



**Convention on the
Rights of the Child**

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Committee on the Rights of the Child

**Consideration of reports submitted by States
parties under article 12, paragraph 1, of the
Optional Protocol to the Convention on the Rights
of Child on the sale of children, child prostitution
and child pornography**

Initial reports of States parties due in 2008

Nepal*

[12 May 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

Contents

	<i>Paragraphs</i>	<i>Page</i>
Acronyms and abbreviations.....		4
Glossary		8
I. General.....	1–13	9
II. Introduction.....	14–66	11
A. The context of the reporting	14–18	11
B. The process of preparation of the report.....	19	12
C. The country context.....	20–37	13
D. Implementation of the Optional Protocol in respect to the general principles of the Convention.....	38–64	18
E. How and to what extent the implementation of the Optional Protocol contributes to the implementation of the provisions of the Convention, in particular articles 1, 11, 21, 32, 33, 34, 35 and 36	65–66	25
III. Data.....	67–83	25
A. Sale and trafficking of children and women.....	67–75	25
B. The situation of commercial sexual exploitation of children.....	76–77	28
C. Child sex tourism.....	78	29
D. The situation of child labour with particular reference to forced and worst forms	79–81	29
E. International adoption of Nepali children.....	82–83	30
IV. General measures of implementation.....	84–133	31
A. Legal status of the Optional Protocol in domestic law and its applicability in domestic jurisdictions	84–96	31
B. Key ministries, departments and bodies and their coordination with regional and local authorities as well as the civil society, the business sector and the media	97–118	33
C. Dissemination of the Optional Protocol	119–122	39
D. Mechanism and procedures used for periodical evaluation of implementation of the Optional Protocol.....	123–127	40
E. The major challenges encountered	128	41
F. Resource trend and budget allocation.....	129–133	42
V. Prevention (art. 9, paras. 1 and 2)	134–175	43
A. Measures to prevent the offences referred to in the Optional Protocol.....	134–156	43
B. Institutional mechanisms to combat sale and trafficking, prostitution and pornography.....	157–162	51
C. Methods used to raise awareness within the population at large about the offences prohibited under the Optional Protocol	163–174	53

	D. Measures to prohibit the production and dissemination of materials advertising the offences described in the Optional Protocol.....	175	57
VI.	Prohibition and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7).....	176–213	57
	A. The Constitutional provisions.....	176–177	57
	B. Prohibition of sale of children, child prostitution and child pornography.....	178–188	58
	C. The penalties which are applicable to each of these offences.....	189–195	61
	D. Prohibition of employment of children in hazardous work.....	196–200	63
	E. Adoption.....	201–204	64
	F. Jurisdiction with special reference to offences prohibited by the Optional Protocol.....	205–207	65
	G. Extradition.....	208–212	65
	H. Seizure and confiscation of goods and proceeds and closure of premises.....	213	66
VII.	Protection of the rights of victims (arts. 8 and 9, paras. 3 and 4).....	214–240	66
	A. Protection of the rights of child victims of sale and trafficking, child prostitution and pornography.....	214–225	66
	B. Establishment of juvenile benches to hear juvenile cases (children in conflict with the law).....	226–235	69
	C. Provision of rescue, rehabilitation and reintegration.....	236–240	72
VIII.	International assistance and cooperation.....	241–259	73
	A. Cooperation with United Nations agencies, bilateral agencies and international donors.....	241–244	73
	B. South Asian Association for Regional Cooperation (SAARC) Convention and other regional initiatives.....	245–254	74
	C. Cross-border collaboration.....	255–258	77
	D. Financial and other assistance.....	259	78
IX.	Other legal provisions.....	260	78
X.	Conclusion.....	261–266	78

Annexes

I.	Governmental institutional mechanisms for implementing the National Plan of Action against Trafficking of Women and Children.....	80
II.	National policy to eliminate and prevent trafficking of women and children adopted in 2000.....	84
III.	Steering Committee formed by the Ministry of Women, Children and Social Welfare (MoWCSW) to prepare the initial report under the Optional Protocol.....	85
IV.	List of international and regional instruments to which Nepal has expressed its commitments.....	86
V.	Some information about the educational status of Nepali children.....	88
VI.	Joint statement of Nepal–India Cooperation Meeting against Girl Trafficking and Prevention.....	90

Acronyms and abbreviations

AATWIN	Alliance against Trafficking in Women and Children in Nepal
ABC Nepal	Agro-forestry, Basic Health and Cooperation in Nepal
AGO	Attorney General Office
AIN	Association of International NGOs in Nepal
AHW	Auxiliary Health Worker
ANM	Auxiliary Nurse Midwife
ATSEC	Action against Trafficking and Sexual Exploitation of Children
BS	<i>Bikram Sambat</i> (Era): A calendar used in Nepal
CA	Constituent Assembly
CATW	Coalition against Trafficking in Women
CBS	Central Bureau of Statistics
CCWB	Central Child Welfare Board
CDC	Curriculum Development Center
CDO	District Administrative Officer
CPA	Comprehensive Peace Accord
CSE	Commercial Sexual Exploitation
CRDP	Child Rights Protection Desk of NHRC
CYP	Children and Young People
CWIN	Child Workers in Nepal Concern Center
DACAW	Decentralized Action for Children and Women
DCWB	District Child Welfare Board
DDC	District Development Committee
DEO	District Education Officer
DFID	Department for International Development
DIC	Documentation and Information Center
DTF	District Task Force
DWD	The Department of Women and Development
ECD	Early Childhood Development
ECPAT International	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purpose (International)
EHCP	Essential Health Care Package
FP/MCH	Family Planning and Maternal Child Health
FCHV	Female Community Health Volunteers
FWLD	Forum for Women, Law and Development

FY	Fiscal Year
GOs	The Government Organizations
GAATW	Global Alliance against Trafficking in Women
HA	Health Assistant
HIV/AIDS	Human Immune Deficiency Virus/Acquired Immune Deficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Persons
IIDS	Institute for Integrated Development Studies
ILO/IPEC	International Labor Organization/International Programme on Elimination of Child Labour
INGO	International non-governmental Organization
IOM	International Organization for Migration
JICA	Japan International Cooperation Agency
JIT	Beyond Trafficking: A Joint Initiative in the Millennium against Trafficking in Girls and Women
LACC	Legal Aid and Consultancy Center
LDO	Local Development Officer
MACR	Minimum Age for Criminal Responsibilities
MCHW	Maternal Child Health Worker
MDG	Millennium Development Goals
MoES	Ministry of Education and Sports
MoFA	Ministry of Foreign Affairs
MoLJPA	Ministry of Law, Justice and Parliamentary Affairs
MoLTM	Ministry of Labour and Transport Management
MoHA	Ministry of Home Affairs
MoHP	Ministry of Health and Populations
MoLD	Ministry of Local Development
MoWCSW	Ministry of Women, Children and Social Welfare
NATCW	Network against Trafficking of Children and Women
NCC	National Coordination Committee
NDC	National Development Council
NFE	Non-formal Education
NGO	Non-governmental organization
NHRC	National Human Rights Commission
NHRIs	National Human Rights Institutions
NHSP	National Health Sector Reforms Strategy

NJA	National Judicial Academy
NNAGT	National Network against Girls Trafficking
NPA	National Plan of Action
NPC	National Planning Commission
NRT	National Rapporteur on Trafficking against Women and Children
NWC	National Women Commission
ONRT	Office of the National Rapporteur on Trafficking
PLA	People's Liberation Army
PLWHA	People living with HIV/AIDS
PMD	Poverty Monitoring Division
SAARC	South Asian Association for Regional Cooperation
SAFAHT	South Asian Forum against Human Trafficking
SAF-VAC	South Asian Forum on Violence against Children
SAPAT	South Asian Professionals against Trafficking
SC	The Supreme Court of Nepal
SCA	Save the Children Alliance
SMC	School Management Committee
SSR	School Sector Reform
TAGSA	Technical Advisory Group for South Asia
TBA	Traditional Birth Attendants
TIP	Trafficking in Persons Report
TVPA	Victims of Trafficking of Violence Protection Act
UAE	United Arab Emirates
UNDP	United Nations Development Programme
UNESCO	United Nation Education, Social and Cultural Organization
UNFPA	United Nation Population Fund
UNICEF	United Nation Children's Fund
UNIFEM	United Nation Development Fund for Women
UNHCR	United Nation High Commissioner for Refugee
USA	United States of America
USAID	United States Agency for International Development
USD	US Dollar
VAW	Violence Against Women
VHW	Village Health Worker
VDC	Village Development Committee
WATCH	Women Acting Together for Change

WCSC	Women and Children Service Center
WDD	Women Development Division
WDO	Women Development Officer
WOREC-Nepal	Women's Rehabilitation Center-Nepal

Glossary

<i>Ain</i>	Act
<i>Badi</i>	A superstition system under which women from Badi community are considered commercial sexual workers
<i>Brahman/Chhetri</i>	Nepali hill origin people in the top hierarchy of the Hindu caste system
<i>BS</i>	Bikram Sambat – a Nepali Calnder based on lunar year
<i>Dalal</i>	Middle person (in some context) or a criminal (in other context)
<i>Dalit</i>	Nepali hill and plain origin people in the bottom hierarchy of the Hindu caste system – ‘Untouchable’ groups
<i>Deuki</i>	A girl lifelong offered to God as His discipline, and the girl remains unmarried lifelong
<i>Gumbas</i>	A place where Buddhist Monks live in and perform religious activities
<i>Hakwala</i>	A close relative who posses the right to have power and property ofthe person
<i>Janajati</i>	Indigenous people (both hill and plain origin people)
<i>Jhuma</i>	A girl is offered to become monk in some Buddhist communities and she remains unmarried longlife
<i>Kamaiya</i>	Agriculture Debt Bonded Labour
<i>Madarasa</i>	Religious school run by Islamic community
<i>Madheshi</i>	A group of Nepali people whose origin is in the Plain of Nepal
<i>Muluki Ain</i>	The National Code of Nepal
<i>Nibedan</i>	An order by the Supreme Court that the applicants are allowed to reregister their cases in the appellate courts again

I. General

1. The Government of Nepal is committed towards ensuring rights of all Nepali children. Nepal has expressed its commitments at international arenas by ratifying various international hard law instruments (Conventions, Covenants and Treaties) and adopting soft law instruments such as Declarations and Plans of Actions that guarantee rights of the children. This includes, among others, ratification of the Conventions on the Rights of the Child on 14 September 1990; the two Optional Protocols of the Convention on the Rights of the Child in 2006 and in 2007. Likewise, at national level, the Government has enacted laws, formulated policies and plans as well as developed institutional mechanisms to be responsive towards attaining rights of Nepali children to its fullest. The Government, together with the national and international development partners as well as with civil society organizations, is consolidating its efforts to translate the principles and provisions concerning children's rights, their wellbeing and their overall development to usher positive change in day to day reality of all Nepali children. As such, the prime concern of the Government over the period has been to protect and promote rights of children in Nepal and to offer them opportunities to develop their maximum potential.

2. Nepal became State party to the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography by ratifying it on 20 January 2006 (which was signed on 08 September 2000). This initial report, which is due in 2008, is prepared as per the obligation of the State party as stated in the article 12, paragraph 1 of the Optional Protocol. In the process of preparation of this report, key Government agencies at central, regional and district levels; national and international child focused organizations; national human rights institutions; and children and young people and their organizations were engaged through consultations, meetings, discussions and dialogue in various stages of information gathering as well as compilation of the report.

3. During the reporting period, a significant political change has taken place in Nepal. As the result of the historic People's Movement in 2006, a ten-year long armed conflict was ended; an Interim Constitution of Nepal 2007 was promulgated; and an Interim Government was formed having representatives of major political parties including Communist Party of Nepal (Maoist). At present, Nepal has successfully held Constituent Assembly election on 10 April 2008 to frame a new constitution. Despite the political challenges, there are some significant progresses made in promoting and protecting rights of the children. For example, for the first time in the constitutional history of Nepal, the Interim Constitution of Nepal 2007 has incorporated children's rights as fundamental rights, a new act was enacted to control trafficking of human being in 2007, and Juvenile Justice (Procedures) Rules 2006 was adopted in 2006. In the same manner, the Government has drafted new Child Right (Promotion and Protection) Bill. Likewise, the Government has been implementing the Interim Plan (2007–2010) which incorporates separate plan of actions for children and youths. The Government is also in the process of reviewing the National Plan of Action against Trafficking of Children and Women for Sexual and Labour Exploitation with the aim to consolidating efforts of the Government and development partners to combat sale of children and adults, child prostitution and child pornography effectively.

4. The Government has adopted strategies of developing functional coordination among national and international agencies; child focused organizations; bilateral, multilateral and donors as well as civil society actors for ushering positive change in the life of Nepali children. The Government, in particular, the Ministry of Women, Children and Social Welfare (MoWCSW) and other key Ministries and Departments are proactively facilitating among the actors and stakeholders coordinating their efforts for improving the

situation of the rights of the children. It has been realized that such efforts in the past have brought gradual progress in the recognition and promotion of respect of the rights of the children in Nepal.

5. The Government, national and international agencies, and civil society have been implementing advocacy campaigns and intervention programmes for the protection and promotion of rights of the child in the country. Significantly, Nepal has made progress in the field of basic health, education, and general awareness-raising on the rights of the child from family to national levels. The Government is aware of and prioritizing its efforts more in coordinated and sustained manner, to end all forms of abuse, exploitation and discrimination against children, especially girls and children from socially and economically marginalized families.

6. The Government of Nepal welcomes technical input, suggestion and guidance in regards to fulfilling its obligation towards Nepali children. In this report, the Government has tried its best to present the reality about the situation of children, efforts made by different actors, progress attained and challenges encountered. Therefore, the Government of Nepal believes that the report offers opportunity to have open dialogue and discussion with the United Nations Committee on the Rights of the Child as well as with concerned international communities. The Government will readily offer any further information, and explanation sought by the Committee regarding this report.

7. The MoWCSW, on behalf of the Government of Nepal, would like to extend its sincere thanks to all the concerned Ministries, Departments and the government agencies at various levels, United Nations agencies, international organizations and donors, national NGOs, civil society and children and young people and their organization for the contribution made during the compilation of the information for preparation of this report.

8. First of all, the Ministry would like to offer its sincere thanks to Hon'ble Minister Ms. Pampha Bhusal of this Ministry for providing overall leadership and necessary guidance in the entire process of preparing of this report. The team was encouraged by the participation of Hon'ble Minister in the Regional Consultation Meeting held in Biratnagar, Nepal.

9. The Ministry would like to appreciate the contribution made and cooperation extended in the entire process of finalizing this report by the individual members of the 'Steering Committee' formed by the Ministry for the preparation of this report. The Ministry would like to thank Mr. Kedar Paudel, Joint Secretary of the Ministry of Law, Justice and Parliamentary Affairs for providing technical guidance for finalizing this report.

10. The Ministry would like to thank to Mr. Chandrika N. Khatiwada, a Nepali Child Rights Activist, for his hard efforts to prepare this report by facilitating the entire process of preparation of this report. Mr. Khatiwada was appointed by the Ministry as an expert with the responsibility of compilation of the information, preparation of draft report as per the reporting guidelines, and finalization of the report by incorporating inputs received from individual and organizations. Likewise, the Ministry would like to thank Dr. Ananda Mohan Bhattarai, Hon'ble Justice of Appellate Court and faculty of National Judicial Academy and the team for editing the report.

11. Many officers and staff at the Ministry were involved in numerous ways in the preparation of this report who owe appreciation. Special mention should be made of Mr. Mahendra Prasad Sherstha, Joint-Secretary and Coordinator of the 'Steering Committee' under whose leadership this report is prepared. Mr. Lakshmi Prasad Dhakal, Under-Secretary and Chief of Child Development Section coordinated the entire process of preparation of the report. Mr. Khuma Kanta Acharya, Section Officer and Mr. Shankar Rai, Section Officer extended their cooperation and support. The Ministry acknowledges this with appreciation.

12. The Ministry would like to thank UNICEF-Nepal for providing financial support which enabled the Ministry to prepare this report following a comprehensive process. In the same manner, Mr. Bhanu Pathak of UNICEF-Nepal and Mr. Shiva Prasad Paudel of Save the Children Norway-Nepal deserve special thanks for their technical assistance to this report. Thank you to Mr. Dharma Raj Shrestha, Executive Director and the Central Child Welfare Board (CCWB) team for offering their cooperation in this report preparation process.

13. Last but not least, the Ministry would like to thank all the agencies (of the Government and NGOs) for their generous support and cooperation in the entire process from its inception to finalization of the report. The Government would look forward to working with them in the future as well for the promotion and protection of the rights of the children in the country.

II. Introduction

A. The context of the reporting

14. The Government of Nepal ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereafter called the Optional Protocol) on 20 January 2006 (which was signed on 8 September 2000) without any reservation. The Protocol was entered into force in Nepal on 20 February 2006. This is an initial report of Nepal submitted to the Committee on the Rights of the Child (as per the provision of article 12, paragraph 1 of the Optional Protocol).

15. Nepal ratified the Convention on the Rights of the Child on 14 September 1990 and submitted its initial report to the Committee in February 1995 (CRC/C/3/Add.34) and first (and second combined) periodic report on 4 March 2004 which was registered on 3 December 2004 (CRC/C/65/Add.30). The Committee considered Nepal's initial report on its 301st to 303rd meeting held on 29–30 May 1996 and the periodic report in its Thirty-ninth session, 1033rd meeting held in Geneva on 20 May 2005. The Committee has offered its concluding observation to Nepal's initial report (CRC/C/15/Add.57) and to the first periodic report (CRC/C/15/Add. 261) dated 21 September 2005 to Nepal. This report takes reference to these documents as relevant.

16. The Government of Nepal is committed towards its obligations to implement the principles and provisions of the Convention and its two Optional Protocols. The Government has continued its efforts for the fulfilment of rights of all children as guaranteed by the Optional Protocol by initiating various administrative, legislative and judicial measures. In this regard, the Government has developed and implemented policies, strategies, programmes and projects as well as mobilized key actors and stakeholders including the government agencies, national and international organizations, United Nations agencies, community, parents and children.

17. This initial report basically highlights the status of the implementation, progress achieved and measures adopted for the implementation of the Optional Protocol and fulfils the obligation as per article 12, paragraph 1, of the Optional Protocol. This report is prepared by the Government of Nepal through the Ministry of Women, Children and Social Welfare (MoWCSW) in consultations with concerned Ministries and Departments, national and international organizations and networks, United Nations agencies, children and their

organizations.¹ The report primarily follows the general guidelines offered by the Committee (CRC/OP/SA/1) for the purpose of State party reporting. In the same manner, due consideration has been given to the relevant sections of previous reports under the Convention the Convention on the Rights of the child submitted to the Committee (CRC/C/3/Add.34 and CRC/C/65/Add.30) by Nepal and the concluding observations (CRC/C/15/Add.57 and CRC/C/15/Add.261).

18. The Government of Nepal will readily offer any further information and explanation sought by the Committee regarding this report.

B. The process of preparation of the report

19. The report was prepared following a consultative process, by engaging relevant Government Ministries, Departments and agencies; concerned United Nations agencies, international NGOs, and development partners; National Human Rights Commission (NHRC) and national human rights institutions (NHRIs); NGOs; student unions and children's own organizations. The MoWCSW took a lead role in preparing this report and coordinated with these agencies for the entire process of preparation of this report. The following paragraphs describe key steps and process followed in brief:

- A Steering Committee chaired by Joint Secretary of the MoWCSW was formed that composed of representatives from the key relevant ministries, departments, and Central Child Welfare Board (CCWB).² The MoWCSW then hired the service of an expert to facilitate the process and take a lead role in compiling information, interacting with key government institutions as well as organizations and prepare a draft report. The draft report was critically reviewed by the Steering Committee, the key relevant Ministries and Departments and was shared with key government agencies, organizations and stakeholders for their inputs.
- The draft report was presented in the consultation meetings organized in Nepalgunj, Mid Western Development Region on 24 January 2008; Biratnagar, Eastern Development Region on 1st February 2008; and Kathmandu, Central level on 17 February 2008. There were 53 participants in Nepalgunj, 52 in Biratnagar and 45 in Kathmandu representing Ministries and Departments, district level bodies responsible for children including District Child Welfare Board (DCWB) and Women Development Offices (WDO) as well as district level line agencies; United Nations agencies and I/NGOs; NHRC, National Women's Commission (NWC) and national human rights organizations; Community Based Organizations (CBOs), student unions and district level network of children's club; media personnel and other stakeholders were the participants of these consultations. In these consultations, the central level was represented by the Secretary, Joint Secretary and Under Secretary of the MoWCSW as well as the Director General of Department of Women Development (DWD) whereas district level line offices were represented by Chief District Officer (CDO), Local Development Officer (LDO), District Education Officer (DEO), District Public Health Officer (DPHO), District Attorney General, District Police Officers (including Women and Children Service Centers), Women Development Officer (WDO), and Child Protection Officer (CPO) of DCWBs. The consultation meeting in Biratnagar was attended by Hon'ble Minister of the

¹ Reference is made to paragraph 19 of this report for further information about report preparation process.

² Reference to annex 3 of this report for the list of members and the organizations represented in the committee.

MoWCSW. A total 24 district were represented directly by the Government officials in these consultations. The issues raised and inputs offered by these consultations have been incorporated in the report as appropriate.

- In the process of preparing this report, a separate consultation meeting was organized with children and young people (CYP) in Kathmandu, the capital city on 18 February 2008 to collect their perspective in the report. The consultation was attended by 32 CYP (18 boys and 14 girls). The issues and concerns expressed by the group have been incorporated in the report mentioning them distinctively in the report, as appropriate.
- The draft report was revised by incorporating comments and suggestions received from the consultations, written inputs received on the draft report from Ministries and Departments and specialized organizations including NHRC and National Women's Commission (NWC), relevant United Nations agencies, INGOs and national NGOs and networks as well as individual experts. The revised draft was again forwarded formally to relevant Ministries and Departments, NHRC and NWC and other relevant institutions for soliciting their input and opinions on the content of the report. The inputs received were incorporated as relevant.
- The draft report was posted in the website of the MoWCSW for the access of public, followed by a press conference to publicize the report. A fair amount of input was received from concerned organizations and individuals through this process and relevant information were incorporated in the report. Then, the draft was submitted to the Councils of Ministers (Cabinet) for final approval as well as for necessary process for forwarding the report to the United Nations.

C. The country context

Political context

20. The historical People's Movement in 2006 (2062/63 BS) has brought several changes in the political context of Nepal. As a result of the people's movement, the direct rule of the King came to an end. The then Parliament was reinstated and a new government was formed in consensus among eight-political parties. A Comprehensive Peace Accord (CPA) was signed on 21 November 2006 between the Government of Nepal and Communist Party of Nepal (Maoist) to end 10 year-long armed conflict in the country. The CPA opened up opportunities for resolving political concerns and disputes through peaceful means.

21. The Parliament made a historical declaration recognizing that sovereign power and State authority rested with the people. It also withheld some of the provisions of the Constitution of the Kingdom of Nepal 1990 and limited the power and authority of the King.

22. As per the mandate received from the people's movement of 2006, Interim Constitution of Nepal was promulgated in 15 January 2007 (2063-10-01 BS). The Interim Constitution of Nepal 2007 (hereafter called Interim Constitution) reiterates the commitment of the State towards democratic norms and values including competitive multiparty democratic rule, civil liberty, fundamental rights and human rights. Likewise, periodic election, freedom of press, independent judiciary and rule of law are other areas to which the State is committed. The Interim Constitution also guarantees the basic rights to Nepali people to frame a Constitution by themselves and thus, to hold a Constituent Assembly election. Moreover, the Interim Constitution has upgraded the status of the National Human Rights Commission (NHRC) as a constitutional body 'to ensure the respect, protection and promotion of the human rights and its effective implementation'.

Furthermore, the Interim Constitution has declared the country a secular State, and paved a path for social inclusion, restructuring of the State and heading towards republic and federalism.

23. Following the promulgation of the Interim Constitution, an Interim Government was formed with representation of major political parties including Communist Party of Nepal (Maoist) who led 10-year long armed struggle in the country. The Government is primarily putting its efforts to ensure lasting peace, political stability and reconciliation in the country. In this regard, the Constituent Assembly election was successfully conducted on 10 April 2008 in order to frame a new Constitution of the country. In total, the Constituent Assembly have 601 members. Of them, 240 members are elected through the 'First Past the Post (FPTP)', 335 representatives are nominated by the political parties from the Proportional Representation (PR) system and 26 members would be nominated by the Cabinet by ensuring representation of ethnic and excluded groups and communities. The representation of women, ethnic groups, Madeshi and Dalit in the Constituent Assembly is encouraging. For example, a total 191 women have been elected in the Constituent Assembly from the FPTP and PR system.

24. However, Nepal being in the state of political transition is in the process of implementing the CPA to its fullest including management of People's Liberation Army (PLA) of the Communist Party of Nepal (Maoist). Likewise, there is necessity of addressing the issues and concerns of different agitating parties and groups. The country also faces the challenge of managing inclusive and sustainable development and uplifting economic condition of the people. Moreover, there is a need to furthering democratic values, principles, process and practices in the country.

Demographic profile

25. According to the National Census in 2001, the total population of Nepal was 23,151,423. Of them the total male population was 13,240,233 i.e. 50.11 per cent and the total population of female was 13,187,166 i.e. 49.89 per cent. The following table presents population of children categorized under the age 14 years, 16 years and 18 years:

Table 1

Population of children categorized under the age 14 years, 16 years and 18 years

	<i>Under the age of 14 years</i>			<i>Under the age of 16 years</i>			<i>Under the age of 18 years</i>		
	<i>Girls</i>	<i>Boys</i>	<i>Total</i>	<i>Girls</i>	<i>Boys</i>	<i>Total</i>	<i>Girls</i>	<i>Boys</i>	<i>Total</i>
Total Population	4 460 201	4 638 000	9 098 201	4 899 616	5 086 191	9 985 807	5 412 964	5 583 088	10 996 052
% as per the total population	(20.03%)	(19.27%)	(39.30%)	(21.17%)	(21.96%)	(43.13%)	(23.38%)	(24.12%)	(47.50%)

Source: Central Bureau of Statistics, 2006/07 as quoted in the State of Children of Nepal 2007.

26. The following table presents number of children under the age of 14 living in three major geographical regions of Nepal:

Table 2
Ratio of children living in major geographical regions of Nepal

Geographical regions	Census 2001			Projected population in 2006/7		
	Boys	Girls	Total	Boys	Girls	Total
Mountain	340 913 (50.22%)	337 983 (49.78%)	678 896 (100%) (2.93% of the total population)	359 938 (50.55%)	352 156 (49.45%)	712 094 (100%)
Hill	2 009 147 (50.65%)	1 964 672 (49.44%)	3 973 819 (100%) (17.16% of the total population)	2 154 416 (51.18%)	2 055 719 (48.82%)	4 210 135 (100%)
Tarai (or Plain)	2 278 940 (51.46%)	2 157 546 (48.54%)	4 445 486 (100%) (19.20% of the total population)	2 457 605 (51.46%)	2 318 532 (48.54%)	4 776 137 (100%)
Total	4 638 000 (50.97%)	4 460 201 (49.03%)	9 098 201 (39.30% of the total population)	4 971 954 (51.27%)	4 726 407 (48.73%)	9 698 366 (37.47% of the total population)

Source: Central Bureau of Statistics, 2006/07 as quoted in the State of Children of Nepal 2007.

