *Id.*

213. Interviews with Indira Ghale, *supra* note 130.

214. ABA, *supra* note 9, at 66.

215. HTTCA § 6(1).

216. ABA, *supra* note 9, at 65.

217. *Id.* at 66.

218. HTTCA § 5(2).

Immediately after the FIR is filed, the trafficking victim is directed to report to the nearest district court to certify their account of the facts in a statement.²¹⁹ The statement of a human trafficking victim is unique in that it can be used as evidence even if the victim does not appear in court during trial.²²⁰ Also, after the FIR is filed, the police are required to send a preliminary report about the crime to the prosecutor.²²¹

At this stage, the police must commence the investigation without delay. The investigating officer is to take the accused (or defendant's) statement in the presence of the government representative.²²² This may take some time because police are not as proactive as they should be in searching for the suspects or evidence, and the prosecutors provide little guidance on how to conduct the investigation. The prosecutor is then left with a haphazard investigation, compounded by insufficient time to prepare a strong charge sheet. Naturally, this contributes to weak and circumstantial evidence in most human trafficking cases.²²³

After the police have completed their investigation, the prosecutor will review the police file, make a decision on whether to press charges, and file the charging document sheet with the district court.²²⁴ The charge sheet cannot be amended once it has been lodged with the court. Technically, the Government of Nepal is considered the complaining witness or the plaintiff in trafficking in persons cases.²²⁵ Although there is a controversial clause requiring the accused in human trafficking cases to prove their evidence—i.e. bear the burden of proof²²⁶—some claim that it serves the public purpose because it helps to raise the prosecution and conviction rates.²²⁷

Observers have noted that “each judge hears, on average, 3–4 cases per day.”²²⁸ Each prosecutor then “handles, on average, over 1,000 criminal cases per year.”²²⁹ “This creates a significant imbalance of power [and advantage to well-heeled traffickers] in the courtroom” against the victim

219. ABA, *supra* note 9, at 67; if the complaint is unsuccessful, the interviewee may file a petition for a writ of mandamus with the Supreme Court, or present a petition or complaint to the National Human Rights Commission. NEPAL CONSTITUTION art. 107(2); HUMAN RIGHTS COMMISSION ACT §§ 9(1)-(2) (2012) (Nepal).

220. ABA, *supra* note 9, at 67.

221. *Id.*

222. GOVERNMENT CASES ACT § 9(1)(Act No. 43/1992) (Nepal) (as amended 2006).

223. ABA, *supra* note 9, at 68.

224. GOVERNMENT CASES ACT §§ 17(2), 18(1).

225. HTTCA § 28.

226. *See, e.g.*, ICCPR, *supra* note 96, art. 14 § 2.

227. ABA, *supra* note 9, at 70.

228. *Id.*

229. *Id.*

due to the fact that “defense attorneys [for the traffickers generally] handle fewer cases, earn higher salaries, and have better access to modern equipment and internet.” Furthermore, judges are still not conversant in the various challenges faced by victims of trafficking phenomenon, such as “trauma endured by the victims and [the preservation and presentation of crucial items, such as] cross-border evidence.”²³⁰ Observers have noted that the system has yet to focus on the victim,²³¹ and not allow the process to be diverted by external, and sometimes, irrelevant issues.

Court proceedings in human trafficking cases must be conducted in camera—with only parties, their attorneys, and certain non-parties permitted to enter.²³² Pleadings in court must be done by a licensed attorney.²³³ Even though they could rely on their written statement, many victims make court appearances because their testimony does increase the chances of a successful conviction.²³⁴ Moreover, since many judges believe that the defendant has the right to cross-examine the victim in court, a victim should be well prepared (by their advocate). In fact, if a victim gives a contradictory statement, she could be charged with perjury, which carries a penalty of 3 months to 1 year in prison.²³⁵ Many victims are not protected from retaliation or compensated for travel expenses, causing delays due to resulting delays or non-appearances.²³⁶

The final step is sentencing after a finding of guilty—either incarceration and/or monetary judgments. With respect to incarceration of defendants, it is somewhat good news that most prison sentences in human trafficking cases have been implemented simply due to the fact that the majority of defendants remain in judicial custody for the duration of the trial, thus having fewer opportunities to abscond, resulting in failure to appear in court.²³⁷

With respect to monetary judgments, under the HTTCA the Nepali government is required to seize any movable and immovable property acquired as a result of trafficking in persons.²³⁸ This includes houses, land, or vehicles that were used or provided for the purpose of committing human trafficking.²³⁹ Final judgments in cases involving trafficking in

230. *Id.*

231. *Id.*

232. HTTCA § 27.

233. Interview with Mandira Sharma, *supra* 208.

234. ABA, *supra* note 9, at 67.

235. HTTCA § 15(6).

236. ABA, *supra* note 9, at 71.

237. *Id.* at 72.

238. HTTCA § 18(1).

239. *Id.* § 18(2).

persons are enforced by an execution official of the concerned district court in collaboration with the district judge, the CDO, and the Nepal Police.” Enforcement of judgments is coordinated throughout Nepal by the Judgment Execution Directorate under the Supreme Court.²⁴⁰ However, the enforcement of judgments in Nepal has been unsatisfactory “due to the lack of coordination among different state organs at the central and local levels.”²⁴¹ Furthermore, a person (usually the victim) who holds a legal entitlement to compensation has the burden of filing and following up with “a request with an execution official of the court to have it enforced when the conviction judgment becomes final.”²⁴² Therefore, “fines, compensation, and assets are almost never recovered.”²⁴³ Moreover, the vast majority of judgments in human trafficking cases are appealed, either by the defendants or by the government attorneys. “Decisions of the districts courts are usually upheld by the courts of appeal. In the fiscal year 2010-2011, seventy-eight (78) human trafficking cases reached the Supreme Court.”²⁴⁴

“Under the HTTCA, obstructing an investigation of” a human trafficking case “is punishable by a fine of up to NPR 10,000 (approximately USD \$143).”²⁴⁵ However, due to large case loads and limited resources, prosecutors have been challenged in seeking and recovering fines.²⁴⁶ Apparently, the new criminal procedure code envisions provisions covering witness and victim protection are undergoing internal substantive review. However, none of these provisions appear to have been passed yet.²⁴⁷

The above deficiencies and institutional weaknesses strongly impede victims of human trafficking from seeking access to justice, resulting in an unacceptable rate of successful prosecutions against egregious traffickers. As a result, “conviction rates in human trafficking cases are lower than” found “in other criminal cases.”²⁴⁸ Therefore, this Article advocates for the immediate implementation of a new and improved role for “victim’s advocates,” manned by trained and impassioned human rights defenders

240. ABA, *supra* note 9, at 72.

241. *Id.*

242. *Id.* at 84.

