

**Rethinking Child Trafficking in Nepal: *Victimhood,*
*Agency and Beyond***

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To the survivors

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Selected Abbreviations

| | |
|--------|------------------------------------------------------------------------|
| ADB | Asian Development Bank |
| CBS | Central Bureau Statistics |
| CCWB | Central Child Welfare Board |
| FWLD | The Forum for Women, Law and Development |
| GAATW | Global Alliance Against Traffic in Women |
| HTTCA | Human Trafficking and Transportation(Control) Act |
| INGOs | International Non-governmental Organisations |
| ILO | International Labour Organisations |
| MAC | Monitoring and Action Committee |
| MoFALD | Ministry of Federal Affairs and Local Development |
| MoHP | Ministry of Health and Population |
| MoHP | Ministry of Home Affairs |
| MoWCSW | Ministry of Women, Children and Social Welfare |
| NCCHT | National Committee on Control of Human Trafficking |
| NHRC | National Human Rights Commission |
| NGOs | Non-governmental Organisations |
| SAARC | South Asian Association for Regional Cooperation (SAARC) |
| TIP | Trafficking in Persons |
| UN | United Nations |
| UNCRC | United Nations Convention of Child Right Convention |
| UNICEF | The United Nations Children’s Emergency Fund |
| UNODC | The United Nations Convention Against Transnational Organized Crime |
| WCO | Women and Children Office |

Map of Nepal



Source: <http://www.lib.utexas.edu/maps/nepal.html> Accessed on: 10 May 2014

Abstract

The thesis sets out to critically analyse the national responses to child trafficking in Nepal. This has been approached by exploring: (1) the changing dimensions of child trafficking in Nepal and the reasons for the perpetuation of trafficking vulnerabilities; (2) the development of legislative approaches to child trafficking; and (3) the limits encountered in anti-trafficking interventions. The thesis situates the national responses to child trafficking within the existing debates on ‘children’s rights’, the universal notion of ‘childhood’, and ‘cultural relativism’. This facilitates an investigation into the applicability of the international human rights framework to the reality of specific socio-economic situations. Despite deploying a human rights standard in legislations and policies, there is very little evidence to suggest that the international human rights approach has been effectively applied in practice in Nepal. There are several persistent challenges for comprehensive responses to child trafficking in the country. The simultaneous use of two frameworks – the ‘victimhood’ and ‘agency’ approaches – has resulted in conflicting conceptualisations of trafficking vulnerabilities and variations in practices. The thesis suggests that it is crucial to rethink the child trafficking phenomenon and the approaches to interventions in Nepal. Trafficking of children is linked to broader problems facing the protection of children—such as child migration, children living in institutional care, livelihood opportunities for children, and working children, among others. It is argued that, in order to protect the rights of all vulnerable children, the focus cannot be restricted to anti-trafficking interventions. Unless the policies and programmes are integrated within broader issues of child protection, children will continue to become victims of trafficking and other forms of exploitation. The research calls for an alternative way of embedding interventions within communities so as to protect children from discrimination, abuse, and exploitation.

Chapter 1: Introduction

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to protection as are required by his or her status as a minor, on the part of his family, society and the State (Article 2 of the United Nations Convention on the Rights of the Child).

1.1 Introduction

Child¹ trafficking is not only a pervasive issue but also a much-contested phenomenon. It has been examined and understood with the use of different theoretical frameworks, which variously focus on organised crime, migration, gender or human rights issues (Ebbe, 2008; Lee, 2011; Amir and Beeks, 2006; Kempadoo and Doezema, 1998; Wijers, 1998; Montgomery, 1998; Heyzer, 2006; Crawford, 2010; Sanghera, 2012) (Chapter 2). Estimates show that approximately 1.2 million children are trafficked every year globally for the purpose of labour or sexual exploitation (ILO-IPEC, 2002). Exploitation of children – either through forced labour, sex or removal of organs – takes place within nations and across borders, resulting in a wide range of anti-trafficking interventions across countries (UNODC, 2000).

Recognising child trafficking as a violation of human rights, governments, non-governmental organisations (NGOs), and international non-government organisations (INGOs) have adopted several international instruments in the last decades. The 1989 *United Nations Convention on the Rights of the Child (CRC)* and the 2000 *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Trafficking Protocol) are among the key conventions (Chapter 2). These international human rights frameworks have broadly emphasised that governments

¹ In this thesis the term children refers to aged 0-18 years, which is the general standard contained in the CRC.

should take effective steps to ‘protect victims’, ‘prevent trafficking’, and ‘prosecute traffickers’ (known as the 3Ps) (Drew, 2009; Obokata, 2006).

South Asia is considered an interesting setting to study child trafficking (Kaufman and Crawford, 2011). Within South Asia, Nepal has been a key source country for sex trafficking and forced labour (UNICEF, 2008; Frederick et al., 2010; NHRC, 2012). For instance, the International Labour Organisation (ILO)’s (2002) report estimates that approximately 12,000 Nepali girls and young women, the majority of whom are under 16, are trafficked every year to Indian brothels. Trafficking of children in Nepal has, in recent years, taken different forms and is becoming increasingly complex. Forced child labour, organ donation, and inter-country adoptions have emerged as new forms of trafficking (Frederick et al., 2010; NHRC, 2012). Studies show that Nepali children are now trafficked to new destinations, including: the Middle East, Africa, Korea and China (NHRC, 2012; Frederick et al., 2010). Along with cross-border and external trafficking, there has also been a significant rise of trafficking within the country’s borders (Frederick et al., 2010).

The rapid growth in trafficking of children, alongside the increasing attention it has provoked at global level, has prompted Nepal to undertake several actions. A range of legislations, policies and practice guidelines have been introduced in a short period of time to embed international human rights instruments—in particular, the *Children’s Act, 1992*, the *Human Trafficking and Transportation (Control) Act, 2007* and the *Human Rights Standards for the Treatment of Trafficked Persons 1999*, developed by *Global Alliance Against Traffic in Women (GAATW)* (Chapter 6). It seems paradoxical that the problem of ‘child trafficking’ is yet to be resolved, even as national anti-trafficking initiatives have been amplified by governments, INGOs and NGOs in

Nepal. This has been observed in the recent US *Trafficking in Persons Report (TIP Report)* rankings. Nepal is still ranked in the Tier 2 category in the *TIP Report*, which is published annually by the Department of State. The *TIP Report (2015)* states that the country does not fully comply with the minimum standards required for the elimination of trafficking of persons.

Scholars argue that addressing the trafficking phenomenon within a human rights framework has remained problematic in practice (Obokata, 2006; Brysk, 2012; Kaye and Winderdyk, 2012; Jordan, 2012). There is envisaged a difficulty in formulating a ‘universally accepted’ understanding of rights and responses catering to specific requirements of local contexts (Kaye and Winderdyk, 2012; Fontana and Grugel, 2015). Further, scholars argue that the universalised responses are hard to achieve where there is little consensus on the definition of ‘human trafficking’ and ‘childhood (transition from childhood to adulthood)’ and that the debates on trafficking are driven by ‘polarised agendas’ (Kaye and Winderdyk, 2012; Mayall, 2004; Boyden 1997) (see below this Chapter and Chapters 2 and 3).

Responses to child trafficking in Nepal have, however, received very little scholarly attention and have yet to be included in broader debates. The country faces many challenges: stagnant economic growth, inequality (among rural people, castes, ethnic groups and women), endemic corruption, and political instability (discussed below). Given this, the thesis sets out to critically analyse the national responses to child trafficking in Nepal. In particular, the possibility of applying the international human rights framework effectively in a challenging socio-economic and political setting is questioned. The thesis illustrates how the application of the international human rights framework to deal with child trafficking has proven to be difficult in a complex social,

economic and political setting (see below). The intention of this thesis is, however, not to undermine the various international and national efforts in Nepal. Instead, I argue in this study that rethinking the child trafficking phenomenon and the approaches to interventions is crucial. Central to my research is the argument that child trafficking has become a complex social phenomenon—as argued in prior work (see Lee, 2011; Hynes, 2010; Pearce et al., 2013; Kaye and Winterdyk, 2012). I argue that, without contextualising the complexities of the risks associated with children who are in vulnerable situations (in a specific socio-economic setting), any attempt to protect the rights of trafficked children would largely remain rhetoric. Such knowledge may be valuable for policy makers and practitioners in their development of anti-trafficking strategies and their implementation in practice.

The remainder of the introductory chapter is organised in the following manner. The next section presents the research questions. Then I outline the research framework. This is followed by an account of the geographical, socio-economic and political circumstances that children are situated in. Lastly, I briefly present the structure and contents of the remaining chapters of the thesis.

1.2 Research Questions

This research asks a number of broad questions concerning Nepal's responses to child trafficking.

1. What are the changing dimensions of child trafficking in Nepal? what perpetuates trafficking and who are the vulnerable children?
2. What are the various child trafficking legislations and policies? how do the legislation and policies address the rights of the vulnerable? and are they guided by underlying assumptions?

3. Finally, what are the existing child trafficking interventions in practice? and what are the implementation strategies and its challenges?

The thesis is concerned precisely with whether the application of the international human rights framework has benefitted trafficked and vulnerable children, particularly surrounding the key debates on ‘children rights’, the universal notion of ‘childhood’, and ‘cultural relativism’ (Chapter 3). I will do this by highlighting the perceptions of the representatives of different agencies (governments, NGOs and INGOs) to gain an understanding of the anti-trafficking framework and its challenges/limitations. The analysis draws upon two linked literatures – ‘victimhood’ and ‘agency’ – to examine the tension between the two discourses that have shaped the understanding of child trafficking as a problem and subsequently have informed interventions.

This thesis intends to contribute to the existing body of knowledge on human trafficking whilst addressing the key concerns relating to responses to ‘child victims and their vulnerabilities’. This then calls for the acknowledgment of the particular needs and vulnerabilities of children while developing the interventions (Bokhari, 2008; Bovarnick, 2010; Pearce, 2010; Crawley, 2006). Studying the vulnerabilities of children in the context of trafficking in Nepal, the thesis also contributes to the existing debate on trafficking and childhood studies (Howard 2012; Amahazion, 2015; Kempadoo 2005; Gallagher 2010; Dottridge and Jordan 2012; James et al., 1998).

1.3 Situating the Research within a Framework

Trafficking of persons has been considered both a cause and a consequence for violation of human rights (Lee, 2011: 31). In the context of child trafficking, the United Nations Convention on the Rights of the Child (CRC) provides an international human rights framework for ‘the protection of the rights and dignity of the children who have

been trafficked or are vulnerable to trafficking' (Gallagher, 2010:65) (Chapter 6). Stainton Rogers (2009) argues that this universal ratification of the CRC has marked the beginning of the rights-based models in instigating policy and programmes for children. The CRC has therefore no doubt become instrumental in recognising children's rights as human rights in international legislation (Boyden, 1997). The CRC has encouraged States to be more responsible while addressing children's needs and interests, which has led to the introduction of new rights and the reconstruction of existing rights in order to promote a child-centred perspective (Boyden, 1997). More importantly, this model required a shift from a 'needs' discourse to one of 'rights' which treats children as 'social actors' allowing them to act themselves (Stainton Rogers, 2009: 150). In this model, children are envisaged as both capable of and entitled to have a say in what is done to and for them (ibid: 150). Lansdown (1995:107) argues that given the full implementation, the CRC may lead to substantial improvement in 'the status of children in society'.

Scholars have however questioned the adoption of universalised responses to localised issues (Simmons, 2009; Bissell et al., 2007; Fontana and Grugel, 2015; Kaye and Winterdyk, 2012). It has been argued that international standards do not necessarily lead to changes in practices and policies, nor necessarily resonate with the specific requirements of local contexts (Fontana and Grugel, 2015:62). As discussed in Chapter 3, criticisms have been made about the notion of childhood set up by the CRC (based on western perspectives) and 'the problems with applying it in certain situations' (Stainton Roger, 2009:152). Pupavac (2000 in Bentley, 2005: 110) argues that such standards reflect Western policies, which de-emphasise the influence of more diverse social, economic, political and cultural circumstances. What this means is that the Western perspectives on children and childhood are dominant in the theories and

concepts used in the global South (Chapter 3). Further, the programmes focused in the developing countries have been critiqued for using these western ideas about childhood, based on the assumption that they can be easily exported to local contexts (Mayall, 2004; Boyden 1997; Burman, 1996 in Woodhead, 2009). Why then impose such a western notion of childhood in the global South?

In fact, on the contrary, it has been argued that, since children's rights are developed differently at the local, national, and regional level, it requires global standards to consider the existing underlying principle of universal biological processes of children's development and welfare (Cassidy, 2012). It has been argued that *cultural relativism* should not be allowed to provide a barrier in implementing global standards in different cultural or economic circumstances (Alston, 1994). Notwithstanding the debate between 'universality' and 'relativity', Twum-Danso proposes a *middle ground* to bridge the gap between the CRC and local realities that allows us 'to engage in a discussion about how children's rights can be realised in ways that meet international standards, but also appreciate local realities – be they cultural, religious or socioeconomic' (2009:123).

Some other scholars advocate, not a *middle ground* constituting 'a happy compromise', but rather an adoption of the respective strengths of both universalism and relativism (Dembour, 2001:56). Dembour (2001:56) suggests that such a position would succumb to a 'pendulum motion'—an unstable state where, just as 'one accepts being drawn towards relativism, there is a moment when, getting as it were too close to it, one is compelled to revert towards universalism – and vice versa'. As a researcher, I have come across such theoretical debates and I feel that I have experienced such a 'pendulum motion' whilst carrying out this research. This was also evident in my

interview sample, causing ambiguity in ‘how’ the international norms and principles would (or rather could) apply in the local context (Chapter 7).

Scholars have stressed that consideration of (universal) children's rights calls for a discussion of the nature of childhood – for instance, the power differential between adults and children and other forms of inequalities that exist universally – while taking into consideration different cultural and historical forms (Ennew et al., 1996; Boyden, 2015). In light of these on-going debates and theoretical discussions, this thesis unpacks the constructions of childhood in the current ‘trafficking policy and practice’ in Nepal so as to understand the complexities of children’s vulnerabilities.

As a social category, ‘childhood(s)’ provides a broader context for contextualising and analysing my empirical findings. For this, the thesis relies on the ‘sociology of childhood’ paradigm that emerged in the early 1990s, promoted primarily by James and Prout (1990, 1997). This is to say that, children are not viewed as passive subjects of social structures and processes (James and Prout, 1997). The key features of the ‘sociology of childhood’ paradigm are delineated as follows. Firstly, childhood is understood as a social construction: as distinct from biological immaturity or any other apparently natural or universal feature of a human group. Secondly, childhood is a variable of social analysis, which can never be divorced from other variables such as class, gender, or ethnicity. Thirdly, children’s relationships and cultures are worthy of study in their own right, independent of the perspective and concern of adults. Fourthly, children are and must be seen as active in the construction and determination of their social lives. Children are not just passive subjects of social structures and processes. Fifthly, ethnography is a useful methodology for the study of childhood. Finally, studying childhood is to engage in and respond to the process of reconstructing

childhood in society (James and Prout, 1997: 8). Of the six features of the ‘sociology of childhood’ paradigm, ‘childhood as a social construction’ and ‘the importance of childhood as a variable of social analysis which can never be entirely separated from other variables such as class, gender, or ethnicity’ (ibid.: 8) are key to the research framework which is further discussed in Chapter 3.

The thesis argues that highlighting the situation of children that diverges from the western notion of childhood could be one way of moving closer to understanding the problem of child trafficking in Nepal. I argue that the way ‘child trafficking’ legislation and policies have been constructed, with a certain notion of childhood in mind (the western notion of childhood), does not ‘fit’ neatly with the realities of all ‘trafficked children’ and their specific socio-economic conditions.

In relation to the thesis, the section below serves as a starting point by drawing on the geographical, socio-economic and political circumstances that children are situated in. This overview of the context will help illuminate the problems of enacting the policies and practice of anti- trafficking with a human rights framework in the later parts of the thesis.

1.4 Brief overview of Nepal

The Federal Republic of Nepal is one of the oldest states and the only non-colonial country in South Asia (Malik et al., 2009:371). It is landlocked, situated between India and China—the two emerging nations in the global economy. The country shares an open border with India in the Southern region while access to China is difficult due to the Himalayan terrains. Nepal is segregated into three main regions: the mountain region, the hilly region and the plain Terai region. It covers a total area of 145 to 241

kilometres in width and 885 kilometres in length (ibid.: 372). The Himalayas have a sparse population density because of infertile land and harsh climate. While the hilly region includes 68 percent of the total landmass, the Terai region is now the most densely populated region because of the agricultural opportunities and the open border with India (ibid.). It is argued that this open border with India has historically aided the flow of trafficked women and children from Nepal (Shaha, 1989; Ghimire, 1994; Terre des Hommes, 2003; NHRC, 2008).

1.4.1 Political History

The political history of Nepal has consisted of uncertainties, a systematic power abuse, corruption and government instability throughout its establishment as a state. Understanding the political history of Nepal has interested many scholars (Malik et al., 2009; Hachhethu and Gellner, 2010; Rajamohan, 2008 and Shaha, 1989). The ancient history goes back to the ‘Kirati’—who invaded Kathmandu in the early first millennium BC and remained in power for a thousand years (Malik et al., 2009: 373). The *Licchavis* ruled Kathmandu after the *Kiratis*, marking the beginning of the Nepali medieval era.

The modern history of Nepal commences with the conquest of the Kathmandu valley by Prithvi Narayan Shah in 1767. As the king, he unified the small Nepali Kingdoms to create one nation. During the Shah reign, the British East India Company showed interest in Nepal which eventually erupted in the Anglo-Nepali war of 1814-16. The war ended with Nepal signing a peace treaty (known as the Sugauli treaty) which confined Nepal to the existing territory. At this time, migration of Nepali men started and they were recruited by the British and Indian army (Hutt, 1989).

After the Shah dynasty, Nepal was ruled by the Rana regime (1847-1951), which was the epitome of a family dictatorship. The Rana rulers took over the administrative, judiciary and executive power and maintained stringent control over the population. The years of exploitation from the Rana regime, led to the emergence of a national movement by political parties (Nepali National Congress and Nepali Democratic Congress) in the 1950s (Malik et al., 2009: 377). This revolution gave birth to the idea of democracy and a multi-party democratic system, terminating the century-long dictatorship of the Rana regime. It is argued that many Rana oligarchs fled to India, together with their *keti syams* (maids who were young women from rural areas) (Ghimire, 1994; Shakya, 1999). These maids were eventually sold for prostitution in the brothels of India (ILO-IPEC, 2001), marking the beginning of cross-border trafficking of women and children in Nepal (Chapter 3).

With the collapse of the Rana regime, Nepal held its first election in 1959 which resulted in the formulation of the democratic government. However, the government was short lived, as King Mahendra dismissed the ruling government. A new constitution was promulgated which established a party-less Panchayat system (1960-1990) known as the council system (Malik et al., 2009: 388). In 1990, the people's movement once again restored multi-party parliamentary democracy. The country witnessed a rise of rural-urban migration for non-agricultural sectors—such as the service sector, factory work (including cement, carpet, and brick factories), and the tourism industry.

However, economic growth was stifled due to political instability and the Maoist insurgency (ibid., 445). In 1996, the Communist Party of Nepal (Maoists) declared a civil war – also known as the ‘People’s War’ – that lasted a decade. The aim of the

armed struggle was to abolish the special privileges of the King and royal family, and to promulgate a new republican constitution (Rajamohan, 2008:212). During this period, and even today, Nepal has witnessed political instability, deterioration of security, and economic stagnation. For instance, the country witnessed twelve governments between 1990 and 2002 (Malik et al., 2009: 394). Corruption was rampant after the decade long armed conflict (The Economist, 2011).