Educational status of Nepali children

27. As per the statistics,³ the total number of recorded school in 2007/08 was 46,080. Out of the total, 29,220 are primary, 9,736 lower secondary, 5,879 secondary and 1,246 higher secondary levels. Likewise, total enrolment in primary grades is 4,418,713 of them 2,159,763 are girls and 2,258,950 are boys. At the primary level, the enrolment of *Dalit* is 19.2 per cent, *Janajati* 40.9 per cent and for others is 39.9 per cent. It is increased by 1.5 per cent in *Dalits* and 3.2 per cent in *Janajatis* compared to last year (i.e. 2006). Similarly, total enrolment at lower secondary level is 1,443,515 of them 680,072 are girls and 763,443 are boys. The total number of secondary enrolment is 671,183, of which 308,839 (46.0 per cent) are girls. The enrolment by eco-zone is 6.1 per cent in Mountain, 39.6 per cent in Hills, 11.8 per cent in Valley and 44.6 per cent in *Tarai* zone respectively. The enrolment of *Dalit* in total is 6.4 per cent, which is lower than the enrolment share at primary and lower secondary levels. However, the *Dalit* enrolment share at secondary level is quite low compared to their population, but in comparison to previous year, it has increased by 1 per cent. The enrolment of *Janajati* has increased by 8 per cent as compared to last year and the share is 37.0 per cent for *Janajati* and 56.6 per cent for others.⁴

28. Recently, the Government has made a decision to mainstream education offered in religious institution including *Madrasa* and *Gumbas* to national education system. In the regard, the Government is developing necessary policies and programmes as well as working for developing curriculum and designing text-books.

29. As per another indicator, the literacy rates for 15–24 years olds have increased from 50 per cent in 1991 to 70 per cent in 2001.⁵ The share in government expenditure in education sector has increased from about nine per cent in the 1980s to about 17 per cent in 2007/08. The basic education component, within the education sector, has been between 55

³ Flash Report I of 2007/08 of Department of Education, Ministry of Education and Sports, Kathmandu, 2008.

⁴ Reference is made to Annex 4 of this report for further details of educational information and health related information.

⁵ Central Bureau of Statistics, Population Monographs of Nepal, Volumes I and II, CBS, Kathmandu, 2003.

per cent and 65 per cent since the early 1990s.⁶ Nepal is implementing ‘Education for All National Plan of Action 2001 to 2015’ under which a detailed programme for 2005–09 has been developed in consultations with education stakeholders at national, regional (development region), district and sub-district levels. The Education for All National Plan of Action incorporates six policy goals of the Dakar Framework for Action and aims to meet the main objectives including, (a) ensure access and equity in primary schools (to raise net enrolment to 96 per cent by 2015), (b) enhance quality and relevance of primary education, and (c) improve system efficiency and institutional capacity of schools and institutions at all levels. Likewise, the Government is promoting alternative learning opportunities for children aged 6–14 years who are out of formal education. There are three packages targeted to such children – ‘out-of-school’ programme, flexible schooling and the ‘school outreach’ programme. In addition, the Government is running literacy programme for adults, particularly targeted to women. Likewise, Nepal has initiated School Sector Reform (SSR) Programme aiming to integrate school system (grade 1 to 12) since 2008. The proposed policy direction defines grade 1–8 as the basic education which is evolved with the notion of ‘rights-based’ rationale. The Government of Nepal has long taken the position that every child has the right to receive quality basic education. And, thus, interventions are planned and implemented in the same direction.

30. The Government has included matters on child rights including child health in the school level curriculum. In the same manner, the Government is promoting child-friendly pedagogies in teacher training programmes and child-friendly learning materials targeting to students and teachers have been developed and used in the schools. Likewise, non-violence training is introduced to the teachers and members of School Management Committee (SMC) to make them aware of the principles of child rights and child-centred teaching and learning approaches.

Health services and health status of children

31. The health service has expanded very fast in last five years both from public sector, non-government sector and private sector. The Government is running 99 hospitals at national, regional, zonal, district and sub-district levels. While the private (for profit) and non-governmental (not for profit) sector is running 162 hospitals and of them, at least six are specialized hospitals for women and children. Beside these hospitals, there are 209 primary health centres, 675 health posts and 3,127 sub-health posts under the public sector. There is at least one modern health care facility (primary health-care centre, health post of sub-health post) in each Village Development Committee (VDC) which is the lowest political unit covering between 3,000–20,000 population in average. The health post and the sub-health post are usually the first point of contact for basic and essential health services with the community. Besides, in each wards⁷ of every VDC has a Mother’s Group consisting of at least ten women as members, and of them one woman is trained as Female Community Health Volunteers (FCHV) to support health care of mother and children. Currently there are 48,000 Female Community Health Volunteers (FCHV).⁸ Each sub-health post has one Auxiliary Health Worker (AHW), one Village Health Worker (VHW), and one Maternal Child Health Worker (MCHW). Each health post has one Health Assistant (HA), two AHW, and one Auxiliary Nurse Midwife (ANM). Each primary health-care centre has one Medical Officer (a doctor), one Staff Nurse, and three ANM. However, there is a challenge particularly in geographically remote areas to fill the positions as well as deploy health professionals.

⁶ Situation of Children and Women in Nepal 2006, UNICEF Nepal, Kathmandu, 2006.

⁷ There are nine wards in each VDC.

⁸ Situation of Children and Women in Nepal 2006, UNICEF Nepal, Kathmandu, 2006.

32. Nepal's under-five and infant mortality rates have decreased from 91 to 61 and 64 to 48 (per 1,000 live births) respectively between 2001 and 2006. The proportion of fully immunized children increased from 66 per cent in 2001 to 85 per cent in 2006. For measles, 85 per cent of children are immunized. The proportion of children who are malnourished and underweight decreased from 57 per cent in 2001 to 49 per cent in 2006 and 48 per cent in 2001 to 45 per cent in 2006 respectively.⁹ The government has developed and implemented 'National Health Sector Reforms Strategy and Implementation Plan (NHSP-IP) with the objective of providing an equitable, good quality health care system in partnership with health sector stakeholders. Likewise, the Essential Health Care Package (EHCP) of the National Health Strategic Plan (NHSP) pays special attention to child health and includes pre-natal, neo-natal, infant and childhood health care. And the areas of focus include reducing neonatal and maternal mortalities; addressing inequality in access to and utilization of services; and controlling HIV and AIDS pandemic. To reduce malnutrition, new strategies are developed and being implemented for (a) sustained vitamin A supplementation, de-worming and reduction of iron-deficiency anaemia among children, adolescents and women of child-bearing age; and (b) improvement of the private sector performance in salt iodization.

33. Significantly, Nepal has already expanded the Community-Based Integrated Management of Childhood Illness (CB-IMCI) programme, which is critical for child health into 48 districts and it is aimed to cover all 75 districts by 2009–2010. Likewise, since last two years, Japanese Encephalitis vaccine has been introduced in all endemic *Terai* districts. And Zinc tablet is introduced for prevention and control of diarrhoea in under five children. By analysing the progress attended so far and the trend, it is observed that Nepal is in the position of achieving the Millennium Development Goals (MDG) related to child health.

The economic context (in brief)

34. Nepal is among 50 'least developed countries', as defined by the United Nations General Assembly. Nepal's per capita income in 2004 was US\$ 300.¹⁰ According to Human Development Report 2007 of UNDP, Nepal ranks 142 out of 177 countries in the Human Development Index and in the human poverty index 84th among 108 developing countries.¹¹ The 2001 census estimates that 13.9 per cent of the population live in urban centres. As per the National Living Standards Survey 2003/04, a total of 31 per cent of Nepal's population are still living below the national poverty line. Most of the poor — over 90 per cent — live in rural areas. Nepal depends heavily on foreign aid for supporting its development activities. For example, in 2004/05, the foreign aid totalled nearly NRs 35 billion (or about US\$ 285 million).¹²

The Three-Year Interim Development Plan

35. The three-year Interim Plan (2007/08–2009/10) incorporates separate sections on 'Children', 'Youth' and 'Women Empowerment and Development' with the specific objectives to address the issues and concerns of children, youths and women with a focused and prioritized programme of action. With regard to children, the Interim Plan has recognized challenges such as (a) protection of children from all forms of abuse and exploitation, (b) ensuring social security of children, (c) proper implementation of laws concerning children including laws related to juvenile justice, (d) increasing access to

⁹ Nepal Demographic and Health Survey 2006, Ministry of Health and Populations, Kathmandu, Nepal, 2006.

¹⁰ Situation of Children and Women in Nepal 2006, UNICEF Nepal, Kathmandu, 2006.

¹¹ UNDP, Human Development Report 2007.

¹² Situation of Children and Women in Nepal 2006, UNICEF Nepal, Kathmandu, 2006.

education and social security particularly those children who are from *Dalit*, indigenous, *Madhesi* (*Terai* community), Muslim community and children from rural and economically poor families and children with disabilities, and (e) social and psychological rehabilitation of child labourers, children affected by armed conflict and children at-risk as well as children victimized by sale and trafficking and HIV and AIDS. The strategies of the Interim Plan includes (a) developing and implementing immediate relief programme to support children affected by armed conflict, children from marginalized groups and children with disability as well as children who are at-risk, (b) improving in the policy, programmes, legislation and institutional structures for the promotion of rights of children with special focus to un-reached groups, (c) increasing coordination and collaboration in the efforts from the government and non-governmental sectors to make them effective and complementing each other for ensuring rights of children, (d) promoting participation of children, support the development of children's own organization and networks by enhancing decentralized efforts, and (e) developing human resource and institutional capacity to be responsive towards issues and concerns of children in the country.

36. The prioritized action programmes of the Interim Plan for children include (a) integrated and targeted programme for rehabilitation and reintegration of children affected by armed conflict, victimized by abuse and exploitation, children who are at-risk, children from marginalized groups and children with disabilities; (b) creating and utilization of "child fund" to support children who are especially at risk and are in need of immediate protection; (c) develop and implement focused programme targeting to 'un-reached' children with the objective of improving access and promote inclusion; (d) promoting 'child friendly' environment in the service providing institutions such as school, child protection centre/home, hospital, court etc. and declare places of children as 'zones of peace'; (e) establish and run information and documentation centre for disaggregated data regarding children; (f) formulate policy and law in regard to adoption and foster care as well as define minimum standards for establishment and running childcare centre/home; (g) encourage the establishment and functioning of child club and networks with the objective of promoting social-activism of children and young people and support for capacity development of such institutions; and (h) develop and implement policy framework to promote participation of children and young people as per their age and maturity, in the entire process of project cycle management of the programmes concerning children of the governmental and non-governmental sectors concerning children.

37. The Government has finalized its plans and budget for 2007/08 based on the three year Interim Plan which has put emphasis on poverty alleviation and economic prosperity; investment promotion; human development; reconstruction; rehabilitation and relief. The government plan has given equal emphasis to social sector as priority areas of development.

D. Implementation of the Optional Protocol in respect to the general principles of the Convention

Non-discrimination (art. 2)

38. The Interim Constitution has incorporated 'Right to Equality' as its one of the fundamental rights. The provision of article 13 of the Interim Constitution states that "[a]ll citizens shall be equal before the law. No person shall be denied the equal protection of the law." (art. 13.1) "No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any other of these." (art. 13.2) Likewise, according to article 13.3, "[t]he state shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any other of these". However, this provision does not prevent the state in "... making of special provisions by law for the protection,

empowerment or the advancement of the interest of women, so-called *Dalit*, indigenous ethnic tribes, *Madhesi* or peasants, labourers or those who belong to a class which is economically, socially or culturally backward and children, the aged, persons with disabilities” (art. 13.3).

39. Article 14 of the Interim Constitution protects citizen’s ‘right against untouchability and racial discrimination’ as fundamental rights. The article states that, “[n]o person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability of any form. Such a discriminating treatment is punishable and the victim is entitled to the compensation as provided by the law (art. 14.1). The article further elaborates that, “[n]o person shall, on the ground of caste or tribe, ... be deprived of the use of public services, facilities or utilities, or be denied access to any public place or public religious places, or perform any religious function” (art. 14.2).

40. Article 20 of the Interim Constitution ensures rights of woman, and further elaborates that, “[n]o discrimination of any kind shall be made against the women by virtue of sex” (art. 20.1). The provision of article 20.3 further ensures that, “[n]o woman shall be subjected to physical, mental or any other kind of violence, and such act shall be punishable by law”. Women’s equal right to ancestral property is now guaranteed by the Interim Constitution as well as 12th amendment of the National Code (*Muluki Ain*) 1964.

41. The above-mentioned fundamental rights of the Interim Constitution that recognize every citizen’s rights against discrimination are equally applicable in the case of children as well. Following the spirit of the Interim Constitution, various domestic laws applicable to children have incorporated non-discrimination as one of the fundamental values of such laws. As such, the Interim Constitution and other relevant laws prohibit discrimination against children on any ground.

42. The Government and non-governmental actors are continuously developing and implementing targeted programmes and projects with multifaceted approaches to address the discrimination that prevails in some societies in Nepal. Such programmes, on one hand, aimed at providing equal access and opportunities to the group of people who are in need and on the other, raising public awareness through education, training and awareness-raising campaigns among the targeted groups of people and community for preventing any sorts of discrimination. Similarly, private and the Government owned electronic and print media institutions are mobilized strategically for making people aware of and for engaging them to address the issues of discrimination from their level best. As such, there is an increasing trend of mass media mobilization both from the Government side as well as the civil society and development organizations as an effective means to reach the people at large to communicate messages. Moreover, the Government has adopted the policy of ‘positive discrimination’ to uplift the situation of community and group of people particularly those who are backward socially and economically.¹³

43. In regards to practical implementation notion of ‘positive discrimination’, the Government has developed legislation, policy and programmes to the targeted groups of people including children. These efforts of the Government were reinforced by the directives issued by the Supreme Court of Nepal in its verdict upon deciding a case¹⁴ to enact legislation for implementing interventions plans to uplift the situation of the backward section of the society, group of people who are in need of protection and women as well as to promote equitable development. Respecting the directives, the Government

¹³ Reference is made to paragraphs 51–67 of the periodic report of Nepal under the Convention (CRC/C/65. Add.30) for further details.

¹⁴ Writ petition of *Prathous Chhetri Vs. Council of Ministers and others* – case decided in 2004 (on 2061-07-13 BS).

has increased significantly the scholarship programmes targeting children from *Dalit*, girl children, the backward section of the society, and geographically remote areas since 2006 (FY 2063/2064 BS). In the same manner, the provision of protection of children has been incorporated in the Comprehensive Peace Agreement (CPA) between the Government of Nepal and Nepal Communist Party of Nepal (Maoist).

44. The MoWCSW is the mandated Ministry to uphold children's issues as a national priority and to work for developing policy, strategies and plan of action towards ending all sorts of discriminatory practice against children. To uphold this responsibility up, the Ministry is working in collaboration with the line-Ministries and other governmental agencies, national and international development organizations and has taken various interventions focused on children and adults. Such interventions primarily aimed at addressing the root causes as well as providing support to the groups that are discriminated against and to bring them in the mainstream society.

45. The Government, acknowledging that an inclusive approach is required from the State to uplift the status of girl children, has developed and implemented child rights and development programmes focused on improving the situation of girl children. For example, the Government has launched targeted programme for increasing the number of girl children in education (providing scholarship for girls, free text-books and other subsidies) and training as well as providing them with a job opportunity as they grow as an adult. Likewise, the Government has been implementing focused and package programme targeting to children from *Dalit* and indigenous community and extremely poor families for their education (with the provision of scholarship, free text-books and other subsidies), health and other services as well as up-lifting economic status of the families. In the same manner, the Government in collaboration with development partners has implemented targeted programmes for girl children in *Terai* districts where girl's enrolment is lower than any other districts. Such efforts are contributing in changing societal mindsets about girl children, children from *Dalit* and indigenous community and their roles in the society. The Government has been implementing educational and awareness-raising programmes to address the situation.

46. The Department of Women's Development (DWD) of the MoWCSW is implementing programmes to empower adolescent girls and advocate their right to health as well as end discrimination against girl children in all the 75 districts. Furthermore, a number of focused programmes have been implemented targeting to women and girl children across the country for their empowerment and bringing them in the mainstream society. In the same manner, children's clubs are active in raising awareness in the community and advocating against the existing social prejudice and discriminatory practices against children through various activities. Many national and international NGOs are working specifically supporting particular groups of children, including street children, child labourers, children from *Badi* community and children with disabilities. Moreover, the CCWB and the NHRC are advocating children's right to non-discrimination and inclusion as well as lobbying to address the situation. These institutions are regularly conducting situational analysis and monitoring the situation of rights violations, and are making recommendations to the concerned agencies to intervene such situation.

47. The Government has also realized the need to review existing laws relating to children from non-discrimination and inclusion perspectives and amend them or introduce new laws as required. It is imperative to strengthen institutional capacity to enforce laws and constitutional provisions effectively. Further, a strategic action plan is required to raise awareness in the communities. Massive social mobilization would be an effective method not just for raising awareness about the issues of critical concerns but also for developing first line of protection in the community. Likewise, the Government requires developing policies, programmes of actions and projects for prevention as well as rescue and

rehabilitation of children victimized by all forms of abuse, exploitation and harms. Furthermore, there is a need to strengthen functional coordination between the concerned government institutions and authorities, law enforcement mechanisms, I/NGOs and civil society organizations for creating a protective environment and for addressing the problem effectively and efficiently.

48. The Government has amended¹⁵ the law that set out different marriageable age for boys and girls as it was not in conformity with article 2 of the Convention.¹⁶ As per the new provision, the marriageable age for both boys and girls is 20 years.

Best interests of the child (art. 3)

49. For the first time in the Constitutional history of Nepal, the Interim Constitution has recognized the 'Rights of the Child' as one of the fundamental rights. Article 22 of the Interim Constitution recognizes the right of the child to name and identity; the right to nourishment, basic health and social security; the right against exploitation; the right to get special privileges in the case of vulnerable groups of children; and prohibition of employment of minors in factories, mines or similar other hazardous works or to use in army, police or in conflict. Article 22.3, states that "[e]very child shall have the right against physical, mental or any other kind of exploitation. Such exploitative act shall be punishable by law; and the victim of such act shall be given such compensation as may be determined by law."

50. The Government has developed and implemented 'Minimum Standard Rules for Running Child Welfare Homes' in 2007 to ensure the best interest of children living in welfare homes. The rules covers all the aspects of running a welfare home and defines minimum standards regarding to physical infrastructures, operation and management and basic facilities for ensuring health, education and psychosocial support for children. Likewise, the rules set criteria for regular monitoring and supervision of such homes particularly to ensure respect for the best interest of children.

51. September 2006, the Government, as per the mandate given by article 58 of the Children's Act 1992, approved a 'Juvenile Justice (Procedures) Rules 2006' for strengthening the administration of juvenile justice in the country. Respecting best interest of children in conflict with the law, the rules define processes for entire cycle of handling juvenile cases including investigation and prosecution; trial and disposition of cases in Juvenile Court or Juvenile Bench. The rules set criteria for a social worker and a child psychologist who are to be in the juvenile bench; and the service providing organizations in the district. Along with the adoption of the rules, the Government has implemented pilot projects on juvenile justice in 13 districts of Nepal. In these pilot districts, separate juvenile benches have been established and are equipped with necessary infrastructure for in-camera proceedings. Similarly, the judges, public prosecutors, court officials, police personnel, social workers and child-psychologists have been provided professional training and

¹⁵ Act to Amend Some Nepali Acts to Harmonize Gender Equality, 2006 (2063 BS).

¹⁶ The Committee on the Rights of the Child has raised its concern regarding the different marriageable age for boys and girls mentioning it as discriminatory and had advised the Government to undertake legal reform to ensure full conformity with the principles and provisions of the Convention on the Rights of the Child (paragraphs 12 and 25 of the concluding observations of the Committee on the Rights of the Child to Nepal's initial report, (CRC/C/15/Add.57). A writ petition was filed in the Supreme Court of Nepal (*Advocate Sapana Pradhan Malla Vs. Council of Ministers*) and the Court in its decision made in 2006 (on 2063-03-02 BS) issued a directive to the Government to harmonize all the legal provision regarding marriage and make necessary arrangement to implement the law effectively to control incidences of child marriage.

capacity development opportunities for strengthening their capacities to handle juvenile cases.

52. The Government has made legislative reform and made programmatic interventions to ensure fundamental rights of all Nepali children for birth registration including those who are living in remote areas. The provision of Vital Registration Act 1976 (2033 BS) has been amended¹⁷ allowing both male and female members of the family to inform and seek birth registration of the child. Beside, the Government has introduced several packages such as exemption in the registration fee, late fee etc. to encourage parents for birth registration of their children. In the same manner, the government has launched birth registration campaign in collaboration with national and international child focused organizations¹⁸ particularly targeting to those districts where birth registration rate is comparatively low.

53. The State, the main duty-bearer, has been continuously reviewing its policy and programmes in legal and judicial, administrative and programme aspects for ensuring best interest of children. The Government is also involved in enhancing responsibility of primary caregivers and the family for enabling them to provide better care opportunities for children. Ongoing training and capacity development of key institutions and professionals as well as dissemination of information regarding children's rights have contributed to promote the best interest of children from community to national levels. There are some examples of children being regularly engaged and listened to in the planning process of local authorities at district and VDC/Municipality level. In the same manner, the trend of organizing consultations with children and adults in the community for the practical implementation of programme of action particularly in education, health and social sectors, is increasing. The establishment and functioning of children's own organizations as well as the rights advocacy by child focused organizations have also contributed to creating demand especially at the district and community levels to promote respect to the best interest of children.

54. The Nepal Police is taking forward the concept of child-friendly police by strengthening its Women and Children Service Center (WCSC) which is operational in 23 districts of Nepal. The WCSC is providing support to women and children victimized by abuse and exploitations for securing justice as well as their rescue and rehabilitation. Organizations including UNICEF-Nepal and Department for International Development (DFID), UK are offering support to WCSC particularly for their capacity development organizing training to women police officer on issues related to women and children.

55. However, there is a need to further enhance the process of empowerment of children and adults and their organizations as well as capacity of authorities and institutions for securing the best interest of children. It is observed that imparting adequate knowledge and awareness among key government institutions as well as of the professionals would be extremely important. This involves providing skills and methodological process to the targeted audience explaining practical ways to promote the best interest of children in practical term. The Government has realized the need to develop comprehensive and targeted strategy and programmes to promote the best interest of children particularly focusing on vulnerable groups. Likewise, a functional coordination is required between and

¹⁷ This amendment is made by the Act to Amend Some Nepali Acts to Harmonize Gender Equality, 2006 (2063 BS). Prior to this provision, only the elderly male member of the family was considered eligible to give information for birth registration.

¹⁸ There are several international organizations engaged in birth registration. To name some Plan Nepal, UNICEF-Nepal, Save the Children etc. and their partner NGOs have been implementing focused programme in their working districts.

among key government institutions, national and international development partners and children and parents for ensuring the best interest of children in wider contexts.

The right to life, survival and development (art. 6)

56. Article 16.2 of the Interim Constitution states that, “[e]very citizen shall have the right to get basic health service free of cost from the state as provided for in law”. Furthermore, in the case of children, article 22.2 of the Interim Constitution ensures that “[e]very child shall have the right to nourishment, basic health and social security”. Moreover, according to article 12.1 of the Interim Constitution every person does possess “the right to live with dignity...” Similarly, article 17 of the Interim Constitution ensures ‘education and cultural rights’ whereas article 17.2 states that, “[e]very citizen shall have the right to free education from the State up to secondary level as provided in law”. As per article 17.1, every community does possess “the right to get basic education in its own mother tongue ...”.

57. The Government of Nepal is implementing its strategies and plans to make sure that basic health services are available to its citizens across the country regardless of geographical hardship. In November 2007, the Government announced that the health services offered by 4,005 Primary Health Care Centers, Health Posts and Sub-Health Posts would be free of cost. There are significant results of immunization campaign and Vitamin A campaign run over the years in the country in saving lives of younger children. In the same manner, the country is progressing towards eradication of Polio and of maternal and neo-natal tetanus.

58. The Government is focusing its efforts in increasing access of Children and Young People (CYP) to education, vocational and skill development opportunities. In education and vocational training sector, the Government is consolidating its efforts to address issues of critical concerns such as increasing access by respecting the principles of equity and decentralization of services particularly in areas where there is geographical hardship. In the same manner, enhancing quality and efficiency in education and training is another area where the Government is prioritizing its efforts. Furthermore, the Government is expanding Early Childhood Development (ECD) programme across the country with the aim to provide early socialization and stimulation to younger children and having continuous dialogue with parents, the primary care-givers. Efforts are underway to increase recreational activities and opportunities for children largely backed up by the existing rich socio-cultural values, traditions and cultures that are embodied in many societies of Nepal.

59. The Government is focusing its efforts to address the resource constraints, inadequate infrastructure and lack of professional human resource to improve health facilities particularly in remote rural areas.

Respect for the views of the child (art. 12)

60. Illuminating the provisions of fundamental freedom, the Interim Constitution provides every citizen with “freedom of opinion and expressions” and “freedom to form unions and associations” (art. 12.3 (a), (d)). These constitutional provisions are equally applicable to children as well.

61. The Government as well as development partners working in child rights sectors are continuously encouraging and promoting child participation both in policy and programme interventions. This is mainly guided by the desire to make children and young people aware of their rights as well as to mobilize them as active actors for advocating child rights among children and parents in the community. The very notion of ‘participation rights of children’ is gradually getting due recognition from community to national levels. Various opportunities have been created in this regard. There is an increasing trend to consult CYP

in the process of formulating policies concerning them as well as implementing plans and projects at local and national levels. The establishment and operation of 9,000 child clubs/forum across the country (with 235,143 members) have been found instrumental in flagging the issue of child participation up to national level. Furthermore, the DCWBs, the focal agencies in the district for children, have started enlisting child clubs/forum with their offices. They are mobilizing child clubs/forum for promoting child rights through educational and awareness activities. Some DCWBs have included representatives of child clubs/forum in their formal structure. Similarly, the Consortium of Organizations Working for Child Clubs of Nepal¹⁹ has been involved in promoting participation of children in decision-making processes in matters concerning them by empowering children and child clubs/forum as well as enabling adults and/or adult organizations.

62. Children have been actively participating in the electronic and print media. In most of the cases, CYP are running programme targeted to children on their own, taking least support from adults and professionals. Such programmes are successfully disseminating information among children and adults about child rights. They highlight issues concerning children's participation. The Government and privately owned electronic media institutions are broadcasting and telecasting children run media programmes particularly targeting children and young people. Such programmes generally aim at raising awareness on the human rights of children and highlighting issues of critical concerns related to children. They also offer fora for children to express themselves.

63. The Government has incorporated a separate chapter on 'Child Participation' in the NPA for Children, 2004–2015. The plan has two overall objectives: (a) promoting proper participation of children throughout the project cycle; and (b) developing capacity of child clubs/forum and their networks. Likewise, it has accepted strategies for 'legal and administrative reform, development of networks, capacity development of child clubs, and coordination and collaboration' among stakeholders. The MoWCSW and CCWB are coordinating the implementation and monitoring of the plans by mobilizing key stakeholders both at national as well as district levels. In the same manner, the Government, in coordination and collaboration with child-focused organizations, is in the process of developing: (a) a National Protection Policy for Children; and (b) a National Framework for Child Participation. These policy-frameworks would contribute to defining a process and setting up a system to enable children to express their views and incorporating them as appropriate in the administrative, legal and judicial processes systematically.

64. In Nepal, there are several initiatives made to engaging children and young people in projects particularly targeted towards awareness-raising, disseminating child rights messages and advocacy/lobbying. A majority of development organizations operational in Nepal have facilitated Child Club/Forum as an entry point to promote children's rights and participation. Furthermore, there are wider ranges of practices in place and various experiences have gained in terms of engaging children and young people in project processes including planning, implementation, monitoring and evaluation. Besides participation in Child Clubs/Forum, children are also exercising their participation right through child mock parliament. The trend of organizing consultations with children and young people is increasing. In the past, consultations were done during the development of 10-years National Plan of Action for Children, in the process of formulating new bill for Children's Act, and the in-country process concerning to A World Fit for Children and so on. Recently, a four-day national consultation on the girl child, provided a platform for 76

¹⁹ This coalition, also known as 'Consortium', has more than 42 child-focused national and international organizations as its member.

girls²⁰ aged 12–18 to voice their opinions on issues they considered vital. The girls identified and prioritized their issues,²¹ and developed strategies to integrate them into the new Constitution and various policies.