243. *Id.* at 72.

244. *Id.*

245. *Id.* at 53.

246. *Id.*

247. *See generally* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 287–88 (2014).

248. ABA, *supra* note 9, at 11.

who would fill the gaping holes in the system. “A person must know her rights in order to demand their protection or fulfillment.”²⁴⁹

V. WHY HUMAN RIGHTS DEFENDERS?

“The past two decades have seen a growing recognition of the crucial role human rights defenders (“HRDs”) play in the struggle to realize universal principles of human rights.”²⁵⁰ Yet, little is known in the developed world about the existence, role, and effectiveness of HRDs, an extremely precious workforce in the fight against human rights violations, most working for little to no remuneration. There are tremendous advantages and strengths, many set forth below, that justify the utilization of this powerful cadre of front line warriors in the fight against human trafficking.

An HRD is a person who “can act to address any human right (or rights) on behalf of individuals or groups.”²⁵¹ HRDs seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights.”²⁵² HRDs accept “the universality of human rights”²⁵³ as defined in the Universal Declaration of Human Rights.”²⁵⁴ The most obvious human rights defenders that come to mind would be those whose work specifically involves “the promotion and protection of human rights, for example human rights monitors working with national human rights organizations, human rights ombudsmen or human rights lawyers.”²⁵⁵ However, more important than the person’s official title is the character of the work that he or she is doing—does it involve “human rights?”²⁵⁶

The roles of HRDs cover such tasks as redressing and monitoring violations such as summary executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues,

249. Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L L. 505, 516 (2003).

250. Cynthia Soohoo & Diana Hortsch, *Who Is A Human Rights Defender? An Essay on Sexual and Reproductive Rights Defenders*, 65 U. MIAMI L. REV. 981, 983 (2011).

251. UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *Who is a Defender*, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx> (last visited May 22, 2015).

252. *Id.*

253. UNITED NATIONS, HUMAN RIGHTS DEFENDERS: PROTECTING THE RIGHT TO DEFEND HUMAN RIGHTS 9 (2004), available at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> (last visited May 22, 2015).

254. See UDHR, *supra* note 133.

255. UNITED NATIONS, *supra* note 251, at 6.

256. *Id.* at 5.

forced evictions, education, and freedom of movement.²⁵⁷ They often address the rights of certain vulnerable categories of persons, such as women, children, indigenous persons, or national, linguistic or sexual minorities.²⁵⁸ “The majority of [HRDs] work at the local or national level, supporting respect for human rights within their own communities and countries.”²⁵⁹ Many work in support of victims of human rights violations, such as investigating and reporting on violations.²⁶⁰ Another important function undertaken by human rights defenders is the providing of human rights education.²⁶¹ Types of training performed by defenders include teaching human rights standards in a professional sector, such as judges, lawyers, police officers, soldiers or human rights monitors. Other times, defenders can teach about human rights in schools and universities, or even directly to the general public or to vulnerable populations.²⁶²

Many face tremendous danger, such as restrictions on freedom of movement, arbitrary arrest and detention, stigmatization, and danger requiring witness protection.²⁶³ HRDs and their families are frequently the targets of human rights violations such as death threats, killings, abductions, assassination attempts leading to serious injury, kidnappings for short or long periods, severe beatings to elicit false confessions or in reprisal for a defender’s denunciation of violations, arbitrary arrest and detention with torture and ill-treatment, without any judicial review.²⁶⁴ Moreover, those who contribute to assuring justice—judges, the police, lawyers and other key actors—may also face considerable pressure to make decisions or take actions that favor offending parties, such as the State or other powerful interests, such as the leaders of organized crime, rather than the victim.²⁶⁵ Therefore, the special efforts on the part of these strategically placed individuals to ensure access to fair and impartial justice, and guarantee the related human rights of victims, can also render

257. *Who is a Human Rights Defender*, *supra* note 251.

258. *Id.*

259. UNITED NATIONS, *supra* note 251, at 3.

260. *Id.*

261. *Id.* at 5.

262. *Id.*

263. UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, COMMENTARY TO THE DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS 15 (2011) [hereinafter UN SPECIAL RAPPORTEUR], *available at* <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersjuly2011.pdf>.

264. UNITED NATIONS, *supra* note 251, at 11–12.

265. *Id.* at 7.

them HRDs.²⁶⁶ Compelling justifications for the mobilization of HRDs are set forth below.

A. There is an Immediate Need and Role for Victims' Advocates in the Court System

In Nepal, it is estimated that only about 5-10% of victims have some separate representation or legal assistance besides the prosecutor who is their official advocate.²⁶⁷ The perceived role of victim's advocates is generally to assist government attorneys in building their cases against the defendants, and assist victims appearing before the court to give their testimony. Nepalese victims advocates may be both lawyers and HRDs (not necessarily licensed lawyers). Trafficking victims are also accompanied in court by NGO representatives.²⁶⁸ Very few victims' advocates are licensed attorneys. One does not need to be a licensed lawyer in order to serve as a victim's advocate.²⁶⁹ In order for a non-lawyer—such as a dedicated and trained HRD—to accompany a victim in the actual courtroom, they would simply need to obtain permission from the social welfare counsel.²⁷⁰

While victim's advocates are not permitted to “plead”—direct and cross examine witnesses, as well as to make statements and arguments before the judge²⁷¹—they are permitted to serve as silent “co-counsel” to the victim in court, permitted to physically sit with them and quietly advise them of their rights.²⁷² Quite significantly, however, victims' advocates are permitted to act as witnesses for the victim. In fact, they are even allowed the right to testify as a separate witness for the victim, and report on the victim's experience in the judicial system/prosecution from police intake to their testimony and presence in court.²⁷³ This is extremely advantageous to the victim since the victim's advocate can corroborate testimony and evidence, thereby boosting the credibility and confidence of the victim, especially in an intimidating court where she must face her

266. *Id.*

267. Interviews with Indira Ghale, *supra* note 130.

268. *Id.*

269. *Id.*

270. *Id.*

271. Interview with Shyra Karki, Human Rights Defender, Member of the Women's Human Rights Defenders Network of Nepal (Jan. 13, 2015).