This practice is prevalent at all levels of government and is becoming the definitive characteristic of the country. In 2008, a constituent Assembly was elected with the aim to set up a 'new' Constitution so as to build a 'new' Nepal. Only recently, in June 2015, the political parties finally resolved to work on the constitution after the country got hit by the earthquake. Despite the new constitution, the country continues to witness political unrest among ethnic groups. Stagnant economic growth, inequality – among rural people, castes, ethnic groups and women (discussed below) – and endemic corruption are some of the challenges that have been affected by the absence of effective governance.

1.4.2 Socio-cultural and economic situations

Nepal's economy is primarily based upon agriculture, employing almost half of the total population and producing one third of the Gross Domestic Product (GDP). Agricultural production is based on traditional methods, with a lack of irrigation and difficult terrain leading to low agricultural productivity. Consequently, the level of poverty is significantly higher in the rural areas (Lawoti, 2007). Nepal, in recent years, has experienced a huge mobility in cross-country migration. According to the

Population Census of Nepal 2011, migration has increased over the past 10 years by 52 per cent. According to the Central Bureau of Statistics (CBS) in 2011 foreign employment contributed to 23.45 per cent of Nepal's GDP (in NHRC, 2011). Nepal is therefore heavily reliant on the remittance economy (Dahal, 2014; Sapkota, 2015). However, income inequality is claimed to be the highest in Asia, overtaking countries such as China and the Philippines (The Economist, 2011).

The country is characterised by being a multi-religious, multi-lingual, multi-ethnic and multi-racial society (Malik et al., 2009: 378). Hindu is the largest religious group, with 80 per cent of the population according to 2001 census, and was constitutionally a Hindu Kingdom until 2006. Other religions include Buddhist, Muslim, Kirati and Christianity, which are on the rise today. More than 100 languages and dialects are used in Nepal—which mainly belong to the Indo-Aryan and Tibeto-Burman families (ibid., 378).

The caste system was introduced by the Licchavis—a system which is prevalent even today. In the beginning of the fourteenth century, the Mallas ruled Kathmandu and forced the caste system on local inhabitants (the Newars) (ibid., 374). Today, Nepal's major ethnic and caste groups are classified into four major sub-groups: the caste hill Hindu elite, the indigenous nationalities known as 'Adibasi Janajati', the Madhesi people living in the Terai, and the Dalit (ibid.). The cultural diversity among ethnic and caste groups – with varied festivals, languages, food, and people, arts and artefacts – makes Nepal unique but complex.

The Hindu caste system in Nepal has apparently categorised people into four groups: the Brahmans (who rank highest), the Chhettri (who are often wealthy), the Vaisyas (who are middle class and are mainly Nepal's small business owners/entrepreneurs),

and the Sudras (who are the lowest caste)—additionally, there are the Dalits (who are even lower in status than the Sudras) (IIDS, 2008). Although the caste system and untouchability was abolished by the civil code in 1963, it is still widely practiced in Nepal. This caste system has shaped Nepal's political culture, facilitating discriminatory practices among the lower caste both socially and economically. Consequently, the majority of Adibasi Janajati, Madhesi and Dalits live below the poverty line (Chakma, 2008 in Crawford, 2010:18). Nepal is therefore not only poor but also an unequal society among different sectors: ethnic and caste groups, geographic regions, gender, and rural and urban areas (Malik et al., 2009:423).

1.4.3 Gender, power, and status

The UN Gender Development Index (GDI) of 2015 ranks the status of women in Nepal 145 out of 188 countries (Human Development Reports, 2016). According to the Central Bureau of Statistics (CBS) of 2012, the female literacy rate in Nepal is lower (57 percent) than the male literacy rate (75 percent), thereby limiting the skills of women (in MoWCSW, 2015). Women in Nepal face unequal power relations and gender-based barriers due to a patriarchal society (ADB, 2010), where men are considered superior to women in every aspects of their personal, social and domestic life (Sangroula, 2001). Patriarchal discrimination is stronger among the higher-caste Terai Hindus and Muslims than among the indigenous groups (Malik et al., 2009:382) and the status of Nepali women is often linked to the social and economic positions of the men in their household (mainly their fathers and husbands). Though Nepali women work much longer than their male counterparts, their economic contributions have largely been unnoticed (ibid., 2009). According to Aengst (2001), the employed women receive wages at least twenty five percent less than those received by men.

The materially and symbolically lower status and power of women and girls in Nepal constitute a root cause of gender-based violence, trafficking and other forms of exploitation. Murphy (2003) argues that the lower social status of women has tended to contribute to culturally specific forms of violence and oppression (in Crawford, 2012:100). However, it is important to acknowledge that the socio-cultural and economic conditions of girls and women are to some extent improved because of Nepal's international commitments, such as the ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1991 (ADB, 2010).

1.4.4 The situation of children in Nepal

Nepal is a country of young people. According to the preliminary report of the national population census 2011, prepared by Central Bureau of Statistics (CBS), children under 18 comprise almost 50 percent of Nepal's population and children (below 16 years of age) comprised 39 percent of the total population. The number of male children (50.93 percent) is slightly higher than female children (49.07 percent). The situation of children is a real challenge to the protection of children's rights in Nepal. Below are some examples that highlight this point well. Firstly, children's health has not improved, mainly due to the disparity of rates of early childhood mortality among rural and urban residence, caste, and ethnic groups. For instance, infant mortality is higher in rural regions of Nepal (36.6 percent) and lower in urban regions (35.9 percent) (in MoWCSW, 2013a: 227). Furthermore, children in rural areas lack adequate nutrition. According to the Ministry of Health and Population (MoHP) (2010) report, approximately 46 percent of children under the age of five are stunted, lacking adequate nutrition (in MoWCSW, 2013a: 226).

Secondly, although it is compulsory for all children to go to school up to lower secondary school, a large number of children do not attend schools. According to the Central Bureau of Statistics (CBS), 4 percent of children are enrolled in primary education and among them 49 percent are girls. However, there are disparities in school enrolment among Dalit (19 percent), Janjati (38 percent), and children who are disabled (due to inadequate special education programmes). Similarly, according to the CBS, the dropout rate is still high—for example, 6.5 percent from primary level in the academic year 2009 (in MoWCSW, 2013a:243) .

Thirdly, despite several attempts – for instance, the issuance of the ‘Birth, Death and other Personal Incidences Act of 1976’ and campaigns for promoting birth registration by the government, with NGOs and INGOs – birth registration is still a problem today (MoWCSW, 2013b). The main barrier to birth registration is lack of awareness of the importance of birth registration, logistic hurdles (in rural areas), and financial burden among others (UNICEF, 2002: 12). The problems have persisted throughout Nepal – particularly in the rural areas. A survey found out that only 35 percent of children aged zero to four years old were registered; the majority of birth registration is among children living in urban areas (MoHP, 2006). To address the issue of birth registration, the government has recently introduced a system for compulsory submission of birth certificates for school enrolment and other purposes; the implementation of this is still questioned.

Fourthly, due to the persistence of poverty, child labour forms part of the support for the subsistence of families. In Nepal, 40 percent of children (approximately 3.14 million) are economically active. It is estimated that more than half of these

economically active/working children (approx.1.6 million) are child labourers.² There are approximately 0.62 million children in hazardous forms of child labour—twenty percent of working children in Nepal (NHRC, 2012:39).

Fifthly, traditional practices such as child marriage, child labour – including bounded labour (*Kamaiya*)³ – and *Chaupadi pratha*⁴ are still prevalent. The prevalence of the early marriage of girls and *Chaupadi pratha* in Nepal has adversely impacted the educational opportunity of girls, as compared to boys. Child marriage, although illegal, is still a persistent problem in Nepal, with 10 percent of girls married at the age of 15 and more than 40 percent of women aged 20–24 married by the age of 18 (Centre for Reproductive Rights, 2013). Studies claim that the practice of child marriage is still widespread (see Plan Nepal et al., 2012; ICRW and Plan International, 2013).

Sixthly, children in institutional care is also a growing trend. According to the Central Child Welfare Board (CCWB) (2012), there are 743 child care homes in 32 districts in Nepal (NHRC, 2012). In 2011, the number of children in child care homes was reported to be approximately 56 percent of which were boys and 44 percent were girls and young women (ranging from 3 to 16 years old) (ibid.). The phenomenon of street children is another problem in Nepal. The CCWB and the National Alliance of Organisations for Street Children (NAOSC) estimates that approximately 800 children are taking shelter

² Child labour includes ‘street children’ (informal economy), child domestic workers, factory workers (formal sector), and so on. However, the ILO distinguishes between children working in economic activities and child labour. Child Labour includes children in economic activities aged 5-14, while children aged 12-14 working in hazardous conditions are the worst forms of child labour (ILO, 2002).

³ The *Kamaiya* system is a form of agricultural debt bondage among the low caste, *Tharu* ethnic group in the western district of Nepal during the 1950s. Female children who work as domestic workers in the home of the master are known as *Kamaliri* (Kara, 2012).

⁴ *Chaupadi pratha* is a cultural practice relating to menstruation. When girls or women are menstruating, they are considered impure. During their periods, they are restricted from entering their house and are made to live in a shed. They are not allowed to visit temples or even attend schools. Although this practiced was banned in 2005, it is still commonly practiced in the mid and western region of Nepal (Kara, 2012).

in the streets of Kathmandu, among them 95 percent are boys and 5 percent are girls (MoWCSW, 2013a:249).

Lastly, the process of globalisation around the world has also led to new developments that challenge traditional beliefs and practices. The proliferation of modern technologies and western influence has altered the perception of people in terms of defining what constitutes a 'better life' (Crawford, 2010:106). While Nepal is witnessing the rise of the 'new middle class [...] acquiring and maintaining this new social positioning is not easy for Nepalis' (ibid.:110). On the other hand, widening income and wealth inequalities in society has instigated desire among the young people to uplift the quality of their life and to access so-called middle-class practices. An increasing number of children and young people are therefore abandoning their homes to fulfil their desire of a better life—who are an easy target for traffickers (Chapter, 3).

All of these situations shape children's experiences in the context of Nepal. In the thesis, I therefore argue that without focusing on these broader vulnerabilities, trafficking will continue to persist. In doing so, some of the commonly held assumptions in the literature and the policy/practice discourses relating to homogenous views of 'trafficking vulnerabilities' are challenged (Chapter 5). Ultimately, this will help us look beyond the 'ideal victim' narratives (Chapter 3). I also argue that vulnerabilities along with children's roles in decision-making (for a better life or escape from abuse) should be discussed within the emerging trafficking policy and practice discourses. The 'overarching theme of agency or decision-making in regard to children' should not, however, be misunderstood 'for indifference to the suffering and plight of exploited and trafficked children' (UNICEF, 2009a: 20). A careful consideration should be given to such a dichotomy. The thesis further highlights the need to move

beyond an overwhelming focus on anti-trafficking interventions informed by the 3Ps framework.

1.5 A Summary of the Structure and Contents of the Thesis

The thesis is divided into two parts. The first part of the thesis includes the background, theory and method. The second part of the thesis presents the research findings. The first part of the thesis is structured in the following way:

Chapter 1 – *Introduction* – provides an overview of the country’s geography, history, politics, and its socio-cultural and economic situation. In addition, there is a discussion of gender, power, class, and the situation of children in the country. The chapter presents the research within a framework and outlines its aims and research questions.

Chapter 2 – *Neither ‘new’ nor ‘news’: Understanding Child Trafficking* – critically reviews the existing literature to identify explanatory frameworks offered to understand the responses to the phenomenon of trafficking. The chapter reviews the definition of trafficking in persons and child trafficking in order to understand debates around the notion of consent, victimhood and agency. The key theoretical perspectives – such as ‘push and pull factors’, migration, gender, organised crime, and human rights – identified by trafficking scholars and advocates from INGOs and NGOs are presented. In doing so, the chapter outlines the gaps in the literature, arguing that there is a need for a renewed focus to be placed on understanding child trafficking vulnerabilities within a broader social context.

Chapter 3 – *Construction of Childhood(s)* – discusses the construction of childhood(s) in order to understand the theories that explain the challenges of the application of the international framework in its efforts to respond to the problem of trafficking in Nepal.

The chapter presents the history of childhood in the West, leading to a new conception of childhood, and then discusses the key debates on the children's rights, universal notion of childhood, and cultural relativism. The multiplicity of perspectives on childhood and the construction of childhood in 'child trafficking' discourses in Nepal is presented to contextualise the analyses/interpretations of the empirical findings. It also sets out the difficulties in exporting a Western notion of childhood to diverse socio-economic contexts and traditional belief systems. Acknowledging the challenges, the chapter presents key debates in relation to the notion of 'victimhood' and 'agency' in the trafficking discourses. The empirical analyses in this thesis are built on an understanding of childhood and children rights in these aspects.

Chapter 4 – *Methodology: My Research Process* – explains the methods used in the research, data collection, and sampling, as well as reflecting upon the research area/field. This chapter covers the methodological issues pertaining to the research as well as the explanation of the validity and reliability of the study. The chapter also sheds light on the methodology that has been applied, ethical considerations, limitation of the study and how data will be analysed.

The second part of the thesis is divided into 4 chapters – each of the chapters are designed to explore the research questions outlined above. Chapter 5 – *Nepali Perspectives on Child Trafficking: The findings from within* – analyses the current trends of child trafficking. The chapter also attempts to demonstrate the trafficking process—tracing it from the place of origin to the final destination and identifying the various actors involved in the process to underscore its complexity. In this chapter, I reassess the arguments that the child trafficking literature has stressed. In order to ultimately bring an end to child trafficking phenomena, it is critical to take measures

that address the social, economic, and political factors that not only made children vulnerable to trafficking but that have allowed the trafficking situation to occur and continue in the first place.

Chapter 6 – *The Construction of Child Trafficking Legislation and the Influence of Anti-Trafficking Organisations in Nepal* – provides a critical account of the constructions of child trafficking legislations and policies adopted by Nepal. This chapter describes and analyses the international treaties and conventions ratified by Nepal in relation to child trafficking. While examining the background and provisions of ‘child trafficking’ legislation and policies, the chapter also refers to the debates explored in Chapter 3 on the construction of childhood(s). The chapter also examines the role of enforcement actors who are the key players in the fight against child trafficking in Nepal—mainly the government, civil society, international organisations, and the media.

Chapter 7 – *The Limits of the Current Response to Child Trafficking* – explores the interventions/practices aimed at tackling child trafficking. The chapter explores whether or not the different programmes currently adopted have benefited the child victims. The international human rights framework (i.e. the ‘3Ps’) has to some extent shaped the way the interventions (programmes on awareness raising, rescue, and social reintegration for the victims) are developed. The key underlying values and assumptions that seem to have had an impact on the nature of the activities offered by anti-trafficking organisations will be unpacked and discussed. In particular, it raises concerns that, while many of the current approaches to child trafficking are effective, some are not.

After Chapters 5, 6, and 7 have explored the important issues concerning the emerging trends and causes of trafficking, as well as the different forms of vulnerabilities and existing responses to child trafficking, Chapter 8 – *Discussion: Victimhood, Agency and Beyond* – analyses the findings (of the earlier chapters) with regard to the national responses to child trafficking. While the international human rights framework (i.e. the ‘3Ps’) serves as the backbone of the national responses to trafficking, two approaches are employed by the anti-trafficking community in Nepal—namely, those centred on the concept or category of ‘victimhood’ and those centred on the concept or category of ‘agency’. The existence of the simultaneous application of these two frameworks has created conflicts in practice. This chapter concludes by providing some suggestions on how anti-trafficking interventions can improve and protect the rights of child victims.

Chapter 9 – *Conclusion* – will provide the outcomes of the analysis, its contribution to the field, and highlight four areas for future research indicated by this study.

Chapter 2: Neither ‘new’ nor ‘news’ : Understanding Child Trafficking

2.1 Introduction

The trafficking of women and children is perhaps the most discussed and debated phenomenon in the literature. Using a range of theories, scholars have explained the trafficking of women and children by linking it to the economic and criminality conditions, the globalisation of crime, and/or a migration problem, and other gender and human rights-related issues (Ebbe, 2008; Lee, 2011; Amir and Beeks, 2006; Kempadoo and Doezema, 1998; Wijers, 1998; Montgomery, 1998; Heyzer, 2006; Crawford, 2010; Sanghera, 2012). Scholars argue that such an understanding of trafficking, one that draws on and applies diverse perspectives, has contributed to the instigation of a wide variety of responses to trafficking (Lee, 2011; Mutso, 2009). This chapter reviews prior works that have drawn on a range of perspectives both to study child trafficking phenomena and explain responses to them. In doing so, the chapter attempts to identify the explanatory frameworks so as to offer an understanding of the responses to the trafficking phenomena in Nepal.

The first section of this chapter reviews the definition of trafficking in persons and child trafficking as they have been used in prior works. This is crucial in order to generate an understanding of ongoing debates around issues of consent, victimhood, and agency (Pearce, 2009; O’Connell Davidson, 2005; Bovarnick, 2010). In addition, attempts have been made to discuss the key theoretical perspectives applied to study the trafficking phenomena, mainly the ‘push and pull factors’, migration, gender, organised crime, and human rights. This chapter speaks to the necessity of reimagining the problem of child trafficking by putting in place a renewed focus on child trafficking vulnerabilities while developing and executing interventions.

Most of the studies in trafficking available in Nepal are in the form of reports, conference papers, international and regional action plans, and best practices as propagated by national and international organisations (see ILO-IPEC, 2002; UNICEF et al., 2009a; UNICEF et al., 2009b; UNICEF, 2003). There is limited theoretically-underpinned work in the study of national responses to child trafficking. Analysing the programmes and strategies developed to combat the problem of trafficking at international, regional, and national levels, this study adds theoretical understanding to the trafficking responses/interventions being practiced in Nepal.

2.2 Defining trafficking in persons and child trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000, provides the definition of human trafficking in its Palermo Protocol; this is perhaps the most widely used definition of trafficking at a global level (see Experts Group on Trafficking in Human Beings, 2004; Laczko and Goździak, 2005; Hughes, 2000; Salt, 2000; UNICEF et al., 2002). In Article 3 of this protocol, ‘human trafficking’ or ‘trafficking in persons’ is explicated as:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by mean of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of other or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking

in person” even if this does not involve any of the means set forth in subparagraph (a) of this article
(d) “Child” shall mean any person under eighteen years of age (UNODC, 2000: 42-43).

The Trafficking Protocol envisages three interrelated elements in defining trafficking in persons, namely, the act (what is done), the means (how it is done), and the purpose (why it is done). The protocol acknowledges the complexity inherent to trafficking led to by varied actions and outcomes. Central to the Trafficking Protocol is an attempt to extend the concept of trafficking by focusing beyond prostitution (Lee, 2011).

However, the Trafficking Protocol is not without its critics (see Crawford, 2010; O’Connell Davidson, 2005; Lee, 2011; GAATW, 2007; Pearce, 2011). An important issue that has instigated debates concerns the umbrella definition of operationalisation incorporated in the protocol (see Bovarnick 2010; O’Connell Davidson, 2011; Anderson and O’Connell Davidson, 2003; Kelly, 2005a; Ebbe, 2008; Goździak 2008; Bovarnick, 2010; Dottridge and Jordan, 2012). Similarly, the existing definition of trafficking in persons tends to be problematic in the sense that it is difficult to operationalise it uniformly in anti-trafficking interventions. This is because different individuals tend to undertake different decisions considering the diverse actions and outcomes which fall within the umbrella definition of trafficking. Criticising the Trafficking Protocol, Miller (2004 in Kaye and Winterdyk, 2012:71) for instance argues that:

by focusing on crime control and security concerns, approaches to trafficking embedded in the protocol neglect the full range of rights needed by trafficked persons, such as safe migration and movement or equitable economic conditions in home or destination countries.