E. How and to what extent the implementation of the Optional Protocol contributes to the implementation of the provisions of the Convention, in particular articles 1, 11, 21, 32, 33, 34, 35 and 36

65. The implementation of the Optional Protocol in the country has added emphasis to the implementation of the Convention on the Rights of the Child, more specifically articles 1, 11, 21, 32, 33, 34, 35 and 36. Now the child is defined as a person below the age of 18 years in general terms, and for the purpose of the Optional Protocol in particular. The Government is in the process of developing law that is in line with the Convention and the Optional Protocol in terms of imposition of criminal responsibility and banning illicit transfer of children and international adoption. The existing child labour law which bans the use of child labour in hazardous works is being implemented. The Children's Act 1992 proscribes the use of narcotic, and the proposed Child Rights (Promotion and Protection) Act decries the buy and sell of alcohol and tobacco products to children. The prevailing laws also prohibit sexual exploitation of children and sale and trafficking for sexual and labour exploitation.

66. The CCWB has developed indicators in respect of the provisions of each article of the Convention that ensures rights of the children. This is being used for monitoring the child rights situation in the districts and at the national level. The DCWBs collect information following the indicators in the districts by mobilizing district line agencies and stakeholders. The CCWB compiles information received and publishes child rights status report every year. The information is being utilized for policy making and various other purposes.

III. Data

A. Sale and trafficking of children and women

The situation of sale and trafficking of children and women in Nepal

67. Sale and trafficking of human beings is the worst form of violence and a gross violation of human rights. It takes away from people their right to dignity, freedom, choice, survival and development. It impedes the realization of human rights and fundamental freedom. The causes of trafficking of human being include: (a) illiteracy and ignorance and lack of awareness (within the family and victimized persons); (b) family dysfunctionality, gender discrimination, child marriage and forced marriage, and violence against girl child and women as well as low social status accorded to women and children; (c) wide spread poverty and unemployment as well as lack of job opportunities in rural areas; (d)

²⁰ The participants included girls in-school and out-of-school; girls from child clubs, working children's clubs, and children's homes; disabled, indigenous, *Dalit* and *Madheshi* girls; girls representing religious minorities, those affected by conflict, survivors of trafficking, circus returnees, internally displaced girls, street girls; and married girls as well as girl-mothers.

²¹ The priority issues they identified included sexual harassment, abuse and exploitation; disability; child marriage; discrimination; lack of education; children in armed conflict; and bonded domestic girl-child labour.

insufficient food security in remote districts particularly in mountain regions; (e) growing urbanization and consumerism; (f) armed conflict, internal displacement and migration; (g) traditional, cultural and religious mal-practices that discriminate girl child and women; and (h) open and uncontrolled border with India as well as inadequate trans-border and regional interventions. Besides, there are inadequate basic services and livelihood opportunities in the villages that force people to migrate to urban centres, and in some cases put people to risk of sale and trafficking. These factors are however not in themselves the causes of trafficking. They merely exacerbate the vulnerability of marginalized and disadvantaged groups and render them amenable to a variety of harms. The sale and trafficking of human beings is therefore a complex issue in itself and, calling for a multi-faceted approach to address it.

68. Various reports of the Governmental bodies, United Nations agencies and national and international organizations as usual state that each year some 5,000–7,000 women and children are trafficked out of the country for the purpose of sexual and labour exploitation. According to an ILO report, the number could be up to 12,000 per year.²² Of the total number, over 40 per cent is believed to be children under the age of 18 years. Likewise, various reports prepared (during 1997 to 2001) by different organizations estimate that some 100,000 to 250,000 trafficked girls and women are working as sex workers in India.²³ However, reported cases each year are very few in number (it was 112 in 2006/07).²⁴ There is no match in the ‘usually quoted’ figures and reported cases. The estimates made are based on speculations and refer to one and another report, which are also without any firm base.²⁵ The 2001 census data shows that altogether 82,712 women are absent from households and out of them 33,620 (40.6 per cent of female absentees) are absent without any known reasons. Despite, widely varied data on cross-border and in-country sale and trafficking of children (and women) as well as the difficulties in ascertaining exact data, the magnitude of the problem is high.

The reported cases

69. According to the data of Women and Children Service Center (WCSC) of Nepal Police, the following table presents the reported cases of trafficking during the past eight years:

Table 3

Reported (with police) cases of trafficking

<i>Year (Fiscal year AD (BS))</i>	<i>Reported cases of trafficking</i>
1999/2000 (2056/57 BS)	120
2000/2001 (2057/58 BS)	92
2001/02 (2058/59 BS)	40
2002/03 (2059/60 BS)	55

²² National Plan of Action against Trafficking in Children and Women for Sexual and Labour Exploitation, MoWCSW, Kathmandu.

²³ Status and Dimensions of Trafficking within Nepalese Context, Integrated Development Studies (IIDS) and UNIFEM, 2004.

²⁴ Reference is made to table: 3 of this report for further detail.

²⁵ Status and Dimensions of Trafficking within Nepalese Context, draft report of Institute for Integrated Development Studies (IIDS) and UNIFEM, Kathmandu, 2004.

<i>Year (Fiscal year AD (BS))</i>	<i>Reported cases of trafficking</i>
2003/04 (2060/61 BS)	56
2004/05 (2061/62 BS)	72
2005/06 (2062/63 BS)	97
2006/07 (2063/64 BS)	112

Source: Women and Children Service Centers, Nepal Police, 2007.

70. The table below presents the age and number of victims of trafficking and the cases filed in the court:

Table 4

Number of trafficking victims according to their age and number of cases filed in the court

(During fiscal year 2003/04 (2060/61 BS) to 2006/07 (2063/64 BS))

<i>Year</i>	<i>Below 7 years</i>	<i>8–12 years</i>	<i>13–16 years</i>	<i>17–25 years</i>	<i>26–35 years</i>	<i>36–45 years</i>	<i>Above 46 years</i>	<i>Total</i>	<i>Number of case filed</i>
2003/04 (2060/61 BS)	2	7	26	39	1	0	1	76	56
2004/05 (2061/62 BS)	3	3	22	52	8	4	2	94	72
2005/06 (2062/63 BS)	6	7	30	74	10	1	0	128	97
2006/07 (2063/64 BS)	3	12	35	83	12	2	0	174	112

Source: Women and Children Service Center, Nepal Police.

Cross-border trafficking of children (and women) for labour exploitation

71. There are instances of cross-border trafficking of children (boys and girls) from Nepal for the purpose of using them as bonded labourers, using them in circus, begging and for the sale of organs. The situation and exact number of children trafficked for such purposes are difficult to identify. According to an international NGO, it is estimated that about 500 children²⁶ under the age of 14 are trafficked to Indian cities for the purpose of using them in circus. Of the number, 233 children were rescued and brought back to the country and reunited to their families by the same organization.²⁷ Among the rescued children, 217 are girls and 16 boys.

72. As per the data at the National Center for Children at Risk – 2006,²⁸ the number of missing children recorded during mid-2006 to mid-2007 (2063-8-22 BS to 2064-8-30 BS) was 2,670 (of them, 1,094 girls and 1,576 boys). Of the missing children, 2,022 children were found (805 girls and 1,217 boys) and were reunited and rehabilitated.

²⁶ According to the information gathered by the organization, it is believed that the traffickers or pimps sell children for 9,000–10,000 NPR for the purpose of using them in circus.

²⁷ As per the details of rescued children, a total 149 (63.98 per cent of the total rescued children) are from Makawanpur district, 24 from Bara, 23 from Chitawan, and 18 from Udayapur district.

²⁸ Popularly known as *Balbalika Khojtalas Samanwaya Kendra* in Nepali language.

73. Nepal Police and Maiti Nepal, an organization working against trafficking of human being, have been successful in preventing 754 women and children from being trafficked by intercepting them at different borders of Nepal in 2002. A total of 1,618 children and women were intercepted at Nepal India border during 2004. The number was 1,404 and 2,398 in the year 2005 and 2006 respectively. There are more than 10 Transit Homes run by different NGOs at the border cities of Nepal with the objective of providing temporary support to the rescued and intercepted children and women.²⁹

Factors responsible for fewer number of reporting

74. The available data indicate that the number of cases reported is less. Besides, low level of awareness, there are several other factors contributing to the same including: (a) social stigma attached to it and social pressure for not disclosing the incidence publicly; (b) ignorance of law and procedures; (c) innocence of the minors as to the nature and gravity of the crime; (d) threats and further harassment from the offender; (e) feeling of guilty, shame and trauma (in the victimized women and children); (f) inadequate infrastructure and procedures (children and women friendly court process including in-camera proceeding) within the justice system from victim support perspective; (g) inadequate victim support systems and services (including social support, rehabilitative support etc); and (h) inadequate training, capacity development and orientation of concerned officers and agencies.

Difficulties to ascertain exact number (survivors and victims of sale and trafficking)

75. Presenting exact data on issues such as sale and trafficking of children and women, places of origin and destination of trafficking, purpose of trafficking etc. is difficult. Variations and inconsistencies in data, which are based on mere assumptions, make the task even more difficult. The difficulty in ascertaining exact number of cross-border and in-country trafficking as well as the reasons for low rate of reporting could be attributed to various factors. For instance a majority of victims are led away from their homes under false promises and/or deception. Sometimes it is with the consent of their family and relatives as they are lured by the false hope of prosperity. Social stigma is attached to it as majority of trafficking is happening for sexual exploitation. This forces the victim and his or her family to hide the case in the name of maintaining social prestige.

B. The situation of commercial sexual exploitation of children

76. According to an ILO study, about 5,000³⁰ girls aged less than 16 years are involved in commercial sex work³¹ in Nepal.³² Studies show that many children and adults engaged

²⁹ Reference is made to paragraphs 170 and 257 of this report.

³⁰ However, there is no record of case filed against involvement of children in commercial sex work. Though according to data of Nepal Police, a total 70 cases (number of victims 70) have been filed in the court on attempt to rape offence; 317 against Rape (number of victims – female 385 and male 3); 112 against Trafficking (number of victims – female 117 and male 30); 1,100 against domestic violence (number of victims – female 1,010 and male 90); and 7 against child marriage in 2006/07 (fiscal year 2063/64 BS).

³¹ The term ‘Sex Worker’ is commonly used in recognition of those adults who assert their rights to engage in prostitution as an occupation in the situation where sex work is legal. But as per law of Nepal, prostitution is illegal in any situation.

³² International Trafficking among Children and Youth Engaged in Prostitution, ILO/IPEC, Geneva, 2002.

in sex work are those who are migrated from rural to urban areas in search of employment opportunities.

77. A study conducted by MoWCSW in 2006 (2063 BS),³³ estimated 40,000 female workers aged between 12–30 years employed in 1,200 Cabin and Dance Restaurant and Massage Parlours in Kathmandu valley. The study reveals that these female workers are vulnerable to trafficking.³⁴ To address the issue, the study has recommended: (a) the development of legislation to ensure job security as well as protection of workers from abuse and exploitation; (b) provision of proper registration of business and preparation of detailed information about the workers employed in them; (c) development and implementation of minimum standards for running a business and safeguarding the rights of workers, (d) provision of regular monitoring and supervision by representatives from Nepal Police, workers, restaurant owners and other relevant stakeholders; and (e) development of a separate mechanism for hearing complaints of employee of restaurant business. In response, the government has already initiated a process of drafting a regulation particularly to protect female workers from sexual and other forms of exploitation and abuse. The Government has formed a monitoring team for regular monitoring.

C. Child sex tourism

78. A situation analysis of child sex tourism revealed that between 1995 and 2001 at least eight foreign paedophiles had been arrested in Nepal.³⁵ As per the report, foreign paedophiles use various means to access young children such as running so-called ‘orphanages’ and ‘street shelters’ for poor and neglected children. They usually gain trust of the children by providing financial or material support such as food, clothes, shelter and medical assistance. And in return, they demand sexual favours.

D. The situation of child labour with particular reference to forced and worst forms

79. The National Labour Force Survey of Central Bureau of Statistics (CBS) shows that among the total of 4,900,000 children aged between 5–14 years, about 2,000,000 (41 per cent) children are found engaged in work force in one way and other.³⁶ Likewise, another survey conducted on Child Migration and Employment of Children, estimates 2.6 million children working as child labourers.

80. Seven work sectors have been identified as the worst forms of child labour in the context of Nepal in which a total of 127,143 children are involved. According to an ILO/IPEC study conducted in 2001, a total of 57,603 children aged between 5 to 18 years were identified in 650 Kamaiya households (2.9 children per household) in five districts of

³³ This study was conducted as per the order issued by the Supreme Court in connection with the case filed to protect physical and mental abuse and exploitation of female workers in Cabin and Dance Restaurants, and Massage Parlors.

³⁴ As 52.2 per cent shared that they have been approached by the pimps with the assurance of providing better jobs in countries like Hongkong, Saudi Arab, and Dubai.

³⁵ CWIN/ECPAT International, A Situational Analysis of Child Sex Tourism in Nepal (Kathmandu valley and Pokhara), Kathmandu, 2003.

³⁶ National Labour Force Survey, CBS, Kathmandu, 1998/99.

Nepal namely Dang (8,698), Banke (2,952), Bardia (20,152), Kailali (16,455) and Kanchanpur (7,350).³⁷

81. The availability of foreign labour market also increased the possibility of trafficking due to nexus between trafficking and migration'. This led to a greater shift in types of victims, forms of exploitation and/or trafficking and countries of destination. Consequently, the victims of trafficking are not only children and women, but it is also men. Though, the intersection between migration and trafficking is a debatable issue as a majority of trafficking starts after migration or movement. As such, examining the linkage between migration and trafficking is to facilitate for more effective strategies to combat trafficking without violating the rights of migrants, especially in the area of prevention. Therefore, understanding the relationship between migration and trafficking is important because knowledge about migration trends and patterns and about the processes of migration could play an important role in combating trafficking.³⁸

E. International adoption of Nepali children

82. A total of 1,798 Nepali children have been adopted by foreign nationals during 2000–2006. Likewise, 327 children have been adopted in the period between 1996 and 2000.³⁹ The following table presents number of children adopted each year during 2000–2006 by foreign nationals:

Table 5

The number of children adopted each year during 2000–2006 by foreign nationals

<i>Year</i>	<i>Number of children</i>	<i>Year</i>	<i>Number of children</i>
2000–01 (2057–58 BS)	94	2004–05 (2061–62 BS)	236
2001–02 (2058–59 BS)	157	2005–06 (2062–63 (Ashad) BS)	373
2002–03 (2059–2060 BS)	213	2006 (2063 (Sraban-Magh) BS)	419
2003–04 (2060–61 BS)	306	2007 (2063–2064 BS (14 Chaitra))	363
Total			2 161

Source: The MoWCSW, 2006 (2064) as quoted in the States of Children of Nepal, CCWB, 2007.

83. According to the data of the MoWCSW, during the period till 2006 (of the total 1,798 children), a total of 509 Nepali children have been adopted by Spanish citizens followed by 392 children by Italians, 303 children by Americans, 246 children by French, and 194 children by Germans. Citizens of 17 countries are seen to have adopted Nepali children.

³⁷ Bonded Child Labour among Child Workers of the Kamaya System: A Rapid Assessment, ILO/IPEC, Kathmandu, 2001. This study has tried to view bonded child labour in the wider context of child labour and debt-bondage among one of the largest ethnic groups of Nepal.

³⁸ Trafficking in Person Especially on Women and Children in Nepal National Report 2005, Office of the National Rapporteur on Trafficking in Women and Children (ONRT), National Human Rights Commission, Kathmandu.

³⁹ Reference is made to paragraph 170 of the periodic report of Nepal (CRC/C/15/Add.30).

IV. General measures of implementation

A. Legal status of the Optional Protocol in domestic law and its applicability in domestic jurisdictions

84. Nepal is committed to protect its people from all forms of abuse, exploitation and discrimination. The Interim Constitution, and the domestic laws uphold right to be protected against abuse, exploitation and discrimination. One of the responsibilities of the State, as per the Interim Constitution, is to implement international treaties and agreements effectively. The following paragraphs highlight the provisions of the Interim Constitution and laws that ensure applicability of the Optional Protocol in domestic jurisdiction and its implementation.

85. Section 9 (1) of Nepal Treaty Act 1990 states that ‘[i]f any provision contained in a treaty to which the State of Nepal or Government of Nepal has become a party following its ratification, acceptance, approval or accession by Parliament is inconsistent with the law in force, such law shall, for purposes of that treaty, be invalid to the extent of such inconsistency and the provision of that treaty shall be applicable as if it were the law of Nepal’.

86. According to the provisions of the same Act, one can appear before the court also quoting the provisions of the international treaties and conventions ratified by the country. There are some cases filed in the court on this ground and court has taken into consideration the principles and provisions of such conventions. This does not however obviate the need to enact enabling domestic legislation.⁴⁰

The constitutional provisions and special provision regarding conventions and treaties ratified by the States

87. ‘Right against Exploitation’ has been recognized as one of the fundamental rights by the Interim Constitution. Article 29 (1) states that “[e]very person shall have the right against exploitation”. The same article prohibits “[e]xploitation on the basis of custom, tradition and usage or in any manner” (Article 29.2). Article 29.3 prohibits, traffic in human beings, “slavery or serfdom ...” and “[f]orced labour” in any form by article 29.4. In the same manner, article 20 of the Interim Constitution ensures right of women against discrimination and violence. The provision states that no one shall be discriminated in any form merely for being a woman (20.1). Likewise, the provision of article 20.3 states that “[n]o woman shall be subjected to physical, mental or any other kinds of violence; and such an act shall be punishable by law”.

88. The Interim Constitution provides that every child has the right against exploitation as his or her fundamental right. Article 22.3 states that “[e]very child shall have the right against physical, mental or any other form of exploitation. Any such act of exploitation shall be punishable by law and the child so treated shall be compensated as may be determined by law.” Likewise, the Interim Constitution has guaranteed every person’s right against exploitation including traffic in human being as fundamental rights. And according to article 32 of the Interim Constitution every person can seek remedies in the situation of violation of such rights.

⁴⁰ Reference is made to paragraphs 19 and 21 of first and second combined periodic reports of Nepal under the Convention (CRC/C/65/Add.30).

89. Similarly, the provision of article 35 (9) of the Interim Constitution highlights one of the policies of State "... of making special provisions of social security for the protection and welfare of single women, orphans, children, helpless, the aged, the disabled, incapacitated persons and the tribes in the verge of disappearance". In the same manner, according to the provision of article 35 (14) "[t]he State shall pursue a policy of making special provision based on positive discrimination" for empowering and uplifting the status of specific groups of people including women. In the same manner, the provision of the article 33 (m) of the Interim Constitution explicitly states that one of the responsibilities of the State is "[t]o implement international treaties and agreements effectively, to which the State is a party".

90. The Supreme Court of Nepal has taken into consideration a number of International Conventions into its judicial decisions. For example, the Supreme Court has stated that "... while enacting the law ... the State should take note of the commitments made ... in the Constitution, fundamental rights and freedom of citizens, international instruments ratified by the State concerning human rights and humanitarian law and take cognizance of several international instruments accepted by international community ...".⁴¹ Such proactiveness of Court in its judicial decisions offers opportunity to incorporate international human rights standards, principles and provisions into domestic law. There is an increasing trend of filing cases in the Court quoting standards, principles and provisions of international instruments to which Nepal is a party. And in response, the Court is continuously taking notice of such international instruments in its decisions. Such practices among others keep reminding the Government towards its commitments expressed through ratification of international instruments.

Enactment of domestic laws and other efforts made in relation to the Optional Protocol

91. Human Trafficking (Control) Act 2007 (2064 BS) has been enacted with the objective of controlling sale and trafficking of human being and protect and rehabilitate the victims and survivors. The Act was adopted by the Interim Legislature-Parliament on 20 July 2007 (2064/04/08 BS).

92. Various provisions of Acts which were discriminatory in regard to women's human rights and conflicting to international instruments to which Nepal is a Party have been amended by an 'Act to Amending Some Nepal Acts 2006' (2063 BS). The Act was adopted by the Interim Legislature-Parliament on 3 November 2006 (2063/7/17 BS).

93. Nepal has enacted National Women's Commission Act 2006 (2063 BS). The Act was adopted by the Interim Legislature-Parliament on 2005 (2063/9/3 BS). The NWC was established as an administrative decision before enactment of the Act and now the institution gets statutory status.

94. The Interim Legislature-Parliament has given its approval on the ratification of the following Conventions and Optional Protocols:

- The ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 18 December 2006 (2063/9/3 BS)
- The ratification of the two Optional Protocols of the Convention on the Rights of the Child, viz., on the sale of children, child prostitution and child pornography and on

⁴¹ Supreme Court's verdict dated 1 June 2007 while deciding the *Writ petition case of Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal [Advocate] Vs. Government of Nepal*, Home Ministry and Others. Nepal Judicial Academy, NJA Law Journal (p. 328), Volume 1, Number 1, 2007.

the involvement of children in armed conflict 2000 by the Interim Parliament on 19 September 2006 (2063/6/3 BS)

- The ratification of the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 on 5 September 2005 (2063/5/20 BS)
- The ratification of SAARC Convention on Regional Provisions on Child Welfare 2002 on 5 September 2006 (2063/5/20 BS)

95. Moreover, the Government of Nepal has already initiated drafting legislation on (a) Controlling Sexual Harassment against Women, (b) Controlling and Punishing Domestic Violence, and (c) Controlling Sexual Harassment against Women in Workplace (Zero tolerance). The Ministry has initiated a process of developing a national policy to address (a) the issues and problems of girls and women working in Dance and Cabin restaurants, and (b) rehabilitation of victims and survivors of trafficking. Likewise, the MoWCSW has finalized the draft Regulation (or bi-laws) of Human Trafficking (Control) Act 2007 which is in the process of being submitted to the Council of Ministers (Cabinet) for formal approval.

96. The Government has initiated a process of drafting a new Child Rights (Promotion and Protection) Act to replace the existing Children's Act 1992.

B. Key ministries, departments and bodies and their coordination with regional and local authorities as well as the civil society, the business sector and the media

97. The Ministry of Women, Children and Social Welfare (MoWCSW) is the focal Ministry and is responsible for implementation of the Optional Protocol. It shoulders the roles of coordination with relevant Ministries and Departments at the national level and the government authorities at sub-national levels.⁴² MoWCSW holds the responsibility, among others, to (a) formulate and implementation of plans and policies concerning women, children and social welfare, (b) coordinate and liaison with national and international organizations working in social sector, and (c) ensure protection and promotion of orphan children, vulnerable women, the aged and persons with disabilities. The Ministry is also responsible for child welfare and adoption related functions (in case of international adoption of Nepali children), and social welfare. In order to carry out its mandate effectively the Ministry is working in coordination with other line ministries, national and international organizations, United Nations agencies, community based organizations, parents and children's organizations, private sectors, mass media and professional associations and networks for attaining the objectives of the Optional Protocol.

98. MoWCSW has two Divisions and 8 sections at the Ministry level. The Ministry has the Department of Women Development (DWD) at central level and Women Development Offices (DWO) in 75 districts. The Ministry has functional relationship with the Central Child Welfare Board (CCWB) and District Child Welfare Board (DCWB) in all the 75 districts. The Ministry is liaison-ministry for Social Welfare Council (SWC), an autonomous body governed by a separate Act and National Women's Commission. The Ministry runs four Child Care Centers and funds for the running of Child Correction Center which houses children in conflict with law. The Ministry coordinates and monitors activities of national and international NGOs particularly engaged in social sector.

⁴² Nepal is divided into Five Development Regions, 14 Zones, 75 Districts and 3,915 Village Development Committees (VDCs) and 58 Municipalities.

99. The CCWB is a statutory body created by the Children's Act 1992 (2048 BS). It is charged with 'the overall responsibility of ensuring realization of the rights of children of Nepal. It also looks after children's issues and works towards promotion and protection of the children's rights. While fulfilling its mandated role, the CCWB works in collaboration and coordination with the government bodies, development partners and civil society organizations to meet the State's obligations towards children's rights progressively as per the Convention standard.' As mentioned in the previous paragraphs, the CCWB has DCWB as its district chapter in all 75 districts.

100. The other line Ministries and Departments that extend support and hold responsibility for achieving the commitments made under the Optional Protocol include Ministry of Home Affairs (MoHA), Ministry of Education and Sports (MoES), Ministry of Health and Populations (MoHP), Ministry of Law, Justice and Parliamentary Affairs (MoLJPA), Ministry of Labour and Transport Management (MoLTM), Ministry of Foreign Affairs (MoFA), Ministry of Local Development (MoLD), National Planning Commission (NPC) and Nepal Police. Likewise, Supreme Court of Nepal, Appellate Courts and District Courts, National Human Rights Commission (NHRC), National Women's Commission (NWC) etc. also hold mandate to contribute towards the realization of the rights guaranteed under the Optional Protocol. The following paragraphs provide brief information about the roles of these institutions with regard to the Optional Protocol.

101. The Ministry of Home Affairs (MoHA) is primarily responsible for home administration and maintaining law and order in the country. According to the Government of Nepal (Allocation of Business) Rules, 2007, the MoHA is responsible for prison administration; supervision, control and expulsion of foreign citizens; local administration; citizenship; migration and immigration; control of public nuisance, alcohol, and public offences as well as management of refugees, and for controlling of sale and trafficking of children and women. The MoHA has programmes of cross border security and it organizes annual cross-border meeting with Indian Security Officers on border issues including trafficking in children and women. Nepal Police is functioning under the MoHA (discussed in the following paragraphs).

102. Nepal Police which works under the Ministry of Home Affairs is charged with the responsibility 'to safeguard people's rights and to maintain law and order in the country'. Some of the major functions of Nepal Police are to preserve public order and create and maintain a feeling of security in the community; to reduce incidences of crime and to protect life and property of people; and to investigate crime, apprehend offenders and institute and participate in related legal proceedings. Nepal Police also works 'to aid individuals who are in danger of physical harm' and 'provide services and extend relief to those people who are in distress'.

103. Nepal Police, with the aim of promoting public participation in the maintenance of law and order in the society and controlling and investigating crimes, has implemented the concept of Community Police. A total of 179 Community Service Centers have been established in 72 districts. They have been functional to 'minimize crimes including trafficking of women and children, drug abuse, gambling, prostitution and other crimes in the society'. The Centers organize various public awareness programmes for the promotion of the rights of children and adults. Nepal Police has also established Women and Children Service Center (WCSC) in 1996 (2052 BS). At present, there are a total of 25 WCSC operational in 23 different districts.⁴³ Through these Centers, Nepal Police 'mobilizes female police officers, with an aim to control and prevent crimes against women and

⁴³ There is one in the centre level, one in Valley Police Office, Kathmandu and one each in 23 District Police Office.

children, investigate and publish the perpetrator of those crimes according to law and safeguard the rights of the victims. The crimes that are investigated by the WCSC mainly include sexual offences, human trafficking, child marriage, polygamy, domestic violence and abortion.’ (Reference is made to paragraphs 159 and 160 of this report).

104. The Ministry of Education and Sports (MoES) is mandated with the task of educational administration and management including planning, management and service delivery systems in the education sector across the country. The MoES has been implementing various educational and skill development programmes especially targeted to vulnerable and marginalized groups including girl child, adolescents, and women. The MoES is implementing policy of free primary education for all, scholarship in the lower and secondary education and food for education to the most vulnerable populations such as *Dalit*, girls as well as children from Karnali zone.