272. *Id.*

273. *Id.*

trafficker.²⁷⁴ Given this strategic position, it is not surprising that victims' advocates are also in need of protection against the intimidating tactics of the traffickers.²⁷⁵

Finally, the cost of hiring victim's advocates who are licensed attorneys, and more apt to possess legal training and knowledge of the human trafficking process, has often been prohibitive to victims.²⁷⁶ Therefore, with targeted training in human trafficking substantive law and procedure, with accompanying oversight, it is clear that HRDs should be trained and utilized to fill this niche and represent victims of human trafficking on a comprehensive basis from intake through after-care.

B. HRDs are Internationally Sanctioned and Protected

Because of the vital role of HRDs, and the human rights violations faced by these workers, the United Nations formally recognized the class of people who undertake human rights work as "human rights defenders."²⁷⁷ On December 9, 1998, by resolution 53/144, the General Assembly of the United Nations adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the "Declaration on Human Rights Defenders") ("Declaration").²⁷⁸ In April 2000, the United Nations Commission on Human Rights asked the Secretary-General to appoint a special representative on HRDs to monitor and support the implementation of the Declaration.²⁷⁹ The Declaration basically provides for the protection of HRDs in the context of their work.²⁸⁰ Annex II of the Guidelines set forth procedures for submitting allegations of violations of the Declaration on human rights defenders to the Special Representative.²⁸¹ The work of

274. On Jan. 9, 2015, the effect of having a victim's advocate was evident in the Banke District Court slapped a prison term of 34 years (16 years for human trafficking, 10 years for incest and 100,000 Nepali Rupee fine and compensation. The victim's mother acted as her daughter's victim's advocate. *Rapist Father Gets 34-year Prison Term*, KANTIPUR.COM, Jan. 9, 2015, <http://www.ekantipur.com/2015/01/09/national/rapist-father-gets-34-year-prison-term/400114.html>.

275. Interview with Shyra Karki, *supra* note 271.

276. *Id.*

277. UNITED NATIONS, *supra* note 251, at 18.

278. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, Annex, U.N. Doc. A/RES/53/144 (Dec. 9, 1998) [hereinafter Declaration on Human Rights Defenders].

279. UNITED NATIONS, *supra* note 251, at 18.

280. *Id.* at 9, 18.

281. *Id.* at 47.

the Special Rapporteur is to mobilize the international community, governments and civil society to protect defenders so that they are secure and able to continue their work.²⁸²

HRDs in any country, including Nepal, will continue to confront hurdles, including the suspicion of the law, lawyers, outsiders, and international advocates—even more so, if they are seen as a threat to the comfortable status quo of corrupt officials and powerful traffickers. And, the presence of international experts illuminating into the dark crevices of a system that has been historically woven with racial, economic, or political biases could even increase danger to these courageous defenders. Even though there exists formal protection for HRDs under the UN and EU, there has been no implementation of these protections in Nepal, except for one NGO, Protection Desk Nepal, whose mission is devoted to protecting HRDs.²⁸³

C. Mobilization of Defenders Follows Nepal's National Strategy for their Judiciary

The proposed expansion and mobilization of a HRDs corps in Nepal dovetails with the country's enunciated national goals for its judiciary. Nepal's Five Year Strategic Plan specifically highlights increasing access to justice and enhancing public trust as one of its strategic priorities.²⁸⁴ Traditional capacity building methods generally include projects or initiatives in the justice system such as: making the proceedings more public²⁸⁵ by offering telephone and audio visual disseminations, the strengthening of, including remuneration of legal aid lawyers,²⁸⁶ in addition to strengthening services provided to court users.²⁸⁷ Classic "legal aid" training usually encompasses specific training in the drafting of complaints, appeals, and other legal documents for parties requiring legal aid.²⁸⁸ Other traditional strategies include the training of court bench officers and assistants, and establishing work performance standards for judicial employees.²⁸⁹

282. Soohoo & Hortsch, *supra* note 250, at 998.

283. STRATEGIC PLAN, *supra* note 151, at 47.

284. *Id.* at 47.

285. *Id.* at 105.

286. *Id.* at 75–76.

287. *Id.*

288. *Id.* at 106.

289. *Id.* at 86.

Other major international heavy weights who are involved in Nepal's judicial development, such as the World Bank,²⁹⁰ reiterate the need to legitimize the judicial systems of developing countries, stating that "strengthening legitimate institutions and governance to provide citizen security, justice, and jobs is crucial to break cycles of violence."²⁹¹ No one questions the value of investing heavily in the targeted area of criminal justice²⁹² systems in developing countries, especially one as needy as Nepal.

D. Networks of HRDs Are Already Geographically Available throughout Nepal

As of the date of the writing of this Article, there is little available data to support an accurate estimate of HRDs in Nepal, since the title "human rights defender" is so all encompassing, and any record keeping system for defenders is fragmented or incomplete. While it is difficult to ascertain accurate numbers of HRDs in Nepal, it is estimated that between 600 and 1,500 HRDs are active in most of the 75 districts throughout the country.²⁹³ Other observers estimate that there are approximately 75 HRDs currently working in Kathmandu, and approximately 500 HRDs present nationally, working in various districts and fields.²⁹⁴ The number of defenders will also fluctuate depending on the various political and social situations that give rise to the need for such advocates and assistants.²⁹⁵ Approximately half of the defenders are women.²⁹⁶ HRDs presently exist in roughly 22 of the 75 districts throughout Nepal. Most of them work on human rights violations, and gender violence issues, caste-based discrimination, and LGBTI issues. Recently, more HRDs have been involved in advocating for indigenous and ethnic rights.²⁹⁷ Very few, however, work in the field of human trafficking.

290. As of March 2014, the World Bank has twenty active projects in Nepal with a net commitment of about \$1.506 billion including the Adolescent Girls Employment Initiative, Poverty Alleviation Fund Project, Strengthening the Office of the Auditor General, Urban Government and Development Program, and Enhanced Vocational Training Program. *See, e.g., Nepal All Projects*, WORLD BANK, http://www.worldbank.org/en/country/nepal/projects/all?qterm=&srt=status&order=asc&lang_exact=English&os=0 (last visited May 22, 2015).

291. THE WORLD BANK, *supra* note 57, at 2.

292. GARY A. HAUGEN & VICTOR BOUTROS, *THE LOCUST EFFECT: WHY THE END OF POVERTY REQUIRES THE END OF VIOLENCE* 197–213 (Oxford Univ. Press 2014).