Another debated issue with the Trafficking Protocol has been its attempt to envisage children as a special case. The terms ‘child trafficking’ and ‘trafficking in children’ are

differentiated from trafficking in persons mainly on the basis of the age of the person being trafficked. For instance, Article 3 of Trafficking Protocol has defined child trafficking as ‘the recruitment, transportation, transfer, harbouring or receipt of any person under the age of 18 for the purposes of sexual or labour exploitation, forced labour, or slavery’ (UNODC, 2000: 42-43). The essence of this definition is that the issue of ‘consent’ is largely irrelevant in the case of children under 18 years of age (Dottridge and Jordan, 2012; UNICEF, 2003). This implies that any children transported for exploitative work are considered to be trafficking victims, whether or not they have been deceived (Dottridge and Jordan, 2012; Kooijmans and Glind, 2010; UNICEF, 2003).

However, attempts to define the children on the basis of their age (i.e. under 18 years) have appeared problematic. A key issue concerns obtaining ‘consent’ (Huijsmans, 2008:335). A number of pieces of research contest the notions of ‘agency’ and ‘consent’ imbedded in the definition of child trafficking (see O’Connell Davidson, 2005; Bovarnick, 2010; Pearce et al., 2013; Vijeyarasa; 2015). For instance, Hynes (2010) has contested the underlying assumption of the trafficking protocol, which states that children are not eligible to provide their consent for trafficking.

It has been suggested that the Trafficking Protocol has invalidated children’s consent and discarded their own sense of ‘agency’; this lack of agency may increase the victimisation of the child (Bovarnick, 2010: 83). Bovarnick (ibid.: 83) suggests that the definition of trafficking offered in the protocol has placed children in a safeguarding or protection arena. In a similar vein, Huijsmans (2008: 335) argues that the Trafficking Protocol is weak in terms of differentiating between older children and younger adults. Such a distinction is important in understanding why children migrate and the reasons

for their being trafficked. All these debates show the importance of considering the extent to which children can be perceived as agents, able to intersect with the structures surrounding their lives (Mayall, 2000).

Such debates on defining trafficking offer an important context in this thesis in terms of analysing how childhood has been constructed within the trafficking policies and practices that are in motion in Nepal (Chapter 6 and 7). In the case of child trafficking interventions, children are often viewed as ‘victims’ and vulnerable on the basis of their age (Bovarnick, 2010). Huijsmans (2008, 335-336) argues that such views, which are built on the age of children, leave ‘no room for children’s evolving capacities and ignores other sociocultural and economic heterogeneity hidden within the singular notion of “the child”’. An interesting aspect of Nepal lies within the differences in defining the age of a child in and across regulations and legislations (discussed further in Chapter 6).

Prior work shows that the notion of ‘childhood’ is based on social constructions, which in turn are influenced by the values of particular cultures and social groups (James and Prout, 1990; Stainton Rogers et al., 1989; Jenks, 2005) (Chapter 3). Hynes (2010) argues that children are usually perceived differently in different contexts and may therefore have different experiences of childhood. The notion of consent largely invalidates this contextual diversity that is experienced by children. For instance, children in some countries ‘have experienced a forced, rapid transition to adulthood, drawn into armed conflict and/or into child labour’ and their experience of childhood can be different from children in other contexts (Arocha, 2010; Breuil, 2008 in Pearce, 2011: 1425). It is argued that children tend to leave a situation of abuse and neglect that

may deprive them of experiencing their childhood (Bovarnick, 2010; Melrose et al., 2008 in Pearce, *ibid*: 1425). The diversity of childhood and the agency of the trafficked children and young people in different contexts have largely been ignored in the protocol (O'Connell Davidson, 2005)(Chapter 3). Pearce (2009:48) points out that it is crucial to consider whether children and young people are capable of giving informed consent in an adverse situation so as to exercise their right to live by abandoning poverty, war, and violence. It has also been argued that considering 'children's consent to "exploitation" irrelevant' tends to 'deny them executing any form of agency' (Huijsmans, 2008: 336) both at a conceptual and practical level. A more nuanced understanding of childhood and agency is therefore needed, which considers the specific context in which the children are placed.

2.3 Approaches to understanding trafficking in general and child trafficking

Studies in trafficking have drawn on different approaches to framing the nature and causes of trafficking in persons (Anderson and O'Connell Davidson, 2003; Kelly, 2005a; Kelly, 2005b; Segrave et al., 2009). For instance, traditionally, studies on human trafficking are largely based on economic approaches (see Beeks and Amir, 2006; Haque, 2006; Laczko and Thompson, 2000; Salt, 2000). The economic approach has envisaged trafficking as 'a consequence of "commodification", which is meant to generate profits out of people's mobility' (Hague, 2006:11). Much attention has been paid to discussing how international movements have been managed and directed by a set of institutions that are driven by profit-making objectives (Laczko and Thompson, 2000: 26).

Other theories that have dominated the trafficking studies include the globalisation of crime and migration (Ebbe, 2008; Lee, 2011). Scholars argue the use of such diverse theories has resulted in the pursuit of different approaches to developing and responding to trafficking. For instance, while some responses have been developed that relate trafficking with migration, other responses equate trafficking with prostitution and organised crime (Lee, 2011; Mutso, 2009). The following section discusses some of the overlapping phenomena in trafficking and in the responses to it, mainly ‘push and pull’ factors and issues relating to gender, migration, organised crime, and human rights. Attempts have been made to identify the overlaps and gaps in prior work drawing on these different approaches. The chapter emphasises the need for reimagining trafficking discourses in order to generate a comprehensive insight into child trafficking vulnerabilities in a broader socio-economic and cultural context.

2.3.1 The ‘Push and Pull factor’ of trafficking

Mutso (2009: 282) states that despite becoming increasingly interdisciplinary, the bulk of studies on trafficking focus on the “‘push and pull’ factors’ to study the emergence of the trafficking phenomena and to estimate the scale and scope of the trafficking problems. Such studies argue that identifying the trafficking process is complex in that it involves a combination of factors, mainly the push and pull factors, which include, amongst others, the use of force, deception, manipulation, poverty and economic need, social negligence, and abuse (ILO-IPEC, 2002; Laczko and Gozdzia, 2005; Piper, 2005). Evidence drawn from both academic work and reports by anti-trafficking organisations shows that a number of factors are involved in triggering trafficking (O’Connell Davidson, 2005). For instance, O’Connell Davidson (2005) points out that none of the push and pull factors acts alone; rather, a combination of these factors is

responsible for trafficking. The 'push' (supply-side) factors mainly include poverty, lack of educational opportunities, and cultural attitudes and discrimination against girls. On the other hand, the 'pull' (demand-side) factors relate to economic growth/demand for cheap labour (working in homes on farms and at carpet looms), arranged marriages, selling of organs, and demand for commercial sex work (ILO-IPEC, 2002; Laczko and Gozdzia, 2005; Piper, 2005).

That poverty has been a key factor propelling women and children into trafficking is evident in extant work (Kelly, 2002; Dottridge, 2004). The supply side (push factors) of trafficking is mainly driven by poverty and a desire for a better life. A lack of educational opportunities, dysfunctional families, and cultural norms and discriminations have been other factors promoting the supply side of trafficking.

Children belonging to poor families and communities in developing countries are forced to contribute to their household's income. Evidence shows that poor families who are unable to raise/feed their children themselves have few alternatives but to send their children to urban areas or other countries in which they have better opportunities to support themselves and contribute to the family income (ILO-IPEC, 2002). The evidence shows that traffickers tend to target children from vulnerable communities as they can easily lure them by offering employment opportunities and higher wages (ILO-IPEC, 2002).

Studies have demonstrated that education has become another important push factor for trafficking (Dottridge, 2004; UNICEF, 2003). A lack of education is reckoned to be a cause for institutionalising all forms of child exploitation, including trafficking. Studies have illustrated that the risk of trafficking is higher when the level of education is low among children and their parents (UNICEF, 2003). This also means that children

who are deprived of schooling are more exposed to trafficking. ILO-IPEC (2001) points out that most of the trafficked children in Nepal are from illiterate households. A lack of education amongst the children can have a number of consequences. For instance, they are unqualified to get decent jobs, unaware of the alternatives to improve their circumstances, and less informed about the risks involved in migration (Dottridge, 2004).

Along with poverty and illiteracy, studies show that children experiencing domestic abuse and neglect are more vulnerable because they leave home and/or are encouraged by traffickers to leave home (UNICEF, 2003; UNICEF et al., 2002). Such children, who are largely unaware of the trafficking intentions, tend to be easily attracted by offers from traffickers. UNICEF (2003) states that it is easier for the traffickers to approach vulnerable children who are distant from their friends and family.

On the other hand, the 'pull' factors that have been created by globalisation – for instance, increasing demand for commercial sex work, employment, and education opportunities both within the country and abroad – have become other stimuli for trafficking (Melrose, 2010, Bovarnick 2010; O'Connell Davidson and Farrow, 2007; Pearce et al., 2013). This is illustrated in a study conducted by the ILO-IPEC (2002), which identifies two main sources that have elevated the trafficking of children to a global level: economic growth and growing demand of the commercial sex industry. Economic growth has resulted in increased demand for cheap migrant labour, including child labour, for domestic service. For instance, the ILO-IPEC (2002) illustrates a migration trend amongst children from Cambodia and Myanmar to Thailand for various types of employment. The same study shows that such irregular migrations, led

to by a demand for cheap labour, have increasingly become a key form of child trafficking (ibid).

Recent studies illustrate that the growth of the international and national sex industry has been another factor elevating the demand for children for commercial sex (Shelly, 2007; ILO-IPEC, 2002). The ILO-IPEC (2002) has highlighted the myth prevailing in many communities that children are less vulnerable to contracting HIV and other sexually transmitted diseases (STDs). It is argued this myth has also played a role in increasing the demand for child sex workers (ILO-IPEC, 2002). In a similar vein, the ever expanding sex tourism enhanced by technological advancements such as internet chat rooms, online sites, and cell phones has put vulnerable young children into high-risk situations, in danger of becoming victims of child prostitution and child pornography (ILO-IPEC, 2002; Shelly, 2007).

A number of studies have demonstrated circumstances in which both the push/supply and pull/demand factors have acted together in the trafficking of women and children in Nepal (Aengst, 2001; IIDS and UNIFEM, 2004; UNICEF, 2009b; Hennink and Simkhada, 2004; Piper, 2005; Asia Foundation and Horizon Program, 2001). These studies argue that the push/supply factors of trafficking, which operate at the place of its origin, can involve both the immediate and root causes for trafficking. On the contrary, the pull/demand factors are influenced by development at a global level, as well as by the extent to which such developments have created demands for cheap labour markets, domestic servants, and sex workers – all of which have made children more vulnerable to trafficking.

2.3.2 Gender issues (Abolitionist and Pro-sex perspective)

A stream of feminist literature has related trafficking with the sexual slavery that prevails in a patriarchal gendered context (see Amir and Beeks, 2006; Kempadoo and Doezema, 1998; Wijers, 1998; Montgomery, 1998; Heyzer, 2006; Crawford, 2010; Sanghera, 2012). An essence of the feminist perspective perhaps lies in its attempts to unpack the debates on ‘forced’ versus ‘voluntary’ prostitution and trafficking (Kempadoo and Doezema, 1998). The extant literature draws on the two main perspectives while defining the relationship between trafficking and prostitution, i.e. the abolitionist and the pro-sex perspectives. The abolitionist perspective has campaigned against trafficking and women in prostitution (see Farley, 2004; Raymond, 2004; Balos, 2004). As such, no distinction has been made between trafficking and voluntary, commercial sex work (Uy, 2011; Limoncelli, 2009). The abolitionists hold the view that women in prostitution should not be penalised in the process of rescue and rehabilitation (Chuang, 2010: 1669). They have considered trafficking for sexual exploitation distinct from other forms of trafficking, and have argued that the former should be envisaged more as forced labour (O’Brien et al., 2013). Such a view has also been shared by some of the major anti-trafficking organisations at the global level, for instance, *The Coalition Against Trafficking in Women (CATW)* (Evans and Bhattarai, 2000).

On the other hand, the pro-sex work perspective has attempted to make a distinction between ‘voluntary sex work’ and ‘trafficking’ (see Kempadoo and Doezema, 1998; Segrave and Milivojevic, 2005). This approach has denied the view that envisages all paid sexual labour as exploitative, and has called for the acknowledgment of women’s choice to engage in sex work (see Limoncelli, 2009; Evans and Bhattarai, 2000; Banyopadhyay, 2008; Doenza, 1998; Kempadoo, 2005; Worthen, 2011). Of

the key proponents of this perspective, the *Global Alliance Against Trafficking in Women (GAATW)* – an international network of organisations working in the field of human rights and trafficking – has emerged as the most influential (Evans and Bhattarai, 2000). Advocates of this perspective have questioned many of the anti-trafficking efforts (mainly police rescue and rehabilitation) for their failure to identify voluntary prostitution and offer support to sex workers who do not consider themselves victims of trafficking (Kempadoo, 1998; Jana et al., 2002; Ahmed and Seshu, 2012). Scholars, however, argue that such a distinction between trafficking and consensual entry is blurred in practice (Frederick, 1998; Busza, 2004).

It is evident in a number of studies that women and children are assumed to be ‘universal victims of patriarchal oppression’ (Musto, 2009: 285). Mentions are made that they are vulnerable, particularly in a context in which gender discrimination abounds (Kelly, 2002). Research has shown, in fact, that many trafficking victims are from some rural areas of Nepal, and that their vulnerability can be linked to tradition of early marriage (NHRC, 2008; UNICEF, 2003).

Crawford (2010: 9) has averred a feminist stance in order to give an understanding of sex trafficking in Nepal. She has envisaged the trafficking of Nepali girls and women as a product of social construction that is led to by the various gender, power, and status issues that prevail in the society. Providing an example in Nepal, she argues that the notion of sex trafficking is constructed and assimilated in a particular context reflecting the specific socio-cultural and economic characteristics of that context. In a similar vein, the IIDS and UNIFEM (2004) in their study of Nepal state that men’s patriarchal perception, attitudes, and beliefs towards children and women can also play an important role in facilitating both the supply and demand sides of trafficking. In fact, the women and children in Nepal are in many instances conceived of as commodities

that can be sold and resold in the markets (IIDS and UNIFEM, 2004). It is therefore argued that a contextual understanding of trafficking is of utmost importance prior to developing policies and guidelines intended to reduce or eliminate sex trafficking (Crawford, 2010: 164).

However, although the importance of gender and its role in understanding the trafficking of women and children cannot be denied or ignored, the feminist stances are not without their critics. The feminists are particularly criticised for their attempts to polarise debates over trafficked women's status as either 'victim' or 'agent' (Kaye and Winterdyk, 2012: 61). Furthermore, Obokato (2006: 28) argues that by focusing too much on prostitution and sex trafficking, the feminists have largely undermined the importance of 'a comprehensive analysis of trafficking' and its causes.

2.3.3 Organised crime issue

Another important aspect of trafficking discussed in the extant work conceives of the phenomena of trafficking as an organised and complex crime (Beeks and Amir, 2006; Salt 2000; Haque, 2006). Trafficking is viewed as a violation of legal provisions in which criminal networks are involved (Laczko and Thompson, 2000; Haque, 2006). Lee (2011: 24) argues that this approach to trafficking has gained a wider recognition, especially after its incorporation in the *United Nations Convention Against Transnational Organised Crime* of 2000 and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children 2000*.

Both the academic work and the reports published by NGOs and INGOs, all of which have an extensive focus on 'traffickers' and 'trafficking processes', have attempted to establish a link between trafficking and organised crime. For instance, Salt and Stein

(1997: 467) have offered a three-stage model covering mobilisation (recruitment), movement, and insertion in their attempt to explain the movement of people between their countries of origin and their destination (Salt and Stein, 1997: 467). In fact, many of the interviewees have offered a similar explanation of trafficking process, which will be discussed in more detail in Chapter 5.

In a similar vein, UNICEF (2009) states that trafficking has increasingly become a multidimensional and complex phenomenon in that it takes place at multiple levels, including the child's home communities, transit points, and final destinations. The trafficking process involves a network of many different actors, mainly the recruiters, intermediaries, transporters, employers, brothel owners, and friends and relatives (Kelly, 2002). In the context of Nepal, for instance, Hennink and Simkhada (2004) have identified four major routes: through brokers, independent migration to urban areas, deception and false marriages, and by the use of force/abduction. They argue that trafficking is primarily conducted by those who have some sort of relationship with the victims. In addition, it is suggested that trafficking has been widespread not only in the villages, but also in urban areas through migration.

The bulk of trafficking studies have attempted to identify the routes through which the trafficking takes place. In its study, UNICEF (2003) states that cross-border, internal, regional, and international trafficking have significantly increased in recent years as the economic disparities between countries have widened. International and cross-border trafficking have, to a large extent, resembled internal trafficking because they involve transporting the children from poor countries to rich countries in order to meet the growing demands of the labour market and the commercial sex industry. Dottridge

(2004) states that such a form of cross-border trafficking has further increased with the expansion of the European Union.

Similar to cross-border trafficking, children are increasingly trafficked outside the region for the purpose of commercial sex. They are forced to perform various exploitative domestic services and encounter exploitative labour situations (Frederick et al., 2010). Studies show an increase in the number of children forcefully trafficked to the sex industry in recent years. This is because of the emergence of new destinations in Asia, Europe, and the U.S.A (Ghimire, 1994; Terre des Hommes, 2003; Sangroula, 2001; NHRC, 2011). In its study of 2012, the National Human Rights Commission (NHRC) shows the emerging destinations to which girls and young women are being trafficked. While external trafficking is led to by cross-border trafficking to India, the Gulf countries, Malaysia, and other destinations, internal trafficking in Nepal is mainly driven by the rise of entertainment industries within the country/urban areas (*ibid.*).

This has resulted in making trafficking both an internal and external phenomenon, at least in South Asia (Coomaraswamy and Satkunanathan, 2006; Huntington, 2002). For instance, the ILO-IPEC (2002) states that children in South and South-East Asia are internally trafficked from rural to urban cities for seasonal work. Most of these workers are sexually exploited in the course of their work and forced to work as prostitutes. As stated by Dottridge (2004), such internal forms of trafficking are driven by the demand for commercial sex work, mainly in the tourism sector. However, studies mainly focusing on internal trafficking and its connection with cross-border and international trafficking are few (ILO-IPEC, 2002; Laczko and Goździak, 2005). Some of the trends in internal trafficking are elaborated in Chapter 5.

Scholars argue that the organised crime approaches have paid less attention to the processes and outcomes of trafficking (Laczko and Thompson, 2000; Haque, 2006). Understanding the processes and outcomes of trafficking is paramount to the process of identifying the victims and developing an effective anti-trafficking strategy (Laczko and Thompson, 2000; Haque, 2006). Furthermore, Obokato (2006: 32) argues that the linkage between trafficking and organised crime itself does not necessarily provide a full picture of trafficking. As a result, as will be shown in Chapter 5, the trafficking of children has become a complex phenomenon. The fact that traffickers have started using sophisticated and organised mechanisms by mobilising recruitment agencies and websites has further added to these complexities. Chapter 5 discusses in detail the ambiguities inherent to trafficking.