105. The Ministry of Labour and Transport Management (MoLTM) is responsible for formulating and implementing policies and programmes to address labour issues including child labour. The Ministry has developed and is implementing Master Plan for the Elimination of Child Labour 2001–10. The Master Plan primarily aims to address the issues such as hazardous and worst forms of child labour. The MoLTM is responsible for formulation and implementation of foreign labour migration policies, plans and strategies. Under the Ministry, there is a specialized Department with the major responsibility of coordination, regulatory instruction, licensing to employment agencies, approval for foreign employment and legal actions in accordance with the Foreign Employment Act (third amendment) 2007 (2064 BS).

106. The Ministry of Health and Populations (MoHP) takes lead in ‘improving the health of the people including mental, physical and social well-being. The Ministry is also responsible for making necessary arrangements and formulate policies for effective delivery of curative services, disease prevention, health promotion activities and establishment of a primary health care system’. The MoHP is also responsible for running HIV and AIDS control programme including prevention, awareness-raising, blood testing and distributions of medicines for Sexually Transmitted Infections (STIs) targeting to vulnerable groups, survivors and victims of sale and trafficking.

107. The Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) is responsible for (a) developing a legal base for effective governance of the country and national development, and (b) looking into functional aspects of law and justice administration and working as line ministry for the Secretariat of Legislature-Parliament. The MoLJPA is the focal Ministry regarding law and justice. It offers legal advice to the Government in legal matters including assimilation, signature and ratification of international conventions, treaties, covenants and bilateral agreements.

108. The Ministry of Foreign Affairs (MoFA) maintains Nepal’s foreign relations in accordance with the policies and guidelines of the Government of Nepal. This includes the promotion of bilateral, regional and multilateral relations. It acts as a first point of contact for outside world towards Nepal and also serves as Nepal’s window to the world. The MoFA is responsible for maintaining relation with United Nations and other international and regional organizations. Extradition and claims on respective citizens of foreign countries also comes under the functions of the Ministry.

109. Ministry of Local Development (MoLD) provides leadership to the local government bodies i.e. DDC, VDC and Municipalities. As per the provision of the Local Governance Act, the local government bodies are responsible for implementing development plans and projects as well as work for addressing social problems. The DDC, VDC and Municipalities have been implementing programmes to empower people particularly focusing to marginalized section of the society including women, *Dalit*, and

Janajatis. Moreover, the MoLD in collaboration with UNICEF-Nepal is implementing Decentralized Actions for Children and Women (DACAW) in 23 districts as an integrated intervention for increasing status of women and children.⁴⁴ Furthermore, Poverty Alleviation Fund, established in 2003, is aimed at contributing reduction in poverty among women, *Dalit*, and *Janajatis* including others through enhancing social mobilization, promoting income generating programmes, development of community's infrastructure and capacity building of the Community Based Organizations (CBOs) including women's organizations. The programmes under the fund covers 25 poverty stricken districts (expanded to 19 more districts last FY).⁴⁵

110. The National Planning Commission (NPC) is the advisory body for formulating development plans and policies of the country under the directives of the National Development Council (NDC). It explores and allocates resources for economic development and works as a central agency for monitoring and evaluation of development plans, policies and programmes. It also facilitates the implementation of development policies and programmes. For doing so, the NPC advises the Government, Ministries, and Departments on (a) amendments to be made in the periodic plans, programmes, and projects, (b) feasibility studies and developing of master plans of large projects, (c) accepting foreign aids and (d) appraisal of project proposals.

111. The judiciary is the custodian of human rights. It has a significant role in relation to the Convention and the Optional Protocol. The Courts and judicial institutions exercise judicial power in Nepal in accordance with the Constitution, the laws and recognized principles of justice. The Supreme Court, the highest court in judicial hierarchy, holds the final authority to interpret the Constitution and other prevailing laws and enunciate principles for plugging the loopholes in law which are regarded as judge-made laws. As such, the court not only recognizes laws but also makes a meaningful interpretation. While doing so the court can take reference to international treaties and conventions to which Nepal is a party. Therefore, the court can be considered in wider context in relation to creating a legal environment, harmonizing domestic laws in line with the spirit of the Constitution and international conventions and treaties. In recent years, Nepali judiciary has shown examples of 'judicial activism' handing down landmark decisions that uphold human rights principles and fundamental freedom as envisioned in international instruments.

112. There are several examples in which Courts of Nepal have decided the cases and issued directives to the Government which support the implementation of the principles and provisions of the Convention and its Optional Protocols. The following are some of the broader areas of child rights in which the court has made its decision:

(a) Establishment and functionalizing of Juvenile Court or Juvenile Bench – in deciding the writ petition case (*Santosh Mahato Vs. Council of Ministers and others*) in 2005 (on 2062-08-09), the Supreme Court issued an order to the Government to establish Juvenile Courts and report the progress to the court. The Government enacted Juvenile Justice (Procedures) Rules 2006 and established Juvenile Bench in all the 75 district Courts;

(b) Birth Registration and Citizenship Certificate – in deciding the writ petition cases (*Dil Bahadur BK Vs. Council of Ministers and others* and *Tek Tamrakar Vs. Council of Ministers and others*) in 2005 (on 2062-05-30), the Supreme Court has issued an order to the Government to make birth registration and issuing Citizenship Certificate to the

⁴⁴ Reference is made to paragraph 148 of this report for further details about DACAW programme.

⁴⁵ The districts are Darchula, Mugu, Pyuthan, Kapilbastu, Ramechhap, Siraha, Accham, Baitadi, Bajhang, Bajura, Dadeldhura, Dailekh, Dolpa, Doti, Humla, Jajarkot, Jumla, Kalikot, Mahottari, Rasuwa, Rautahat, Rolpa, Rukum, Sarlahi, and Sindhuli.

children of *Badi* women whose father is not known. In the same verdict, the Court has ordered to form a Commission comprising representatives of *Badi* Community and organizations working with *Badi* community to study the issues and problems facing by *Badi* community and implement them in priority order;

(c) Education of Children with Disabilities – in deciding the writ petition case (*Sudarsan Subedi Vs. Council of Ministers and others*) in 2003 (on 2060-07-28 BS), the Supreme Court has issued an order for free admission of children with disabilities in the public schools, universities and training centers and not to charge any fee afterwards;

(d) Domestic Child Labour – in deciding the writ petition case (*Som Prasad Paneru and others Vs. Council of Ministers and others*) in 2003 (on 2063-05-25 BS), the Supreme Court issued an order to the Government for enacting legislation regarding domestic child labour and to implement them effectively. In the same verdict, the court has ordered to incorporate issues related to child labour in curriculum and to make plan for the protection of children who are in situation of exploitative child labour including Kamlari;

(e) Adoption – in deciding the writ petition case (*Advocate Nirmala Upreti Vs. Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs*) in 2006 (on 2063-02-25 BS), the Supreme Court issued an order to the Government to make necessary legislation for the protection of the rights of adopted children;

(f) Children in conflict with the law – in deciding the writ petition case (*Advocate Balkrishna Mainali Vs. Ministry of Home Affairs*), the Supreme Court has issued an order to all 75 District Police Offices, 71 Jails, Ministry of Home Affairs and Nepal Police Headquarters to ban cruel punishment to children, put handcuff, place in the isolated area of the jail and with the adult prisoners;

(g) Registration of Children's own organization – in deciding the writ petition case (*Tilottam Paudel Vs. Ministry of Home Affairs*) in 2004 (on 2058-04-25 BS), the Supreme Court has given its verdict mentioning that article 15 of the Convention has guaranteed children's rights to association and the constitutions has given the rights to every citizen to register an organization except prohibited by law and this right should not be restricted to children as because they are minors;

(h) Equal marriageable age for boys and girls (mentioned in paragraph 48 of the report), right to special protection (mentioned 49 of this report) and right to privacy (mentioned in the paragraph 223 of the report) are also among benchmark decisions of the Courts.

113. The National Human Rights Commission (NHRC) of Nepal is an independent and autonomous constitutional body. The NHRC is mandated by the Constitution 'to promote respect for, protect and promote human rights and ensure their effective implementation' (art. 132.1). In order to perform this responsibility, the NHRC is mandated to (a) conduct inquiries into, investigations of, and recommendation for action against the perpetrator, on the matters of violation or abetment of human rights of a person or a group of persons; (b) forward recommendation to the concerned authority for taking departmental action against the authority, who has the duty or responsibility to prevent the violation of the human rights, failed to perform such duty; (c) make recommendation to lodge a petition in the court, if necessary, in accordance with the law against the person who has violated human rights; (d) review prevailing laws relating to human rights on a periodic basis and to recommend to the Government for necessary reforms and amendment thereto; and (e) recommend with reasons to the Government to become a party to any international treaties and instruments on human rights (art. 132.2).

114. While performing its mandated functions, the NHRC holds the authority to (a) exercise the same powers as the court has in requiring any person to appear before the

Commission for recording his/her statement and information or examining them, receiving and examining evidences, ordering for the production of any physical proof; (b) enter, without prior notice, in case of information of incidents of the violation of human rights occurred or going to occur, into any residence or office, conduct search and seize any document and evidence relating to the case; (c) enter any government premises or other places, without prior notice, where it has information regarding violation of human rights of a person and where immediate action is required and rescue the person; and (d) order for the provision of compensation, in accordance with law, to the victims of human rights violation (art. 132 of the Interim Constitution).

115. As an independent rights monitoring body, the NHRC monitors violations of rights of the children including of those provided by the Protocol. The NHRC has established Child Rights Protection Desk (CRPD) as a specialized unit within its functional structure for monitoring violations of children's human rights throughout the country and for ensuring protection as and when required. The unit does carry out its task of (a) complaint handling, (b) conducting inquiries or investigations, (c) organizing field visits, inspection and observation, and (d) making assessment of human rights situation to ensure rights of the children. In the same manner, an Office of the National Rapporteur on Trafficking in Women and Children (ONRT) has been established in the NHRC in 2002 as per the Memorandum of Understanding (MoU) signed between the MoWCSW and the NHRC. Following this, a National Rapporteur (NRT) has also been appointed. The ONRT is mainly responsible for monitoring the incidence of trafficking and coordinating national, regional and international efforts to combat trafficking. The establishment and functioning of the ONRT reflects higher level commitment of the nation against trafficking of human being.

116. The National Women's Commission (NWC) has been established as a specialized statutory body with the mandate to promote and protect human rights of women in the country. The NWC is mandated⁴⁶ to (a) Monitoring, evaluation and analyzing of the policy and programmes of the Government from gender perspective, as well as make recommendations for their effective implementation, (b) study of the laws concerning women and make recommendations for necessary reform, (c) observe the physical facilities and works of the public and private offices and make recommendations for protection of the rights of the women, (d) monitor the implementation of the international conventions to which Nepal is State party and make sure that the country is fulfilling its reporting obligation, and (e) entertain the individual complaints regarding rights violation of women and make investigation of the of such cases. The NWC is working for policy advocacy, awareness-raising, monitoring and documentation of rights violations, coordinating with the government bodies and human rights organizations for strengthening women's rights situation in the country.

117. With regard to the principles and provisions of the Optional Protocol, the institutions of local self government⁴⁷ have the roles to (a) support human resource development, and create opportunities for employment and self-employment, (b) keep records of orphan children, children living without parents or guardians and children with disabilities within its territory and coordinate their protection (including arranging them to put into children's homes), (c) develop and implement plans for raising status of women and implement them, (d) do necessary work to control immoral acts and business as well as work for the protection of victimized persons particularly women and children, (e) work for the protection of orphan and children in difficult circumstances, needy women, aged people, and persons with disabilities as well as work for challenging harmful social traditions and

⁴⁶ National Women's Commission Act 2064 (2063 BS).

⁴⁷ District Development Committees-DDC, and Village Development Committees – VDCs and Municipalities.

practices, and (f) work for the protection of women and girl children as per the policy of the Government.⁴⁸ The local bodies are, therefore, responsible for mainstreaming marginalized section of the society into development agenda at the local levels, and ensuring people's empowerment and participation. The local bodies have been playing vital roles to fight abuse, exploitation and discrimination against women, children and other groups of people.

118. A large number of national and international organizations and NGOs are working for addressing the issue of sale and trafficking of women and children. These organizations are delivering various services such as health, non-formal education, income-generation activities, creation of livelihood skills, awareness-raising, networking, policy advocacy and so on. The Government is developing and implementing policy framework. It is also collaborating with these organizations at various levels for addressing the issue effectively by consolidating efforts.

C. Dissemination of the Optional Protocol

119. The Government, in collaboration with the United Nations agencies, national and international organizations/networks, has initiated various activities for the dissemination of the principles and provisions of the Convention and its two Optional Protocols. The following are some of the highlights of specific and targeted initiatives:

- The text of the Optional Protocol has been translated into Nepali language and published in the book form by CCWB together with other International, Regional instruments and national legal provisions regarding children. This document has been widely circulated in all the 75 districts through district level agencies such as DCWBs, WDO, and NGOs and their networks. The publication is distributed among government institutions and organizations/networks at national level as well.
- The National Judicial Academy (NJA), in partnership under Juvenile Justice Strengthening Project of CCWB, has conducted training for all the judges from all the 75 District Courts on child rights and juvenile justice. In such training, the text of the Protocol has been distributed for their reference. Intensive discussions were held on the issue of sale and trafficking of children, child prostitution and pornography.

120. United Nations Agencies, international and national NGOs and networks have also been instrumental in advocating the issue, publicizing the principles and provisions of conventions and optional protocols related to women and children to the target groups at national, district and sub-district levels through publications, audio-visual materials, training materials, song and essay contests, painting competitions and street drama. A number of training workshops have been organized for the stakeholders including government officials, teachers, police officers, school children, journalists, local authorities, DCWBs and NGOs. Besides, national and international NGOs have developed training manuals for the purpose of disseminating information on the issue of sale, trafficking, prostitutions and pornography of children. Such manuals target to disseminate information among stakeholders including professional groups from community to national levels.

121. The number of Child Clubs/Forum is increasing as new kinds of organization across Nepal. They aim at promoting rights of children among children and adults in the community. The Child Clubs/Forum, most importantly, offer children and young people a platform to exercise their participation rights. It is estimated that there are 9,000 Child Clubs/Forum functional in Nepal with 235,143 children and young people as members. Of

⁴⁸ Section 28 (1.xi), 96 (1.viii), and 189 (1.vi) of Local Self Governance Act 1999 (2055 BS).

them, 135,680 are boys and 99,463 girls.⁴⁹ The Child Clubs/Forum are involved in raising awareness among children and adults in the community on the rights of children through various activities such as street drama, song, stories and training and interaction programmes etc.⁵⁰

122. Efforts are underway to incorporate the principles and provisions of the Convention and its two Optional Protocols in the school and university curricula as well as curricula of professional training institutions. The concerned government bodies and organizations/networks are advocating/lobbying with the MoES and other concerned Ministries and Departments for the same. As an encouraging initiative, the NHRC in October 2007 advised the Government to incorporate 'rights provisions' into school and academic curricula in a comprehensive manner.⁵¹ Curriculum Development Center (CDC) is a body to review the curriculum of school. Now, the CDC, with the support of United Nations and international agencies, is working to incorporate human rights, civics and peace education in the curricula. However, there is a need to have a comprehensive review of existing curricula of school and academic courses for incorporating the principles and provisions of human rights conventions, covenants and optional protocols in a holistic and strategic manner.

D. Mechanism and procedures used for periodical evaluation of implementation of the Optional Protocol

123. The Government of Nepal has established mechanism for monitoring and evaluation of annual, periodic plans, programmes and project. This could be broadly highlighted as follows:

- The NPC works as an apex body and takes responsibilities for coordination among all line ministries, especially in annual and periodic planning and programming. There is a central monitoring system at the NPC that monitors and evaluates specific projects and programmes, based on annual and periodic plans of the Government. The NPC as a lead agency for monitoring progress towards the Millennium Development Goals (MDG) houses a Poverty Monitoring Division (PMD) with a mandate to monitor and analyze poverty trends; tracking progress towards key human development and MDG indicators and the implement measures to ensure social inclusion and undertake periodic reviews.⁵²
- There are also planning, monitoring and evaluation divisions in line ministries that monitor their own projects and programmes, based on annual and periodic plans. In line with its sectoral responsibility, each Ministry coordinates and facilitates the work of the concerned line Ministries and departments for monitoring of periodic plans and projects that are implemented under other Ministries and Departments. In such case, a joint monitoring and evaluation is done by forming a joint team between and among the concerned Ministries and Departments to carry out monitoring of annual and periodic plans, programmes and projects being implemented by line-Ministries.

⁴⁹ The State of Children of Nepal 2007, Central Child Welfare Board, 2007, p. 62.

⁵⁰ Reference is made to paragraphs 42–43 of the first and second combined periodic report of Nepal under the Convention (CRC/C/65/Add.30).

⁵¹ Reference is made to paragraphs 44–45 of the first and second combined periodic reports of Nepal under the Convention (CRC/C/65/Add.30) for further information.

⁵² National Progress Report on "Plus 5" of A World Fit for Children, MoWCSW, Kathmandu, 2006.

124. The MoWCSW, the focal Ministry for the purpose of the Optional Protocol, has the mandate to coordinate, facilitate and monitor children-related policies, prepare annual and periodic plans and undertake project activities. This mandate implies both in conducting of situational analysis of the sector as well as implementation of specific policy, periodic plans and projects. The National Coordination Committee (NCC) and various Task Forces at the national, district and village/municipality levels are formed for the purpose of undertaking projects and programmes to address the sale and trafficking of children and women. They function as per the National Plan of Action (NPA) Against Trafficking in Children and Women for Sexual and Labour Exploitation and take the responsibility of monitoring and evaluating implementation of the NPA.

125. The CCWB is the central agency of the Government which has the responsibility to monitor effective realization of the rights of children at all levels. This mandate includes monitoring of child-related issues, policies as well as periodic and annual plans and projects. The specific mandate of the CCWB includes coordination, policy dialogue, facilitation, monitoring and evaluation of child related issues. The CCWB is also responsible for carrying out periodic situational analysis regarding fulfilment as well as violation of children's rights. As per the National Plan of Action (NPA) for Children-Nepal (2005–15), the MoWCSW and CCWB jointly coordinate the planning and implementation process with all line ministries, government agencies and development partners at the central level. Similarly, district level offices and/or committees of the MoWCSW and CCWB coordinate, monitor and evaluate district-level plans and programmes, including implementation of their own programmes.⁵³ The CCWB provides guidelines and coordinates DCWBs. It also strives for greater coordination among I/NGOs and develop monitoring indicators for implementation of the Convention.

126. The NPA against Trafficking in Children and Women for Sexual and Labour Exploitation has incorporated the monitoring and evaluation of the NPA into two components: (a) periodic review to measure the progress (of the activities of the NPA) made, and (b) evaluation of the initiatives of the NPA as a whole to analyse existing situation and to develop comprehensive programme of actions and framework to combat trafficking of children and women. As per the NPA, monitoring and evaluation of the implementation of the activities planned is done on a yearly basis whereas comprehensive review of the NPA itself is done after every two years.

127. The NHRC, on the other hand, does the case monitoring of human right violations of children. Likewise, the National Women's Commission monitors the rights violation in the case of women and girl child.⁵⁴

E. The major challenges encountered

128. The following are some of the challenges with regard to combating the sale of children, child prostitution and pornography:

- Inadequate awareness among children and adults about rights and responsibilities which is also linked with the prevailing low literacy rates.
- Prevailing extreme poverty and hardship – including low social status of girl children, son preference, and economic disparity.

⁵³ Reference is made to Chapter 7 of the NPA for Children, p. 45.

⁵⁴ Reference is made to paragraph 116 of this report.

- Inadequate institutional mechanisms and administration and governance related issues; necessity of enhancing technical capacity of the institutions and increasing accountability.
- The nature of trafficking of children and women particularly for the purpose of commercial sexual exploitation generally attracts the crime syndicates that pose challenges in the efforts of addressing the issue.
- Family break-down and associated marital problem – dysfunctional family, polygamy, divorce, family violence, desertion etc.
- Coverage of specialized services to support the victims and survivors is yet to expand across the country. There is a need to increase number of trained and skilled human resources, and technical capacities of service providers.
- There is a need to have effective programmatic response — rescue and rehabilitation, social stigmatization, etc. Projects are more concentrated in awareness-raising — lack practical action, lack longer term vision and sustainable approaches to address the issue.
- There lack comprehensive Community based Child Protection Mechanisms and Systems — armed conflict, domestic violence — rape, incest and abuse.

F. Resource trend and budget allocation

129. The overall resource envelope in the children sector has increased but there is little information about how much is currently being invested in interventions for the implementation of the programmes for promotion of the rights of children.

130. The total cost of attaining the MDG on education for 2005–2015 amounts to Rs. 334 billion (US\$ 4.78 billion) at 2004/05 constant prices. For instance, the total basic and primary education budget of the Government FY 2005 was NRs. 13.7 billion, and for 2006/07 the budget was NRs. 23 billion. The total cost of attaining the health-related MDGs was Rs. 11.8 billion (US\$ 168.4 million) in 2005, which increases to Rs. 24.2 billion (US\$ 345.6 million) in 2015. Moreover, in the Tenth Plan, social service allocation is maintained with incremental growth and about 17 per cent of government expenditure has gone to basic social services. The budget only includes funds that are reflected in the Government's budget, and many donors and I/NGOs' contributions are not reflected while the INGO sector contribution is significant, particularly for children.⁵⁵

131. Throughout the Three Year Interim Plan (2006/07–2009/10) period, a total of NRs. 28 billions is estimated to be spent in women development, empowerment and gender mainstreaming programmes by MoWCSW and other sectoral ministries and departments.

132. INGOs currently occupy a significant role in the development effort of Nepal. There are over 100 INGOs working in the country of which almost half of them are the members of AIN. Currently the estimated annual programming budget for AIN members is approximately \$77 million which is equivalent to approximately 14 per cent of the total official development budget of the country.⁵⁶ The report unveils the trend that 28 organizations with 58.44 per cent budget are engaged in health, HIV/AIDS, nutrition and food whereas 4 organizations with 8.33 per cent budget have focus on disability. A total of

⁵⁵ "National Progress Report: 'Plus 5' Review of the 2002 Special Session on Children and A World Fit for Children Plan of Action" prepared by MoWCSW.

⁵⁶ Membership Report, Association of International NGOs in Nepal, 2004.

25 organizations are involved in education and vocational training with 43.75 and 8.33 per cent budget respectively. Water sector receives 29.16 per cent with the direct involvement of 14 organizations. And 13 other organizations are dedicated to relief, rehabilitation (humanitarian support) and managing Bhutanese Refugees camp with 25.7 per cent of the budget allocation. Human rights, women and gender draw the attention of 33 organizations with 68.74 per cent of their total budget.⁵⁷

133. Altogether 20 INGOs are working on children's cause with 41.66 per cent of their resources excluding the involvement of two organizations on birth registration with 4.16 per cent of their budget. In addition to the 20 organizations (out of the Association of International NGOs-AIN membership) that contribute a significant amount of their resources towards children, other organizations work in areas that also affect children. Three organizations work on conflict and peace with 6.25 per cent of their budgetary investment whereas 10 organizations are operating on good governance and social mobilization with 20.83 per cent and 23 organizations with 47.91 per cent respectively. There are fewer organizations focused on and allocating resources for media (two organizations with 4.16 per cent), livelihood (two organizations with 4.16 per cent), poverty (two organizations with 4.16 per cent) and 2 organizations with 8.33 per cent on advocacy and lobbying.⁵⁸

V. Prevention (art. 9, paras. 1 and 2)

A. Measures to prevent the offences referred to in the Optional Protocol

International and regional commitments

134. Nepal has shown its commitment at international and regional levels by becoming party to various conventions and treaties with the intention of combating sale and trafficking of children and women; commercial sexual exploitation of children and child pornography.⁵⁹ This has created an environment for extending to and seeking support from international community to address the issue. Given that sale and trafficking in children and women is becoming a growing phenomenon on an international, regional and national level, commitment is required at the international level. The international community needs to join hands with national governments in their efforts to address the issue.

Administrative measures

135. The Government has adopted a four-pronged strategy to address the problem of trafficking which consists of (a) law enforcement measures, (b) income generation programme, (c) expanding educational opportunities, and (d) rehabilitation and reintegration of victimized persons. The Government has concentrated its efforts to

⁵⁷ "National Progress Report: 'Plus 5' Review of the 2002 Special Session on Children and A World Fit for Children Plan of Action" prepared by MoWCSW.

⁵⁸ "National Progress Report: 'Plus 5' Review of the 2002 Special Session on Children and A World Fit for Children Plan of Action" prepared by MoWCSW.

⁵⁹ Reference is made to annex 4 for detail list of international and regional instruments to which Nepal has made its commitments.

translate its concerns and commitments for combating trafficking by enacting various acts, developing and implementing policies and programme.⁶⁰

136. In 2000, in pursuance of the commitment made at international, regional and national levels, the Government of Nepal (the MoWCSW as focal ministry) adopted thirteen focus areas for its national policy to prevent trafficking of women and children.⁶¹ Some of the focus of the policy include, (a) public awareness campaigns to be carried out at a large scale, (b) reviewing and amending laws that discriminate against women, (c) mobilization of the government institutions, I/NGOs, and private sector as well as resources to combat trafficking in women and children, (d) penal sanction to the offence with a heavy fine and utilize the collected funds to provide financial assistance to victims, (e) formal and vocational education and training to the targeted groups, (f) rehabilitation programmes for the rescued women and children in collaboration with NGOs, (g) establishment of coordination committees at the national, district and village/municipality levels for coordinating activities, raising awareness and compiling data, (h) poverty alleviation measures and employment opportunities to women of high-risk communities, and (i) higher level political commitment to combat trafficking of women and children. Later, these areas were incorporated in the NPA against Trafficking of Women and Children.

Formulation and implementation of the NPA against trafficking of women and children

137. The MoWCSW has formulated a National Plan of Action (NPA) against Trafficking of Women and Children for Sexual and Labour Exploitation in 1998 (2055 BS). The NPA against Trafficking of Women and Children was revised comprehensively in 2001 in consultations with the concerned United Nations agencies, international organizations, national NGOs and networks. It is being implemented since 2004. The NPA against Trafficking of Women and Children, first of its kind, has conceptualized the problem of sale and trafficking of human beings in a wider context in conformity with the understanding of the relevant international and regional conventions ratified by the country and has adopted programme of actions to address the problem of sale and trafficking. At present, the Government, development partners and NGOs are in the process of implementing the NPA. The key actors are imparting information, education, communication and awareness-raising programmes; and conducting various trainings, workshops, consultations and mass campaigns at the national and local levels. Moreover, NGOs together with Government agencies are carrying out surveillance activities as well as facilitating social reintegration of the victims and survivors.

138. The NPA against Trafficking of Women and Children has considered various aspects such as maintaining effective coordination, strengthening economic interventions, regional interventions and conducting reliable surveys and studies. Likewise, the NPA against Trafficking of Women and Children has acknowledged that trafficking of women and children can and does lead to other forms of exploitation i.e. for labour exploitation than just for sexual exploitation and has adopted programme of actions for the same. Moreover, the NPA against Trafficking of Women and Children has recognized the necessity to have distinction between sale and trafficking of children and women. In both the cases, it is gross violation of human rights but in the case of adult (i.e. woman), the rights to mobility should be respected. Likewise, there is the issue of consent which is different in the case of an adult and a child. On the other hand, children are much more

⁶⁰ Trafficking in Person Especially on Women and Children in Nepal: National Report, 2005, Office of the Rapporteur on Trafficking in Women and Children (ONRT), National Human Rights Commission.

⁶¹ Reference is made to annex: 2 of this report for detail information.

vulnerable and thus, require special protection and care. Therefore, different prevention strategies and rescue and rehabilitation approaches would be necessary to counter sale and trafficking of children and adult effectively.