293. Interview with Shyra Karki, *supra* note 271.

294. Interviews with Indira Ghale, *supra* note 130.

295. Interview with Mandira Sharma, *supra* note 208.

296. Interviews with Indira Ghale, *supra* note 130.

297. *Id.*

Most of the HRDs in Nepal possess some education, and some are licensed lawyers. Most work on staff at foreign or local NGOs. The most renowned organizations employing HRDs are the Women's Human Rights Defender Network, National Alliance of Human Rights Defenders, Third Alliances, In Sec Nepal, Advocacy Forum, and other media organizations.²⁹⁸ There are three loose coalitions of HRDs that have been formed to mobilize, educate, and protect defenders from individual entities whose roles may be threatened by them.²⁹⁹ The most well known network is the Women's Human Rights Defender organization that boasts about 200 to 600 members. Given that the majority of violent crimes and human trafficking affects women and girls,³⁰⁰ it is not surprising that women are engaged in this type of work.

Therefore, with an existing network of on-the-ground advocates, there is already a rudimentary communication channel that can be utilized to identify, reach, assess need, train, and mobilize advocates throughout the country. Expanding on existing workers who already have access to and knowledge of the idiosyncrasies of the various districts would inevitably produce a synergistic effect to strengthen dissemination of crucial information, such as prevention plans to combat human trafficking (and related human rights abuses). These networks could not only link human rights defenders to potential victims in the various provincial courts as victims' advocates, but defenders could also facilitate broader linkages between victims and related safe migration programs, safety houses, and other resources available in the districts themselves or refer victims to other locations such as Kathmandu for more specialized services.

The synergy created by the sharing of information and resources among these multiple centers of collaboration would naturally strengthen the justice system whose goal is to ultimately punish offenders of human trafficking—by empowering and equipping victims to navigate the justice process with knowledge, courage, and determination. Moreover, any successes would have a

298. *Id.*

299. *Id.*

300. Approximately 5,000 to 12,000 girls may be trafficked for commercial sexual exploitation annually, and as many as 200,000 trafficked Nepalese girls are estimated to reside in Indian brothels. *See* NAP, *supra* note 43, at 5; *See also* MINISTRY OF LABOUR AND TRANSPORT MANAGEMENT, NATIONAL MASTER PLAN ON CHILD LABOUR 2004–2014 3 (2004), available at <http://dol.gov.np/ckeditor/kcfinder/upload/files/Master%20plan%20child%20eng.pdf>.

multiplier effect in that such victories—especially outside the central metropolitan areas—could be highlighted by the media and justice system to empower other victims who have not yet been rescued, as well as to serve as tools of prevention and awareness-raising for potential victims in more remote areas.

E. HRDs, by Nature, Are Already Committed to Fighting Against Human Rights Violations and Have Experience in the Field

Because HRDs are not limited by specific qualifications or mandatory licenses, their passion is the driving force that determines their role. This commitment is clearly found in the burgeoning defender ranks in Nepal, a country that is coming out of a decade of violence on the heels of the Maoist insurgency, and continues to suffer from rampant socially inbred and culturally sanctioned violence affecting marginalized classes of people throughout the centuries. Harnessing the innate emotional commitment of the defenders, enhanced with effective targeted substantive and skills training, is a sure-fire way to impact the existing structure and system in a dynamic and positive way.

Moreover, as described above, since Nepal has faced an inordinate amount of human trafficking, in proportion to the size of its population, there are many people who have been directly and indirectly affected by this crime. Hence, many former victims and others associated in their aftercare have also been revolutionized to take up the cause.³⁰¹ Human trafficking is a classic example of a human rights violation.³⁰² There are formidable possibilities in launching this under-equipped army—who are both personally and professionally impassioned to combat the evils of human trafficking and related human rights violations.

F. HRDs have Voiced a Need for Training as Victims' Advocates

Human rights defenders report that training has been sparse, intermittent, centralized, and not sufficient to cover the need and

301. Open Discussion Roundtable on Prevention, Protection and Prosecution of Human Trafficking Victims in Nepal. Sponsored by Mountainchild and Mukti, a local coalition of approximately 45 local and foreign NGOs in the field of anti-human trafficking in Nepal (Sept. 23, 2014).

302. United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, Vol. I, at 43, U.N. Doc. A/55/49 (2001) [hereinafter UN Transnational].

interest.³⁰³ Some defenders—with access to foreign support and connections—have been able to obtain training and exposure to international human rights and human trafficking experts overseas. However, their objective would be to return to Nepal to rectify the training needs in their home country.³⁰⁴ In 2014, the American Bar Association (“ABA”) in conjunction with Advocacy Forum, sponsored a training for human rights defenders and Terai region-based lawyers, to monitor torture and human rights violations.³⁰⁵ The first part of that training was given in 5 days with subsequent mentoring, with a second part to be executed in early 2015. However, given the recent earthquakes in Nepal commencing on April 25, 2015, the imminent future of such trainings are uncertain as the country moves to repair its basic structure and address vital emergency needs.³⁰⁶ Other HRDs have received intermittent training from the national resources like the National Human Rights Commission. Other HRDs come from NGOs such as Shakti Samuha, Maiti Nepal, the Judicial Academy, Cellerd (a law-based NGO), Kathmandu School of law, the National Human Rights Commission, and Sasane.³⁰⁷

Very few, however, have received training from international organizations.³⁰⁸ Even the most high-profile HRDs who are engaged actively in the field have received little to no training in the field of human trafficking.³⁰⁹ Although there was a one-day roundtable seminar geared to the exchange of ideas of prevention, protection and prosecution among local and foreign NGOs in September 2014,³¹⁰ there appears to be little funding, nor a central organizing body in Nepal to follow up or build upon such initiatives. The majority of the funding for human trafficking has

303. Interview with Mandira Sharma, *supra* note 208.

304. *Id.*

305. *Human Rights Defenders Trained on the Collection and Documentation of Human Rights Abuses*, ABA (Dec. 2014), http://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/nepal/news/news-nepal-training-on-collection-documentation-human-rights-abuses-1214.html (last visited May 22, 2015).