2.3.4 Migration issue

Musto (2009) argues that trafficking is often envisaged as a continuum of migration. There is, in fact, a lack of clarity within the dominant trafficking paradigm in terms of differentiating trafficking and migration (Kelly, 2005b; Lee, 2007; Sanghera, 2012). Studies have illustrated a number of challenges in identifying trafficked children led to by a lack of definition and clarity within the terms frequently used in trafficking, for instance, smuggling or illegal migration (Dottridge and Jordan, 2012; IOM, 2007; Laczko and Goździak, 2005; Lee, 2007).

For example, UNICEF (2008) has illustrated that trafficked child-victims can be misidentified as migrant children, victims of sexual exploitation and abuse, juvenile delinquents, or children living on the street. It is therefore challenging to distinguish a trafficked victim and a child from other children who have experienced other forms of

exploitation or abuse. Anderson and O'Connell Davidson (2003) state that child trafficking victims are often lost in highly politicised debates, most of which focus on organised crime and illegal migration. Lee (2005) and Di Nicola (2007) argue that the lack of an attempt to define trafficking or to relate it to other phenomena – for instance, the movement of people across borders – has become an obstacle in articulating effective research and policy implementation in this field. Similarly, Bovarnick (2010:80) argues that 'the ways in which "trafficking" is constituted discursively in policy and practice affect outcomes for trafficked children'. Bovarnick's (ibid:80) study illustrates the existence of two main trafficking discourses: 'immigration-centred' and a 'child-centred' in the UK.

In a similar vein, Dottridge and Jordan (2012) state that government child protection officials and NGOs have little understanding of the nature of work allocated to the child migrants to earn money for a living. They argue that it is therefore difficult to make a distinction between trafficked children and child labour. For example, in the United States, trafficking victims often remain unidentified as they have limited access to rehabilitation and reintegration programmes (Gozdziak and MacDonnel, 2007). Bump and Duncan (2003) state that initial contact with unidentified child victims is often made by officials working in immigration or other detention facilities, local law enforcement officers, and other units' service providers (e.g. educational, social-service, and medical providers). Calls have therefore been made for a greater understanding of the reasons why 'child trafficking' is so complex and difficult to define (Dottridge and Jordan, 2012; Hynes, 2010). One of the main problems of the debates on trafficking is the underlying migration perspective where there are political imperatives to curb migration so as to prevent trafficking (Chuang, 2006, Anderson and O'Connell, Davidson, 2003).

2.3.5 Human rights issue

The trafficking of children is claimed to be violation of human rights (Obokato, 2006; Lee, 2011). Such violations are echoed in a number of international declarations and regional conventions. In particular, the United National Convention on the Rights of the Child (CRC) 1989 draws attention to the problem of trafficking in relation to children's rights. In recent years, understanding of trafficking from a human rights framework has been on the rise (Obokata, 2006; Gallagher, 2010; Drew, 2009; Jordan, 2002; Pearson, 2002). Obokata (2006: 6), for example, points out that:

A human rights framework is beneficial because it not only allows different actors to pay close attention to the plight of the victim, but also promotes a holistic approach to trafficking in which due consideration is given to wider issues such as the causes and consequences of the practice.

Jordan (2002: 30) states that this approach has led to a shift from viewing trafficked persons as objects to recognising them as rights-bearing individuals. Proponents of these perspectives argue that anti-trafficking measures should adequately protect the rights of trafficked persons (Dottridge 2007; Sanghera 2012). Pearson (2002) has pointed out that there is an increasing awareness of the need for a human rights framework to combat trafficking effectively. Heyzer (2006: 101) states that 'a gender- and rights-based approach is a vision and practice of development that ensures fundamental human entitlements- social, economic and political- in ways that expand human choices and promote human well-being and empowerment'. According to Heyzer (2006), anti-trafficking intervention strategies must integrate human rights principles as codified in national laws, policies, and programmes. In addition, economic empowerment of women has been emphasised as it ensures gender equality in the family, community, and society (ibid.: 115). In fact, the feminist rights based approach to understanding the problem of trafficking is considered to be more

comprehensive (as compared to economic and criminal approaches) in terms of analysing ‘safe migration’ and ‘citizenship rights for women and girls’ (Heyzer, 2006:117).

Emphasising the importance of human rights approaches, the *Global Alliance Against Traffic in Women (GAATW)* in its report (2007) has demonstrated that anti-trafficking responses have often failed to incorporate abuses of human rights. The GAATW has called for the importance of understanding the impact and effectiveness of anti-trafficking responses, within a broader human rights framework. The human rights approach has been envisaged as an important strategy in addressing trafficking issues and developing effective responses.

The human rights treaties and conventions serve more or less as a conceptual basis and theoretical framework for transnational responses to human trafficking (Bruckmuller and Schumann, 2012: 105). A wide range of programmes and strategies have been developed at international, regional, and national levels to combat the problem of trafficking of women and children. An essence of the human rights approach perhaps is its ‘attempts to articulate legal obligations imposed upon States, such as obligations to prohibit trafficking, prosecute traffickers, protect victims, and address the causes and consequences of the practice’ (Obokato, 2006: 35). For instance, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, along with providing the internationally agreed definition of trafficking (discussed above), has classified anti-trafficking responses into 3 Ps: ‘Prevention of trafficking’; ‘Protection and support of victims’, and ‘Prosecution of traffickers’ (Winterdyk et al., 2012: 11). The ‘3Ps’ paradigm has become an integral component of international efforts to combat the problem of trafficking.

As argued earlier (Chapter 1), one of the key debates of the human rights approach to trafficking concerns the adoption of universalised responses to localised issues (Simmons, 2009; Bissell et al., 2007; Fontana and Grugel, 2015; Kaye and Winterdyk, 2012). For example, Fontana and Grugel (2015: 61) argue that international standards do not necessarily lead to changes in practices and policies or resonate with the specific requirements of local contexts. Extending this debate, albeit writing in the context of child labour, Fontana and Grugel (2015: 74) suggest that the articulation of international standards may not be relevant to local reality, in which actors are ‘deeply divided’ in practice. Kaye and Winterdyk (2012: 68) further note that formulating a ‘universally accepted’ understanding of rights and responses remains problematic, particularly in a context ‘where there is little consensus on the definition’ of human trafficking and where debates on trafficking are driven by polarised agendas.

An understanding of the trafficking phenomenon is continuously evolving in many contexts, and different actors hold a variety of different views on trafficking (Obokato, 2006: 37). Obokato (2006: 37) further argues that this diversity in understanding trafficking has been promoted by the ‘changing nature of the act or perhaps to changing societal priorities’. Sanghera (2012), for instance, offers an example of regulations as well as trafficking discourses in South Asia that are based on the trafficking myth. Such a myth has perpetuated unrealistic stereotypes of the trafficking episodes, the causes of trafficking, the transportation of trafficked persons, trafficked destinations, and intervention activities influenced by organisational, cultural, or political agendas (Frederick, 2012). Against this backdrop, the thesis attempts to unpack the various debates/narratives that have influenced child trafficking interventions in Nepal.

Furthermore, emphasising the importance of human rights approaches, UNICEF (2008) has in its recent study assessed various legal, policy, and implementation frameworks to address this phenomenon. The study has demonstrated that, although the initiatives may have been designed and implemented with the best intentions, the interventions could inadvertently expose the children to risk and violate their rights. A nuanced understanding of the human rights approach to trafficking within broader social complexities is therefore considered paramount (Kaye and Winderdyk 2012; Pells, 2012). Central to my thesis is the critical analysis of the approaches providing a basis for anti-trafficking interventions in Nepal (Chapter 7).

Although the extant literature has discussed the causes and consequences of trafficking, policies, and practices, none of the previous studies in the context of Nepal have sought to explore responses to child trafficking/vulnerabilities in particular. Trafficking in Nepal is focused on the trafficking of women who are over 18 years when trafficked (Sanghera, 2012): such is evident in the reports published by NGOs and INGOs (Asia Foundation and Horizon Program, 2001; American Bar Association, 2011; FWLD, 2014). For instance, the Asian Foundation and the Horizon Program (2001) has undertaken the study of girl trafficking in Nepal, and posed a question: ‘How effective are Nepal’s policies and programmes in shaping cohesive and effective national anti-trafficking strategy?’ In a similar vein, Huntington (2002) has attempted to clarify the conceptual frameworks used to define trafficking and identify the potential intervention models in South Asia by providing examples of Nepal. The study demonstrates that the shelter homes for the trafficked victims isolate trafficked persons and contribute to, instead of reducing, their stigmatisation (Huntington, *ibid*). Huntington (*ibid*) mainly has identified the characteristics of successful rehabilitation programmes such as

counselling, educational services, linkages with livelihoods training and credit schemes, and residential facility. Furthermore, the ILO et al. (2009b) in its report suggest the importance of child-friendly standards and guidelines for child centred anti-trafficking programmes. Despite a number of measures and recommendations to protect children in certain situations, it is argued that there is a lack of systematic approaches to addressing the issues of child trafficking in Nepal (ILO-IPEC, 2002).

In its recent study, the American Bar Association (2011) has sought to provide an assessment of anti-trafficking legislation, existing regulatory frameworks, and other available infrastructures. The methodology applied in the study was qualitative, drawing on legal provisions, secondary materials, interviews, and focus group with key informants. The Forum for Women, Law and Development (FWLD) has facilitated a similar study attempting to analyse the new anti-trafficking law of Nepal, and comparing this law with the previous one. Both qualitative and quantitative data have been used to determine the effectiveness of the anti-trafficking law. In Nepal, a study conducted by the Ministry of Women and Children Social Welfare (MoWCSW) (2013c) has presented an account of different government-led initiatives to combat trafficking in Nepal. What is striking, however, is that none of the aforementioned studies have sought to explore child-specific legislations, policies, and programmes. Moreover, these studies are rather descriptive in that they appear in the form of reports, and lack critical and theoretical underpinnings when analysing the anti-trafficking responses. The current study responds to this theoretical gap in the literature by offering a holistic understanding of child trafficking responses in Nepal.

2.4 Conclusion

Child trafficking as a complex social phenomenon

This chapter has attempted to shed light on the various approaches to trafficking, ranging from ‘push and pull factor’, to those that relate trafficking with various issues, mainly gender (abolitionist and pro-sex perspectives), migration issues and human rights issues. All of these perspectives highlight the complexities inherent to the understanding of trafficking. Nevertheless, Kaye and Winterdyk (2012: 72) point out that trafficking discourses are often too simplistic and that discussions are polarised, for instance, around ‘rights versus restrictions; state versus nongovernment actors; victims versus agents; and coercion versus consent’. ‘Rather than presenting human trafficking as a single event (e.g., prostitution or irregular movement across borders), trafficking should be presented as “series of interrelated events along an extended continuum that spans a given period of time”’ (Ahmed, 2005: 208 in Kaye and Winterdyk, 2012:73). Some scholars have therefore emphasised the importance of adopting a sociological approach which considers trafficking as a complex phenomenon (Lee, 2011; Hynes, 2010:142; Pearce et al., 2013; Kaye and Winterdyk, 2012). The sociological approach is crucial to overcome such polarised understandings of trafficking and to reflect on the diversity of vulnerabilities and trafficking experiences (Kaye and Winterdyk, 2012:72).

Viewing trafficking as a broader social process rather than a single event enables a clear understanding of the background of the children and human right contexts within countries of origin, countries of transit, and final destinations (Hynes, 2010; Pearce et al., 2013). It has been argued that trafficking begins at a point when the traffickers exploit ‘vulnerabilities’. A sociological understanding of childhood is therefore

particularly emphasised as it allows practitioners to understand the trafficking *process* by looking into the children's circumstances and their needs and aspirations (Hynes, 2010:142). Hynes (2010: 156) argues that explaining 'vulnerabilities' through 'push' and 'pull factors' can be inadequate given the ambiguity in explaining how children are 'pushed' into migrating and how the desire for a 'better life' 'pulled' children to the exploitative trafficking situation. In the extant work it is evident that trafficking tends to flow from regions (for example, South Asia) in which children's socio-economic position is marginalised and in which exploitation/abuse are entrenched (Crawford, 2010; Hynes, 2010). In such a context, children are usually perceived differently and they may have different roles within the family as compared to children in other contexts (Chapter 3). Gallagher (2010, 247) argues that in order to develop better interventions, however, it is crucial to understand why some children are vulnerable and others are not. It is emphasised that the root causes of child trafficking need to be investigated in closer relation to other child protection concerns (Dottridge, 2004; Dottridge and Jordan, 2012; UNICEF, 2009). Moreover, Mayall (2000) points out that the children's welfare has been interconnected with women's welfare and women's conditions, and that therefore, to a large extent, children's welfare has been subsumed in a 'women-children' theme. She suggests that there is a need to study the social conditions of childhood mainly for two purposes. First, it allows children's voices to be heard, and as a result their voices would be taken into account. Second, it provides a strong ground for working towards implementation of their rights. This thesis considers these arguments, which are discussed in detail in the subsequent chapters. It argues that unpacking the different constructions of children and childhood is crucial to generate insights into the complexities around children's vulnerabilities in a broader socio-economic context (Chapter 3). The next chapter is devoted to

discussing construction of childhood(s). By considering the pertinence of some of the existing debates relating to universal notions of 'childhood', 'children's rights', and 'cultural relativism', the chapter provides an understanding of the notions central to trafficking responses. This understanding is important in order to control the trafficking problem and protect children in Nepal.

Chapter 3: Construction of Childhood(s)

3.1 Introduction

Scholars have stressed that the consideration of (universal) children's rights calls for discussions of the nature of childhood in different cultural and historical forms (Ennew et al., 1996; Mayall, 2000; Boyden, 2015). In light of this call, this chapter focuses on 'childhood(s)' as a social category, in order to provide a broader context for empirical analysis. The research aim is to critically analyse the national responses/interventions (both policy and practice) and whether the application of international standards has benefited trafficked and vulnerable children; the chapter highlights the key debates surrounding children's rights, universal notions of childhood, and cultural relativism. The chapter further argues that there is no single view of childhood in Nepal, and that the children's experiences are varied based on their social and economic status and geographical location. There are apparent ambiguities in imposing a Western notion of childhood on the diverse socio-economic contexts of Nepal. In addition, the chapter also considers the way childhood is constructed within 'trafficking' discourses. It puts forward the victimhood and agency discourse that is used, in subsequent chapters, to analyse responses to the current 'trafficking policy and practice' in Nepal. The remainder of the chapter is structured as follows: the next section provides an overview of childhood in the West. This is followed by a section on children's rights, the universal notion of childhood, and cultural relativism. Next is an overview of childhood in Nepal, while the final section will discuss notions of 'victimhood' and 'agency' in trafficking discourses.

3.2 Overview of childhood in the West

This section provides an understanding of the historical conception of childhood as it has developed in the West. This will help generate nuanced insights into ongoing debates and discussions of the notion of childhood. The concept of the child has been constructed in the West over the centuries (Gittins, 2009). Children in medieval European society were seen as ‘little adults’; no attention was given to their specific wellbeing and development (Gittins, 2009: 38). To begin with, Aries’s 1962 critique of contemporary accounts, *Centuries of Childhood*, provided a foundation for the conceptualisation of childhood in Europe. In this seminal work, Aries (1962: 128) mentions that there was no awareness during the medieval period of the ‘idea of childhood’. He further states:

In medieval society the idea of childhood did not exist; this is not to suggest that children were neglected, forsaken or despised. The idea of childhood is not to be confused with affection for children: it corresponds to an awareness of the particular nature of childhood, that particular nature which distinguishes the child from the adult, even the young adult. In medieval society this awareness was lack (Aries, 1962: 128).

Aries envisages childhood more as a historical and social construction that varies across time and space. Despite some criticisms (for instance, that he relies on outdated evidence of the twentieth century conception of childhood; see Heywood, 2001: 13), scholars have acknowledged the importance of Aries’ work on the social construction of childhood, which varies in different societies and cultures (James and James, 2008: 23). Extending Aries’s understanding of childhood, scholars have attempted to explain different conceptions of childhood across various periods and places (Heywood, 2001). The question *What is a child?* has therefore been a topic of interest for many scholars over the years. The development of various constructions of childhood over time, underpinned by varying ideologies, has shaped an understanding of contemporary

childhood in the West. In the sociological literature, the child is grouped into two categories: the pre-sociological and the sociological child, which are discussed in the following subsections.

3.2.1 The pre-sociological child

James et al. (1998) have put forth a concept of the ‘pre-sociological’ child under the realm of common sense, classical philosophy, and developmental psychology. The pre-sociological child is formed by the social context within the remit in which the child lives. Woodhead (2009) states that the notion of developmental psychology evolved during the twentieth century as the dominant paradigm for studying childhood. Within the framework, childhood is viewed as an ‘apprenticeship’ for adulthood on the basis of age, physical development, and cognitive ability. In particular, James et al. (1998: 10) have pointed out five main pre-sociological discourses including the evil child, the innocent child, the naturally developing child, the immanent child, and the unconscious child. Of these discourses, the evil and the innocent child are particularly emphasised in the literature to enfold child-related issues, for instance, child labour and child abuse (Boyden, 2015; Baker and Panter-Brick, 2000; Ennew, 1986, Kitzinger, 2015). This study draws on two of these discourses to understand trafficking vulnerabilities in Nepal.

3.2.1.1 The evil child

The ‘evil child’ discourse is mainly echoed in contemporary criminology, public moralising, and pedagogic practice. This discourse views the child as evil and corrupt; childhood should therefore be shaped by programmes of discipline and punishment. It

draws on Foucault's (1970) metaphor, in which correct training for 'evil' children is considered vital for their transformation into docile adults – that is, good citizens and pliant members of the social order (in James et al., 1998; Wilson, 1980 in Aitken, 2001: 121). Puritanical views of children, which apparently contradict the Aries model of childhood, emphasise children 'as anarchistic and fundamentally evil, requiring parentally-imposed strictures and tutelage that were God-given and absolute' (Aitken, 2001: 121). It is argued that evil children should avoid places such as shopping malls and other locales which may trap them into bad habits or bad company (James et al., 1998). Hobbes (in James et al., 1998: 11) envisages the Puritan tradition as a way to empower parents and control children. In this way, parental power 'is absolute and stands over and above the populace or children, who have no rights or power (in James et al., 1998: 11).

Furthermore, Boyden's study (2015: 167) has added to the commentary concerning the evil child by tracing historical accounts of childhood and examining their impact on poor children. She argues that punitive and judgemental historical attitudes of how childhood *should be* were reflected in the welfare philosophy and practice in the UK in the nineteenth century. Such practices claimed to reform children's 'abnormal development' (for example, in the case of juvenile delinquents) by providing direction and training at home and in school to correct 'immoral behaviour' (Boyden, 2015: 170).

These negative images of the evil child still tend to prevail in different social and economic conditions (Boyden, 2015). For example, child prostitutes and street children are viewed as a threat to society as they do not conform to middle-class standards of childhood (Montgomery, 2000; Baker and Panter-Brick, 2000). These views have raised concerns over children's competence and needs, and signal the importance of

considering the lives and diverse experiences of children across the world (James and James, 2008: 136).

3.2.1.2 The innocent child

The ‘innocent child’ discourse is apparently contrary to the ‘evil child’. This discourse to some extent resonates with the modern Western view of childhood. Referring to the work of Rousseau (1762), James et al.(1998:13) state children as ‘angelic’ and ‘uncorrupted’ in their world. They further argue that Rousseau (ibid) asserts that ‘children have a natural goodness and a clarity of vision’ that idolises or worships ‘the intrinsic values they bring to bear on the world’ (in James et al., 1998: 13). The view has also been expressed that the ‘association of children with innocence has earlier roots within the Christian tradition’ (James and James, 2008: 75). This notion of ‘innocence’ gained ground in the West throughout the nineteenth and twentieth centuries. Cunningham (2005:137) argues that such ideology ‘began to influence public action’ and that, subsequently, governments and philanthropists began to formulate policies and programmes relating to ‘child-saving activity’. Boyden (2015: 173) argues that such norms of childhood have provided a basis for the development of human rights legislation both at the international and national level (the CRC being an example of this).