139. The NPA against Trafficking of Women and Children has identified four cross-cutting issues: (a) sustainability, (b) gender, (c) human rights based approach, and (d) child participation. The NPA against Trafficking of Women and Children has envisioned sustainability in the context of (a) having more coordinated efforts engaging wider range of actors (GOs, NGOs and civil society actors) at different levels; (b) adopting strategies and programme of actions in longer-term perspective; and (c) mobilization of resources. In regard to gender, two critical aspects are considered. Both boys and girls are being victimized of sale and trafficking though the number of girls is high. And gender-based discrimination against girls and women is one of the contributing factors. Intervention should aim at creating gender equality as well as a gender-just society. 'Human right-based approach' views the issue of sale and trafficking as gross violations as well as denial of human rights of the victims and thus, approaches have been explored to protect respect and ensure realization of the rights of children and adults. The NPA against Trafficking of Women and Children basically respects children and young people (CYP)'s rights to express their views and respects views in regard to their age and maturity.

140. The NPA against Trafficking of Women and Children has identified eight major areas for intervention and outlined detailed plan of actions accordingly:

(a) *Policy, research and institutional development:* The objectives of this area include, (i) increase awareness amongst stakeholders and to promote the implementation of national policy and the NPA, (ii) maintain a reliable, up to date and gender disaggregated national database on trafficking in order to develop, prioritize and implement effective anti-trafficking policy and programmes, and (iii) strengthen the coordinating role of the MoWCSW at all levels. Likewise, the NPA against Trafficking of Women and Children has recognized the need to (i) have clear policy (of the Government) with conceptual clarity of the issue and framework for intervention, (ii) have commitments from the State machinery, and (iii) strengthen the institutional capacity and functioning of mechanisms from community to national levels for implementation of the plans effectively in coordinated manner;

(b) *Legislation and enforcement:* The objectives of this area of intervention include, (i) promotion and assertion of the entitlement of children's legal rights, (ii) enhancement of legal enforcement system to control and prevent trafficking of women and children and ensuring justice for the victims, and (iii) creation of legal awareness among different stakeholders and vulnerable groups. The NPA against Trafficking of Women and Children has recognized that weak law enforcement mechanisms and lack of coordination amongst law enforcement agencies have resulted in the delays in justice system. Existing laws have focused more on trafficking process but comparatively less on its consequences and providing support to victims. And there is a need to ensure that there is no further criminalization of victims and that their rights are upheld;

(c) *Awareness creation, advocacy, networking and social mobilization:* The objectives of this area include, (i) implement awareness-raising programmes targeted at vulnerable groups (i.e. families, communities and youth), (ii) increase awareness among people at large on the issues of sale and trafficking of children and women through mass media, (iii) improve anti-trafficking networks at local, district and national levels, (iv) prioritize the issue of sale and trafficking of children and women on the national and regional agenda, and (v) create a sense of responsibility at local level to combat child trafficking through organizing the local community. In this regard, the NPA against Trafficking of Women and Children has recognized that awareness can be an effective tool for making communities and vulnerable group aware of the issue. Advocacy is essential to

bring major issues such as education and social protection in the national priority. A strategy to activate local communities and networks as well as CYP themselves and their organization is also required for preventing persons from being victimized and ensuring protection;

(d) *Health and Education*: The objectives of this area include (i) promote preventive and curative health education to the most vulnerable communities, (ii) provide preventive and curative health services for women and children who have been rescued, and (iii) increase school enrolment and create educational awareness, particularly among the most vulnerable groups. The NPA against Trafficking of Women and Children has recognized two issues in health, the need to increase health awareness through disseminating messages using formal and non-formal channels, and the need to ensure health service provisions. Given that education enables person to understand the issue, it should be free and assessable, especially to marginalized groups as a central focus for preventing sale and trafficking of children and women;

(e) *Income and Employment Generation*: Here the objective is to increase income and employment opportunities and uplift the economic status of communities, groups and the families vulnerable to sale and trafficking. The NPA against Trafficking of Women and Children has recognized that endeavours for income and employment generation as well as uplifting economic status require to be linked with poverty reduction and overall socio-economic development. For this purpose targeted efforts should be made in a sustainable manner. And participation of the target groups of beneficiaries in such activities and efforts should be increased;

(f) *Rescue and Reintegration*: Here the objective are: (i) to intercept and rescue girls and boys who are being trafficked or are already engaged in exploitative work situations, and (ii) to rehabilitate and reintegrate victims into their families and communities. The NPA against Trafficking of Women and Children has recognized that sale and trafficking of children internally from rural areas to urban areas is increasingly becoming a pressing issues in addition to trans-border and regional sale and trafficking. The children and women who are in such situation should be rescued and reintegrated with their families and communities for which there is a need to (i) increase professional competence and services, (ii) institutional capacities of governmental and non-governmental organizations, and (iii) build strong network among the actors and allies both inside and outside the country. It is recognized that in such process, the best interest of children and women should always be in the forefront. In the case of adults, their rights to self-autonomy and to make their own decision should be respected;

(g) *Trans-border, regional and International issues*: The issue of sale and trafficking is a trans-border and regional issue. Thus, the NPA against Trafficking of Women and Children has with an objective of strengthening anti-trafficking efforts at bilateral, regional and international level through greater coordination and collaboration has recognized that there is a need to (i) have bilateral treaties under the SAARC Convention, (ii) tighten border posts and monitor them properly, and (iii) increase collaboration and coordination between local authorities of Nepal and India mainly from the bordering districts. Similarly at regional level, continuous dialogue is necessary between and among the governments for collaborated efforts to improve legal and policy frameworks for (i) offering support to victims (including rescue, repatriation, and rehabilitation), (ii) prosecuting and penalizing the offenders, and (iii) adopting appropriate prevention measures (including advocacy and awareness-raising among key institutions that hold responsibility);

(h) *Monitoring and Evaluation*: Here, the objective is to establish and functionalize a system of monitoring and evaluation in order to measure progress made in

the implementation of the NPA against Trafficking of Women and Children as well as of anti-trafficking initiatives at the national, bilateral and regional levels.

Institutional mechanisms

141. The MoWCSW is the focal ministry for implementing measures against sale and trafficking in women and children. The MoWCSW is carrying out its mandate of coordinating and facilitating other relevant Ministries, Departments and organizations engaged in combating the issue of sale and trafficking of children and women. This role has been recognized by the NPA against Trafficking of Women and Children as well. Thus, the MoWCSW is putting its efforts especially for better coordination, collaboration among actors and resource mobilization for effective implementation of the NPA against Trafficking of Women and Children.

142. A 16 member National Coordination Committee (NCC) has been formed under the chairpersonship of the Minister of MoWCSW where representatives from line-ministries and NGOs are members. Under the NCC a board-based National Task Force is constituted representing senior officials of relevant government ministries,⁶² I/NGOs and International organizations such as UNICEF and ILO. This National Task Force coordinates activities at the national level and provides guideline and decision regarding interventions against trafficking of women and children. The Government has also formed an 18-member District Task Force representing various governmental and NGOs in 26 districts. Similarly, there are Village Task Force and Municipality Task Force, comprising 12 and 13 members respectively, with representation from the governmental line agencies, NGOs and civil society at the local level. These Task Forces are mandated to identify trafficking-prone areas and conduct awareness-raising campaigns, collect data on trafficking and disseminate relevant information, among others.⁶³

Progress made in regards to Implementation of the NPA against trafficking in women and children

143. The NPA against Trafficking of Women and Children is being implemented across the country with focused attentions to the 26 districts⁶⁴ which were identified as trafficking prone districts by the MoWCSW.⁶⁵ Some noteworthy initiatives of the Government along with the progress made could be highlighted as follows:

- National Task Force at the centre and District Task Force in the 26 districts have been formed and are functional. In most of the districts, district level planning workshops are organized to develop district level plan of action to combat sale and trafficking of children and women and the plan of actions is being implemented. In the same manner, Village and Municipality level Task Force have been formed and are functional in these 26 districts.
- The Government has established a rescue/emergency fund in Kathmandu, Jhapa, Parsa, Rupandehi and Banke districts. There are emergency fund in all the 15 programme districts where Decentralized Action for Children and Women

⁶² I.e. MoWCSW, MoFA, MoHA, MoLJPA, MoLTM, MoHP, MoES, the NPC, and Nepal Police.

⁶³ Reference is made to annex: 1 of this report for further detail of the NCC and Task Forces at various levels and their mandates.

⁶⁴ However, the analysis of print media reports showed that trafficking was taking place from 39 districts (Status and Dimensions of Trafficking within Nepali Context, IIDS and UNIFEM, 2004).

⁶⁵ The districts are: 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.

(DACA) is being implemented in partnership with the MoLD, Department of Women and UNICEF-Nepal.

- A Documentation and Information Centre (DIC) is established at MoWCSW which systematize information regarding trafficking in women and children.
- A number of action research have been conducted and reports have been prepared on trafficking related issues.⁶⁶
- Awareness-raising activities are launched at national and district levels.

Ongoing plans of the Government

144. The Three Year Interim Plan (2006/07–2009/10) has adopted the following programme of actions that are relevant to anti-trafficking initiatives: (a) Women Empowerment Programme, (b) Women Development Programme (Central and District levels), (c) Gender Equality and Women Empowerment Programmes (Project), (d) Implementation, Monitoring and Reporting of International and Regional Instruments on Women's Rights, and (e) Capacity Building of Women Empowerment Programme related Institutions and their Institutional Development. A total 158.74 thousand NRs has been allocated to implement these projects. Some of these programmes are regular and cover throughout the country (such as scholarship, special programmes for conflict affected women etc.) while others are project based and target the most vulnerable areas of trafficking. In the same manner, various government departments including WDD are carrying out focused and targeted awareness-raising programmes against violence against women and girl children, trafficking in women and children, sexual exploitation and domestic violence as well as harmful traditional practices. For the same, the Government is strategically mobilizing community groups, women's groups, engaging men and Para-legal Committees.

145. Besides, the Government is implementing district level women development programmes which as several components that are targeted to prevention of trafficking in women and children. These project aim at (a) promotion of the participation of the target groups, (b) awareness-raising on gender and inclusion programmes, (c) reproductive health care, iv) development of adolescent girls and (d) economic empowerment. Likewise, the Government is implementing gender equality and women's' empowerment project from 2007 (2064/2065 BS) with the funding support of Asian Development Bank. The project aims at (a) social empowerment, (b) economic empowerment, (c) strengthening of organization and management of the community organizations and community managed project and (d) legal empowerment. Moreover, Decentralized Action for Children and Women (DACA) programme is ongoing covering 23 districts at present. The major components of the in programmes are (a) child protection and development, (b) maternal health care and (c) awareness on gender equality and inclusion. In addition, the Population and Reproductive Health Integrated Project (PARHI), which is being implemented in six districts, targets young population, women of reproductive ages and community with the aim of achieving integrated population development, reproductive health care and awareness on gender equality and inclusion. Furthermore, there are several projects being implemented particularly in remote districts with the aim of skill development, livelihood programme, community contact, institutionalization and action learning.

⁶⁶ For example, Situational Analysis of Rescue, Rehabilitation and Reintegration Activities on Trafficking in Children for Commercial Sexual Exploitation in Nepal; Effect of Awareness Creation and Advocacy Programmes on Trafficking in Women and Children for Commercial Sexual Exploitation on the Knowledge, Attitude, Belief and Practice of the Affected Communities in Nepal; and Situation Analysis of Deukies and their Children in Nepal.

146. The MoES has contributed to prevent trafficking through its provision of free primary education for all, scholarship in the lower and secondary education and food for education to the most vulnerable populations such as *Dalit*, girls and children from Karnali region. In the last fiscal year, it made the following provisions: scholarship to all 583,000 *Dalit* children totalling of Rs. 204,050,000 (Rs. 500 yearly per school enrolled *Dalit* student); scholarship to 700,000 girl students totally of Rs. 30,1804,000; distribution of day food to 450,000 children of 3,974 schools; provision of maternal and child health care to 79,000 mothers and children in 21 districts and distribution of edible oil of 2 liters per month to 144,300 girl students in 11 districts. Other relevant programmes include secondary education support programme (including scholarship to 114,573 *Dalit* students), non-formal education and national literacy campaign (including six and three months adult literacy programmes in 15 and 13 districts, respectively), education for all — child development programme including women’s education, skill for employment programme for educated unemployed persons, food for education programme — Karnali region (distribution of 465 metric tons food to 24,000 students in 250 schools).

147. Many national and international NGOs have taken important initiatives to combat trafficking in person by making interventions through advocacy, lobbying, workshops, training, research and media monitoring activities against trafficking. NGOs together with the government agencies are involved in repatriation and rehabilitation of victims and survivors of trafficking. Many national NGOs (such as ABC Nepal, Maiti Nepal, CWIN, Stri Shakti, FWLD, LACC, Didi Bahini etc.) are running their programmes at the national level as well as through their field offices established in trafficking prone areas and in the districts bordering to India. Two networks namely National Network against Girl Trafficking (NNAGT) and Alliance against Trafficking in Women in Nepal (AATWIN) in which several NGOs are members have been actively engaged to combat human trafficking. Likewise, the donor agencies and INGOs have been contributing to anti-trafficking initiatives by providing financial support to the NGOs and GOs. The contribution of I/NGOs and donors is recognized by the Government as well as international community. Further, the United Nations Agencies in Nepal have taken lead to form Inter-Agency Coordination Group to combat trafficking of women and children. There is representation from relevant United Nations agencies (such as UNDP, UNICEF, UNIFEM, ILO, IOM, etc.) and INGOs in the Coordination Committee. But, National NGOs are not part of the group. The Coordination group is engaged in addressing the issue of trafficking in Nepal by mobilizing resources and ensuring rational use of resources as well as sharing information among the actors with the aim of consolidating their interventions.

148. United Nations Agencies such as UNIFEM, ILO and UNICEF are implementing targeted projects to combat trafficking in person in collaboration with different Ministries and Departments. Likewise, anti-trafficking interventions have been tied up with major programmes of United Nations agencies. For example, UNICEF-Nepal is jointly implementing Decentralized Actions for Children and Women (DACA) programme in 23 districts in partnership with MoLD, Department of Women’s Development (DWD), Small Farmers Development Programme (SFDP), and various NGOs since 1998. One of the focused areas of intervention of DACA is to ensure protection of children and women in the communities for which Para-legal Committees. Community based mechanisms are created and facilitated in 450 VDCs of 23 districts (having over 6,500 female members). The Para-legal Committees works to protect children and women against violence, exploitation, abuse and discrimination. As per data of 2006, a total of 59 orientation programmes on protection issues and Para Legal committee have been conducted for 3,300 community members and district level stakeholders. Phase-wise trainings are conducted for 25,265 para-legal committee members from 351 VDCs. The DACA programme is being facilitated by over 7,500 trained Community Mobilizers and over 265 trained village

facilitators in the project communities. The programme has helped in raising awareness among community people (particularly among women) about rights of children and women. It has also engaged them for the protection of children and women from all forms of harm including trafficking and commercial sexual exploitation. The partners have agreed to expand the programme in other districts in near future.

149. Despite political and security challenges, the Government has sustained its efforts to combat trafficking in persons.⁶⁷ Achievements have been made in the area including advocacy and awareness- raising, formulating national plans and policy, enactment of law, implementation of programme for rescue and rehabilitation of survivors and victims etc. Significantly, the Government has prioritized anti-trafficking in its periodic and annual plans and programmes and efforts have been made to implement them.

Monitoring implementation of the NPA against Trafficking of Women and Children

150. The NPA against Trafficking of Women and Children has the provision of periodic monitoring and evaluation of the implementation of the NPA and measure the progress made. At present, it is realized action points planned and the initiatives taken needed to be comprehensively reviewed and the NPA against Trafficking of Women and Children revised. This would allow the Government to further build on lessons learnt and experiences gained so far as well as develop strategies to effectively address the challenges encountered.

Controlling commercial sexual exploitation and sexual abuse of children

151. The Government has undertaken legislative reform, adopted administrative measures and launched programmes to control commercial sexual exploitation of children. However, a host of challenges still persist. There is a necessity to enact law to address the issue of paedophiles as well as addressing the issue of commercial exploitation of children. The existing law does have provisions regarding sexual abuse i.e. rape, incest and touching to a girl or woman over the age of 11 years with sexual intention. The National Code (*Muluki Ain*) 1964 defines that sexual intercourse with any girl under the age 16 years as rape, regardless of her consent.⁶⁸

The necessity to improve the law

152. The Children's Act 1992, specifically prohibit activities that involve children in 'immoral act or professions', it fails to define what this expression imply. Further, as opposed to offences related to trafficking, a limited time is allowed for victims of child prostitution, child pornography and other forms of commercial sexual exploitation to file a case to the police. If the deadline is missed, the victimized child has no access to legal remedy. The Government is concerned to this and is in the process of amending law.

Child pornography

153. The increasing use of internet and cyber poses the risk of availability of pornography through the internet, including child pornography which requires meaningful steps to control it.

⁶⁷ Reference is also made to Trafficking in Persons Report 2005, <http://www.state.gov/g/tip/rls/tiprpt/2005/46614.htm>.

⁶⁸ Where the girl is above 16 years of age it is a rape only if it is without consent.

Measures adopted to address child labour with particular reference to forced and worst forms

(Administrative and programmatic framework)

154. The Government is implementing the Child Labour Master Plan 2001–2010, with a comprehensive approach to tackle the issue and initiate a gradual process of elimination of the worst forms of child labour. The master plan aims to reduce the number of child labour and eliminate the worst forms of child labour gradually by providing child with educational opportunities. Moreover, the plan is concerned to provide economic opportunity to the family and parents with the objective of raising their living standards and minimizing child labour. The plan has adopted a strategy to develop functional coordination among the agencies and stakeholders. As such, the Government as well as the United Nations and bilateral agencies and I/NGOs have been working with preventive, curative as well as rehabilitative strategies to address the issues of child labour in the country.⁶⁹

155. The Government in 2001 abolished and banned the employment of bonded child labour under *Kamaiya* system (agriculture debt bondage practice) which is one of the worst forms of child labour. Such practice was particularly found to be in existence in western *Terai* districts of Nepal. The Government is consolidating its efforts to rehabilitate children and adults who used to work under *Kamaiya* system by providing basic services and respecting their fundamental rights. In this regard, the Government is collaborating with national and international development partners.

156. As per the provision of Child Labour (Prohibition and Regularization) Act 1999, the Government has appointed and deployed Labour Inspectors with the responsibility of investigating and filing cases against illegal employment of child labour in formal work sectors. Likewise, a total of 10 labour offices are functional across the country. Moreover, as per the provision of article 23 of the Act, the Child Labour Eradication Committee has been established as an advisory body. The committee is charged with the responsibility (a) to ensure health, safety, education and skill training opportunity; (b) to arrange appropriate work to children; (c) to discourage employment of child labour and (d) offer advice for elimination of child labour. Similarly, as per the provision of the Act, the Government has established 'Child Labour Eradication Fund'.⁷⁰

B. Institutional mechanisms to combat sale and trafficking, prostitution and pornography⁷¹

The Office of National Rapporteur on Trafficking in Women and Children (ONRT)

157. As mentioned in paragraph 115 above, the Office of the National Rapporteur on Trafficking in Women and Children (ONRT) has been established in National Human Rights Commission (NHRC) in Nepal in 2002.⁷² Accordingly, a National Rapporteur (NRT) has also been appointed. The objectives of the ONRT is to bring about conceptual clarity on trafficking and related vulnerabilities (illegal migrant status and exposure to HIV/AIDS); monitor the incidence of trafficking and thereby galvanize public opinion;

⁶⁹ Reference is made to paragraph 363 of the first and second combined periodic reports of Nepal under the Convention (CRC/C/65/Add.30).

⁷⁰ Reference is made to paragraphs 368 and 371 of the first and second combined periodic reports of Nepal under the Convention (CRC/C/65/Add.30).

⁷¹ This related to other mechanisms than those mentioned in paragraphs 141 and 142 of this report.

⁷² ONRT was established as per the Memorandum of Understanding between MoWCSW and NHRC on 29th August 2002.

coordinate national, regional and international efforts to combat crime of trafficking; and generate high level of commitment to efforts aimed at improving the human rights situation of women and children.⁷³

158. The ONRT also holds the responsibility for (a) developing rapporteur system, (b) monitoring and investigating of rights violations, (c) monitoring and reviewing national policies, plans and laws, and (d) developing network and coordination. The ONRT has been active in carrying out its mandated functions. In 2005, the ONRT prepared a national report on human trafficking.⁷⁴ It has also initiated efforts to bring conceptual clarity on trafficking and related issues and conducting monitoring of incidences of trafficking in persons. Furthermore, the ONRT has provided necessary input in the process of drafting a bill for Human Trafficking Act particularly to adopt provisions in conformity with the relevant international conventions and prepared a national report in 2005 on the situation of trafficking in person especially on women and children in Nepal.

Women and Children Service Center, Nepal Police

159. As discussed in paragraphs 103 of this report, Women and Children Service Center (WCSC) is functional with 25 centres in 23 districts which is now expanded to 37 districts with the objective of (a) ensuring protection and welfare of children and women, (b) preventing and controlling of crimes against children and women, (c) investigation of crimes against women and children, (d) assisting in investigation of crimes committed by women and children, and (e) providing support to the victims in coordination with concerned government and NGOs. For prevention, the centre is implementing activities such as awareness-raising campaigns; school visit and interaction programmes; mass awareness rallies, radio and TV programmes; and publication and dissemination of IEC materials. Likewise, to support investigation, the centre provides reporting environment and receive complaints; collect evidences and documents; conduct interview; search and seizure; arrest the suspect; and forward the case to concerned court through Public Prosecutor. For victim support, the centre does conduct need assessment (particularly on shelter, medical support, psycho-social counselling and support, rehabilitation and skill training) and provide necessary support to the victims in coordination with the concerned agencies.

160. The WCSC has contributed to (a) offer conducive environment for the victims and victimized women and children for lodging complain and reporting; (b) respect and maintain privacy for protecting best interest of women and children; (c) raise awareness in the concerned units and departments within Nepal Police on the issues of women and children; (d) raise concern regarding security of accused women in Custody; (e) establish a National Center for supporting children at risk; and (f) advocate and lobby within Nepal Police for allocating 298 new postings (approved by the Government in 2007) and expanding the centre to cover 37 districts. The centre has been successful in extending cooperation with DFID, UNICEF-Nepal, UK and USA Embassy and mobilizing financial support from them beside the regular fund from the Government. The WCSC of Nepal Police has been providing training to police officers on victim support techniques, provide victims with counselling services and raise public awareness about violence against women and children. The WCSC has provided training to all women police personnel (over 1,100 in number) regarding the issues of women and children as well as providing them support.

⁷³ Trafficking in Person Especially on Women and Children in Nepal: National Report, 2005, Office of the Rapporteur on Trafficking in Women and Children (ONRT), National Human Rights Commission, Kathmandu.

⁷⁴ The report entitled Trafficking in Person Especially on Women and Children in Nepal: National Report, 2005.

The National Center for Children at-Risk-2006⁷⁵

161. The National Center for Children at-Risk-2006 was established in 2006 (2063/08/22 BS) in collaboration with MoWCSW, CCWB, Nepal Police and I/NGOs. The primary objectives of the center are to discourage and minimize criminal activities against children, and to collect information and ensure protection of missing and found children. The Center is running a toll free helpline telephone number 104 with the aim of receiving timely and prompt information regarding crime against children. From the very first day of its establishment, the Center is actively working for protection of children – missing, abducted, children found without care and children victimized by criminal acts. It supports the child for family re-union. The Center does documentation of necessary information. It is engaged in raising awareness by providing information among children, parents, schools, community and concerned NGOs with the aim of preventing and minimizing criminal acts against children.

Child Helpline-Nepal

162. The Government of Nepal has launched a center called Child Helpline-Nepal with a toll free number 1098 (ten-nine-eight) for protection of children at-risk. The Child Helpline, inaugurated officially on 20 November 2007, is run by the MoWCSW in partnership with CCWB, Nepal Telecom, Save the Children Norway Nepal, Plan Nepal and CWIN-Nepal. It is aimed that the same toll free number would be expended across the country gradually by handing over responsibility of day-to-day management of the Helpline to any child focused organizations as per the guidelines approved by the Ministry. Presently, CWIN-Nepal has been running the Helpline in Kathmandu valley from 29th September 2007. Till February 2008, Child Helpline-Nepal has received 2,085 calls regarding the cases of children at-risk within Kathmandu valley. Of the total calls, 130 were received from children themselves. During the period of five months, 209 children were offered services such as Rescue (54 children), Investigation and Monitoring (15 children), Legal Aid (17 children), Medical Support (42 children), Refer/rehabilitation (41 children), follow up services (26 children) and other services (14 children). Similarly, 6 cases of child trafficking (5 children within the country and 1 child to India), 7 cases of kidnapping were reported during the period.

C. Methods used to raise awareness within the population at large about the offences prohibited under the Optional Protocol

Anti-trafficking interventions

163. According to a study done in 2004, several government agencies and 57 NGOs together with 19 United Nations and INGOs (funding and other agencies) or donors have taken various initiatives to prevent sale and trafficking in Nepal.⁷⁶ These organizations have adopted a variety of strategies to combat trafficking in children and women, which include:

- Awareness-raising and education against trafficking, targeting the primary groups – vulnerable women and girls
- Advocacy and awareness-raising against trafficking among secondary groups – parents, teachers, policy makers, government officers, politicians, parliamentarians, policy officers, community leaders, etc.

⁷⁵ Also known as *Balbalika Khojtalas Samanya Kendra* in Nepali.

⁷⁶ Status and Dimensions of Trafficking within Nepali Context, IIDS and UNIFEM, 2004.

- Skill development for alternative employment and income generating opportunities for women and girls
- Rescue and rehabilitation of survivors or victims of trafficking
- Capacity building of various stakeholders
- Networking among Government agencies, United Nations and bilateral agencies as well as among NGOs
- Prosecution of traffickers and imposition of penal sanction against them

164. Likewise, the following activities are conducted to address the issue of trafficking:

- Awareness sessions, campaigns, programmes
- Training, workshops and seminars
- Capacity building, skill development and economic support
- Rescue, rehabilitation and reintegration (including helpline-toll free telephone service)
- Community surveillance system
- Cross-border collaboration
- Research and study
- Media monitoring
- Coordination and networking
- Human resource development, etc.

Coverage/reach of programme

165. The Government is working all over the country through its regular structure for the prevention of sale and trafficking of children, commercial sexual exploitation and child pornography. However, focused interventions and awareness programmes of the Government has covered altogether 49 districts of Nepal. Various national and international NGOs are working in 37 districts with intensive intervention to address the issue. The anti-trafficking programmes cover both the primary target groups, i.e. vulnerable children, women and adolescent girls, and secondary target groups, i.e. the community, DDC and VDC representatives, social workers, doctors and nurses, school and college teachers and students, judges, advocates, prosecutors, lawyers, police, GO/NGO personnel, human rights commission personnel, parliamentarians, politicians, journalists, media persons, traditional healers, local club representatives, research organizations and other individuals or groups concerned.

166. A large number of NGOs are involved in creating awareness with financial or technical support, or both, of international donor agencies. Under awareness programmes, the activities conducted include:

- Orientation sessions for stakeholders
- Social campaigning/mobilization (youths and community groups mobilization, door-to-door campaigning, group discussion, literacy campaigns)
- Training and workshop (formation of Para-Legal Committees, conceptual clarity, legal awareness, gender sensitization, women leadership, child and women rights, etc.)

- Raising public awareness on the issue (posters, painting competition, rallies, slogan writing and dissemination, talk programmes, public lectures, public meetings, street dramas, peer education, distribution of pamphlets and IEC materials, display of news sheets/boards, billboards, etc.)
- Audio-visuals – televising movie, documentary or serials against trafficking, broadcasting radio programme etc.)
- Formal and non-formal education, and support to school/college education
- Community sensitization and mobilization to develop community strategy to combat trafficking, etc.