306. Interview with Mandira Sharma, *supra* note 208; Nepal was hit with a 7.8 magnitude earthquake on April 25, 2015, and a 7.3 magnitude earthquake on May 12, 2015. Economists estimate that repairs for damages caused by both earthquakes with cost \$6 billion, equivalent to about 30% of Nepal’s annual economic output. *Nepal’s Second Quake Piles on the Pain*, CNN MONEY (May 12, 2015), <http://money.cnn.com/2015/05/12/news/nepal-second-earthquake-damages>.

307. There have been other related training such as “Safeguarding Human Rights in the Criminal Justice System in Nepal” to train key actors such as police, prosecutors and young lawyers in the Nepalese criminal justice system. *See Training Projects*, KATHMANDU LAW SCHOOL, http://www.ksl.edu.np/hr_project.html (last visited May 22, 2015).

308. Interviews with Indira Ghale, *supra* note 130.

309. *Id.*

310. Open Discussion Roundtable on Prevention, Protection and Prosecution of Human Trafficking Victims in Nepal, *supra* note 301.

been spent to raise awareness, with almost none devoted to assist the prosecution of traffickers.³¹¹

VI. INCORPORATING HUMAN RIGHT DEFENDERS AS VICTIM ADVOCATES

To effectuate immediate visible change in the justice system, this Article advocates a plan that is easily implementable and cost effective, in that it builds upon existing resources. A workable strategy will require both acceptance of HRDs into the role of victims' advocates by the existing infrastructure players, combined with targeted training of HRDs. Placement of HRDs into the existing system will require some degree of institutional flexibility as well as a change in the mindset of various officials, who must incorporate this fledgling army of HRDs into their system. Nevertheless, even just a few measured "successful" outcomes—marked by a visible increase in the number of victims represented throughout the process, or an increase in the number of convictions against traffickers—could serve as the first dominos to fall and instigate complementary responses throughout the judicial and law enforcement community.³¹² "Effective criminal justice systems take impunity off the market," in heightening the cost for oppressors like traffickers.³¹²

The following are proposed initial steps to incorporate HRDs as Victims' Advocates into the Nepalese judicial system³¹³:

1. Survey judges, prosecutors, private attorneys, volunteer pro bono lawyers, HRDs, and available victims to develop and proclaim a consensus on the need for such victims' advocates.
2. Obtain the buy-in, approval, or participation of the necessary stake-holders—players and officials that comprise the section of judicial institutions.³¹⁴ Such may include high- and mid-level prosecutors, public and private defense attorneys, high- and mid-

311. Interviews with Indira Ghale, *supra* note 130.

312. *Id.*

313. Many of the following proposed steps to design and implement a plan of action for a HRDs program with an eye to minimizing the risks as found in such publications as USAID's 2011 Field Guide: Assistance to Civilian Law Enforcement in Developing Countries. The US government has traditionally uses the Criminal Justice Sector Assessment Rating Tool (CJSART) to prioritize and administer host-nation criminal justice sectors needing assistance, as a systematic tool to measure progress and accomplishments against standardized benchmarks. The CJSART holistically examines a country's laws, judicial institutions, law enforcement organizations, border security, and corrections systems as well as a country's adherence to international rule of law standards such as bilateral and multilateral treaties. The "judicial institutions" prong includes judges, prosecution, and defense bar (including both private attorneys and public HRDs). USAID, *supra* note 164, at 18–21, 178.

314. USAID, *supra* note 164, at 187.

level justices, traditional/customary legal professionals, Ministry of Justice representatives, Bar Association representatives, law school faculty, and human rights organizations, NGOs, and international non-governmental organizations (INGOs).

3. Negotiate and solidify a written commitment to the training plan from host country officials and relevant judiciary stakeholders that sets forth clear expectations and timelines.

4. Consider an initial pilot program of 25 defender trainees into the form of a demonstration project to showcase the basic concept and implementation.

5. Establish a practical, methodological targeted curriculum for training of HRDs.

6. Bring together trainers with proven track records in the specified areas from the national and international community. Vet and match capabilities and teaching backgrounds of any external advisors that match programmatic requirements. Verify suitability of advisors through vigorous background and reference checks and in-person interviews. Gather motivated, experienced local, regional, and international advisors from the field of human trafficking to work together to assemble a permanent teaching team, with visiting teachers. Look to other sectors for trainers with valuable experience who could also provide an opportunity for partnership in a variety of ways, including law enforcement and other justice sector projects.

7. Set outcome factors to measure the feasibility and effectiveness of the curriculum and training as early as possible. Such would include number of HRDs trained as victims' advocates, number of additional victims served (by victims' advocates), number of judicial assistants trained, number of cases prosecuted or moved through the system, number of successful convictions, number of sentences and restitutions obtained by victims, number of public informed about victims' advocates and other resources for victims.³¹⁵ (Early positive results would enhance perception of the program, training and ultimately success for victims in the system.)

315. THE WORLD BANK, *supra* note 57, at 260.

8. Establish an administrative mechanism for the internal directives for the training program, including standard operating procedures (“SOPs”), enforcement of student code and discipline policy, instructor/curriculum development guidelines, instructor rotation policy, and yearly training plan.³¹⁶
9. Establish a policy and standard operating procedures for the documenting and recording of dispositions, results, client cooperation, cases, and trends.
10. Look for entry points for HRDs, with relatively low levels of risk fitting an area of agreed need, such as having HRDs available/on call at police station intake division. Develop a relationship with the media to enhance public information and interest regarding the program.
11. Establish a non-intimidating and simple complaint mechanism for clients and victims about level and efficiency of defender service.
12. After initial demonstration project, review, evaluate and modify the training program into a model that can be expanded, duplicated and contracted in response to changes in the environment.
13. Establish a certification system, which would enhance HRDs’ role and identity in the justice system, serving as an indicator to the public of a certain level of ability, credibility and accountability.
14. Establish a victim/witness protection program for both victims and HRDs, following successful models developed for other transitional countries.
15. Establish a system where clients would eventually pay minimal fees to allow system to become self-sustaining, which would substitute in for initial funding of HRD modest monthly stipends.

316. USAID, *supra* note 164, at 205.

A. *Guidance from Existing Models*³¹⁷

Before any training program for HRDs can be developed, one must first delineate the proposed roles and duties for these victims' advocates to establish expectations for victims and other players in this highly interconnected justice system. This Article suggests that any feasible model to circumscribe the role of the victim's advocate incorporate principles from existing approaches using similar situations. In other parts of the world, victims' advocates have traditionally been comprised of "professionals trained to support victims of crime" that "offer victims information, emotional support, and help finding resources and filling out paperwork."³¹⁸ Victims' advocates sometimes accompany victims to court, and may have studied social work, criminal justice, education or psychology.³¹⁹

For further guidance, we propose looking at both traditional and novel models. For instance, looking to concepts found in traditional models for court advocates such as guardians *ad litem* or "amicus" counsel could be highly instructive. In particular, valuable knowledge could be gleaned from studying newer models such as the Special Victims' Counsel that was recently implemented by the United States Military.