However, this association of childhood is not without critiques. As Ennew (1986: 18) has pointed out, ‘the myth of childhood as a “golden age” in which the happiness of childhood equals innocence can be problematic depending on how the child is categorised. Consistent with this view, Montgomery (2001a: 55) has argued that children are viewed in need of protection both in terms of:

[...]on an individual basis as their means of support or on a wider level in the form of national legislators, who would look after the interests of those too helpless to work or defend themselves.

Moreover, Giroux (2000) suggests that:

In practice, ‘innocence’ is not held to apply to all children. Since the epitome of innocence is represented by white, middle-class children, many children by virtue of their class or ethnicity, may find themselves being demonised (in James and James, 2008: 75).

This personification to a large extent reflects contemporary understandings of childhood as well as the ‘loss of (natural) childhood’ (James and James, 2008: 50). This idea of the innocent child is, however, no longer limited to the Western intellectual tradition. As James and James (2008: 76) note: ‘childhood’s innocence is becoming integral to the ongoing, global **social construction of childhood**’, a task undertaken by the CRC. In a similar vein, Boyden (2015: 173) underscores that such ‘stereotyped perceptions of childhood – of the innocent child victim on the one hand and the young deviant on the other – have been exported from the Industrial world to the South’, and that this has proved to be problematic. For instance, as Ennew (1986: 21) highlights:

This idea of childhood as a period of lack of responsibility, with rights to protection and training but not to autonomy, may be culturally irrelevant in countries where a high proportion of children work alongside adults from an early age.

Critics say that this view has failed to ‘acknowledge the cultural context of the children’s lives’ (James and James, 2008: 50), which is reflected in the fact that some child-saving interventions have even led to more damaging consequences to children (James and James, 2008). Kitzinger’s (2015: 148) research into representation/images in campaigns against child sexual abuse exposes how misplaced the concepts of ‘innocence’, ‘passivity’, and ‘innate vulnerability’ are in this context. She argues that this is problematic for two reasons: firstly, the idea of innocence ‘excludes those who do not conform to the ideal’, and secondly, ‘those who champion “childhood” use

innocence as an excuse to exclude children from “the adult world”...to isolate them from other children’s experience’ (Kitzinger, 2015: 148). Kitzinger attempts to counter the idea of ‘innocent victim’ with that of ‘passive victim’, in which the child is ‘described as a “silent sufferer of victimization”’, who is ‘rarely allowed to speak about her own actions as opposed to the acts committed’ (Kitzinger, 2015:149). This study has illustrated a range of problems with notions of ‘innocence’ and ‘passivity’ in anti-trafficking interventions and responses (Chapters 7 and 8).

3.2.2 Life span perspective on childhood and adolescence

Lifespan developmental psychology deals with the study of individual development, such as change and movement from one life stage to the other (Baltes et al., 1998; Lerner, 2002; Schaffer, 2006; Coleman and Hagell, 2007). The traditional view of the lifespan approach was primarily applied to understand the development of infancy, childhood and adolescence. However, after the late twentieth century, the approach has been extended to the study of all ages (Lefrancios, 1996; Schaffer, 2006; Kloep and Hendry, 2014). Lefrancios (1996: 8) states that the perspective is concerned with ‘the changes that occur over time, as well as the processes and influences that drive these changes’.

Of the many influential scholars on development psychology, Jean Piaget was perhaps the most notable one. He argued that children progress through a series of stages of growth, from preconception and intuitive thought to the final achievement of being a ‘normal’ person in formal operations (James et al., 1998: 18). The underlying essence of Piaget’s view regards the differences between adults and children; a view that entails the supremacy of adulthood over childhood. It is argued that ‘children are natural rather

than a social phenomenon, and that part of this naturalness extends to the inevitable process of their maturation' (James et al., 1998: 17). The lifespan development scholars argue that 'each age period of the life span (e.g., infancy, childhood, adolescence, adulthood, old age)' has 'its own developmental agenda' (Baltes et al., 1998: 1029). For example, Havighuurt (1972 in Lefrancios, 1996: 38) argues that the 'developmental tasks begin with the simple and essential requirements of infancy, such as learning to eat [...] and ultimately culminates with the requirements of old age, which include adjusting to changing physical strength and health [...]'. Compas et al. (1995: 271) state that such 'observations have contributed to interest in individual differences, mainly the association between childhood functioning and adolescent development, and between the adolescent and adult functioning'. Damon and Lerner (2006: 392) argue that apart from a biological foundation (i.e. how children and young people learn to be adaptive to their environment), consideration should also be given to the impact that the social context and social experiences have on their development.

Scholars, such as Coleman (2011: 2), however, look at the nature of adolescence as a biological and socially constructed phenomenon. Adolescence is a stage of transition covering at least nine or ten years; although it is important to note that 'individuals grow up in the context of constant social, economic and political changes' (Coleman, 2011: 2). There is however 'limited understanding about the developmental trajectories of young people living in different socioeconomic and cultural contexts' (Ma and Jacobs, 2010: 829). Coleman and Hagell (2007: 5) argue that 'the adolescent stage carries with it a series of developmental tasks, as well as a variety of potential challenges'.

In particular, the lifespan development scholars have shown interest in understanding the notions of risk and resilience, linking them with children and adolescence (Baltes et al., 1998; Coleman and Hagell, 2007; Olsson et al., 2003; Pearce, 2007). Compas et al. (1995: 278) argue that the 'identification of risk and resilience factors and processes is of necessity closely linked to correct identification of developmental pathways'. Coleman and Hagell (2007: 2) look at the issue of how 'adolescence is often portrayed as an age of particular risk'. They identify four ways through which the concept of risk can be applied to young people, including: risk factors (referring to the factors related to poor outcomes such as poverty, dysfunctional family, and illness), risk behaviour (referring to potentially harmful behaviour such as unsafe sex, substance use, and abuse), young people at risk (referring to socially excluded young people who are subject to abuse or neglect) and young people who pose a risk to society (referring to anti-social behaviour). They argue that both risk and protective factors can enhance resilience. For instance, a young person may express a degree of emotion or stress as a result of negative experiences but can 'still be showing resilience in the management of everyday tasks and responsibilities' (Coleman and Hagell, 2007: 14). Similarly, Olsson et al. (2003: 9) argue that 'resilience is closely linked with intervention in that protective processes can inform the development of targeted intervention'. Interventions include capacity building, which facilitates negotiation of high-risk environments to 'removing or avoiding factors [...] implicated in the development of problematic outcomes' (Olsson et al., 2003: 9). Nonetheless, these interventions designed to assist young people 'to overcome adverse effects of risk differ according to the population studied, context and outcome' (Fergus and Zimmerman, 2005 in Zolkoski and Bullock, 2012: 2301).

A number of scholars have applied the concepts of ‘risk’ and ‘resilience’ to study sexual exploitation/abuse among young people (Gilligan, 1999; Newman, 2002; Pearce, 2009). For instance, Pearce (2009: 91) argues that the interventions are based on the individual, family, and environment factors. While individual factors involve ‘a more secure sense of self, the confidence in an ability to be self-determined and make decisions for oneself’, familial and environmental protective factors include ‘housing, leisure and social work intervention’ so as to build a sense of agency (Pearce, 2009: 99). Thus, attempts to understand childhood and adolescent development using a lifespan approach can have many positive implications in developing effective and sound interventions, including interventions in adverse situations.

3.2.3 The sociological child

Prior to the emergence of the ‘sociology of childhood’ theory in the 1970s (discussed below), the theory of developmental psychology (as pioneered by Jean Piaget) and the theory of socialisation (developed by Emile Durkheim and Talcott Parsons) had served as the dominant discourses for childhood studies. Central to the sociological approaches to childhood is the process of ‘socialisation’ (Ritchie and Kollar, 1964: 117), which implies that children acquire culture within the social world around them. Socialisation theory emphasises the ‘ways of exploring how children learn to become members of the society in which they live’ (Kehily, 2009: 8). The theory has therefore been described as ‘elitist ideology’ (Jenks, 2005) and ‘adult ideological view point’ (Speier, 1970 in Kehily, 2009: 8). Children, when applying the socialisation lenses, are considered to be ill-equipped as individuals in terms of fully participating in a complex adult world (Jenks, 2005). Children are therefore constructed as ‘non-adults’ who are seen as requiring to pass through various stages before they eventually develop and

mature into adults. They are seen as 'less than fully human, unfinished or incomplete' (Jenks, 2005: 19). Smith (2007) states that the term 'adult' has been used to refer to persons who possess temporary authority as 'caretakers' over children to protect them from others and teach them in a similar way as their family members. They are defined as mature, rational, and competent.

Referring to the work of Alanen and Mayall (2001), child development is largely influenced by their relationships with adults. Mayall (2004) states that the child is constituted with a view of supporting certain adult versions of how society should be operated. They are viewed as 'human becoming' because of the fact that they do not acquire a social role and are considered to be silent members of society (Kamp, 2001: 3). In a similar vein, Smith (2007) argues that children are considered to be lacking in competence and experience, and their views are seen as the reflection of the adults who are part of their lives, for instance, parents and teachers. Childhood is therefore reckoned to be an integral component of both adults and society at large (Cassidy, 2012). Walkerdine (2009 in Waller, 2009: 28) emphasises that it is important for children to develop qualities necessary to transform them into adults in their specific contexts.

The sociological perspectives of childhood, as propagated by James et al. (1998), however, offer a transition from 'socialisation theory' that goes beyond the concept of 'socialisation'. James et al. (1998) argue that their model represents an epistemological break between the pre-sociological notion of the child and sociological approaches to the child. The sociological perspective of childhood, pioneered by James and Prout (1997), envisages the child 'as a person with a distinct status, a set of needs, rights and certain differences' (in Vanobbergen, 2015: 68). Children are seen as an active member

in the construction and determination of their social lives, the lives of those around them, and of the societies in which they live. This notion of childhood both engages and responds to the process of reconstructing childhood in society. In particular, the approach of childhood predicates the view that children are a constant feature of all social worlds, rather than passive subjects of social structures and processes. It has been argued that children's social relationships and cultures are therefore worthy of study in their own right, independent of the perspective and concerns of adults (James and Prout, 1997).

While the traditional view has envisaged children as inevitably bound to adults in respect of their process of 'becoming', the modern notion of childhood holds to some extent a contradictory view in which children are seen as a separate entity characterised by dependency on adults and vulnerability (Ferguson, 2012). The duality of the above-mentioned perspectives in the understanding of childhood has led to a discussion as to whether the child can be viewed both as a 'competent actor' and a 'subordinate', controlled by adults. Such a debate on childhood is important in this thesis as it helps to understand the complexity in developing the rights of the child as reflected in the CRC (Cassidy, 2012) as well as applying those concepts in a different context (Montgomery, 2001a: 53), which is discussed later in this chapter.

For the purpose of my thesis, I have therefore relied on the 'sociology of childhood' paradigm, which allows me to unfold and unpack the varying notions of childhood(s). Of the six features of the 'sociology of childhood' paradigm (discussed in Chapter 1), 'childhood as a social construction' and its underlining of 'the importance of childhood as a variable of social analysis which can never be entirely separated from other variables such as class, gender, or ethnicity' (James and Prout, 1997:8) are pertinent to

the study. They argue that childhood is shaped by socio-cultural practices and processes (Wells, 2015). The following section briefly presents the notion of the ‘socially constructed child’, as discussed in the literature.

3.2.3.1 Socially constructed child

The development of the social construction approach can be traced to the work of postmodern sociologists (Jenks, 2005; Alanen and Mayall, 2001; James et al., 1998). The approach has been used not only to study the historical constructions of childhood in different cultures, but also to throw light on the contemporary construction of childhood (Stainton Rogers, 2009). According to social constructionists, people’s understandings of childhood are influenced by the wider social and political context in which they live (James and Prout, 1997). The main concept of the socially constructed child underscores the fact that there is no taken for granted meanings with regard to ‘what children are’ and ‘what childhood is like’ (Jenks, 2005; James and Prout, 1990; Stainton Rogers et al., 1989; Mayall, 2000). Rather, emphasis is placed on the knowledge of the child and the relations between the child and the social, political, historical, and moral context in which they are based (James et al., 1998).

A number of researchers argue that this approach has enabled them to grasp an in-depth understanding of the diversity of children’s lives, particularly in respect to suffering and poor conditions (Corsaro, 2005; Qvortrup, 1994; Mayall, 2000; Boyden, 2015). Scholars have therefore challenged metaphorical representations of the child as an individual who is inadequate, inexperienced, or immature (Mayall, 2000; James et al., 1998). James et al. (1998) further argue that, as such, there is no social structure that makes childhood; rather, childhood is constructed by children themselves in their particular social context through their interactions with adults. Considering childhood

through a lens of social analysis, Kitzinger, in her research on representation/images in campaigns against child sexual abuse in the UK, explores how child exploitation/abuse ‘is built into childhood as an institution itself’ (2015: 162). This approach has affected our understandings of child sexual abuse as “a problem” and our visions of “a solution” (Kitzinger, 2015: 146). Discussing the narrow focus of mainstream approaches, Kitzinger asks:

Why these are often insufficient protection: insufficient because of a lack of alternatives, resources and power[...]We need to examine children’s material reality and recognize that children are vulnerable because they are children – childhood is a state of oppression (an oppression compounded by discrimination based upon sex, race, class and disability) (2015: 159).

More importantly, scholars have questioned the universalisation of the concept of childhood based on this worldview (James et al., 1998; Jenks, 2005; Stainton Rogers, 2009; Boyden, 2015). For instance, Jenks (2005) suggests that an understanding of childhood as a social construct requires research to unpack social status and structure, both of which are bound by certain forms of conduct – in particular, cultural settings and variations across time and societies. In this view, childhood does not exist in a finite and identifiable form, leading to multiple conceptions of childhood (James et al., 1998: 27). Jenks (2005: 30) states that the notion of childhood is therefore not a universal and natural phenomenon, but reflects a ‘specific structural and cultural component of the society’.

It is evident that such a conception of children and childhood has been an increasingly popular perspective in contemporary childhood studies (Jenks, 2005; Stainton-Rogers et al., 1989; Qvortrup 1994; James and Prout, 1997). This study further contributes to these debates by bringing forth the contradictions in the notion of the international conception of childhood in the local context. In recent years debates over the value of

children's rights from the social constructionist view of childhood have escalated. Such debates have challenged the use of many aspects of the CRC, in particular social and cultural contexts. The following section briefly highlights some of the pertinent debates surrounding the universal notion of childhood, children's rights, and cultural relativism.

3.3 Towards a universal notion of childhood, children's rights, and cultural relativism

Montgomery (2001a: 53) states that: 'There are no universal standards of childhood, except of those imposed by the industrialised West and the United Nations'. Article One of the CRC states that a child is: 'every human being below the age of eighteen years unless the law applicable to the child, majority is attained earlier' (1990: 4). The arrival at this institutionalisation of a definition of the child and of child rights has, however, taken a considerable amount of time. For instance, in the early 1970s children's rights were described as 'a slogan in search of a definition' (Rodham 1973, in Franklin, 1995: 9). Franklin (1995) states the CRC and the other child rights charters adopted in recent years have outlined a wide range of rights by and for children, including the basic human rights to life, health services, education, and a reasonable standard of living (Franklin, 1995: 9). In particular, the CRC has introduced four key principles, which are basically anchored in the human rights of children.⁵ Detrick 1999 (in Buck, 2011: 88) states that:

⁵ Non-discrimination: Article 2 refers to non-discrimination against children within the territory.
 Best interests of the child: Article 3 refers to the best interests of the child. This principle asserts the states a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.
 The right to life: Article 6 refers to the right to life, which means that states parties shall ensure to the maximum extent possible the survival and development of the child.

While the Convention on the Rights of the Child may not be the last – or complete – word on children’s rights, it is the first universal instrument of a legally binding nature to comprehensively address those rights. As such, it forms a universal benchmark on the rights of the child – a benchmark against which all future claims for evolution will and must be answered.

Franklin (1995: 9) states that the notion of children’s rights is based on two broad distinctions – between legal and moral rights, and between welfare and liberty rights. While legal right is an entitlement enforced by an existing law that a child possesses, moral right, on the contrary, ‘enjoys no legal endorsement’ (Feinberg, 1973 in Franklin 1995: 9). In a similar vein, the distinction between welfare and liberty rights is expressed in terms of the rights to protection versus rights to participation (Franklin, 1995: 9). Welfare rights, as stated by Archard (1993: 65), consist of *interests* that can be preserved, protected, and promoted. On the other hand, however, the possession of liberal rights implies that the child ‘must be capable of exercising their rights’ (Archard, 1993: 65).

Notably, the ongoing discussions relating to children’s rights have been viewed using two conflicting theoretical or ideological standpoints. Archard (1993: 45) categorises these two conflicting theories linked to child rights as the ‘caretaker thesis’ versus the ‘child liberation thesis’. The caretaker thesis emphasises that children should not be free to make autonomous decisions, and that their caretakers should be responsible in making decisions for them (Archard, 1993: 52). Children are therefore envisaged as the property of their natural parents and are denied the right of ‘self-determination’ (Archard, 1993: 52). This so-called traditional view of children’s rights is still dominant

Listening to the child: It assures the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law(Article 12)(Drew, 2009: 121-123). See Appendix 12.

in many developing countries (Archard, 1993: 52), as well as in the West (Kamp, 2001:16). Advocates of the caretaker thesis argue that children are innocent and therefore need special protection and assistance in their decision making. They are considered incapable of acting in their own best interests, as their ability to exercise control is yet to be fully developed. Contradicting the caretaker thesis, the 'child liberation' thesis promotes the rights of 'self-determination' for children. This 'child liberation' model sees children as competent social beings on the basis of an arbitrary age criterion (Archard, 1993: 58). This view stresses that children who possess rights of 'self-determination' must be able to choose for themselves how to lead their own lives.

Another debate around childhood is the concept of its universality. Some scholars argue that the definitions of the child, as well as the varied notions of childhood(s) that children experience, are constructed based on a range of social, historical, political, and cultural factors (Franklin, 1995; Buck, 2011; Jenks, 2005). As noted by Franklin (1995:7), being a child 'is not a universal experience of any fixed duration'. In particular, Franklin (1995) has stated that three factors underlie the complexity of the notion of children and childhood. The first concerns the boundary between childhood and adulthood, which is established in different ages through different activities. For instance, in the UK, a child reaches the age of criminal responsibility at 10 although he/she is not reckoned to be an adult in terms of political suffrage until 18.

The CRC uses chronological age as the universal measure of biological and psychological maturity. However, this provision is debatable, as Montgomery (2001a: 54) argues: 'To define a child simply by age is to ignore the complex role of the child within the family, where status and role depend on more than date of birth'. Such is

evident in the case of Nepal. Second, it is claimed that an attempt to define those who are less than 18 years as a child or a 'non-adult' tends to set up a false uniformity of needs and rights. Children are a heterogeneous group with different needs, and it is therefore argued that it is unrealistic to consider them as a homogenous group belonging within a range of zero to eighteen. Childhood heterogeneity means that children develop a wide range of skills and competencies which are not necessarily addressed by the CRC.