167. Many NGOs run projects to educate and empower children and women who are especially at risk of being trafficked. One of such target group is considered to be adolescent girls and women working in hazardous working condition. For example, in 2006 Maiti Nepal, a national NGO working against trafficking, ran educational and awareness-raising programmes among 3,500 female restaurant workers. Such programmes imparted information about the dynamics, risks and dangers of trafficking and equipped the target group by providing with appropriate life skills to protect themselves from being sexually exploited and trafficked.

Engaging youth and adolescents against sale and trafficking of human beings, prostitution and pornography

168. Various organizations are implementing programmes to empower youth and adolescents. For example, with the financial and technical support from ECPAT International, NGOs from Nepal, India and Bangladesh are implementing the Youth Partnership Project since 2004 as a regional initiative to empower youth to fight against trafficking and commercial sexual exploitation of children. The project is empowering survivors and at-risk youth by enhancing their participation, peer support programmes, community awareness campaigns and public advocacy to combat trafficking and commercial sexual exploitation of children.

169. As a part of the project, a Regional Consultation was organized in Kathmandu, Nepal in December 2007 inviting a total of 48 youths from Nepal, India and Bangladesh. The Nepali youths who participated in the consultation has made the following recommendations:

- Increase youth participation in rural areas through involvement in community activities
- Local, national and regional youth networks should be developed to support youth-led initiatives for social change
- Youth should be at the forefront of national campaigns to promote the welfare of survivors of commercial sexual exploitation and trafficking
- Psychosocial rehabilitation services and specialized counselling, including peer support programmes, should be made available for children and youth who have been sexually exploited
- The awareness of government officials and policymakers on issues affecting the welfare of youth in Nepal should be raised
- Youth should be given opportunities to develop leadership capacity and share their skills with other young people
- The collective efforts of young people to protect children and youth in Nepal should be documented and published annually

- Adults should be encouraged to join forces with youth to reduce violence against children
- School peer supporters networks should be developed across Nepal with effective communication for exchanging ideas and effective strategies
- Youth awareness initiatives should target border areas and the commercial sector, where children and youth are at high risk of trafficking and commercial sexual exploitation

Rescue/rehabilitation and reintegration

170. In Nepal, the issue of rehabilitation of trafficked persons came into surface when the Indian Police rescued girls from different brothels in Mumbai, India in May 1996. At that time a total of 128 Nepali girls (or women) were brought to Kathmandu with the support of Nepali NGOs and the Government of Maharashtra, India. Then seven NGOs namely ABC Nepal, Maiti Nepal, CWIN, Navajyoti, WOREC, PRC and Stri Shakti had taken proactive role in this regard. Now, rescue (both from within the country and outside) and rehabilitation of children and women is another area of work in which NGOs are engaged with. For example, a total⁷⁷ of 48 girl children and women were rescued from different cities of different countries in the year 2005.

171. As per the data provided by the organizations working for the rehabilitation of survivors, 770 trafficked children and women have been rescued and rehabilitated so far. According to them, 628 of them have been either reintegrated with the families or are spending normal life outside the family in society. 128 are still at the centers because they could not be reintegrated with their families for various reasons.⁷⁸ The service offered under the rehabilitation and reintegration programmes of NGOs include:(a) providing survivors with immediate shelters, (b) health service/support, counselling and care, (c) skill and leadership training that also aim at empowering survivors and mobilizing them as change activist in the community, (d) education classes, (e) income generating activities, and economic support, and (f) legal assistance.

Coordination and collaboration

172. The coordination and collaboration among all the actors engaged to address the issue is increasing. This is providing opportunities for sharing experiences for improving planning, policies, working modalities/approaches as well as for consolidating efforts for better implementation of interventions to achieve sustained result. The Government is promoting the policy of strengthening cooperation and collaboration among development partners, including United Nations agencies, the international financial institutions and bilateral, multilateral donor agencies, NGOs, civil society organizations, local bodies and users' groups and relevant partners in all fronts to address the issue of trafficking in persons and commercial sexual exploitation of children and women. Likewise, a policy has been adapted to make coordination with government agencies and/or local bodies (DDCs, VDCs and Municipalities) and other actors mandatory while implementing interventions in the field. The Government has taken facilitating role in this regard and particularly promoting cross-sectoral and multi-sectoral approaches to engage all the actors at all levels. As a result, development partners are allocating more resources for social sector programmes and are working in partnership with the Government. However, there is still some room for

⁷⁷ Annual report of Maiti Nepal 2006.

⁷⁸ These women are either in the process of social reintegration or have been admitted at the centre only recently.

improvement for maximizing international cooperation and support to ensure rights of children in Nepal.⁷⁹

173. Advocacy for promoting the rights of all children is done with the aim to ensure that children are brought to the centre of national plans and are considered as major components of all relevant NPAs. For this efforts are made to strengthen the knowledge base, so that effective advocacy can take place for policy change. Building capacities of relevant institutions to help monitor the implementation of the principles and provisions of the Convention on the Rights of the Child are issues of critical concern. Efforts are also made to effectively inform and sensitize general public on the rights of children at all levels of society. Efforts are made, in collaboration with media, to communicate children's issues among the general mass and to promote ethical ways of reporting on those issues.

Resources for anti-trafficking initiatives

174. Information on the exact amount of fund spent on anti-trafficking initiatives is not available. Generally, the funds have been channelled in different ways: direct from international agencies outside Nepal to local implementing agencies here and through the United Nations and other international agencies that have offices in Nepal. USAID-Nepal was found to be the largest funding agency for anti-trafficking initiatives. However, the flow of fund was multi-layered. For example, USAID granted funds to United Nations agencies and other International NGO, which in turn channelled funds to national organizations, both governmental and non-governmental. The national agency either implements the anti-trafficking programmes themselves or channelled funds to some local organizations. Obviously, this long process of fund channelling involves high operational costs.

D. Measures to prohibit the production and dissemination of materials advertising the offences described in the Optional Protocol

175. Section 15 (1.b) of National Broadcasting Act 1993 (2049 BS) prohibits broadcasting of advertisement of pornographic materials and materials of similar nature through media.

VI. Prohibition and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

A. The Constitutional provisions

176. The Interim Constitution guarantees the fundamental right to equality before the law and ensures equal protection by the law to all its citizens. In regard to the rights mentioned in the Optional Protocol, the Interim Constitution ensures the protection of the rights of children and women against any form of abuse and exploitation. This includes within its sweep sale and trafficking, prostitution and pornography. Other relevant provisions of the Interim Constitution include the right to live with dignity, the right to personal liberty and freedom of movement (art. 12); the right to equality and equal protection of law (art. 13); the right of women against discrimination, physical, mental and any other form of violence (art. 20); the right of the child against physical, mental or any other form of exploitation

⁷⁹ Reference is made to National Progress Report on Plus 5 of A World Fit for Children, MoWCSW, 2006.

(art. 22); the right to justice, seek judicial remedy, consult a legal practitioner of his/her choice and get fair trial by a competent court or judicial authority (art. 24); the right against exploitation (art. 29) and the right against exile (art. 31).

177. Domestic laws of Nepal prohibit sale of children for any purpose, child prostitution and pornography. The following paragraphs elaborate the provisions of national laws that are relevant for the purpose of the Optional Protocol.

B. Prohibition of sale of children, child prostitution and child pornography

Age of the children

178. The Minimum Age of Criminal Responsibility⁸⁰ (MACR): Section 11 (1) of Children's Act 1992 establishes minimum age of criminal responsibility as 10 years. While determining criminal liability to children, the Act sets three age brackets: (a) children under ten years of age; (b) ten years or above and below 14 years of age, and (c) 14 years or above and below 16 years of age. Children below 10 years of age can not be held criminally liable for any crime and thus, can not be prosecuted in any court. Children aged between 10 years or above and below 14 years can be imprisoned for a maximum period of six months in offences in which imprisonment is set as penalty. Likewise, children aged between 14 years or above and below 16 years can be liable to half of the penalty set for the adult. The age of penal majority is generally considered to be 16 years in Nepal. However, there are several laws in Nepal that set age of penal majority at 18 years respecting the age defined by the Convention and the Optional Protocol. The proposed Child Rights (Promotion and Protection) Act has proposed to increase the MACR to 12 years.

179. In regard to the offences prohibited by the Optional Protocol, the age of the children defined in various laws are as follows:

According to Human Trafficking (Control) Act 2007, a 'child' is defined as the person who has not attained the age of 18 years (Section 2.d). The Children's Act 1992 has defined a 'child' as person who has not completed the age of 16 years (Section 2.a). The National Code (*Muluki Ain*) 1964 has defined 'children' as the person who has not attained the age of 16 years. However, in the case of penalizing offences of rape, the code has set five age brackets – (a) girl under 10 years of age, (b) girl of 10 years of age and above but under 14 years of age, (c) girl of 14 years of age or above but under 16 years of age, and (d) girl of 16 years and above but under 20 years of age, and (e) women above 20 years of age. The proposed Child Rights (Promotion and Protection) Act⁸¹ has defined the 'child' as a person who has not attained the age of 18 years.

Likewise, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution which is ratified by Nepal has defined—(i) 'child' as 'a person who has not attained the age of 18 years'.

⁸⁰ The minimum age of criminal responsibility (MACR) is the lowest age at which children may potentially be held criminally liable for alleged crimes. In general, it is the lowest age at which children in a given country can be prosecuted in any court, and is therefore a fundamental concern for the protection of children's rights and juvenile justice.

⁸¹ The Bill is prepared by the MoWCSW and is, at present, under the consideration in Ministry of Law, Justice and Parliamentary Affairs (MoLJPA). It is hoped that the Bill would be tabled to the Interim Legislature-Parliament soon for adapting it as an Act.

New law for controlling sale and trafficking of human being

180. Nepal has recently enacted 'Human Trafficking (Control) Act, 2007' to control the acts of sale and trafficking as well as transportation of human being for any purpose. The Act provides for protection and rehabilitation of the victims and victimized person. The Act supersedes the Human Trafficking (Control) Act 1986 and considers the issue of sale and trafficking of human being in wider perspective and adopts a comprehensive definition. The Act addresses some of the shortcomings of the previous Act and has made provisions for protection and rehabilitation of victims. The new Act has several provisions in line with the spirit of the Optional Protocol some of which could be highlighted as follows:

(a) Defines sale and trafficking of human being in wider perspective (Section 2) (reference is made to paragraph 184 of this report for further information);

(b) Provision for social rehabilitation of victims, victimized persons and survivors for which the Government can establish rehabilitation centres as necessary for physical and psychosocial rehabilitation and family reintegration as well. Likewise, the government shall establish a rehabilitation fund for operation of such rehabilitation centres (Section 13 and 14);

(c) The burden of proof lies on the person accused of an offence prohibited by this Act;

(d) If the person reporting to a Police Office is a victim himself or herself, the police office should take statement of the victim immediately and the victim shall be taken to the nearest District Court to certify the statement. The Judge of the respective District Court, notwithstanding anything mentioned in the prevailing laws and even if the case under jurisdiction of that Court, shall certify the same by confirming that the content written in the statement is stated as said by the victim. The Court may take such certified statement as evidence even in a situation of absence of such victim at the Court in course of proceedings of the case (Section 5 and 6);

(e) Compensating the victim, victimized person and survivors with not less than 50 per cent of the fine levied as punishment to the offender. In case the victim and victimized person dies before obtaining the amount of the compensation, if he or she does have children below the age of 18, such children shall receive the compensation and if there is no dependent parents and minor children, the amount should accrue in the rehabilitation fund (Section 17);

(f) Recognition of the right to self-defence – if a person knows or have a reasonable basis to believe that he or she is getting sold, bought or taken for forced prostitution or about to be sold, brought or taken for that purpose, and seeks for help to escape, flee from a particular place but fails to obtain help and if anyone obstructs or stops or seizes or manhandles him or her in course of his or her effort to escape and flee; he or she shall be exempted from any kind of punishment for causing death or injury to the person believed to be responsible in course of his or her attempt to flee from control (Section 16); and

(g) Rescue of the trafficked person – the responsibility is given to the Government for managing rescue of any Nepali citizen sold in the foreign land (Section 12) and ensuring protection of the victim, victimized person or survivor and the witness from the victim's side from any types of retaliation in relation to his or her involvement in reporting of the incident as well as remaining as witness of the case (Section 26).

Prohibition of sale and trafficking of children and child prostitution and pornography

181. The Human Trafficking (Control) Act, 2007 prohibits sale and trafficking of human being for any purpose and such act is punishable by the law (Section 3).

182. Likewise, Section 16 of the Children’s Act 1992 prohibits the use or involvement of children in immoral acts, in pornographic acts (including the photography, distribution and display of immoral pictures) and in publicity (photograph or description) of materials that are damaging to the child’s character.

183. Section 15 (1.b) of National Broadcasting Act 1993 (2049 BS) prohibits broadcasting of advertisement of pornographic materials and materials of similar nature through media. Any act against this provision is punishable with one year imprisonment and cash fine of NRs 10,000.

Defining sale and trafficking of children and child prostitution and pornography

184. Section 4 of the Human Trafficking (Control) Act, 2007 defines human sale and trafficking:

(a) Committing any of the following acts by a person is considered to be an act of human sale:

- (i) Selling and buying a person for any purpose;
- (ii) Forcing someone into prostitution, with or without taking financial or benefit of any kind;
- (iii) Removing or taking out human organ save in accordance with the provision of prevailing law;
- (iv) Engaging in prostitution.

(b) Committing any of the following acts by a person is considered to be an act of human trafficking:

- (i) Taking any person out of the country with an objective to buying or selling;
- (ii) Taking or keeping with oneself or under one’s control or keeping in a place or carrying from one place to another within Nepal or outside the country or giving to anyone by separating a person from his or her home, residence, place or person by alluring by words or incentive, deceiving, committing forgery, conspiring, forcing, coercing, abducting, making hostage, taking advantage of one’s critical situation, making senseless, misusing one’s position or power, alluring the guardian or patron with incentives, creating a situation of fear, coercion, influence, threat or force with an objective to involve in prostitution or to exploit.

185. Section 2 (e) of Human Trafficking (Control) Act 2007 defines ‘exploitation’ as – (i) act of keeping human being as slave or servitude and in bondage, and this also implies removing or taking out human organ in accordance with the law.

186. According to the provisions of Section 14 number (1) of the National Code (*Muluki Ain*) 1964, sexual intercourse with a girl below the age of 16, with or without her consent, is considered a rape. But in the case of sexual intercourse with a girl above the age of 16 years without her consent is considered a rape.

The definition of international instruments to which Nepal is a State party

187. As mentioned in paragraphs 84 and 85 of this report above, the provisions of the international Treaties and Conventions to which Nepal is a party gets equal status of domestic law in case the provision is inconsistent with it.

188. Likewise, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, which is ratified by Nepal, has defined – (a) ‘prostitution’ as “the sexual exploitation or abuse of persons for commercial purposes”, (b)

'trafficking' involves "the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the subjected to trafficking" and (c) 'person subjected to trafficking' is understood as "women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means". The definition of trafficking made by the Convention captures that transferring, buying and selling of women and children within and outside the country for putting or placing them in exploitative and abusive situation such as forced prostitution with or without his or her consent.

C. The penalties which are applicable to each of these offences

189. The offences of human trafficking mentioned in paragraph 184 of this report are punishable by the law. According to Section 15 of the Human Trafficking (Control) Act 2007 a person committing offence under Section 3 (as described in paragraphs 184-185 -of this report) shall be punished as follows:

(a) For the offence of selling and buying of human being, the offender is liable of twenty years imprisonment and cash fine of two hundred thousand NRs;

(b) For the offence of using or forcing anybody in prostitution with or without benefit whatsoever, depending on the degree of severity of the crime, the penalty is set to be between 10 to 15 years imprisonment and cash fine of fifty thousand to hundred thousand NRs;

(c) For the offence of taking out organ of a person illegally, the penalty is set to ten years imprisonment and cash fine of two hundred thousand to five hundred thousand NRs;

(d) For the offence of visiting prostitute (or person who engaged in prostitution), one to three months imprisonment and cash fine of two to five thousand NRs;

(e) For a person who is involved in trafficking and transportation of human being for the purpose of buying, selling and engaging in prostitution:

(i) 10 years to 15 years imprisonment and a fine of fifty thousand to one hundred thousand NRs for an offence of transporting or trafficking a person outside the country, and 15 years to 20 years imprisonment and cash fine of one hundred thousand to two hundred thousand NRs in case of transporting and trafficking a child out of the country;

(ii) 10 years imprisonment and cash fine of fifty thousand to one hundred thousand NRs for taking a person from one place to another place within the country. 10 years to 12 years imprisonment and cash fine of one hundred thousand NRs for taking a child from one place to another within the country.

(f) One year to two years imprisonment for taking a person from one place to another within the country, and two years to five years imprisonment for taking out of the country for the purpose and intention of exploitation;

(g) Except otherwise written in points (e) and (f), seven years to ten years imprisonment for a person committing an offence mentioned in paragraph 184 (b) (ii) of this report;

(h) A person engaged in conspiracy, abetment or provocation and attempt to an offence of human sale and trafficking shall get a half out of full punishment imposed for that offence.

190. Besides, the punishment mentioned in the previous paragraph, the following circumstances shall be considered and are punished as follows:

(a) If the same person is involved in buying and selling or forcing into prostitution with or without financial benefit or whatsoever; and in an offence mentioned in paragraph 184 (b) (ii) of this report, the offender is liable for separate punishment for each offence;

(b) Likewise, transporting or trafficking of a person with an intention to buy, sell or involve in prostitution with or without any financial benefit or whatsoever, separate punishments shall be imposed to the offender for the respective offences of transporting or trafficking outside the country or within the country from one place to another in Nepal;

(c) If an offence is committed by a person holding public office; he or she shall get 25 per cent additional punishment on top of regular punishment;

(d) If anyone commits an offence against the person under one's protection or guardianship or if the victim is relative of the offender, he or she is liable to additional ten per cent of the punishment besides regular punishment;

(e) Where the offence is committed repeatedly, for every offence he or she shall get an additional one-fourth punishment to regular punishment for every time; and

(f) If the complainant during the trial gives contrary statement to the one earlier given by him or her or if he or she fails to appear at the court when summoned or he or she doesn't cooperate with the Court, he or she shall be liable to imprisonment for a term of three months to one year.

191. According to Section 53 (4) of Children's Act 1992, for any offence of engaging children in immoral activities, attempt, negative provocation or persuasion to the same as prohibited by Section 16 of the Act (mentioned in paragraphs 182 of this report) the offender is liable to imprisonment for a term up to one year or cash fine of ten thousand NRs. or both. And photographs taken for the purpose of involving children in immoral act and printed materials publicizing the same will be seized with the order of Court.

192. The National Code (*Muluki Ain*) 1964 has also provision of punishment against sexual exploitation, rape and sexual abuse. The offence of rape of a – (a) girl under 10 years of age is punishable with ten to fifteen years imprisonment, (b) girl of 10 years of age and above but under 14 years of age is punishable with eight to twelve years imprisonment, (c) girl of 14 years of age and above but under 16 years is punishable with six to ten years of imprisonment, d) girl of 16 years of age or above but under 20 years of age is punishable with five to eight years imprisonment, and (e) women above 20 years of age is punishable with five to seven years imprisonment. However, the law does not say anything about boy child.

193. Chapter 11 (Part 4) of National Code (*Muluki Ain*) 1964 has also made the provision for prosecuting human traffickers. It prohibits taking a person out of the country for the purpose of sale and imposes penalties for a term of ten years imprisonment if it is only an attempt and twenty years imprisonment if the victim is actually sold. In the same manner, the buyer would also be penalized with the same amount of punishment if he or she is found within the territory of Nepal. The same chapter also prohibits slavery and bonded labour and imposes punishment for a term of three to ten years imprisonment. Likewise, enticing minors away from their legal guardians is illegal and penalty is set to be three years imprisonment and cash fine of five hundred NRs or both.

Representation on behalf of children

194. According to Section 51 of Children's Act 1992, parents and guardians of the child could go to Court claiming and defending children's rights. In the case of children without parents, guardians and legal guardians, any person who is a relative of the child (*hakwala*) can represent him or her. In the case of violation of rights of a child, any person or Government of Nepal could file a case to Court.

195. Human trafficking, as per Section 28, of the Human Trafficking (Control) Act 2007, is considered a crime against the State and the Government acts as the plaintiff in all cases filed under this Act. Such cases are deemed included in Schedule 1 of the State Case Act 1993 (2049 BS).

D. Prohibition of employment of children in hazardous work

196. The Child Labour (Prohibition and Regularization) Act, 1999 has given an inclusive list of 'hazardous work' and prohibits employment of children under the age of 16 years in such work. However, Section 3 (1) of the Act allows children above the age of 14 years to work as labours in non-hazardous works for limited period of working hours as described in Section 9 of the Act. This includes, (a) no work between 1800 hrs to 0600, (b) work should not exceed six hours in a day and 36 hours in a week with or without paying for extra hours, and (c) there should be half an hour break in between three hours of continuous work and one day off in a week which would be included as working hours and get paid.

197. The works that are categorized as 'hazardous work' by Child Labour (Prohibition and Regularization) Act, 1999 include (a) work related to tourism such as hotel, motel, restaurant, resort, pub, bar, casino, rafting, trekking, mountaineering, paragliding, gulf, polo skiing etc. (b) service related work such as workshop, laboratories, slaughter house, cold-storage; (c) public transport and construction related works; (d) production factories such as tobacco, carpet and garment, leather, cement, match, explosive and fire related production and transportation of such goods; production and transportation of alcoholic products, soap, bitumen, paper, slate and pencil production, pesticides production, lubricant oil production; collection of and recycling of garbage; electroplating, photo processing; rubber, synthetic, plastic, glass production related works; (e) water, air and solar, coal, natural gas, bio-gas and other means of producing and distributing power and related works; (f) mining, production and distribution of mines, natural oil or gas; (g) pulling rickshaw (three wheeler) and wheelbarrow; (h) cutting machine and related works; (i) the works that demand going deep inside the land, water and up in the sky; (j) works that requires child touching chemicals and (k) other works and profession that are described as hazardous work by existing laws of Nepal.

198. Employment of children as labour in hazardous works as discussed above is violation of law and is punishable. According to the Section 19.2 of Child Labour (Prohibition and Regularization) Act, 1999, a penalty of up to one year of imprisonment and cash fine of fifty thousand NRs or both can be imposed on the culprit. The same penalty is set for compelling children to do work without his or her wish by luring, by giving false assurance and information or by using threats and force or any other forms similar to that.

199. The Government has enacted *Kamaiya* Labour Prohibition Act, 2001 which abolishes and bans debt-bondage practices under *Kamaiya* system. Keeping *Kamaiya* is now an offence punishable with a fine up to twenty-five thousand NRs (Section 14 and 16).

International commitments towards elimination of child labour

200. Nepal has ratified ILO Convention No. 182 regarding the Elimination of Worst Forms of Child Labour and Convention No. 29 regarding Forced Labour in September 2001. As such, the Government has expressed its commitment towards elimination of worst forms of child labour that also include sale and trafficking of children, debt bondage and serfdom and forced labour and efforts have been made to fulfil such commitments made.⁸²

E. Adoption

201. The provision of National Code (*Muluki Ain*) 1964 establishes grounds and provides legal base for in-country and inter-country adoption. Chapter 15 (Part 3) of the Code explains in detail about who can adopt a child and who could be adopted. Adoption of a son or daughter may be carried out by a person who does not have his or her own son or daughter. The age of parents who adopt the child and the age of the adopted son or daughter should differ by at least 30 years. Adopted son or daughter should be entitled to the same rights as their own born son or daughter; likewise, a due process for adopting a child.⁸³ Furthermore, Section 9 of the Children's Act 1992 provides legally adopted child with the rights to maintain direct contacts with his/her biological parents.

202. With regard to inter-country adoption, Nepal allows foreign citizens to adopt a Nepali child upon the compliance of Rules and Procedure approved by the Government in 1999. As per the defined terms, conditions and the process for allowing Nepali children for inter-country adoption, the government carries out a thorough inquiry about the person who wants to adopt a Nepali child. Such inquiry includes ascertainment of his or her personal character, and financial and social status. Since its establishment, the MoWCSW is working as the National Focal Agency responsible for giving the final consent to inter-country adoption of a Nepali child in conformity to the terms and conditions of the Government. Furthermore, Nepal has already initiated a process to ratify the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption. The MoWCSW has translated the convention into official Nepali language and sought opinions from MoFA, Ministry of Finance, MoLJPA and MoHA in this regard.⁸⁴

203. In pursuance of the provision of article 21 of the Convention on the Rights of the Child which provides for the obligation of the state with regard to adoption and other relevant national and international instruments, the MoWCSW has developed a comprehensive Policy Guidelines in 2007 further explaining terms and processes to manage inter-country adoption properly and to ensure best interest of those children who are adopted. In the same manner, the MoWCSW has initiated a process of drafting a law to regulate inter-country adoption and ensure protection of the rights of such children. For this, a Task-force comprising of senior official from the MoWCSW, MoLJPA is involved in preparing the draft of the Act. UNICEF and Save the Children Norway are working as invitees. An international conference on Inter-country Adoption was organized in 2007.

204. The MoWCSW, as a focal Ministry, is monitoring the situation of children adopted in-country and inter-country on a regular basis. However, the Government is facing several challenges in this regard. For example, in the case of in-country adoption, it is difficult to

⁸² Reference is made to paragraphs 361–362 of the first and second combined periodic reports of Nepal under the Convention (CRC/C/65/Add.30).

⁸³ Reference is made to paragraphs 192–195 of the initial report of Nepal under the Convention (CRC/C/3/Add.15).

⁸⁴ Reference is also made to paragraphs 170 of the first and Second combined) periodic reports of Nepal (CRC/C/65/Add.35).

track such children particularly because many adoptions are done informally on ‘goodwill’ basis, thus, making it difficult to find record with the concerned authority. In the case of inter-country adoption, there is resource constraint particularly to regularize monitoring visits to the host countries. The Government is putting its efforts to counter malpractices occasionally found in inter-country adoption such as preparing fake documentation about the child and the parents, providing false assurance to the parents of better educational opportunities etc. It is expected that the new law would well address these issues.

F. Jurisdiction with special reference to offences prohibited by the Optional Protocol

205. National Code (*Muluki Ain*) 1964 and other laws embrace the principle that crimes committed within the territory of Nepal are subject to trial in Courts and other concerned authorities, and any Nepali citizen commits crime outside the territory of Nepal he or she is subject to trial under Nepali law, if found in Nepal.

206. With regard to the offence of human sale and trafficking, the Human Trafficking (Control) Act 2007 has established jurisdiction within the territory of Nepal as well as beyond territory of the country in case any person commits offence against Nepali citizens from foreign land. Section 1 (3) of the Act states, ‘[t]his Act shall remain in operation throughout the country and it shall also be applicable to any person committing offence against Nepali citizen under this Act staying outside Nepal’.

207. As such, in case of offences including human sale and trafficking and prostitution, jurisdiction of Nepali court is attracted where (a) offences are committed within the territory of Nepal, (b) the alleged offender is a Nepali citizen or any person who is residing in the territory of Nepal, (c) the victim of the offence is a Nepali citizen, (d) the alleged offender is present in the territory of Nepal and has not extradited to another country, and (e) offence is committed against a Nepali citizen.