1. *Guardians Ad Litem*

Guardians *ad litem* ("GALs"), sometimes known as Court Appointed Special Advocates, are special representatives who are appointed by family law and dependency courts to represent wards.³²⁰ A ward is an incapacitated person, an unborn child, or a minor in a child abuse suit or a family law dispute, such as a custody battle. Courts have found that wards cannot adequately represent their own interest in a court proceeding due to their age, and thus, GALs are necessary to protect a child's interest in a suit.³²¹ GALs investigate, take care of the child's emotional and legal

317. Even though the training envisioned in this Article focuses on combating human trafficking, this model could be expanded to encompass judicial and prosecutorial assistants—who assist the judiciary and prosecutors—to protect, and prosecute on behalf of all victims of violent crime.

318. *What is a Victim Advocate?* NATIONAL CENTER FOR VICTIMS OF CRIME, <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/what-is-a-victim-advocate-> (last visited May 22, 2015).

319. *Id.*

320. Definition of Guardian Ad Litem, Legal Information Institute of Cornell University Law School, http://www.law.cornell.edu/wex/guardian_ad_litem (last visited May 22, 2015).

321. *Volunteer Frequently Asked Questions*, FLORIDA GUARDIAN AD LITEM PROGRAM, http://guardianadlitem.org/vol_faq.asp (last visited May 22, 2015).

needs, inquire about the child's family, and seek to mitigate any discomfort that the minor may feel throughout an emotionally taxing court proceeding.³²² GALs may also interview witnesses, give testimony, ensure that all parties comply with court orders and give recommendations to the court based on what they believe is in the best interest of the child.³²³ GALs are particularly crucial in child abuse cases since the child is traumatized, vulnerable, and naïve about the judicial proceedings before him/her. In custody disputes, GALs help shield the child from his/her custodians' decisions, which may not align with the child's best interest. GALs do not have to be attorneys, but must have qualifications, which vary by state.

2. *Special Victims' Counsel*

The role of Special Victims Counsel ("SVC") in the military appears to be similar to the proposed role of victims' advocate in Nepal. In November of 2013, the Secretary of Defense implemented the Special Victims Counsel Program to train and appoint victims' advocates for victims of sexual assault in the military.³²⁴ The goal of this program was to provide representation to victims of sexual assault within 24 hours of reporting their case.³²⁵ SVC Counsels, who receive special training,³²⁶ are appointed by the Staff Judge Advocates. These advocates are chosen from a pool of Judge Advocates based on their maturity, military judgment experience, and judgment. Once elected, they must complete a TJAG-approved SVC course before assuming duty,³²⁷ covering topics such as professional responsibility, military rules of evidence, the Army's patrol system, forensic medical exams, rules for practicing SVC, and lessons on how to deal with victims of sexual assault.³²⁸

Training and implementation is closely supervised to ensure that advocates are provided with the materials, cooperation, and resources to complete their mission in representing victims. All Advocates assigned the

322. *Id.*

323. *Id.*

324. U.S. ARMY'S SPECIAL VICTIM COUNSEL PROGRAM, SPECIAL VICTIM COUNSEL HANDBOOK 2 (2013), available at http://responsesystemspanel.whs.mil/Public/docs/meetings/Sub_Committee/2014_0226_VS/Materials_Related/03a_USA_SpecialVictimsConsel_Handbook.pdf.

325. *Id.* at 8.

326. *Id.*

327. *Id.* at 17.

328. Todd C. Lopez, *Army's Special Victims Prosecutors Bring Enhanced Expertise to Courtroom*, U.S. ARMY (Oct. 16, 2013), http://www.army.mil/article/113253/Army_s_special_victims_prosecutors_bring_enhanced_expertise_to_courtroom.

role of a SVC Advocate are required to take targeted training to represent sexual assault victims in order to ensure proper representation is available to victims,³²⁹ bringing a new level of expertise to the courtroom when dealing with these particular types of cases.³³⁰ Since the implementation of SVC, cases have benefited from more extensive investigations and better communication with victims.³³¹ Dramatic improvements have been noted due to the SVC, such as an increase in the number of victims willing to come forward that has resulted in an increase in the number of cases that are brought before the court.³³²

Furthermore, the implementation of this program has resulted in a “better focus” on the offender’s behavior, instead of the victim’s behavior, which was the case for many years. The knowledge and experience of these advocates has allowed for an increase in background investigations on perpetrators.³³³ Even in the US military, the SVC program is seen as an innovative and crucial step to demonstrate the military’s commitment for change and progress.

The negative experiences and factors impacting wards—including children and minors in the contentious family law system—as well as victims of sexual assault in the military, mirror the experiences voiced by service providers in Nepal who see the same difficulties and reluctance to seek justice through the legal system. These may include

- (1) lack of legal awareness; (2) undue influence by the perpetrators who often threaten, intimidate, harass, or bribe victims to remain silent; (3) trauma and psychological suffering; (4) fear of humiliation, stigma, and discrimination; (5) police bias, incompetence, and insensitivity to women’s and children’s issues; (6) lengthy and cumbersome court proceedings; and (7) high cost of access to justice coupled with distrust toward justice institutions, lack of financial support from the government of Nepal, and (8) very low likelihood of receiving compensation upon conclusion of the legal proceedings.³³⁴

Although the model countries from which these examples above have been lifted may be oceans apart in terms of judicial development and rule

329. U.S. ARMY’S SPECIAL VICTIM COUNSEL PROGRAM, *supra* note 324, at 19.

330. Lopez, *supra* note 328.

331. *Id.*

332. *Id.*

333. *Id.*

334. HTTCA, *supra* note 131, § 17.

of law, it appears that victimology, and other common issues could be shared to save time, resources, and anguish to accomplish justice in Nepal. Drawing upon on the expertise and background of similar models that have successfully assisted similarly situated victims could accelerate the customization of a victims' advocate program for and restoration of human trafficking victims in Nepal.³³⁵