Other researchers have also stressed that the CRC has been problematic in universalising childhood across time and space, irrespective of diverse cultural determinants (James and James, 2004). Others (see O'Connell, 2005; Heywood, 2001) state that it is quite common that childhood is experienced differently within a particular country/context based on gender, class, and ethnicity/caste (discussed in Chapter 1). This notion of childhood (based on gender, caste, and ethnicity) provides a framework for my analysis in regard to understanding children's vulnerabilities to trafficking, which is discussed in Chapter 5. Such factors are important in analysing how children are being exploited in different contexts (Cassidy, 2012).

Scholars of childhood have long critiqued the 'idealised vision of childhood' conferred by the CRC as a Western perspective (Ennew, 1995; Montgomery, 2001a). In particular, they have argued that the CRC has negated ideas of cultural and social meanings, which are attached to local systems and based on age ranking. Mead (1962 in Montgomery, 2001a: 56) states that:

As the UN and other international bodies push for a universal view of childhood, the realities of children's lives within the various cultures that they come from have become increasingly overlooked. To say that a child crosses the barrier to adulthood at the arbitrary age of eighteen is to ignore the complex rituals and rites of passage that are part of the life-cycle of many.

Discussing the CRC, Montgomery (2001b: 83), for instance, points to the CRC's universalisation of childhood on the basis of a Western notion of 'no work, no marriage, and no sex' until the age of 18, and has argued the naivety of such an understanding. Burr (2006, 68-72 in Bourdillon et al., 2010:15) argues that the CRC 'reflects ideals of childhood in wealthy societies, and that rights to free education, and to housing, health care, and nutrition are meaningless in societies and communities that cannot afford these'. This is evident in my study (Chapter 8), where I argue that with limited state interventions in Nepal, protection of children from work or marriage may just be rhetoric.

Among the most discussed topics on 'childhood' and 'children's rights' is the debate on 'child labour'. Albeit writing in a Western context, Gittins (2009) argues that children's work is considered a dominant form of 'exploitation', and that children are to be protected in relation to paid work. For instance, studies show that children in Western countries tend to become economically active at the age of 15 or 16 (Gittins, 2009). On the contrary, Gittins (2009: 37) argues that it is not unusual for children in developing countries to go out to work at an early age (5-6) in order to support their families. In many developing nations, children's work involves widely complex issues, including in Nepal (Chapter 1). Working children in these countries are often categorised on the basis of economic activities (ILO, 2002) – for instance, domestic work, including cleaning the house, preparing food, and taking care of young siblings; subsistence work; slaves or bonded labour; beggars; and labourers, earning a wage in the fields or factories, among others.

For instance, the International Labour Organisation (ILO) (2002) estimates that over 800 million children worldwide are involved in child labour.⁶ The same study argues that child labour may have adverse consequences in the physical and mental development of the child (ILO, 2002). Evidence of this can be seen in my interviews with NGO and INGO representatives (Chapter 5) who identified children working in very exploitative conditions in the embroidery (*zari*) factories, stone quarry (*brick kiln*), and other informal sectors. These are sensitive situations, and the interviewees were aware of the importance of carefully assessing such situations to devise effective interventions and protect children from further abuse.

Cultural and economic diversity has continued to pose a serious challenge in implementing children's rights (Alston, 1994). Alston (1994), for instance, has examined the broader relationship between culture and human rights and the impact that culture has in adhering to 'the best interests of the child'. He further argues that prevailing cultural practices such as child slavery, child marriage, or bondage have to a large extent contradicted human rights standards. Studies have also demonstrated a wide range of cultural arguments, which are articulated to justify the denial of children's rights (Plan Nepal et al., 2012). For example, UNICEF (2006) estimates that 36 percent of women aged 20-24 in the developing world get married before they reach 18 years of age. Early child marriage is mainly prevalent in parts of the Sub-Saharan region and South Asia, in which approximately 50-60 percent of girls are married before they reach the age of 18.

⁶ 250 million children under 14 are engaged in work (73 million are under ten years; 12 million work in the Asia-Pacific region; sub-Saharan African had the largest proportion of working children; nearly one third of children under 14 (48 million children) (ILO, 2002).

Studies show that poverty has been a key factor forcing children into early marriage. Along with poverty, other factors – for instance, inadequate gender discrimination laws (UNICEF, 2009c) – have also forced children into early marriage in many contexts. For example, in South Asia (particularly in Nepal), child marriage is considered a customary, socially-established institution, and continues in many parts of the country (Plan et al., 2012). Girls and young women are more likely to get married earlier than boys and young men, and there are many instances in which families in extreme poverty have no choice but to give away their daughters in early marriage (ICRW, 2012). The fact that child marriage adversely affects the social, health, and developmental aspects of girls' and young women's lives is evident in the extant work (UNICEF, 2009c). UNICEF (2011) states that 30 percent of young women and women aged 15-19 years are currently married in South Asia, compared to just 5 percent of young men and men in the same age group (Chapter 1). Chanock (2002: 38) critiquing *cultural relativism* states:

Those rights discourses in which culture is invoked as an argument against universalism now largely belong to rulers, not to those who may need tier rights protected, those who talk in terms of wrongs and needs, not rights and culture.

James (2010: 488) argues that an extensive focus on the plurality of childhood may pose a risk to children's rights. Instead of advocating plurality, it is stated that emphasis should be placed on establishing basic levels of provision, protection, and rights to all children, particularly in the global South (James, 2010:488). Goździak and Bump (2008) state that global norms for childhood should be developed by embedding the 'best interests' (one of the key principles of the CRC) of children who are at stake.

Some scholars, however, argue that to address this problem there needs to be a middle-ground between the extreme views on children's rights (Bourdillon et al., 2010; Twum-

Danso, 2009); they argue that it is important to consider the context in which children are situated. For example, as discussed earlier, because work 'is presented as an integral part of everyday life and indispensable to family livelihoods' (Abebe and Bessell, 2011: 770) in a large number of developing countries (Bourdillon et al., 2010; Gittins, 2009), it is readily acceptable there. Thus, some (Bourdillon et al., 2010:15) have proposed that the CRC 'must be flexible enough to accommodate different childhoods and emerging understanding of childhood'. However, critics argue that existing studies on childhood are predominantly focused on the accounts of children's lives in North America and Europe (Wells, 2015).

3. 4 'Intersectionality' and childhood

The concept of 'intersectionality' has been widely used in feminist/gender-based studies (see e.g. Crenshaw, 1989; Davis, 2011; McCall, 2005; Taylor, 2009; Cho et al., 2013; Lutz et al., 2011). In her work, intersectionality theorist Crenshaw (1989:140) critiques the 'single-axis' thinking in feminist theory and anti-racist policy discourses for not representing 'the interaction of race and gender'. The intersectionality approach emphasises that 'women are not only women but also Black, White, rich, poor, and so on [...] and that women are situated within several frameworks of interacting forms of subordination and privilege' (Alanen, 2016: 158). Cho et al. (2013: 790) in their analysis of legal cases in the context of the U.S. show that 'Black female claimants were unsuccessful both in their attempts to articulate a compound claim of discrimination [...] and in their efforts to represent all women or all Blacks in subsequent cases'. They argue that, '[a]lthough Black male and white female narratives of discrimination were understood to be fully inclusive and universal, Black female narratives were rendered partial [...] something apart from standard claims of

race discrimination or gender discrimination’ (Cho, *ibid*: 290-791). Therefore, categories such as gender, race, and ethnicity are largely interwoven in producing lived experiences. Alanen (2016) states that these categories interact in ‘forms of subordination and privilege’ (Alanen, 2016: 158). This means that intersectionality approaches not only challenge us to integrate marginalised perspectives but also to demonstrate the necessity of understanding the relations of ‘rule and power differentials as co-constituted and co-constitutive’ (Lutz et al., 2011: 8).

Despite the Black feminist critique, the concept of ‘intersectionality’ has now become a ‘buzzword’ (Davis, 2011:43) and is widely applied in a range of studies from sexuality (e.g. Taylor, 2009 :190) to human rights (e.g. Taefi, 2009), among others. For instance, Taylor (2009: 190) has in her study demonstrated the lived experiences of the intersection between class and sexuality among working-class lesbians. Drawing on intersectional feminist theory, Taefi (2009: 345) examines how ‘girls’ at the margins of age and gender’ reinforces ‘a further denial of girl’s rights’. She argues that ‘the adult dominance and male dominance that permeate girls’ lives are reinforced by cultural norms that further intensify the denial of their rights’ (Taefi, 2009: 345). Thus, ‘one of the major contributions of intersectional analysis is that it has made it commonplace to recognise the importance of analysing the ways in which people are simultaneously positioned in multiple categories’ (Phoenix, 2011:137). According to MacCall (2005: 1773-1774), studies using intersectional approaches have applied either an ‘intercategorical’ (i.e. intersection of different social categories, such as race, gender, and class etc. which affects the distribution of resources) or an ‘intracategorical’ approach (i.e. the boundaries of the categories which aim to ‘to reveal the complexity of lived experience within groups’). Davis (2011:158) suggests an intersectional approach using a combination of both the intercategorical and

intracategorical approaches. Despite the fact that intersectional analysis ‘challenges us to look at the different social positions of women [...] in the reproduction of these relations’ (Lutz et al., 2011:8), it has been argued that such an approach is difficult to execute in empirical analysis (Alanen, 2016).

Thorne (2004: 404) argues that, although ‘scholars are calling for the use of intersectional approaches using the familiar trilogy of class, racial ethnicity and gender’, the ‘age dimension’ is usually missing in extant work. As discussed earlier, research on children and childhood undertaken after the 1980s is more focused on unfolding the ‘diversities of childhood’ (Jenks, 2005; Stainton-Rogers et al., 1989; James and Prout, 1997; Alanen, 2016). Alanen (2016: 158) argues that the term intersectionality has been ‘cautiously’ and remotely mentioned in such studies. Using intersectional analysis, Thorne (2004) argues for the need to theorise age divisions along with other social categories such as gender, racial ethnicity, social class, and religion. This is because exploring the intersections between age and other social categories will allow us to unpack the ““processes of temporality” (James et al., 1997), including biological growth and aging [...] as they move through the life course’ (Thorne, 2004: 405). Similarly, Taefi (2009: 347) observes that ‘the experience of childhood is not extractable from its context in that factors such as gender, class, time and place tend to shape the way in which a young person experiences the world’. Using an intersectionality approach, Taefi (ibid: 348) argues that female minors have been marginalised as ‘girls [that] are born into a world of adult dominance’. It has been argued that the ‘gender-neutral approach that most child rights movements’ have drawn on is based on the ‘assumption that boys and girls face oppression in an identical way’, which is seen to be problematic (Taefi, ibid: 349).

However, scholars have criticised social studies of childhood for negating the notion of intersectionality, theoretically and/or methodologically (Alanen, 2016). Alanen (2016:158) has raised a question as to ‘how new or useful “intersectionality” is as a concept, perspective (“lens”), method, or even theory for the theoretical-conceptual advancement of childhood research?’ To some extent, this study attempts to address this gap. An intersectionality approach makes it possible to explore trafficking vulnerabilities by considering the interaction between various social categories such as age, gender, ethnicity, and so on. I argue in the thesis that child trafficking cannot be disengaged from the societal context where various normative and structural factors – such as culture, tradition, family, economic situation, and limited availability of opportunities for children – tend to reproduce rather than resolve the problem of child trafficking in Nepal. In order to understand the centrality of childhood as a social and cultural construction, the next section will briefly highlight the variation of childhood(s) in Nepal.

3.5 Childhood(s) in Nepal

In the Nepali context, it is difficult to define childhood as a singular concept as it is conceived in the West. Baker and Panter-Brick (2000: 161), for instance, place childhood in Nepal into two main categories: ‘traditional childhood’, which is experienced by the majority of the poor, and ‘urban middle-class childhood’, which resembles the Western model. The traditional Nepali view of childhood is in contrast with the modern Western notion, as reflected in the CRC, which is focused on the age of 18. Baker and Panter-Brick (ibid: 161) identify this as the ‘traditional childhood model’ in poor and working class communities who are burdened with a range of work-related responsibilities since early lives. As such, the concept of the ‘golden age’ of

childhood, referring to the time before children undertake the responsibilities of adult life, is missing in rural parts of Nepal (Baker and Panter-Brick, *ibid*: 161).

On the other hand, the urban, middle-class model idealises childhood as a golden age before the undertaking of adult responsibility (Ennew, 1994: 412). Unlike with the traditional childhood model, urban middle-class children are expected to be protected in all aspects of their lives, for instance, work, underage marriage, and war. Scholars argue that Nepali society has been experiencing a rapid transformation in all spheres of social life and that there is an increasing acceptance of the urban, middle-class model (Baker and Panter-Brick, 2000; Ennew, 1994), which has reshaped childhood. Such opposing notions of the traditional and urban childhood in Nepal, however, reinforce Ennew's argument (1995: 213) that the CRC 'was drafted with a particular types of childhood in mind'.

I argue that this way of categorising childhood – as part of a rural-urban model – is problematic in that, as Montgomery (2001a: 58) suggests, 'different areas of the country have very different traditions regarding childbirth and childhood'. For instance, the ethnic group of the south, the so-called *Madeshi*, is very different from *Bahun* or *Chettris*, the dominant groups in the western and central regions of the country (Chapter 1 for a discussion on Nepal's major ethnic and caste group). This means that, by belonging to different ethnic groups, castes, and genders, children will have different experiences. Despite these differences, it is evident from my interviews that both rural and urban children are vulnerable to trafficking (Chapter 5).

Childhood(s) in Nepal are therefore primarily grouped into different categories on the basis of their social and economic status and their geographical location. Thus it is important to note that the transition from childhood to adulthood is dependent on socio-

economic conditions, rather than age, as defined by the CRC. Therefore, some argue that it is problematic to define children's vulnerability using their age as a benchmark (UNICEF, 2009a). This study further contributes to these debates by placing the variations of childhood in Nepal against international norms and values of what a 'child' should be. I critique the current practice for failing to adequately address such variations.

In light of these ongoing debates and theoretical discussions of childhood, the next section considers the way childhood is constructed in 'trafficking' narratives/discourses. This understanding will provide a background to analyse, in subsequent chapters, the responses (and contradictions) in the current 'trafficking policy and practice' in Nepal.

3.6 Childhood in 'trafficking' discourses in Nepal

Following on from the earlier discussions, this section presents two main discourses within child trafficking narratives/literatures. Discourses of victimhood and agency provide a framework to analyse how such discourses affect our understandings of child trafficking as a problem, and subsequently shape/inform interventions.

3.6.1 Victimhood

Scholars have argued that policy makers and practitioners have predominantly conceptualised the problem of child trafficking around the notion of 'victimhood'. For instance, scholars such as O'Connell Davidson and Anderson (2006: 22) and Pearce et al. (2013: 10) state that victimhood in 'child trafficking' discourses is constructed 'of moral hierarchies as well as practical and legal barriers between "deserving vulnerable

child” and “undeserving” causes and victims’. They argue, however, that idealised constructions of victims of trafficking (historically and to the present day) as ‘passive’ and ‘innocent’ are problematic (ibid).

There is a need to extend the problem of trafficking beyond the target group of children identified as ‘victims’ (UNICEF, 2009a: 8). For instance, Sullivan (2008) states that such a construction ‘ignores a large group of victims who do not fit the mould of “innocent[...]and yet find themselves the victims of trafficking’ (in O’Brien et al., 2013: 65). In a similar vein, O’Brien et al. (2013: 65) state that this construction creates ‘a dichotomy between “good” and “bad” victims – those who have done nothing wrong and those who are seen to have put themselves in harm’s way’. Pearce et al. (2013: 10) further argue ‘in the extreme, this means looking at the split between behaviours that position the young person as a “victim” at one end of spectrum and behaviours that position them as a “perpetrator” of crime at the other end of the spectrum’ (Pearce et al., ibid: 10). Thus, children who ‘develop strategies for fighting back or coping’ are often seen with ‘great unease’ (Montgomery, 2001a: 27).

Historically, the trafficking of children and women in Nepal can be traced back to the Rana regime, which endured for more than a century from 1847 to 1951 (Ghimire, 1994) (Chapter 1). Rana rulers introduced the trend of employing girls and young women as their personal maids and often exploited those girls and young women for sexual purposes (Ghimire, 1994). Ghimire (1994) states that a tradition of *Deuki* and *Badini* – a tradition resembling a slavery-like practice – became institutionalised during the Rana period, further leading to many girls and young women ending up as prostitutes. Kara (2012) mentions another ritual that prevailed during the Rana rulers’ period in which girls and young women from very poor and socially disadvantaged

families in the southwest of the country were offered to the temples by their parents to fulfil their religious obligations. These girls and young women, who spent their childhood in the temple, had no alternatives when they grew up other than to work as prostitutes in seasonal brothels on the southern border of India. Shakya (1999) states that the collapse of the Rana regime in 1951 led to many Rana oligarchs fleeing to India together with their maids (*keti syams*). These maids were eventually sold for prostitution in the brothels of India (ILO-IPEC, 2001), marking the beginning of cross-border trafficking of women and children in Nepal. With this, traffickers saw the open border with India as an opportunity to transport women and children to the red light areas of large Indian cities and sell them for prostitution (Ghimire, 1994; Terre des Hommes, 2003; NHRC, 2008). Subsequently, for the next few decades, the trafficking of Nepali girls and women to the brothels to India became an important part of Nepali society (Sangroula, 2001).

These events led to the dominant narratives around the trafficking of women and children among the Nepali NGOs, media, and the international community since the late 1980s (Sanghera, 2005). The depiction of victims as ‘innocent victims of trafficking’, ‘passive’, and ‘victims of sex abuse’ is evident in the reports issued by GO and NGOs, donors to popular press (Pradhan, 1996; ABC Nepal, 1998, Frederick, 1998). For example, the NGO report on *Back Home From Brothels* states the vulnerability of children and young girls as:

Back Home From Brothels

In the carpet factories, children generally work under the contractors of Naike and not directly under the proprietor, and the Naike subjects the poor and helpless village children to a very callous treatment[...] He does not pay anything to them and pockets their rightful wage to himself [...] These child workers, who are mainly girls, are subjected to sexual assaults. After they had worked there for about six months, an aged woman from their home village who had lived in Bombay for many years, offered to take them there. The old lady looked very rich and privileged in her presentations. For the girls, it was a dream come true. For their entire lives they had dreamt of going to Bombay, which was for them the ultimate city of joy. This tin roofed house of that aged woman and of others who had returned from Bombay, their silk saris and golden ornaments and, most of all, the social prestige bestowed upon them had long ago made a deep impression in the minds of these ignorant and derived girls thus helped to nature their dreams and desire to become just like these “successful” women. So they anxiously accepted the ill-fated trip, which ended in their being sold to a brothel in[...] Calcutta, and their trafficker disappearing with the Rs. 25,000 she had made from the sale (Pradhan, 1996:16-17).

The trafficking episode mentioned above served as a key trafficking discourse for anti-trafficking agencies for many years. A second aspect of the narrative is in the problem of trafficking for the purpose of ‘brothel based sex work’ or ‘prostitution’ (Frederick, 2005:132). O’Brien et al. (2013: 65) argue that such narratives are ‘put forward by abolitionist organisations’ who envisage ‘methods of force, fraud and coercion employed by traffickers to force innocent women into sexual exploitation’. Such is evident in the work of John Frederick, published in a popular South Asian magazine in Nepal in 1998. He uses a hypothetical story of *Gita* which reflects a pattern of drugging, kidnapping and enslaving a girl to explain the cross- border trafficking phenomenon. Frederick states:

Gita Myth

This is the story of a poor Tamang girl from Sindhupalchowk District, northwest of Kathmandu Valley. Her name has got to be Gita. Passive, fair-skinned Gita (they like them like that down in Bombay) emerges from her thatch-roof hut one day to buy some cooking oil for her mother. At the local shop, a swarthy stranger hands her a drugged pack of Frooti (the popular mango drink), and the next thing she knows she’s blearily looking out a dirty bus window in Muzaffarpur, Bihar. A little confused, Gita is sure they had promised to get her a job as a nanny in Delhi.