G. Extradition

208. The Extradition Act 1990, which was developed by incorporating provisions of SAARC Regional Convention on Suppression of Terrorism, has provided a legal base for having extradition treaty between Nepal Government and other countries for extradition of offender and convicted criminals. As per the provision of the Act, any foreign country can request Nepal Government in writing for extradition or penalizing the offender or convicted criminals following a due process. In case of such request, the Government if it deems so may cause the investigation of the case by the district court where upon the court may order for the arrest of the offender or convicted criminals; decide whether the case falls under extradition as per the Extradition Treaty or relevant Convention applicable; evaluate evidence and take decision on whether to grant extradition or not. Once the report of the court is received the Government takes the final decision whether to extradite or prosecute locally. In the case of a Nepali citizen, the Government is not bound to extradite and may instead order to file a case in the court and penalize the person (Section 8.1). In such case, the crime done outside the territory of Nepal is considered as same as done within the territory of Nepal and prosecuted and penalized as per existing penal law of country (Section 9.1). In the case of extradition request made from more than one country, the Government should use its judgement for extradition to one country depending on the nature of the crime (Section 11). However, the Government would not execute extradition in the case of political crime, if the prosecution is barred by limitation as per the existing law of requesting country; and where the person has been convicted in Nepal or where there

is an ongoing prosecution against him/her, the Government may deny extradition until the time ongoing prosecution process is over or punishment is not completed (Section 12).

209. Likewise, Section 17 of the Extradition Act 1990 provides that if a person commits crime within the territory of Nepal and absconds to the territory of any other country, the Government of Nepal can request the foreign country with proof for extradition to Nepal or penalize the person in that country.

210. The Act does not limit to specific offences but can be extended to cover any offence agreed upon between the treaty/member States.

211. With regard to extradition and prosecution, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002, which is ratified by Nepal, has the following provisions: (1) The offences referred to in the Convention are to be regarded as extraditable offences in any extradition treaty, which has been or may hereinafter be concluded between any of the parties to the Convention. (2) If a State party, which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State party with which it has no extradition treaty, the Requested State should, if so permitted by its laws, consider the Convention as the basis for extradition in respect of the offences set forth in article 3. (3) Extradition is to be granted in accordance with the laws of the State to which the request is made, (4) The State Party in whose territory the alleged offender is present should, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of the State. (5) In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention should be prosecuted and punished by their courts.

212. At present, there is no extradition treaty in existence between Nepal and any other country. But negotiations on extradition and mutual legal assistance treaty have taken place in the past with India.

H. Seizure and confiscation of goods and proceeds and closure of premises

213. Section 18 of the Human Trafficking (Control) Act 2007 provides that if any movable and immovable property acquired as a result on an offence under the Act (including human sale and trafficking) such property would be seized and confiscated. Similarly if it is proved that a person uses or provides or gives permission to use of one's house, land or vehicle for committing or causing others to commit offence under the Act, such house, land or vehicle would be seized and confiscated.

VII. Protection of the rights of victims (arts. 8 and 9, paras. 3 and 4)

A. Protection of the rights of child victims of sale and trafficking, child prostitution and pornography

214. Nepali criminal justice system broadly follows adversarial model. It involves three main state organs for law enforcement and administration of justice: (a) the police for investigation of the facts related to a crime, (b) the Government Attorneys for the prosecution of the case, and (c) the Court for adjudication. The following paragraphs describe the provisions of Nepali laws which provide for the protection of rights and the best interest of victims and their rehabilitation in the formal judicial process.

Certification of the statement of victims at first instance of his or her reporting at police office

215. As described in paragraph 180 of this report, Section 6 of the Human Trafficking (Control) Act 2007 incorporates the provision of certification of the statement of the victims by nearest District Court where the victim himself or herself is present to lodge the complaint. For this purpose, the police office should record the statement of the victim and produce it immediately to the nearest court. Upon the receipt of such request, the Judge of the respective District Court, notwithstanding anything mentioned in the prevailing law and in spite of the offence related to that statement not falling under his/her jurisdiction, should attest the statement confirming the content of the statement made by the victim. Later, the Court can take the statement thus attested as evidence even if the victim does not appear to the Court. This provision also aims at ensuring protection of victims from being re-victimized during the proceeding of the case in the court.

Trafficking in human to be a non-bailable offence

216. Section 8 of the Human Trafficking (Control) Act 2007 explicitly states that the court shall keep the accused in custody while prosecuting the case relating to the offences such as selling and buying of human being for any purpose or force someone into prostitution and take out or remove human organs except permitted by law. This indicates that the Act has considered the offence selling and buying, trafficking and forcing someone into prostitution as a serious crime and intends to protect the victims, his/her family as well as witness from possible threats from the accused side.

Burden of proof to lie on the accused

217. As per Section 9 of the Human Trafficking (Control) Act 2007, the burden of proof lies on the person accused of an offence such as selling and buying of human being for any purpose, force someone into prostitution and take out or remove human organs except permitted by law.

Right to have defending lawyer

218. According to Section 19 of Children's Act 1992, where a child is accused of a criminal offence, the Court shall not hear and decide the case unless the child is represented by a defence where the child cannot afford to pay for the service of a lawyer the Court should assign a lawyer (*Baitanik Kanoon Byabasayi*) appointed by the Court or any other lawyer who is interested and willing to offer legal aid service to the child.

Right to have a separate lawyer

219. As per Section 28 of the Human Trafficking (Control) Act 2007, the offences of sale and purchase of human being or trafficking in person is considered as an offence against the State and is filed in the court by Public Prosecutor on behalf of Nepal Government. However if the victim so wishes, s/he can hire the service of a separate counsel to represent her/him (Section 10).

Provision of translator and interpreter

220. As provided in Section 11 of the Human Trafficking (Control) Act 2007, where the victim does not understand the language of the proceeding he or she may take the service of an interpreter or a translator with the permission of the concerned Court.

Prohibition of publication of information detrimental to victim

221. Section 25 of Human Trafficking (Control) Act 2007 prohibits publication of confidential information which is detrimental to victim's character without obtaining his/her consent. This includes publication or broadcasting real name, photograph or any information (or matter) causing adverse effect on his/her character in the papers and journals or publicizing from other communication media. Any person who publishes or publicizes or broadcast real name, photograph and other details (information) thus prohibited would be subjected to a fine of 10,000 to 25,000 thousand rupees.

222. Similarly, Section 49 (2) of Children's Act 1992, prohibits the publication in newspaper or magazine the details of the incident and the case in the court in which a child is accused of, without permission of prosecution or the judge of the court. Such restriction is equally applicable to any correspondents and photo-journalist. Similarly, Section 52 of the same Act provides for keeping information about the accused child particularly his or her real name and address confidential. However, if such information is required to be published for the purpose of any study or research, the real name and address of the child shall be kept confidential. Only age and sex of the child can be mentioned (Sub-section 2). According to Section 53 (9) of the same Act, violation of the rights provided in Sections 49 (2) and 52 shall be punishable with cash fine of NRs. 3,000 or imprisonment for three months or both. And all copies of the books, newspaper and newsmagazine in which such confidential information is published will be seized.

223. The Supreme Court of Nepal has recently made a landmark decision⁸⁵ in December 2007 (2064/09/10 BS) to protect the privacy of information about the victims (i.e. women victimized of violence, abuse and exploitation, children and persons infected and affected with HIV and AIDS) in the court proceedings in the regards to special natures of cases field in the court. The Supreme Court has issued directives to the Council of Ministers and the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) to formulate law to ensure and maintain standard of privacy of the victims as well as prohibition of publication and publicizing information that is detrimental to the victim. For the interim period till such law is made, the Supreme Court itself has developed 'A Procedural Guideline for the Protection of Privacy of Parties in the Entire Prosecution and Court Process in Regard to the Cases of Special Nature 2007'. The Procedural Guideline explains the cases to which privacy is required to be maintained as well as defines the term 'personal details' and the conditions to which privacy is required to be maintained and the procedures for the same. The Guideline prohibits publication of information where privacy is required to be maintained privacy and such act is made punishable.

In-camera proceedings

224. According to Section 27 of Human Trafficking (Control) Act 2007, proceedings relating to human sale or trafficking should be conducted in In-Camera. This goes in consonance with the provision of Children's Act 1992 (Section 55). The Juvenile Justice (Procedures) Rules 2006 (2063 BS) provides for In-Camera interrogation of the accused where the proceeding takes place in a separate room of the Juvenile Court or District Court, in which a camera is attached, and that such interrogation is visible in the screen of the Bench. The Guideline for the protection of privacy discussed in paragraph 223 above has

⁸⁵ A case filed by *Advocate Ms. Sapana Pradhan Malla of Women Law and Development Forum (WLDF) Vs. Council of Ministers of Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs, Speaker, House of Representatives; Ministry of Women, Children and Social Welfare, and Ministry of Health and Population.*

also well covered this provision in its content and has made an order for in-camera trial in regard to hearing of cases of special nature that includes juvenile cases.

225. According to Section 49 (1) of Children's Act 1992, during the hearing of the case against the child the lawyer, father and mother of the child and relatives or guardians only are allowed to be present in the court. And, as found relevant and upon obtaining permission from the Judge, individual engaged in protection and promotion of the rights of the children and representative of any social organization can be present in the court during the hearing of the case. Likewise, according to Section 27 (2) of Human Trafficking (Control) Act 2007, only the plaintiff and defendant of the case, their defence counsel and a person permitted by the Court is eligible to enter into the Bench in the Court during proceeding and/or hearing of the case at the In-Camera trial.

B. Establishment of juvenile benches to hear juvenile cases (children in conflict with the law)

226. The rights of children in conflict with the law, suspected or accused of committing an offence has emerged as a matter of concern.⁸⁶ In April 2000, the Government made a decision to set up Juvenile Benches in all 75 District Courts of the country to deal with juvenile cases (children in conflict with the law). It aims to coordinate with the judiciary to involve child psychologists, social activists and child experts in the Bench during the court proceedings. As per this arrangement, the Juvenile Bench would comprise of Social Worker, and Child Psychologists or Child Specialists in the Bench in addition to judges while hearing juvenile cases.

227. The Government has enacted Juvenile Justice (Procedures) Rules 2006 (2063 BS) as per the authority given by Section 58 of Children's Act 1992. The Juvenile Justice (Procedures) Rules 2006 has defined processes and provisions for effective implementation of Juvenile Justice system and functioning of Juvenile Court or Juvenile Bench. Some of the major provisions of the Rules can be highlighted as – (a) assigning a separate unit with specialized police personnel in police office to investigate juvenile cases (in which a child is accused of), (b) defining investigation and prosecution procedures, (c) defining procedure of formation of Juvenile Bench, (d) informing the child through his or her parents or guardians, (e) defining qualification and selection criteria of Social Worker and Child Psychologist to work in panel with the Judge while hearing and deciding juvenile cases, (f) procedure of hearing of juvenile cases in the court, (g) process of collecting and verification of proofs, (h) process of verification of age of the child, and (i) preparation of roster of service providing organizations. The Rules also provides for the formation of Juvenile Justice Coordination Committee at the central level for giving advice and making recommendation to the government on laws and policies to strengthen Juvenile Justice System in Nepal.

⁸⁶ Children have been convicted in different criminal cases in Nepal. The data indicates that about 37 different criminal cases with 50 children have been registered in different District Courts by the Nepal Police between in 2005 (on 2062-04-01 BS) to 2006 (on 2063-03-30 BS). Among them there are six murder cases against 8 children, 12 rape cases against 15 children, 11 theft cases against 20 children and 2 other cases against two children.

Training to judges and legal professionals

228. Since 2005, the CCWB has been implementing Juvenile Justice Strengthening Programme which has a component of strengthening Juvenile Bench in 13 pilot districts⁸⁷ with necessary infrastructure and capacity development of Judges, Public Prosecutors, court officials, Lawyers, Social Workers, Child Psychologists and other concerned professionals. Under the project, all the Judges of all the 75 District Courts have been offered training on child rights with a focus on Juvenile Justice process in partnership with National Judicial Academy (NJA) during 2006 and 2007. Likewise, similar kinds of training have been provided to court officials, Public Prosecutors, Lawyers, Child Psychologists, Social Workers and Police Officials. However, challenges still persist to activate Juvenile Bench in all the 75 District Courts as there is inadequate technical capacity and financial resources. Therefore, it is necessary to continue enhancing capacities of judges and judicial personnel to support them in enhancing their understanding and skills to deal with juvenile cases. Moreover, various professional training institutions including Police Academy have incorporated the principles and provisions of the Convention, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women into curriculum of their training courses.

Informing the child about the court process

229. Rule 7 of the Juvenile Justice (Procedures) Rules 2006 has incorporated the provision that require Juvenile Court or Juvenile Bench to provide copy of the charge sheet, and concerned documents immediately to the father, mother or guardian of the child. Such notice shall be given to the legal practitioner of the said child if the father, the mother and the guardian of the child are not found out or if they refuse to acknowledge the same.

Creation of child friendly environment

230. Rule 4 of the Juvenile Justice (Procedures) Rules 2006 provides that the police or police personnel, shall while investigating and inquiring into any offence committed by the children, follow provisions mentioned below, in addition to the provisions set forth in the prevailing laws:

- (a) The Police officer shall put on plain clothes instead of police uniform;
- (b) While arresting the child, s/he shall give his or her introduction, show the document thereof and mention the reason for arrest;
- (c) S/he shall inform the arrested child about his or her constitutional and legal rights in a language that s/he understands;
- (d) S/he shall give notice of delinquency committed by the child to both father and mother, if available, or at least one of them and to the guardian if there are no parents of the child;
- (e) Physical and mental health of the child shall be examined immediately either in the nearby government hospital or by a doctor;
- (e) On the spot enquiry (*Sarjamin*) shall be done in presence of both father and mother, where available, or at least one of them and the guardian if there are no parents of the child;

⁸⁷ These pilot districts are Ilam, Morang, Saptari, Makawanpur, Kathmandu, Kaski, Rupandehi, Banke, Surkhet, Kanchanpur, Lalitpur, Bhaktapur and Parsa.

(f) To request the service providing person or association for the preparation of social inquiry report relating to the concerned child.

231. The Rules describe the interrogation process as follows:

Rule 5:

(a) The investigation officer shall, while interrogating the child, ask the questions in an easy manner by creating such a children-friendly environment where he or she can answer the questions asked;

(b) Interrogation may be made pursuant to sub-rule above, in presence of the father, mother guardian, legal counsel or representative of the child welfare home or orphanage, if the child has been residing in such home;

(c) The investigation officer may, while making interrogation pursuant to sub-rule (a), ask questions relating to the concerned offence, family and social background of the child and other necessary matters;

(d) No interrogation shall be made with the child for more than one hour at the time and during night time.

232. Likewise, Rule 12 describes the following process of hearing a juvenile case:

(a) The Juvenile Court or Juvenile Bench shall hear cases in a child friendly environment;

(b) The Juvenile Court or Juvenile Bench shall use the language which the child can understand or which is suitable for the physical and mental development of the child;

(c) While hearing the case, the Juvenile Court or Juvenile Bench shall give information to the convicted child as to the nature of the offence and received evidence;

(d) Provisions may be made that the child is interrogated in a separate room of the Juvenile Court or Juvenile Bench of District Court, in which a camera is attached, and that such interrogation is visible in the screen of the Bench;

(e) The Juvenile Court or Juvenile Bench may, in order to make interrogation pursuant to sub-rule mentioned in point (d), designate a person who can easily communicate or talk with the child psychologist or the child;

(f) While making interrogation, the father, mother, guardian or legal practitioner of the child may sit along with the child.

Age determination and disposal of a case

233. Rule 15 of the Juvenile Justice (Procedures) Rules 2006 has incorporated the prioritized now laid down guidelines for determination of the age of the child, in case it is an issue for which the following need to be considered in the order of priority: (a) age mentioned in birth certificate issued by the hospital, (b) where no such certificate exists birth registration certificate issued by local registrar's office, (c) character certificate of school or the age mentioned while enrolling the child, and (d) age verification certificate produced by a government hospital. It is also mentioned that the Juvenile Court or Bench should decide Juvenile Case within 120 days from the date of filing the case (Rule 16).

Claiming rights and lodging complaint at the police office

234. The Human Trafficking (Control) Act 2007 has given authority to any person who knows that the offence concerning human sale and trafficking (as described in paragraphs 184 and 185 of this report) is being committed or may be committed, to report or lodge a complaint to the nearest police office. While doing so, in the case he or she makes written

request to keep his or her name confidential, the police office should register the report maintaining his or her confidentiality (Section 5 of the Act). This provision has given members of civil society an important role to support in collecting evidence and apprehending alleged traffickers.

235. Section 20 of Children's Act 1992 stipulates that any person can submit petition to the nearest court for claiming for the protection of the rights of a child as provided in the Act. Upon receiving such petition, the court shall conduct necessary investigation and issue an order as appropriate for enforcing rights of the child. In such situation, the court might decide to provide compensation to the child whose rights have been violated. Similarly, the Act also provides for representative suit. As provided in Section 51 of the Act, father, mother or guardian can file a case claiming right or in defence of the child in a court. In absence of the father, mother or guardians of the child, his or her close relative can go to the court. The same section of the Act has stated that offence prohibited by the Act shall be considered as offences against the State.

C. Provision of rescue, rehabilitation and reintegration

236. Section 12 of the Human Trafficking (Control) Act 2007 explicitly provides that the Government will arrange for the rescue of any Nepali citizen sold in the foreign land.

237. Section 13 of the said Act provides that the Government of Nepal shall establish necessary rehabilitation centres for physical and psychological treatment, social rehabilitation and family reintegration of the victim of sale and trafficking and commercial sexual exploitation. The other provisions in this regards are:

(a) Any organization can obtain permission as to establish and run rehabilitation centre. And the Government shall regularly and effectively monitor such organization and rehabilitation centre established by such organization;

(b) The Government may provide financial and other support to the Centre operated by other organization;

(c) The Centre shall make arrangement for social rehabilitation and family reintegration of the person stationed at the Centre;

(d) The Centre shall make arrangement of medical treatment and consultation service and facility to the victim as per necessary;

(e) No one shall require the victim staying in the center engage in any work against his or her wish;

(f) The management, operation standard and monitoring of the rehabilitation centre, arrangement of skills training and employment, rehabilitation and family reintegration of the victim shall be carried out as prescribed.

Rehabilitation fund

238. According to the Human Trafficking (Control) Act 2007, the Government shall establish a rehabilitation fund for establishing and running rehabilitation centres as well as to offer other necessary support to the victim (Section 14).

Reform centre for juveniles in conflict with law

239. Children's Act 1992 provides that children under 16 years of age shall be segregated from adults in the police custody. As such, any person below the age of 16 years should not be incarcerated along with adult prisoners (Section 50). Instead, they should be referred to the juvenile reform centre. In addition, the Act also provides for establishment of reform

centre where conflict affected children, children addicted to drugs, runaway children and children involved in immoral activities are kept (Section 42).

240. As per the direction of the Supreme Court, Child Reform Center (Correction Home), with the participation of private sector, is in operation in Bhaktapur District. Considering the mounting number of children, the Government has adopted the policy of encouraging private sector to run Child Reform Centers in Morang, Kaski and Banke districts.

VIII. International assistance and cooperation

A. Cooperation with United Nations agencies, bilateral agencies and international donors

241. The Government is working in close collaboration with United Nations agencies, international development partners, donors and funding agencies to combat sale and trafficking of children (and women), child prostitution and child pornography. According to a mapping done in 2004,⁸⁸ a total of 19 United Nations, bilateral agencies, international non-governmental funding and other agencies or donors are working on the issue with several government agencies and NGOs. These agencies are providing financial and technical support to combat trafficking of children and women commercial sexual exploitation of children and child pornography. The intervention includes prevention of the problem, protection of survivors and victims and their rescue, rehabilitation and reintegration. Likewise, supports are extended for development of capacities of key governmental agencies and institutions for their effective functioning as well as take their mandated roles that include implementation of policies and plan of actions, law enforcement and provide support to the survivors and victims.

Support of United Nations agencies, bilateral and international agencies

242. The United Nations agencies that are working with government bodies and NGOs at national, district and sub-district levels to address the issue of trafficking as well as commercial sexual exploitation of children and women include UNDP, ILO, UNIFEM, UNICEF, UNFPA, UNESCO etc. Likewise, bilateral agencies such as Japan International Cooperation Agencies (JICA), US Agency for International Development (USAID), and Department for International Development (DfID) are also extending financial and technical support to Nepal for addressing the issue of trafficking, and commercial sexual exploitation of women and children. Moreover, there are several international organizations that are either providing funding to the Government and/or non-government initiatives or working in partnership to combat trafficking in women and children and their commercial sexual exploitation. The major areas of support of United Nations agencies, bilateral and internal agencies can be broadly categorized as, (a) capacity development and institutional development (through training, workshops, seminars etc. targeted to people at large as well as professional groups) (b) research, documentation, management of database, publication of reports and IEC materials and dissemination among actors and target groups; (c) advocacy, lobbying for policy adaptation and legal reform; (d) awareness-raising among targeted groups and communities through awareness campaigns and media advocacy; (e) establishment of helpline services against trafficking; (f) establishment and operation of community surveillance system; (g) empowerment of community and vulnerable groups of

⁸⁸ Status and Dimensions of Trafficking within Nepalese Context, IIED and UNIFEM, Kathmandu, 2004.

people through education and awareness-raising on the issue as well as enhancing economic opportunities among targeted groups; (h) para-legal training and providing legal aid and services; (i) facilitate cross-border rescue, repatriation and rehabilitation of rescued girls (and women) and support for establishment of transit centres; (j) contribute in State party reporting of relevant conventions; and (k) facilitate bilateral and regional initiatives and processes.

United Nations system task force

243. Acknowledging the complexity of the issue of sale and trafficking of children and women and their commercial sexual exploitation as well as the urgency to address them, UNDP organized an interagency consultation in September 1998. In respect with the commitment of United Nations agencies to combat sale and trafficking of children and women, a United Nations System Task Force has been formed with the view of developing and implementing strategic interventions in collaborated manner. In 2000, the United Nations Task Force formulated a programme entitled 'Beyond Trafficking: A Joint Initiative in the Millennium against Trafficking in Girls and Women (also known as Joint Initiative against Trafficking-JIT). JIT has adopted a rights based and integrated approach by acknowledging that trafficking is part of a continuum of human rights violation against girls and women.⁸⁹ Besides the implementation of the programme, the Task Force aims at coordinating with different key stakeholders by offering support of complementary and supplementary nature, advocating and lobbying for law adoption and developing policy framework, and facilitate sharing of best practices and lessons learnt among key players.

244. There are some other working groups and task forces established and functional within the United Nations agencies and among international organizations with the aim of consolidating efforts to address the issues of critical concerns regarding women and children. Such groups include:

- Working group on violence against women – this group is coordinated by UNHCR and United Nations agencies as well as international organizations working on women's empowerment are members in the group.
- Network of Gender Focal Points – this group is coordinated by UNIFEM in which all the gender focal points from United Nations agencies are members.
- United Nations Peace Support Working Group – this working group was formed to support implementation of United Nations resolution number 1325 in regard to protection of women (and girls) during the time of conflict. UNIFEM coordinates this group in which representatives of United Nations agencies are members.

B. South Asian Association for Regional Cooperation (SAARC) Convention and other regional initiatives

245. South Asian Association for Regional Cooperation (SAARC), the association of eight countries of South Asia, i.e. Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka, has made a number of commitments to extend regional cooperation to combat sale and trafficking and commercial sexual exploitation of children and women. To address the sale and trafficking of women and children in the region, SAARC adopted a Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution during the Eleventh Summit held in Kathmandu in January

⁸⁹ Status and Dimensions of Trafficking within Nepalese Context, IIDS and UNIFEM, Kathmandu, 2004.

2002. The Convention calls for cooperation amongst member-States in dealing with various aspects of prevention, interdiction and suppression of trafficking in women and children for prostitution, and repatriation and rehabilitation of victims of trafficking.⁹⁰ All the member States have ratified the SAARC Convention and are implementing the provisions in their respective countries.

246. During the Tenth SAARC Summit, the Heads of State or Government recommended to explore the feasibility of establishing a Regional Fund for Rehabilitation of Survivors of Trafficking in Women and Children. Similarly, the Thirteenth SAARC Summit affirmed their strong resolve to work together to address the problem of trafficking in women and children and also made a call for implementation of the Convention. The Summit appreciated the roles of civil society organizations and the media in raising awareness, and stressed that law enforcement agencies in Member States should also coordinate and strengthen their efforts to address this problem effectively.

SAARC Social Charter

247. As a member State of SAARC, Nepal is part of SAARC Social Charter which was adopted by the Twelfth Summit held in Islamabad in January 2004. The Charter encompasses a broad range of targets to be achieved across the region for empowering the women, children and youth which would contribute in determining actions at national and regional levels. In this regard, Nepal has already initiated a comprehensive process of developing national level plan of actions to achieve the objectives of the Social Charter.

Regional Task Force to implement SAARC Conventions

248. A Regional Task Force has been established to facilitate implementation of the SAARC Conventions relating to Trafficking in Women and Children, and the Promotion of Child Welfare. The Task Force convened its meeting in 2007 and developed ways and strategies to support the implementation of the regional conventions effectively.

South Asia Forum on Violence against Children (SAF-VAC)

249. The South Asia Forum on Violence against Children (SAF-VAC) is a regional network established in the SAARC region. The Forum was formed during the process of preparation of Asia Regional Report on Violence against Children which was done as the part of the United Nations Study on Violence against Children. In this regard, (a) regional consultations of governmental and non-governmental organizations and of children and young people were organized, and (b) The South Asia Coordinating Group was established to follow up on the Yokohama Conference which was supported by the Steering Committee that worked as coordinating body to the study process. In this context, the SAF-VAC was formed having representatives of the governments of SAARC member States, SAARC Secretariat, United Nations agencies, civil society organizations, I/NGOs, bilateral agencies, experts and CYP. The Forum aims at working together for ending violence against children in the region. There are two layers body within the organization of SAF-VAC – (a) higher level body in which minister represents the member countries and this body meets once in a year, and (b) coordination body in which national coordinators or national focal persons designated represent the member countries and this body meets two times a year. Generally, issues and plans are discussed in the coordination body and then would be submitted for endorsement or approval. ECPAT International, United Nations agencies such as UNIFEM and UNICEF and other international NGOs are providing financial and technical support to the Forum. Nepal is part of the Forum from its inception

⁹⁰ Gender Initiatives in SAARC: A Primer, SAARC Secretariat and UNIFEM, Kathmandu, 2007, p. 4.

and has recently taken decision to host the secretariat for two years starting from 1 March 2008 which was being hosted by Pakistan here-to-fore. The SAF-VAC has three major focus areas of interventions aiming to end – (a) gender related violence specific to girls, (b) sexual exploitation and abuse (sale and trafficking and commercial sexual exploitation), and (c) physical and psychological punishment.

Technical Advisory Group for South Asia (TAGSA)

250. The Technical Advisory Group for South Asia (TAGSA) was formed by UNIFEM as an advisory board that comprises development experts, academicians and senior government officials in the region. The technical advisory group, which meets every six months in rotation in each member country, mainly offers advice and guidance to UNIFEM to develop and carry out effective interventions strategies and programme of actions in the region to reduce trafficking. The group is active in lobbying with the Government for effective policy adaptation to address trafficking. Likewise, the group has conducted research; facilitated dialogue with mainstream institutions; and pursued partnership with different sections of the society such as media, private sector, academia and parliamentarians.

South Asia Forum against Human Trafficking (SAFAHT)

251. South Asia Forum against Human Trafficking was formed in 2000 as an outcome of the First South Asia Regional Workshop on Trafficking in Women and Children held in Delhi, India. The Forum intends to (a) facilitate and support anti-trafficking activities at regional, national and sub-national levels; and (b) facilitate exchange of information and experiences including organizing exchange and study visits.

Cross-border collaboration

252. A number of workshops have been organized between the representatives of the Government and NGO workers, Police Department and other agencies concerned of both the countries with the objective of combating sale and trafficking of women and children. The NPA against Trafficking of Women and Children has also adopted action point of forming cross-border networks at national and local level which is mainly backed up by other action points i.e. 'development of bilateral coordination and cooperation mechanisms'. The District Task Force of the adjoining district of Nepal bordering to India has been given the responsibility to initiate dialogue and discussion with their Indian counterparts.