VII. PROPOSED PARAMETERS FOR IMPLEMENTATION OF TRAINING

A. *Curriculum Should be Culturally, Historically, Socially and Politically Sensitive*

There are certain deeply rooted cultural practices in the history of Nepal that will affect the treatment of human trafficking victims by the justice system, including their own lawyers and advocates. As noted above in Section I, due to its Hindu religion, the people of Nepal are accustomed to a caste system which, although officially abolished, still affects the attorneys' practices. Some trainers³³⁶ from post-conflict countries note that the development of empathy for clients is crucial to overcoming the strictures of a caste mentality.³³⁷ Particularly, in Nepal, legal aid attorneys—because of their own cultural biases—may assume their own clients are guilty and treat them accordingly, even “allowing them to languish in custody even though there are laws requiring speedy resolution of cases.”³³⁸ Sadly, “[p]oor, low-caste people who have been accused of crimes do not rate much effort from their more educated, high-caste lawyers. Slowly, [however, there appears to be] a change in this attitude as defense attorneys visit their clients more regularly at the jails, and push for release or settlement of their cases within the time limits provided by law.”³³⁹ Lessons learned and training techniques gleaned from training of “public spirited lawyers” from similarly situated countries—such as neighboring India—who face similar issues, should be incorporated into the curriculum.³⁴⁰

335. Lopez, *supra* note 328.

336. Professor Angela Krueger helps train public defense lawyers in post-conflict countries. Currently, she works in Nepal as a fellow with the International Legal Foundation (ILF), training local attorneys as advocates for accused indigent people.

337. Vann, *supra* note 192, at 17.

338. *Id.*

339. *Id.*

340. See THE FREEDOM FUND & THOMSON REUTERS FOUNDATION, PUTTING JUSTICE FIRST: LEGAL STRATEGIES TO FIGHT HUMAN TRAFFICKING IN INDIA (2015), *available at*

B. Curriculum Should be Technical and Practical

First, court advocates must receive specialized and systematic training in the trafficking in persons, encompassing related protection measures starting at intake, through other crucial components during every stage of the process such as witness protection programs or protocols with appropriate attention to children and women.³⁴¹ Other pressing areas could include examination of special tools for investigation, appropriateness of sentences for traffickers, whether laws allow for seizure and forfeiture of assets of traffickers, special training for customs and border control officials in issues of migration, and repatriation of victims with consent.³⁴²

Second, given the highly practical and fundamentally values-driven nature of human rights, learning would be greatly enhanced through an applied clinical component.³⁴³ In the case of Nepal, the “clinical” component would be the immediate implementation of trained HRDs directly into the Nepalese justice system, as victims’ advocates. In such a “human rights” role, advocates should also be trained as watchdogs for prosecutorial misconduct and other malfeasance that works to the detriment or danger of the victim. HRDs’ presence would be tantamount to evaluate progress in the justice sector, such as measuring the country’s level of independence from government interference and influence.³⁴⁴

Third, training for HRDs should include training on professionalizing the role of the victims’ advocates’ role and work to enhance their credibility and safety. Heightened public spotlight on the HRDs’ expanded roles³⁴⁵ would not only raise public awareness, but serve as a layer of protection for them, since they are empowering the “underdog” in a system traditionally stacked against the marginalized victim.

C. Curriculum Should be Human Rights-Focused and Comprehensive

First, training of HRDs as victims’ advocates should include and encompass basic “legal aid/defender” training.³⁴⁶ Of initial significance would be the immediate access to, training in substantive laws and

<http://www.trust.org/contentAsset/raw-data/ceedfd4f-0573-4caa-85ce-d5c222570078/file> (last visited May 22, 2015).

341. USAID, *supra* note 164, at 242.

342. *Id.*

343. Hurwitz, *supra* note 249, at 508.

344. *Id.*

345. UNITED NATIONS, *supra* note 251, at 36.

346. USAID, *supra* note 164, at 200–01.

resources—including international and national statutes, codes, and applicable regulations. HRDs should also be trained to seek admittance at all moments of contact or appearance of the victim with the system. For instance, HRDs should be versed in tactics to protect and guide the victim whenever any statement is taken from them, as well as be present during any appearances in court or related hearings. This would not only protect the victim against harassment and intimidation by the traffickers and their cohorts, but also instill in the victims a sense of confidence in an intimidating process.

Second, HRDs should receive training in prosecutorial tactics and strategies that would strengthen their credibility alongside prosecutors and judges in the public justice system, as well as to recognize and report any abuses. For instance, HRDs should be cognizant of the basic rules governing ethics and conflicts of interest, system of dealing with ethical violations or other misconduct, and prosecutorial discretion/authority to decline a case.³⁴⁷ In this new capacity, HRDs could strengthen and legitimize the prosecution's role, and enhance the overall judicial functioning of the public justice system which would trickle down to assist and empower the marginalized, such as victims of human trafficking. In a country like Nepal where public officials such as prosecutors could be susceptible to corruption,³⁴⁸ the presence of victims' advocates could serve as a valuable deterrent, reminding players of an outside body of monitors in the international community.

Third, HRDs should also be trained with an eye to expand and utilize human rights tools such as victim protection procedures and use of media. In particular, HRDs should learn how to enlist the media to engage in educational efforts increasing awareness of the ploys used by traffickers to trap unwitting victims, by mobilizing the community to recognize and report suspicious actors. Similarly, HRDs could serve to enhance and ensure victim protection procedures in the police station and in the court, adding more layers of protection for potential victims as they go through the legal process of prosecution.

With HRDs physically in place—serving a dual function as international monitors on behalf of external bodies as well as being the protectorates of the state's star witness—defendants, prosecutors (and judges) will inevitably find it more difficult to act unethically. Bribes would no longer work. And, long prison sentences could start being

347. *Id.* at 199–200.

348. ABA, *supra* note 9, at 12.

considered seriously in the cost/benefit analysis done by potential traffickers.

D. Proposed Trainers

Both national and international communities should be involved in the training of Nepal's indigenous HRDs. First, national NGOs and international organizations that have a proven history of working in the country are in a stronger position than outsiders or newcomers with no familiarity with the country, and are more familiar with the unique circumstances, weaknesses and flaws, and personalities in the Nepal systems. They should be utilized to develop a base line of understanding underlying any substantive training. The input of regional and indigenous experts with credibility in the field of human trafficking should also be incorporated into the substantive portions of the training curriculum, as well as in the training of future trainers. A complementary role for NGOs and representatives from international organizations should be formulated to both train local HRDs to monitor the prosecution of human trafficking cases and also to serve as reporting bodies outside the system.