Another Frooti later, she wakes up in a filthy padlocked room in Bombay. Despite the rows of suggestively positioned girls she sees on the sidewalk below, innocent Gita has no idea what's in store for her. When her snarling madam, the gharwali, brings in her first customer (a sickly, festering man who is convinced that sex with a virgin will cure his AIDS), she nobly refuses. In comes the goonda for her 'training'. After being raped 15 or 20 times a day for a week, Gita gets the picture: she is supposed to be a sex worker. Finally accepting her fate, Gita begins work. She has to service 30 customers a night, is not allowed out to see Hindi movies (even though it is Bombay), and has no idea that she owes the destestable gharwali 25,000 (Indian) rupees for her purchase at 80 percent interest compounded daily (1998:2).

The above extract explicitly illustrates the drive that has led to changes in the existing trafficking discourses in the country. A third aspect of the narrative is linked to particular ethnic group of Nepal. In the trafficking episode mentioned above, *Gita* is a poor girl from a *Tamang* community from the hills of central Nepal (Frederick, 2005: 129-130). Interestingly, some argue that the girls from the *Tamang* community held the 'reputation for sexual candour, something that is frequently seen as a factor in their participation in prostitution in India' (O'Neill, 2001: 161). Such a phenomenon linked to trafficking, prostitution and migration, is illustrated below:

The ethnic groups residing in the higher altitude and remote areas (Sherpa, Tamang, Gurung, and Magar) are compelled to send their girls to different cities in India for better employment opportunities. Because there are limited resources in these villages and no employment opportunities, illiteracy, social unconsciousness, and social acceptance of multi-partner sexual behaviour have all contributed to the migration of girls into prostitution, though unknowingly and reluctantly (Rajbhandari, 1998:88 in O'Neill, 2001:161)

This shows the conflation of trafficking with prostitution in the mainstream trafficking discourse. O'Neill (2001: 161) observes that, apart from the 'innocent' or 'passive' narrative, a contrary claim was prevalent within the female trafficking discourse. He further states that:

On the one hand, women are 'unknowingly or reluctantly' being coerced, misled, drugged, or physically and sexually abused into prostitution. On the

other hand, women from non-Hindu minority groups...are held to be sexually promiscuous and their ethnic groups to be socially and culturally inferior by many of the better educated, predominantly Hindu social activist involved in child prostitution rescue (O'Neill, 2001: 161).

These narrow views dilute the multi-dimensional nature of the phenomenon, as discussed in Chapter 5. The 'rural poor' trafficking paradigm has been predominant in the development programmes in Nepal for the last forty years (Frederick, 2005:130) and remains largely intact. In this narrative, a stereotypical image of the family has been constructed as 'uneducated', 'naïve', and 'upright' (ibid.:132). However, as Samarsinghe (2008:60) argues, the trafficking of women and children for sexual exploitation to India is not just a myth: rather, it is an amalgamation of real-life situations of Nepali girls and women trafficked to India. Despite the fact that trafficking practices are mostly associated with cross-border trafficking (for instance, selling of a child to a brothel in India), Samarsinghe argues that they cannot simply be explained by 'projecting the image of a young girl, clandestinely abducted and forcefully taken across the border to nature the openly legal sex industry in the Indian cities of Mumbai or Kalkot' (ibid: 60). Referring to Frederick's hypothetical story of *Gita*, he further explains how the girl is then rescued from a brothel in India:

Gita Myth continues...

Now the saviours appear. An inspired NGO leader, aided by cops with humanitarian conscience, beats down the door of the brothel and finds Gita hidden away behind a pile of tins. After a pleasant holiday in a government remand home, she is repatriated to Kathmandu. But alas, she can't go home anymore because she is found to be HIV positive. Luckily, for Gita, there is a room in a shelter run by a charity, where she learns to embroider placemats and live her last days in dignity (Frederick, 1998:2).

Such narratives have come to shape early anti-trafficking interventions in Nepal. For example, Sanghera (2005) mentions that some practitioners have called for reinforcing the border control and surveillance system within the Indo-Nepal border as part of limiting migration and trafficking. There is a particular focus on the rescue industry as

part of response to anti-trafficking (O'Connell Davidson, 2011; Huijsmans, 2008; Vijayarasa, 2015).

Due to the persistence of cross-border trafficking narratives, internal trafficking has drawn far less attention (Smarasinghe, 2008). Reports of international organisations and several other studies claim that the emergence of entertainment sectors within the country has led to children and women being vulnerable to trafficking (Huntington, 2002; ILO-IPEC, 2002; NHRC 2008; Aengst, 2001; Frederick, 2012). Contrary to the cross-border narratives of the *Gita* myth, internal trafficking has resulted in tensions in terms of how victims are seen as 'coerced' and/or 'non-coerced' in the process. Nevertheless, as shown in Chapter 5, the depiction of how victims are abducted and abused is not relevant in some cases of internal trafficking. Doezema (2000) argues that this creates a dichotomy in which some victims are seen as "madonnas" (vulnerable/innocent) who need assistance' and others as "whore" (conniving, tainted) who need redemption and rehabilitation" (in O'Brien et al., 2013). There is a growing concern that the narratives used in internal trafficking, such as 'freedom' and 'consent', should not be conflated (Elliot, 2015:228). Highlighting the complexity of such narratives, O'Brien et al. (2013: 71) state:

In attempting to create a blameless Madonna, these depictions have created a narrative that ignores women who choose to work in the sex industry (but who also exploited or trafficked) as well as both women and men who are trafficked for other forms of labour.

Such an understanding of the 'ideal victim' has consequently determined policy and practice (as shown in Chapters 6 and 7), which do not address the new forms of child trafficking (as shown in Chapter 5), and therefore do not fit the realities of victim's needs (both social and economic). Challenging 'discourses of childhood innocence, passivity and innate vulnerability', Kitzinger (2015: 146) provides an alternative set of

discourses in which ‘children are viewed as socialised into victimhood and capable of escaping it’. She argues that the responses to sexual abuse ‘are [...] full of tension and contradictions’ (ibid.: 146). Given these varied narratives and contradictions in the trafficking context, there exists a degree of tension among the media, public, government, INGOs, and donors in Nepal in terms of selecting what trafficking narratives to believe when considering interventions (Frederick, 1998) (Chapter 8). Such diverse and contradictory assumptions have made interventions a challenging endeavour. This thesis unpacks some of these challenges in understanding the problem of trafficking and executing interventions (Chapters 7 and 8).

Along with the ‘victimhood’ discourse, the ‘agency’ narrative has recently gained currency. For example, Melrose (2013: 22) highlights how the current dominant discourse on child sexual exploitation ‘is incapable of acknowledging the agency’ of ‘young people since the language positions them always and inevitably as passive objects/victims’. Sanghera (2005: 6) points out further problems with the construction of childhood as ‘innocent’ and ‘passive’ as it assumes that ‘all persons under 18 years of age constitute homogenous category-children’. The following elaborates on agency discourse more in detail.

3.6.2 Agency

While agency discourse is not as prevalent in narratives around the construction of ‘child trafficking’ in Nepal as the ‘victimhood’ discourse discussed above, I consider this pertinent to my research findings and the theoretical debates that I rely on (childhood as socially constructed phenomenon). Increasingly, children are envisaged as active agents, a view which is central to the sociological perspective of the child (Jenks, 2005; Alanen and Mayall, 2001; James et al., 1998). The notion of ‘agency’

envisages children as active agents capable of understanding and acting upon their world (James, et al., 1998; Mayall, 2000; Smith, 2007). That children are holders of human rights – civil, political, economic, social, and cultural – is reflected in the CRC (see Appendix 12). More importantly, their ideas are considered helpful in developing new policies and practices, together with those of adults (O'Brien, 1997; Reimer, 2003).

Kellett (2009:47) states that the CRC can be a catalyst through which to initiate changes and ensure that children are listened to and consulted on matters affecting their lives. There is an explicit demand in Article 12 of the CRC to engage children in all matters that affect their childhood. Lansdown (2001: 95) further argues that 'if children are subjects of rights, they themselves must have the opportunity to exercise those rights and be afforded the means of seeking redress when their rights are violated'.

In a similar vein, Mayall (2000) argues that children are capable of undertaking activities independently and expressing feelings and emotions about their surroundings. However, Mayall (2002: 21) argues that children are viewed as part of the 'minority social group', and their agency may be confined to the boundaries of the minority status. Similarly, Waller (2009) argues that childhood, as a social status, tends to be inferior to adulthood. Such opposing perspectives in the understanding of childhood have created confusion in that children are seen both as 'competent actors' and 'subordinate' controlled by the adult. Sinclair (2004 in Waller, 2009: 36) has raised concerns as to whether the view of children as social actors has actually been translated and materialised in the process of policy making and in practice. Referring to the adult-centric world, James et al. (1998) argue that adults have strategic advantage over children in terms of exercising power. One of the main challenges in promoting children's participation has therefore been to ensure that children's views are not

constrained by adults' interpretations and agendas (Waller, 2009). Such an understanding of children and the challenges they face in participation are manifested in the CRC (Lopatka, 1992: 49). For instance, Article 3 of the CRC states that 'the child is not the property of the parents or the State' and that 'every child should enjoy universal recognition and respect' (Lopatka, 1992: 49). The article underlines the fact that 'the best interest of the child' should be the primary concern when undertaking decisions relating to their life affairs (Article 3 of CRC) (Lopatka, 1992:49). Stainton Rogers (2009) argues that it is, however, difficult for a child to contest her or his parent, as the latter is supposed to act on their behalf and protect and promote their welfare. This argument resembles the view of Freeman (2007), according to which, any attempt to promote children's interests at the expense of parental rights is seen as impractical. A number of scholars, however, have agreed that there are certain occasions or circumstances in which children's rights may not be both in theirs and others' best interests, and that adults are well placed to act in children's best interests and execute responsibility for decision making (Lansdown, 2001: 87). However, it is important to question whether the decision of an adult corresponds to the child's best interest.

In the context of trafficking, the right-bearing citizens are those children who are either vulnerable to trafficking and/or have become victims of trafficking. Victims of trafficking are usually in a position to make a claim against the violation of human rights. However, in its study, UNICEF (2009b: 41) argues that the well-being of vulnerable or trafficked children lies within the responsibility of the adults, although it may not necessarily be in the best interest of the child. Such is evident in my study as it demonstrates contradictions in the rescue programmes (Chapter 7). In the case of trafficking, it is acknowledged that children should not be considered 'passive

recipients of assistance' but rather active 'social actors', capable of deciding on the type of support they need. Some of these studies are of the view that the need for protection would substantially diminish if children were to have more autonomy, respect, and access to economic and political resources. However, Kitzinger (2015: 156) argues that this alternative discourse of empowerment has offered a means not only to assist children to identify abuse, but also to 'empower' them. It rejects the 'assumptions of childhood passivity and defencelessness' and argues that children are capable of developing a 'sense of self-protection' (ibid: 156).

A crucial debate with regard to the notion of 'childhood' and 'agency' in trafficking narratives is put forward by O'Connell Davidson (2005: 52), who argues that 'when children are imagined as a homogenous group, defined by their passivity, helplessness, dependence and irrationality, it is impossible to imagine them as either faced by or capable of making choices'. Children would therefore be capable of undertaking decisions only if they were treated as competent rather than incompetent (James, et al., 1998: 144). It is important to consider that concepts of 'childhood' and 'agency' continue to be perceived differently across countries (O'Connell Davidson, 2005: 52).

These multiple understandings and definitions of childhood and agency trigger a range of issues, suggesting the importance of local cultures in understanding of 'human beliefs' and their 'activities' (Buck et al., 2011:40). Based on these assertions, it is evident that the concepts of 'child' and 'childhood' are context dependent and vary according to social, cultural, historical, religious, and rational norms. Therefore, in the study I argue that the policy makers and practitioners need to understand the variations of childhood and children's experiences for effective interventions (Chapter 8).

3.7 Conclusion

This chapter has opened up the pertinent debates on the universal notion of childhood, children's rights issues, and the construction of 'childhood' in trafficking discourses. The following chapters take these debates further by engaging in the ways in which we know about the problem of child trafficking and the ways responses are developed. By applying this literature, the study will demonstrate whether responses to child trafficking in Nepal fit with the realities of trafficked and vulnerable children.

A fitting conclusion to this chapter lies in an interesting comment made by one of my interviewees, a project coordinator of an anti-trafficking network, who answered my question on the application of international human rights framework of protecting the rights of the children in a local context as follows:

How do we apply the imported thing [international human rights framework]?...how do we harmonise this?...we need more initiation to implement these provisions. The most important factor is asking the question: how can we localise the [international human rights] provisions?...Without more clarity and better indicators, such provisions will remain an imported thing (A1a, August 2015).

The quotation illustrates the acceptance of the idea of such international standards as a step forward. But are the national responses to child trafficking with a human rights approach always positive, or even benign? The remaining part of the thesis aims to unpack and disentangle the problem of child trafficking and national responses/interventions to protect victims of child trafficking and vulnerable children against broader socio-economic, cultural, and political contexts in Nepal.

Chapter 4: Methodology - My Research Process

Maila dai ko choila ko pasal; Airport ko gate najik and Lovely daadha -Pipal ko bot (Some of the signposts leading to my research area).

4.1 Introduction

In recent years, there have been increasing concerns over the need for context specific approaches to children's rights, emphasising the interaction between global and local issues (Kaime, 2011; Twum-Danso, 2009; Reynaert et al., 2015; Pells, 2012). This study seeks to gain a nuanced understanding of the complex socio-economic and political issues in order to understand national responses to child trafficking. The combination of a range of different research methods was used, including semi-structured interviews – with experienced professionals from governments and I/NGOs – and document analysis. The study was articulated in two different phases. During the initial phases, I accessed various secondary sources and grey materials (government and NGO/INGO reports) regarding trafficking in general. In this phase, I also conducted semi-structured interviews with governments, NGO/INGO representatives, independent consultants and donor organisations. While doing the initial research, I was able to identify a significant gap in the literature on the issue of child trafficking in Nepal. During the second phase, I carried out more semi-structured interviews with policy makers, human rights activists, lawyers, police officers and government and I/NGO representatives, as well as having a focus group discussion with members of children's clubs (18 and above) in Kathmandu. Below, I will begin by briefly outlining the philosophical position of the methodology. I will then describe the research method. The chapter will also discuss the sampling technique and the research area and field. Ethical considerations will be discussed in this chapter along with the validity and

reliability of the study. The chapter will conclude by showing how the data was analysed.

4.2 Philosophical Positions of Methodology

The methodology consists of a set of philosophical positions, which impacted the selection of research design (Bryman, 2004; Merriam, 2009). According to Merriam (2009), the study of social science can be categorised in at least two dimensions: the subjective and the objective. The objective dimension mainly consists of functionalistic theories that focus on the rationality of social actors and the instrumentality of their actions. The subjective dimension consists of interpretive theories – such as phenomenology, ethnomethodology and hermeneutics, among others – that assume reality is socially constructed; which means there exists multiple realities, or interpretations, of a single event (ibid). Since this study explored the problem of child trafficking, as well as the different approaches adopted by governments and NGO/INGOs to prevent and protect child trafficked victims in Nepal, it can be argued that it is within the domain of the interpretive paradigm. Interpretive studies attempt to demonstrate the expression of people and their actions in narrative or descriptive ways by presenting situations as closely as possible to their lived experience (Merriam, 2009).

4.3 Research Method

According to Strauss and Corbin (2008), the selection of research method is based on the nature of the research question posed as well as the preferences of the researcher. Among various research methods, qualitative research is aimed at gaining an in-depth understanding of human behaviour and the reasons that govern such behaviour. Qualitative research methods have the ability to investigate not just the questions of

‘what’, ‘where’ and ‘when’, but also ‘why’ and ‘how’—which are fundamental to understanding the phenomena being investigated (Silverman, 2006). Taking this into account, the study combines both primary and secondary data to explore the experience of policy makers and practitioners working in anti-trafficking organisations in Nepal.

While semi-structured interviews and focus group discussions have been the main source of primary data, document searches have provided the secondary data for this study. The use of the two approaches have enabled the exploration of responses to child trafficking in Nepal. The following subsections explain the two- tiered approach used to gather and analyse data in the study. The following subsection briefly highlights the significance of semi-structured interviews, focus group discussion and secondary data.

4.3.3 Semi-structured interviews

The semi-structured interview can be placed somewhere between the completely structured and unstructured interview (Bryman, 2004). An interview guide was developed consisting of several topical areas, with open-ended questions (Flick, 2006) (see Appendix 1, 2, 3 and 4). The main advantage of semi-structured interviews is the flexibility of the interview process (Berg, 2009). This means that the interviewee can frame and understand the issue and event which he/she views as important in describing and understanding the events, patterns and forms of behaviour. According to Flick (2011), the interview is constructed in a way that is closely linked to the aims and the target group of the research. For example, the expert interviews should focus on retrieving their expertise in a specific area rather than the personal attributes of the interviewees. The aim of the interview was to gain insight into the experiences of the professionals and practitioners working in anti-trafficking organisations. The expert interviews consisted of questions focused on getting general information on the

services, programmes and support that are provided to the trafficked victims. In addition, the semi-structured interviews allowed me to obtain individual views of the expert on an issue. Also, the interviewees were given the opportunity to reply to questions freely and as extensively as they wish. Additionally, the interviews with the government, NGO/INGO representatives and independent consultants was extremely informative in terms of discovering relevant documents on child trafficking and child protection, as well as ensuring their authenticity. 60 semi-structured interviews with individuals and key personnel in anti-trafficking organisations (see below) were conducted. Even though this research is on children, who are victims of trafficking, no interviews with individuals from this specific group were carried out. Most of the interviews lasted an average of 45- 60 mins, with some over an hour and a half.

4.3.4 Focus group discussion

In recent years, feminist researchers have increasingly used focus group methods as they consider them to be less artificial than many other methods (Berg, 2009). The major drawback of the method is that it is deeply influenced by the skills of the facilitator, which will be taken into consideration in the study. The advantages of focus group discussions (FGDs) are that they help to obtain detailed information on the concepts, perceptions and ideas of a group of people (Barbour and Kitzinger, 1999). An increasing number of studies on child trafficking have, in recent years, used both interviews and focus groups to explore the different definitions, causes and consequences of trafficking in women and children (ADB, 2002; Sahara Group, 2004; Rajbhandari, 2000). Therefore, these two approaches (interview and focus group) provide a better understanding of the phenomena being studied and therefore help provide better answers to the research questions. Further, scholars argue that effective and meaningful approaches to international children's rights would include imbedded

intervention within the community (Pells, 2012; Kaime, 2011; Twum- Danso Imoh, 2016b; Honwana, 2006). In this study the local government's child protection committees and the community-based children's clubs have been identified as gatekeepers in protecting children from discrimination, abuse, and exploitation, as well as in the promotion of children's rights (Chapter 8). One focus group discussion was conducted with the members of the children's clubs (details below) in order to collect information on their role in protecting and promoting the rights of children, as well as the challenges of doing so and the perceptions of their activities (see Appendix 5). Kumar (2011) states that the researchers need to ensure that the discussions are recorded accurately, so audio recordings were used for this purpose.