Cross-border initiative of Go

253. The following paragraphs provide some highlights of cross-border initiatives (of the Government):

- A cross-border meeting on trafficking in women and girls was held in Birgunj, a border town in southern Nepal in September 1997. The representatives of administration, police offices and representative of social organizations working for the rights of children and women from Nepal and India participated in the two-days long meeting. The meeting discussed on ways to extending bilateral cooperation between Nepal and India for the protection of children and women from being trafficked. The meeting developed several action points to be implemented by the respective countries.⁹¹

⁹¹ Reference is made to annex 5 of this report for the full text of the joint statement of the meeting.

- In 2002, a cross-border workshop was jointly organized by JIT project and MoWCSW in Rupendehi, Nepal. The workshop was attended by the government officials and representatives of United Nations agencies and NGOs from Nepal and India. As the outcome of the workshop a joint cross-border committee was formed with the objectives of (a) sharing information to prevent trafficking in women and children, (b) facilitating the safe migration of women migrants, (c) sharing information about traffickers and their collaborators to ensure that they are apprehended, and (d) ensuring the implementation of human rights standards for the treatment of trafficked persons during the process of their rescue, repatriation and safe return. This was the first joint Indo-Nepal cross-border committee led by government officials from both the countries.

254. Nepal and India have initiated negotiation for extending mutual cooperation by having an agreement with the aim of providing assistances including rescue and repatriation of victims of cross-border trafficking as well as detection, investigation, prosecution and punishment of the offenders.

C. Cross-border collaboration

Cross-border initiatives of NGO sector

Action against Trafficking and Sexual Exploitation of Children (ATSEC)

255. Action against Trafficking and Sexual Exploitation of Children (ATSEC) is a network of non-governmental organizations of Nepal, West Bengal in India and Bangladesh. The network is engaged in extending cooperation mainly on cross-border activities to facilitate advocacy, research, social mobilization. It is offering technical assistance to the key agencies of these countries.

Cross-border workshop on trafficking in women and children

256. In 1997, Maiti Nepal, a national NGO working against sale and trafficking of women and children, organized series of cross-border workshops in bordering cities of Nepal viz., Kakarvitta, Biratnagar, Birgunj, Janakapur, Bhairahawa, Nepalgunj and Dhangadhi. The meeting was attended by representatives of government and NGO from Nepal and India.

Establishment and Running of Transit Homes

257. Maiti Nepal, a national NGO, has established eight transit homes at Nepal-India border points – Pashupatinagar, Kakarvitta, Jogbani, Janakapur, Birgunj, Sunauli, Nepalgunj, and Dhangadhi. The organization is running border surveillance campaigns in coordination with Nepal Police to identify traffickers and pimps and check trafficking of girls and women to India. For this purpose, the organization has deployed its female staff at the border points to patrol the area and identify girls who are being trafficked and rescue them as required. Likewise, national level NGOs including Women Rehabilitation Center (WOREC), a national NGO, has established transit homes in Janakpur and ABC Nepal in Biratnagar, Janakpur and Bhairahawa for rescued girls and women. Similarly, SAATHI, a national NGO, is running transit homes/rehabilitation centers in Kanhanpur, Bhairahawa and Kathmandu to house children and women who are victims of trafficking as well as those who are at-Risk. Likewise, a number of other national NGOs are running helpline services mainly in broader cities to support the victims and survivors.

258. Several NGOs working in Nepal and India are extending mutual cooperation and support to address the issue of Trafficking particularly for prevention, rescue, repatriation

of survivors and victims of sale and trafficking and prosecution and punishment of the offenders. A number of national NGOs of Nepal has set up their offices in major cities of India in collaboration with their Indian counterpart. Such offices are involved in the rescue of Nepali girl children and women who are trafficked to Indian cities for the purpose of commercial sexual exploitation and bring them back to Nepal.

D. Financial and other assistance

259. As highlighted above, Nepal is receiving financial, technical or other assistance from international community to address the problem of sale and trafficking of children and women as well as their commercial sexual exploitation. The international communities are extending support to Nepal include, bilateral and multilateral agencies, United Nations agencies, International funding agencies and donors, International NGOs, networks and coalitions. According to a mapping done in 2004, USAID in Nepal was found to be the largest funding agency for anti-trafficking initiatives. Among the United Nations agencies, the financial and technical support and cooperation extended by ILO, UNICEF and UNIFEM is observed significant to this.

IX. Other legal provisions

260. The Government of Nepal is adopting the principles and provisions of the international Conventions, Treaties and Decelerations into domestic laws to harmonize them into domestic jurisdiction. The Government, thus, does not claim that the domestic legislations are more conducive to the realization of the rights of the child than the provisions of the Convention and of this Optional Protocol. The Government of Nepal has ratified majority of international instruments concerning sale of children, child trafficking, child prostitution and child pornography. At the same time, the Government of Nepal is actively participating in the national, regional (mainly in SAARC regions) and global level efforts and initiatives for protection and promotion of rights of all the Nepali children.

X. Conclusion

261. As can be seen from earlier sections, the report, following the reporting guidelines, has been prepared through a rigorous consultative process. Attempts have been made in various sections to present actual situation of children in Nepal and an honest portrayal of the efforts made both at the Government and non-governmental level, and with the cooperation of international community to alleviate it. In the context of Nepal – a young nation in terms of demographic composition, any discussion about children means discussion about 47.5 per cent of its population (2001 census). Any investment on children in bare terms means a substantive investment to improve the overall situation of its population.

262. Today Nepal stands in a historic transition – transition from conflict to peace and from authoritarian and feudal system to a more democratic and egalitarian order. She has now pushed the decade long conflict back and has entered an era where it plans to create firm constitutional and legal foundations and move on. She has already made many remarkable achievements in terms of recognition, guarantee and realization of rights. The notable among them is the framing of the Interim Constitution which inscribes the rights of the child and guarantees them. They include the right to name and identity, the right to nourishment, basic health and social security, the right against exploitation, right to well being and well ascertained future. Employment of minors in hazardous work or their use in army, police or conflict is now constitutionally proscribed. art. 22 of the Interim

Constitution. Besides, a host of other rights such as the right against untouchability (art. 14), the right to live in a healthy environment, the right to get free basic health services (art. 16), the right to get basic education in mother tongue, and the right to get free education up to the secondary level from the State (art. 17) and the right to social security and social justice (arts. 18 and 21) have a clear bearing on the right of the child. It is hoped that the constitutional inscription of the rights of the child will be taken further in the final constitution.

263. As mentioned earlier the period witnesses massive improvement in the existing legal framework, and the justice system. The enactment of law against trafficking, removal of discriminatory laws, the framing of the Juvenile Justice (Procedures) Rules 2006 and creation Juvenile Bench are notable achievements. Besides the Supreme Court has also handed down many land mark decisions in different areas pertaining to the right of children such as birth registration, education, child labour, adoption, privacy, organization etc. (paragraph 112 above). Efforts are being made to improve legal framework to protect children from exploitation and violence of all forms including sexual exploitation, abuse and violence.

264. The report also presents a glimpse of being undertaken at the policy formulation and implementation level at the government and civil society sector. At the policy formulation level the Interim Three Year Plan makes detailed policy prescriptions on the protection, security, implementation of laws, improvement in the access to education of the marginalized sections, the *dalit*, indigenous community, *Madhesi*, Muslim and other minorities groups (paragraph 35 above). Besides the Government has also framed a National Action Plan of Children which presents a ten-year action plan. The efforts made at various ministerial level, the district level through DDC and the VDC level and in the civil society sector are the other highlights of the report. Creation of child friendly environment, best interest of the child, children as the zone of peace, positive discriminations, Minimum standard rules are catchy slogans and norms that guide policy formulation and actions.

265. Despite a decade long conflict Nepal has witnessed significant achievements in health and education sector. Infant mortality has been reduced from 64 to 48 (per 1,000) from 2001–2006. Similarly malnourishment, and underweight of the child has also been significantly reduced during the same period (paragraph 32 above). In the education sector efforts are being made to increase the reach of girl child, children from *dalits*, *janajatis* and other marginalized communities to education through the School Sector Reform Program 2008 (see paragraph 27 above) by providing scholarships and other support to children and their families. The report also presents highlights of the efforts made in terms of adoption of general measures and more specifically in prevention, prohibition and protection fronts in different sections above.

266. This is not to say that there are no problems, challenges with regard to fulfilling obligations undertaken by Nepal through the Optional Protocol or other international hard law and soft law instruments on human rights. Challenges such as inadequate awareness about rights, poverty and hardship, inadequate institutional mechanism, poor infrastructure and quality of service in terms of protection and rehabilitation front, weak social security, family transition, migration, urbanization and growing consumerism have serious limitations in the efforts made in the protection of child. Weak record keeping system, weak information campaign, net-working and coordination above inadequate resources inhibited efforts in the protection of children. This being so, Nepal has taken a very strong commitment for the protection of child and has made sincere efforts in all the fronts of child right protection, and taken a course for further building up and improvement in the overall situation. The initial report very humbly enumerates them in various sections. We are confident that once the peace process further concretizes, Nepal will make serious strides for ensuring the realization of the right of children.

Annex I

Governmental institutional mechanism for implementing the National Plan of Action against Trafficking of Women and Children

1. National Coordination Committee (NCC)

A National Coordination Committee has been constituted, at national level, under the Chairpersonship of Hon'ble Minister of MoWCSW. The Committee holds overall responsibility of implementation of the NPA against Trafficking of Women and Children. The composition of the Committee is as follows:

<i>SN</i>	<i>Officials</i>	<i>Responsibility</i>
1.	Minister, MoWCSW	Chairperson
2.	Secretary, MoWCSW	Vice-Chairperson
3.	Secretary, MoFA	Member
4.	Secretary, MoH	Member
5.	Secretary, MoLTM	Member
6.	Secretary, Mo Health	Member
7.	Secretary, MoES	Member
8.	Secretary, MoLJPA	Member
9.	Special Secretary,* MoWCSW	Member
10.	Joint Secretary (Women Development Dept.), MoCSW	Member
11.	Commandant, Nepal Police Training Academy	Member
12.	Representatives (2), NGOs of related fields	Member
13.	Representatives, organization of national political parties (not exceeding 3 persons)	Member
14.	Under Secretary, Women Development Coordination Section	Member

* At present, there is no provision of Special Secretary.

2. National Task Force

A National Task Force has been constituted under the Chairpersonship of the Secretary of the MoWCSW. The composition of the Task Force is as follows:

<i>SN</i>	<i>Officials</i>	<i>Responsibility</i>
1.	Secretary, MoWCSW	Chairperson

<i>SN</i>	<i>Officials</i>	<i>Responsibility</i>
2.	Special Secretary,* MoWCSW	Vice-Chairperson
3.	Joint Secretary, MoWCSW	Member
4.	Joint Secretary, MoFA	Member
5.	Joint Secretary, Mo Home	Member
6.	Joint Secretary, MoLJPA	Member
7.	Joint Secretary, MoLTM	Member
8.	Joint Secretary, Mo Health	Member
9.	Joint Secretary, MoES	Member
10.	Joint Secretary, NPC	Member
11.	Representative, Nepal Police, Headquarter	Member
12.	Consultant, MoWCSW, Project on Trafficking	Member
13.	Representative, NGOs working in the concerned areas	Member
14.	Representative, ILO, Nepal Office	Member
15.	Representative, UNICEF-Nepal	Member
16.	Under Secretary, Women Development and Coordination Section of MoWCSW	Member

The mandate given to the National Task Force covers the following areas:

1. To organize orientation seminars on trafficking in women and children and their sexual exploitation.
2. To provide guidelines and directives to the Central and District Child Welfare Board and District Task Forces on the ways and means of solving problems related to trafficking in women and children and their sexual exploitation.
3. To determine procedures for the rehabilitation of the victims of trafficking and sexual exploitation sent back from foreign land.
4. To finalize short-term and long-term plan of actions on the issue and approve appropriate action programme submitted by governmental and non-governmental organizations.
5. To coordinate activities of governmental and non-governmental organizations related to the problem of trafficking and exploitation of women and children.
6. To make necessary arrangements for realizing the commitment made at international and regional conventions on the issue.
7. To take appropriate measures for effective enforcement of relevant laws and regulations, particularly through networking of government, NGOs, district and local Task Forces and community leaders.
8. To publish relevant data and coordinate with district and local level Task Forces constituted to combat the problem.

3. District Level Task Force (DTF)

District Task Force have been constituted in 26 districts (reference is made to paragraph 142 of this report):

<i>SN</i>	<i>Officials</i>	<i>Responsibility</i>
1.	President, District Development Committee (DDC)	Chairperson
2.	Chief District Officer (CDO), District Administration Office	Vice-Chairperson
3.	Local Development Officer (LDO), DDC	Member
4.	District Education Officer	Member
5.	Chief, District Police Office	Member
6.	Chief, District Health Office	Member
7.	Chairperson/Mayer of VDC/Municipality of District Headquarter	Member
8.	Representative, District Chamber of Commerce and Industries	Member
9.	Representative, Women's Association/Organization	Member
10.	Principle, Girls High School	Member
11.	Representative, NGO working in concerned area	Member
12.	Campus Chief, Tribhuvan University, Campus in the district	Member
13.	Chief, District Land Revenue Office	Member
14.	Representative, District Child Welfare Board	Member
15.	Chief, District Agriculture Development Bank	Member
16.	Chief, Cottage and Small Industries, District Branch Office	Member
17.	District Attorney General (Government Advocate)	Member
18.	Chief, District Agriculture Office	Member
19.	Women Development Officer	Member-Secretary

The DTF is discharged with the following duties and responsibilities:

1. To identify the VDCs that are affected by trafficking.
2. To maintain records of children over the age of 10 who are under the risk of trafficking.
3. To constitute all-party committees with representation of government line agencies, NGOs and local organizations and associations in problematic VDCs under the Chairpersonship of VDC Chairpersons.
4. To implement programmes identified locally on the basis of priority.
5. To run awareness, campaigns in problematic VDCs by mobilising District Child Welfare Board.

6. To coordinate programmes of various agencies like government line agencies, NGOs and local elected bodies with regard to girl trafficking.
7. The national-level NGOs are required to consult and cooperate with the DTFs while conducting programmes directed against girl trafficking in the districts.
8. To monitor, supervise and evaluate all activities carried out in the districts in this regard.
9. To set up an emergency fund in the form of a revolving fund by mobilizing local resources.
10. DTFs in bordering districts are required to discuss with their counterparts in the adjoining provinces of the neighbouring countries to work out solutions to the problem.
11. To send information about girls trafficking or any threat or chances of trafficking to agencies concerned at the earliest.
12. In the district where police headquarters have launched a programme in this area, the chief of the District Police Office will function as the member secretary of the DTFs.

4. VDC/Municipality-level Task Force

The composition of the VDC/Municipality-level Task Force is as follows:

<i>SN</i>	<i>Officials</i>	<i>Responsibility</i>
1.	Chairperson/Mayer, VDC/Municipality	Chairperson
2.	Secretary, VDC/Municipality	Vice-Chairperson
3.	Women Members, VDC/Municipality (not exceeding 5)	Member
4.	Representative, Nepal Red Cross Society	Member
5.	Representative, Nepal Children's Organization	Member
6.	Health Teacher, Local School	Member
7.	Chief, Local Health Center/Health Post	Member
8.	Chef, Local Police Unit	Member
9.	Representative, Local Bank	Member
10.	Women Health Worker, Local level worker	Member
11.	Chief, Local Family Planning Programme Unit	Member
12.	Representative, Local Chamber of Commerce and Industry	Member

Annex II

National policy to eliminate and prevent trafficking of women and children on trafficking adopted in 2000

In 2000, in pursuance with commitment made at international, regional and national levels, the Government (the MoWCSW as focal ministry) had adopted thirteen focus areas for its national policy to eliminate and prevent trafficking of women and children on trafficking, which were:

1. Public awareness campaigns on trafficking will be carried out at a large scale.
2. Action will be taken to remove laws that discriminate against women.
3. Various institutions of the Government, I/NGOs, and private sector will be mobilized to combat the problem of trafficking in women and children.
4. The MoWCSW will act as the 'focal point' for carrying out programmes against trafficking.
5. The Government will open its door for cooperation with the bilateral and multilateral donors to combat the problem of trafficking.
6. The Government will protect the human rights of women and children.
7. Heavy fines will be imposed on the traffickers and exploiters of women and children. The fines collected will be utilised to provide financial assistance to the victims.
8. Steps will be taken to control and prevent the spread of sexually transmitted diseases and HIV/AIDS.
9. The Government will take necessary steps to alleviate poverty and provide employment opportunities to women of high-risk communities.
10. District level co-ordination committees will be formed to function as information centers and for collecting data, co-ordinating local level activities and raising awareness to combat trafficking.
11. The Government will establish co-ordination committees at the national, district and village/municipality levels to control trafficking.
12. Provisions will be made for carrying out formal and vocational education.
13. Rehabilitation programmes for the rescued women and children will be organized in collaboration with NGOs.
14. Step will be taken to seek the commitment of Political parties to combat against trafficking of women and children.

Annex III

Steering Committee formed by the Ministry of Women, Children and Social Welfare (MoWCSW) to prepare the initial report under the Optional Protocol

The Coordination Committee was formed under the leadership of Mr. Punya Prasad Neupane, Secretary of the MoWCSW. The Committee is as follows:

- | | | |
|-----|--|----------|
| 1. | Mr. Mahendra Prasad Shrestha, Joint Secretary, MoWCSW | Convenor |
| 2. | Mr. Kedar Paudel, Joint Secretary, MoLJPA | Member |
| 3. | Mr. Bhupendra Paudel, Joint Secretary, Ministry of Defence | Member |
| 4. | Mr. Dharma Raj Shrestha, Executive Director, CCWB | Member |
| 5. | Mr. Ritu Raj Bhandary, Under Secretary, MoWCSW | Member |
| 6. | DSP Ms. Durga Singh, Chief, WCSC, Nepal Police | Member |
| 7. | Ms. Devina Pradhananga, Deputy Director, Department of Education, MoES | Member |
| 8. | Ms. Giri Raj Subedi, Section Officer, MoHP | Member |
| 9. | Mr. Shesh Narayan Paudel, Section Officer, MoHA | Member |
| 10. | Mr. Bhanu Pathak, UNICEF Nepal | Member |
| 11. | Mr. Lakshmi Prasad Dhakal, Under Secretary, MoWCSW | Member |

Report writing:

- | | |
|-----|---|
| 12. | Mr. Chandrika N. Khatiwada, Child Rights Activist, Kathmandu, Nepal |
|-----|---|

Contributing Members:

- | | |
|-----|---|
| 13. | Mr. Shiva Prasad Paudel, Save the Children Norway Nepal |
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Annex IV

List of international and regional instruments to which Nepal has expressed its commitments

International instruments:

- Participation in the First World Congress against Commercial Sexual Exploitation of Children (Declaration) held in Stockholm, Sweden in 1996
- Participation in the Fourth World Conference on Women held in Beijing in 1995
- In 1990, World Declaration and Plan of Action for the Protection and Development of Children, 1990
- In 1990, ratified the UN Convention on the Rights of the Child, 1989
- In 1991, ratified the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979
- In 1992, International Programme on Eradication of Child Labour, 1992
- In 1963, ratified the Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices of Similar to Slavery, 1956
- In 1997, Amsterdam Declaration, 1997
- In 1997, ratified the ILO Convention (no. 138) on Minimum Age for Admission to Employment, 1973
- In 2000, ratified the ILO Convention (no. 182) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999
- In 2001, ratified the ILO Convention (no. 29) on Forced or Compulsory Labour, 1990
- In 2001, Yokohama Declaration on Commercial Sexual Exploitation of Children, 2001
- In 2002, UNGASS Declaration, A World Fit for Children 2002
- In 2005, ratified the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000
- In 2005, ratified the Optional Protocol of the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000
- In 2005, ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Regional level commitments:

- First SAARC level Bangalore Declaration on Children, 1986.
- Second SAARC level Colombo Declaration on Children, 1992.
- In 1996, the Third SAARC Ministerial Meeting on Children held in Rawalpindi expressed commitment to combat inter and intra-country trafficking in children and assist victims of violence due to prostitution and sexual exploitation by evolving administrative, legal and rehabilitative structures both within and between member States.

- In 1997, the Ninth SAARC Summit of Heads of State or Government held in Male similarly expressed grave concern over the trafficking of women and children within and between countries and pledged to co-ordinate their efforts and take effective measures to address this problem. The resolution pointed out that the existing legislation in member states should be streamlined and strictly enforced for simplification of repatriation procedures for the victims of trafficking.
- In 1998, the Tenth SAARC Summit of the Heads of State or Government held in Colombo adopted a draft Convention for Preventing and Combating Trafficking in Women and Children. The Convention was passed by the 11th SAARC Summit held in Kathmandu on January 2002.

Annex V

Some information about the educational status of Nepali children

As per the statistics (Flash Report I of 2007–08 of Department of Education), the following are the some education related information.

Total number of schools and school student ratios

Total number of recorded schools in 2007–08 was 29,448 in the country. Out of the total, 29,220 are primary, 9,736 lower secondary, 5,879 secondary and 1,246 higher secondary levels. The distribution of schools by eco-zone shows there are 3,645 schools in Mountain, 15,218 in Hill, 2,121 in Valley and 8,464 in *Tarai* zone respectively. On average, the school student ratios were 1:151.2 at primary, 1:148.3 at lower secondary and 1:114.2 at secondary levels in the beginning of the school year 2007–08.

Total number of enrolment at primary level by eco-zone

<i>Eco-zones</i>	<i>Girls</i>	<i>Boys</i>	<i>Total</i>	<i>% in total</i>	<i>% of girls' enrolment</i>
Mountain	181 778	191 716	373 494	8.5	48.7
Hill	936 463	938 802	1 875 265	42.4	49.9
Valley	113 311	121 556	234 868	5.3	48.2
Tarai	928 211	1 006 876	1 935 087	43.8	48.0
Total	2 159 763	2 258 950	4 418 713	100.0	48.9

Out of total 4,418,713 students in primary level, 1,334,195 are in grade one and 945,504 are in grade two. The share of the students in grade one and two to the total enrolment are 30.2 per cent and 21.4 per cent respectively. At the primary level, the enrolment share of *Dalit* is 19.2 per cent, *Janajati* 40.9 per cent and for others is 39.9 per cent. It is increased by 1.5 per cent in *Dalits* and 3.2 per cent in *Janajatis* compared to last year. Likewise, the enrolment of girls at primary level is 2,159,763 which is 48.9 per cent of the total enrolment, where *Dalit*, *Janajati*, and others girls' enrolment share is 48.6 per cent, 49.6 per cent and 48.9 per cent respectively. In total the gender parity index (GPI) at primary level is 0.96, for *Dalit* is 0.95, *Janajati* 0.98 and for others is 0.93 in the school year 2007–08.

Enrolment at lower secondary level by social groups

<i>Social groups</i>	<i>Girls</i>	<i>Boys</i>	<i>Total</i>	<i>% of enrolment in total</i>	<i>% of girls</i>
<i>Dalit</i>	63 782	78 056	141 838	9.8	45.0
<i>Janjati</i>	283 209	298 026	581 235	40.3	48.7
Others	333 081	387 361	720 442	49.9	46.2
Total	680 072	763 443	1 443 515	100.0	47.1

The total number of secondary enrolment is 671,183, of which 308,839(46.0 per cent) are girls. The share of enrolment by eco-zone is 6.1 per cent in Mountain, 39.6 per cent in Hills, 11.8 per cent in Valley and 44.6 per cent in *Tarai* zone respectively.

The enrolment share of *Dalit* in total is 6.4 per cent, which is lower than the enrolment share at primary and lower secondary levels. However, it shows that the *Dalit* enrolment share at secondary level is quite low compared to their population share, but in comparison to previous year, the share is increased by 1 per cent. The enrolment of *Janajati* is increased by 8 per cent as compared to last year. The share is 37.0 per cent for *Janajati* and 56.6 per cent for others.

Enrolment at secondary level by social group

<i>Social groups</i>	<i>Girls</i>	<i>Boys</i>	<i>Total</i>	<i>% in total enrolment</i>	<i>% of girls</i>
<i>Dalit</i>	18 129	24 900	43 029	6.4	42.1
<i>Janjati</i>	118 611	129 865	248 442	37.0	47.7
Others	172 099	207 579	379 712	56.6	45.3
Total	308 839	362 344	671 183	100.0	46.0

The GER at lower secondary level was 78.8 per cent with 75.9 per cent for girls and 81.6 per cent for boys. Similarly, the overall GER at secondary level was 55.9 per cent with 52.4 per cent for girls and 59.3 per cent for boys. At the lower secondary level, GER has increased by 7 percentage points, as compared to the last school year 2005–06.

The total number of teachers

The table reveals that, in total there are 162,693 teachers, of which 16,677 are in Mountains, 75,999 are in Hills, 17,591 are in Valley and 52,426 are in *Tarai* zones. The proportional representation of all levels of teachers is 10.3 per cent, 46.7 per cent, 10.8 per cent and 32.2 per cent in Mountain, Hill, Valley and *Tarai* zone respectively. In total, 48,033 (29.6 per cent) female teachers are reported for all levels, of which 3,556 (21.3 per cent) are in Mountains, 20,839 (27.4 per cent) in Hills, 8,826 (50.2 per cent) in Valley and 14,862 (28.3 per cent) in *Terai* zone.

Student teacher ratio in all types of schools by eco-zone and level

<i>Eco zone</i>	<i>Total</i>	<i>Primary</i>	<i>Lower secondary</i>	<i>Secondary</i>
Mountain	30.5	29.9	38.0	24.4
Hill	36.1	34.0	48.4	31.7
Valley	26.1	24.0	36.5	20.7
Tarai	53.9	52.0	66.8	46.2
Nepal	40.2	38.5	51.7	33.4

Annex VI

Joint statement of Nepal-India Cooperation Meeting against Girl Trafficking and Prevention

1. We, the participants of Nepal-India Cooperation Meeting against Girls Trafficking and Prevention, have extensively discussed and shared our experiences regarding the growing problem of trafficking and selling of girls from Nepal to India and reached the conclusion to strengthen our struggle against such heinous crime by empowering the age old Nepal-India relations.
2. Though this is a beginning of our formal cooperation of administrative machinery to fight against the cross border trafficking in girls, we decided that we need to follow the process and establish a concrete mechanism in days to come, so that we will be able to translate our commitments into action through our joint cooperation.
3. We are fully aware that trafficking and selling in girls from Nepal to India has been increasing with every passing year and in order to prevent and control such crime, we seriously realize that the administrative cooperation across the border has to be strengthened to work together in all different points: points of origin, points of border and point of destination.
4. We fully realize that cross-border trafficking in girls across the Nepal-India border is a common problem and is an integral part of the growing border crime. No single solution can overcome such thing, that is why, we need to initiate a holistic approach in order to find out better solution regarding prevention, control and rehabilitation of the victims of trafficking in girls.
5. We strongly recommend to initiate a high level dialogue and develop a strong and effective strategy and mechanism to prevent and control trafficking in girls and rehabilitation of the victims of such crime through extensive cooperation between the administrations across India-Nepal border.

Finally, we appreciate the process and wish for better understanding and cooperation to fight the heinous crime against trafficking in girls.

(Signed by): A.K. **Rath**, Commissioner, Majaffarpur, India
R.B. **Thapa**, DIGP, Mid-Zon, Nepal
Amrik Singh **Nimbrani**, IPS, DIGP, Mujffarpur, India
Ram Swaroop **Sinha**, CDO, Parsa, Nepal
Indra Lal **Singh**, Field Officer, UNICEF, Nepal
Gauri **Pradhan**, President, CWIN, Nepal
Kiran **Tiwari**, General Secretary, CWS, Nepal
Rewat **Thapa**, SP, Parsa, Nepal