HRDs should specifically be trained to report issues of access³⁴⁹ such as case loads, assurances of access to HRDs, presence at various stages of judicial process, engagement of private pro bono HRDs, waiver of court fees available for low-income victims, and related issues.³⁵⁰ Other issues would include the disparity of victims' lawyers to prosecutors with respect to resources and status, adequate funding to HRDs, availability of continuing (legal) education that meets accepted standards, and reporting violations/deficiencies/non-cooperation to appropriate bodies who are able to reprimand e.g. funding by World Bank, UN sanctions. Given the fact that Nepal's culture is a shame-based one, perhaps consequences such as measures equivalent to losing face or being reprimanded for malfeasance could be incorporated into any disciplinary actions that could be used as an effective deterrent to temptations such as bribery, corruption, disparity of treatment, and unjust sentences.

349. USAID, *supra* note 164, at 200–01.

350. ABA, *supra* note 9, at 83.

*E. Incorporation of Law Enforcement Issues*³⁵¹

HRDs should be trained in working with and monitoring police activity on a victim's case, as police misconduct has been reported by observers. Examples include the delaying the registration of an FIR, giving suspects time to abscond or destroy the evidence, or asking victims unnecessary and humiliating questions to influence them to withdraw or change statements, and even, horrifyingly, sometimes returning the victim to the traffickers under a false pretense that the traffickers are the victims' legal guardians.³⁵²

Recent attempts to ameliorate the situation with respect to oversight of police include providing specialized training for law enforcement, establishing a department within the Central Investigative Bureau (CIB) dedicated to trafficking investigations, and conducting more investigations.³⁵³ Although the government has made strides, Nepal remains a Tier 2 country according to the State Department.³⁵⁴ The Tier 2 category indicates that Nepal does not fully comply with the TVPA's minimum standards, but is making significant efforts to bring itself into compliance with TVPA standards.

The government did provide specialized training to 249 judicial and law enforcement officials to address evidence availability/collecting issues, poor investigation techniques, and ignorance of anti-trafficking laws by law enforcement that severely hampered prosecutions.³⁵⁵ However, the new CIB anti-trafficking unit remains inadequate because investigators have not been provided with sufficient trafficking-specific training.³⁵⁶ Furthermore, although the Nepal Police Women's Cell conducted more sex and labor trafficking investigations under the HTTCA, and the government initiated more prosecutions in the fiscal year 2012–13, there were still fewer convictions in the fiscal year 2013–14.³⁵⁷

While, this Article does not address the role and direly needed training and reform of law enforcement into the representation and protection of human trafficking victims, once trained as proposed above, the HRD victim's advocate will be better equipped and strengthened to recognize, report, and deal with police inaction or non-compliance. For instance, if

351. USAID, *supra* note 164.

352. ABA, *supra* note 9, at 68.

353. U.S. DEP'T OF STATE, *supra* note 247.

354. *Id.*

355. *Id.*

356. *Id.*

357. *Id.*

the police refuse to register the FIR, HRDs could be trained in the relevant procedures to lodge a complaint with the upper level Police Office or the CDO.³⁵⁸ Moreover, since neither the Nepal Police nor the prosecutorial service has a specialized unit devoted to the investigation and prosecution of trafficking in persons, it is crucial that HRDs be continuously trained and supported by the international community, and be doubly vigilant.

VIII. CONCLUSION

In sum, if HRDs can be equipped with the necessary tools and training to act as victims' advocates and guides for human trafficking victims from their entry into the judicial process until conclusion of the proceedings, the impact on the system could manifest itself immediately. Victims currently face a shortage or unavailability (due to exorbitant rates) of victims' advocates—rendering justice out of reach for most victims.³⁵⁹ Given the corruption in the system and the powerful resources of traffickers,³⁶⁰ it is clear that victims need a competent advocate to combat the remaining vestiges of a court system that was founded upon “parallel system[s] of private justice, [where] economic elites can protect their people and property from violence, resolve disputes, . . .”³⁶¹ but leave the most vulnerable unprotected and even more at risk.

The immediate identification, mobilization, training and insertion of HRDs into the Nepalese court system as advocates for human rights trafficking victims is a small, targeted, yet potentially powerful piece of justice reform for Nepal. While the international and national community may seek more ambitious comprehensive opportunities to prevent repeated cycles of violence by investing in citizen security, justice, and jobs,³⁶² this plan can be immediately put into place as a cost-effective way to provide the community with a cornerstone that would “contribute to an environment in which law abiding citizens [could] feel reasonably safe, [and where] neighborhoods and communities c[ould] begin to transform themselves.”³⁶³ Presently, both victims and the HRDs who desire to assist them are stymied by the dark forces of inertia, poverty, ignorance and

358. ABA, *supra* note 9, at 67 (citing Government Cases Act § 3(5) (adopted Dec. 23, 1992 by Nepal Parliament, as amended)).

359. ABA, *supra* note 9, at 70.

360. “Interviewees noted that perpetrators pay large sums of money to their victims to thwart criminal proceedings.” ABA, *supra* note 9, at 53.

361. HAUGEN & BOUTROS, *supra* note 292, at 187–96.

362. THE WORLD BANK, *supra* note 57, at 270.

363. USAID, *supra* note 164, at 12.

corruption in the system. Moreover, in light of the earthquakes that have rocked Nepal starting in April 2015,³⁶⁴ destroying infrastructure and rendering the marginalized even less helpless, potential and present victims of human trafficking are even left more vulnerable and less protected. Therefore, strategically placed and effectively trained HRDs, serving as the “eyes” of the international community, would further provide oversight of a legal system that cries out for accountability and change, providing hope to potential victims and those waiting to be made whole. It is time to level the playing field.

364. The United Nations estimates that at least 1 million Nepalese have been devastated by the earthquakes on April 25, 2015 and May 12, 2015. People in remote areas in Nepal are at an elevated risk of being recruited by human traffickers, as aid workers find difficulty reaching these areas. It has been reported that human traffickers have gone to these remote areas posing as relief organizations, and are likely seeking to abduct children for sexual exploitation and forced labor. Ludovica Iaccino, *Nepal Earthquake: Women and Children at Risk of Being Trafficked*, INTERNATIONAL BUSINESS TIMES (May 12, 2015), <http://www.ibtimes.co.uk/nepal-earthquake-women-children-risk-being-trafficked-1500925>.