4.3.3 Secondary data

In this study, secondary data has been accessed through my field visits to Nepal and via online search engines and databases. For instance, the causes and consequences of child trafficking, and the national and international responses to child victims, were analysed since the research intended to assess the influence of these on national laws and policies of the government. There are various secondary sources that can be used as a method of data collection including government or semi-government publications (census, vital statistics registration, health reports and demographic information), previous research, and mass media among others (Kumar, 2011). In particular, the online sources including 'the grey literature' reports and research studies were mainly found on the webpages of governments, NGOs, and UN organisations. The purpose of the document collection as well as online search was to gather and analyse adequate content from a wide range of official documents of the governments, NGOs, and donor agencies including UNICEF, OHCHR and the UN Special Rapporteur on trafficking in persons, especially women and children, Save the Children and Plan Nepal. The

documents relevant for my research (such as policy documents, annual reports, information booklets and CRC reports) were mainly collected during my field visit to Nepal. I also spent some days visiting the Social Science Baha (Library) in Kathmandu. Research, both academic and non-academic, and I/NGO reports provided in depth understanding of the construction of ‘child trafficking’ legislation and policies and the role of anti-trafficking organisations in Nepal.

4.4 Recruiting of Sample Groups

Non-probability sampling design has been used in this study. This sampling design is often used when the population is either unknown or cannot be individually identified (Kumar, 2011). In non-probability sampling, the researcher does not use probability theory for sample selection. It is undertaken by creating a kind of quasi-random sample to represent a larger group (Berg, 2009). There are five non-probability sampling designs used both in qualitative and quantitative research including: quota sampling, accidental sampling, purposive sampling, expert sampling and snowball sampling.

4.4.1 Snowball sampling

Snowball sampling has been a popular non-probability sampling strategy among researchers studying sensitive topics and difficult-to-reach populations in recent years (see Lee, 2007). The snowballing sample – which is a respondent-driven form of sampling – begins with the identification of people with relevant characteristics and interviewing them or having them answer questionnaires. The respondents are then requested to provide information of other people in the group or organisation, which then become the basis of further data collection. This creates a chain of subjects led by

the referral of one respondent to another until the required number (or saturation point) has been reached.

This technique has been used because of my limited knowledge about the organisations working in child protection and children's rights issues in Nepal. This method has allowed me to contact a few interviewees (who I contacted through gatekeepers) in the month of October 2013 before I began my field work. In addition, a number of criteria were used in the selection of the interviewees. The first criterion was with the identification of the key organisations working in the area of trafficking, child rights and child protection issues for sampling. The key organisations included donor agencies, Kathmandu- and Pokhara-based NGOs, as well as international NGOs and anti-trafficking networks.

4.5 Gaining Access, Field Work and Researcher Positionality

The initial fieldwork for this study was carried out in Kathmandu and Pokhara (12th - 14th April) in Nepal from the period of 27th March 2014 to 22nd April 2014. Since the aim with the study was to explore the problem of child trafficking and the existing anti-trafficking interventions in Nepal and its challenges and perspectives, interviews were conducted with different sectors of society to get an overall view of the current situation. As mentioned earlier, the participants were representatives (policy makers, government officials, independent consultants, lawyers, programme managers, and human right activists) of key organisations including donor agencies (funding bodies of anti-trafficking organisations), NGOs (based in Kathmandu and Pokhara, as well as internationally) and anti-trafficking networks. In this initial phase, I interviewed 29 experienced professionals representing various governments and I/NGOs, among others, using the snowball sampling method. The interviewees were mid-level and

senior level staff and therefore they would be expected to have a broad perspective and knowledge of their organisation's approaches/responses, which makes their selection easier to answer the research questions of the study.

I have conducted the majority of my fieldwork in two major cities: Kathmandu and Pokhara (as mentioned above). This is due to the concentration of the anti-trafficking organisations in these locations. In this regard, the challenges faced in some of the remote parts of the country may not be well represented in the findings of this study. For instance, cross-border surveillance teams and transit/shelter homes located along the border were not accessible for interviews. Such interviews would have helped generate a better understanding of some of the practices of interception, rescue and reintegration.

Each interviewee has been given a reference number. For instance, 'IG1' refers to members of INGOs, 'G1' to members or representatives of government, 'J1' to those in the judiciary, 'N1' to members of NGOs, and 'IC1' refers to independent consultants. These were used to maintain the confidentiality and anonymity of the participants. These reference codes have been used in the analyses in chapters 5, 6, 7 and 8. Table 4.1 provides details of the number of the interviews, organisations, and the interviewees' positions. Similarly, reference codes have been given to focus group participants, such as: FGa and FGb.

Table 4.1: Number of interviews in 27th March 2014 to 22nd April 2014

| Organisations | Number of Interviewees | Position of Interviewees |
|---------------------------------------------------------|------------------------|----------------------------------------------------------|
| <i>INGO\Donor</i> | | |
| IG1 a | 2 | Child Protection Officer |
| b | | Programme Officer |
| IG2 | 1 | Programme Manager |
| IG3 | 1 | Programme Manager |
| IG4 a | 2 | Programme Manager |
| b | | Former programme Officer |
| IG5 | 1 | Child Protection Manager |
| IG6 | 1 | Programme Manager, Child Protection and Child Governance |
| <i>NGOs\Child Protection Implementing organisations</i> | | |
| N1 | 1 | Programme Coordinator |
| N2 | 1 | Clinical Supervisor |
| N3 | 1 | Executive Director |
| N4 | 1 | Programme Coordinator |
| N5 | 1 | Programme Manager |
| N6 | 1 | Programme Coordinator |
| N7 | 1 | Programme Manager |
| N8 | 1 | Director |
| N9 a | 3 | Project coordinator |
| b | | Project Coordinator |
| c | | Project Coordinator |

| | | |
|-----------------------------------------|---|---------------------------------------------------------------------------|
| N10 | 1 | |
| N11 | 1 | Social Worker |
| <i>Government</i> | | |
| G1 | 2 | Programme Coordinator |
| a | | |
| b | | Programme Coordinator |
| G2 | 1 | Child Rights Officer |
| <i>Human Rights organisation</i> | | |
| J1 | 3 | Human Rights Officer |
| a | | |
| b | | Human Rights officer |
| c | | Human Rights Officer |
| <i>Independent Consultant</i> | | |
| IC1 | 1 | More than 10 years of experience working in trafficking with a Swiss INGO |
| IC2 | 1 | Former National rapporteur of trafficking of women and children, NHRC. |
| Total number of interviews: | | 29 |

Given the complexity of the theme it was indeed challenging to create a climate of trust—which is a key criterion for being open and sharing feelings. Prior studies have also shown that the researchers have encountered problems in obtaining information from rehabilitation centres and the officials are often reluctant to provide adequate information on persons in their protection (Laczko and Goździak, 2005). Before the field work, I had sent out cover letters and participant information sheets (see

Appendix 8 and 9) to the interviewees explaining to them clearly the objective of the research and what is expected of them in the interview. Kumar (2011) points out that it is important for the researcher to test out the interview schedule before using it for the actual data collection. Therefore, during my initial field work, I pre-tested the research questions with the first few interviewees. Based on some interviews, I then revised some of the questions and then had three separate sets of questions (government, independent consultant, NGO/INGO representative) (see Appendix 1, 2 and 3).

The gatekeepers of the research (see Appendix 7) contacted all of the interviewees individually and explained my research to them, which helped me immensely in getting access to the participants. Interviews were carried out in the location preferred by the interviewees (I was open to wherever they would ask me to meet). Interviews took place mainly at coffee shops and restaurants; but some were held at their offices. One of the main problems of carrying out the expert interviews was the time constraint. In the interview with a senior government officer, I had to visit his office three days in a row to undertake the interview. Moreover, some of the interviews took place in very noisy restaurants with loud music, which was quite distracting.

During my field work, two main libraries in Nepal – ‘the National library’ and ‘Staff College Library’, holding a large collection of trafficking related documents – were explored. Apart from the libraries, I also had an opportunity to use the resource rooms of the organisations I visited. I managed to collect National reports, annual reports, brochures, published work of the government, NGOs and donor agencies. What was evident at this stage, was that much of the existing literature lacked sufficient

sociological analysis. The first field work therefore made me realise that I would have to come for a second visit once I had done my preliminary analysis.

I carried out further field work from the 27th July to 2nd September 2015. The purpose was to conduct interviews with government officials, NGOs and INGOs (see Table 4.2). During my first field visit that I carried out in April 2014 in Kathmandu and Pokhara, I had access to the interviewees of my research through gatekeepers. I had contacted them a few months in advance, requesting if I could have access to some organisations. But my second field visit, in July 2015, was not what I expected. The field work was planned a few months before the devastating earthquake that hit Nepal. In the aftermath of the devastating earthquakes on April 25 and May 12, which killed more than 8,000 people and left millions without proper homes and living in tents, it was not an ‘ideal’ situation to carry out my field work.

Upon reaching Kathmandu for my second field visit, I needed some time out to observe the devastation that was around me. I visited Durbar square (an ancient city square, which is one of the UNESCO World Heritage sites in the Kathmandu valley) and the *Dharara* Tower—both of which were reduced to rubble. Temporary shelters had been set up on open spaces in the city - such as fields, stadiums, offices and houses. Amidst the rubble of flattened buildings in Kathmandu, offices, schools and shops had reopened and people (those living in affected areas) were living in makeshift dwellings and tents.

My family and friends were trying hard to be back to normal life. In such a post-disaster situation, I felt uncomfortable seeking assistance to access interviewees or ask if anyone was willing to take part in an interview. A couple of days later, I made a few

phone calls to some of the people who I had interviewed during my first visit to Kathmandu (in April 2014). I then contacted an ex-LLM student of University of Essex, hoping he would know some of the people that were on my lists (see Table 4.2). And yes, it turned out that one of his colleagues had a very good network with government agencies, NGOs and INGOs in Nepal. I met his colleague, a lawyer by profession, in his office (National Judiciary Academy) located in Pulchowk, Kathmandu. He quickly jotted down names of the contacts at the organisations and their landline/mobile numbers on a piece of paper and left the room to attend a meeting. Surprisingly, once I obtained the names of the interviewees, it was not that difficult to schedule appointments.

During my field visit to Nepal I was able to witness the ongoing political crisis of Nepal. Nepal has been facing political instability since the Maoist conflict (that lasted for a decade). In 2006, parliamentary democracy was reinstated by King Gyanendra and the Maoists took part in the newly set up interim government in 2007. This was a monumental event as the State of Nepal was transformed from a monarchy to a republic. Nepal has had an interim constitution since then. In 2008, a constituent Assembly was elected with the aim to set up a 'new' Constitution so as to build a 'new' Nepal. However, the 2008 constituent assembly failed to draft the constitution and another assembly was elected in 2013. The constitution was delayed due to the disagreements (regarding the federal structures) between Nepal's main political parties. The post-conflict situation has not achieved a permanent peace in the country with the *Terai*, ethnic communities' protest and strikes (*bandh*) demanding proportional representation of the *Madhesis* in the constituent assembly. In June 2015, the political parties finally started work on the constitution after the country was hit by the deadly earthquake on April 25 and May 12.

There have been protests against the proposed constitution by groups including ethnic groups, women rights activists (protesting for a woman and child friendly constitution) and others demanding a Monarchy and reverting Nepal to a Hindu state—some of the protests I witnessed on the streets of Kathmandu. This protest was not limited to just Kathmandu valley but also in other parts of Nepal due to the disagreement with ethnic groups with the size of the provinces and borders. Some protests took a violent turn: the clashes between protesters and security forces killed dozens of people. The Tikapur incident (on August 24, 2015), in which 7 police officers and a 3-year-old child were brutally killed, made national headlines for several days. Despite frequent aftershocks, protests and Nepal bandh, I did manage to conduct the interviews. Table 4.2 provides details of the number of interviews, organisations, and the interviewees' positions.

Table 4.2: Number of interviews in 28th July-2nd September 2015

| Organisations | Number of Interviewees | Position of Interviewees |
|--------------------------------------|------------------------|-----------------------------------------------------------|
| <i>INGO\Donor</i> | | |
| IG7 | 1 | Chief of Party, Combatting Trafficking in Persons Program |
| IG8 | 1 | |
| IG9 | 1 | |
| IG10 | 1 | |
| <i>NGOs working in legal support</i> | | |
| NI2 | 1 | Advocate |
| N13 | 1 | Project Manager |
| N14 | 1 | Advocate |
| N15 | 3 | Programme Director |

| | | |
|----------------------------------------------------------------|---|-------------------------------------------------|
| a | | |
| b | | Programme Coordinator |
| c | | Programme Coordinator |
| <i>NGOs working in rehabilitation and reintegration</i> | | |
| N16 | 1 | Programme Manager |
| N17 | 1 | Project Coordinator and Psychosocial counsellor |
| N18 | 1 | Programme Coordinator |
| N19 | 1 | Programme Leader |
| <i>NGOs Working in child specific issues</i> | | |
| N20 | 1 | President |
| N21 | 1 | Chairperson |
| <i>Government level</i> | | |
| G3 | 2 | Children's Department - Undersecretary |
| a | | |
| b | | Trafficking Desk- Undersecretary |
| G4 | 1 | Chairperson |
| G5 | 1 | Women and Children Officer |
| G6 | 1 | Programme Coordinator |
| G7 | 1 | Child Rights Officer |
| <i>Judiciary level</i> | | |
| J2 | 1 | Judge |
| J3 | 1 | Judge |
| J4 | 1 | Judge |
| J5 | 1 | Public Attorney |
| <i>Police level</i> | | |
| P1 | 1 | Senior Superintendent of Police |

| | | |
|-------------------------------------|---|------------------------------------------|
| P2 | 1 | Inspector |
| P3 | 1 | Superintendent of Police |
| <i>Anti-trafficking Network</i> | | |
| A1 a | 2 | Programme Coordinator |
| b | | Former member/Lecturer in Gender studies |
| Total number of interviewees | | 31 |

Some of the government offices that I visited had been damaged and marked as unsafe.

On some occasions, I had to conduct interviews in temporary shelters or makeshift tents. I even felt an aftershock whilst I was in the middle of an interview with a NGO worker. I had to turn off my recorder and stop the interview when that happened. I could hear children screaming from the next building (I found out later that they were school children running to the playground).



Post earthquake: On 25 April 2015 an earthquake with a magnitude of 7.8 killed nearly 9,000 people and injured nearly 22,000.



Makeshifts- where I interviewed government officers.(See Appendix 10 for pictures from my fieldwork.).

My decision to do a focus group with members of children's clubs came much later. I was initially having trouble gaining access. However, a breakthrough came through an interview with the founder of the first children's club in Nepal. A couple of days later,

he had arranged a group of members who happened to be in the capital for a national youth conference to meet up at a training centre. Through his contacts I managed to organise a FGD with 9 members (aged 18 years and above, with a mix of male and female participants) representing the Village Network of Children's Club (VNCC), the District Network of Children's Club (DNCC) and the National Network of Children's Club (NNCC).

I also had an opportunity to observe Lalitpur Child Friendly district Court—a model court for child friendly services and Women and Children Service Centre (WCSC) in Kathmandu. Moreover, I was invited to attend a one day workshop (August 13, 2015) on '*Gender Based Violence (GVB) and Trafficking in Persons (TIP)*' organised by USAID. The purpose of the workshop was to explore the global and national context of GVB and TIP; the speakers included representatives from Nepal Police, governments, as well as NGOs and INGOs working in anti-trafficking. Attending the workshop was very useful, for several reasons, firstly it provided me with a holistic account of the current responses to trafficking and, secondly, I got an opportunity to meet with the participants and scheduled appointments with some key personnel (whom I had initially thought would not be part of my sample) in the following week.

Positionality of a researcher in the field setting is considered an important part of field work in postmodern and feminist literature (Ryan-Flood and Gill, 2010; Ahmed, 2010; Ali, 2015). Feminist researchers have emphasised the importance of incorporating 'an awareness of the situatedness of both the researcher and researched', where 'differences in power are more openly discussed and acknowledged, where they are seen to inform the research encounter and participant narratives' (Ryan-Flood and Gill, 2010: 4). Reflexivity refers to 'a recognition and self-awareness of who we are, what

we are doing and how our actions might affect those with whom we are working’ (Ahmed, 2010:102). Sultana (2007:380) argues that ‘it is crucial to pay attention to positionality, reflexivity, the production of knowledge and the power relations that are inherent in research processes in order to undertake ethical research especially in international field research contexts’. Similarly, Ryan-Flood and Gill (2010: 2) argue that ‘identity categories, such as gender, “race”, ethnicity, sexuality and age, are viewed as significant in the practice of research for both researchers and participants’.

I was conscious of my positionality and the power relations between myself and my interviewees during the interviews. My decision to research the problem and responses to child trafficking in Nepal has been subjective, and depends upon my long-standing commitment to the topic and my prior experience in the field. My Nepali origin and previous experience working in Nepali NGOs and INGOs (as an insider) contributed to cementing the choice of topic. My subjective position in relation to gender, caste, and nationality helped me access interviewees and design my research questions. ‘Doing research at “home” also brings in different dynamics, in terms of concerns of insider-outsider and politics of representation [...]’ (Sultana, 2007: 378). Being a Nepali-origin female researcher – and thus understanding the context and language – I was able to ask more insightful questions (which was partly due to my prior knowledge and experience). Since I held an insider position, interviewees sometimes did not articulate or explain certain phenomenon as it may seem ‘obvious’. This is evident from the following extract from my field notes:

‘In an interview with a police officer, I was told that, being a Nepali, I should have the answers; he stated ‘...you are asking me this question because you live abroad’ (the question was posed in relation to cultural practices) ... As a response, I reiterated that in this context I am a researcher and ‘I would like to understand your stance on some of the issues’.

Reflecting upon this incident has made me think of how my positionality could play a role in building rapport with interviewees ‘while being attentive to the ethics and politics involved in such processes of “fitting in” and the power relations that are involved’ (Sultana, 2007: 379). Applying reflexive practices (e.g. maintaining a field note diary) made me mindful of how my positionality evolved throughout the data collection and analysis processes.

4.6 Validity and Reliability of the Research

Validity and reliability are central to social science research. Qualitative researchers are expected to accomplish satisfactory validity and reliability, one way or another. The concept of validity refers to a situation where the findings of the research are in concordance with the research objectives (Kumar, 2011). The notion of validity can be applied to any aspect of the research process, including testing research instruments and research findings. However, the use of validity in qualitative research is controversial and has been debated (ibid). According to Guba and Lincoln (1994:105), internal validity is determined by four factors: ‘credibility’ (credible from the perspective of the respondents), ‘transferability’ (generalised to other social settings), ‘dependability’ (achieves the same results if repeated twice) and ‘conformability’ (the results can be confirmed by others) in qualitative research.

While validity concerns the extent to which the study provides a true picture of reality, reliability concerns the extent to which is produced free from any biases or distortions on behalf of the specific researcher. The concept of reliability in qualitative research refers to the consistency, accuracy and stability of the research method. This is to say, research is reliable if the research method is stable and accurate. The study should

accurately represent the social phenomena in which it is based (Hammersley and Atkinson, 1995; Silverman, 2006).

This research is not without limitations. The triangulation approach to data collection adopted in this study – by means of semi-structured interviews and FGD – have ensured the validity and credibility of the data. Most of the studies available on trafficking in persons are in the form of reports, conference papers, international and regional action plans, and best practices propagated by national and international organisations (see, for example, ILO-IPEC, 2002; ILO et al., 2009a; ILO et al., 2009b; UNICEF, 2003). Despite being a global issue, it has been argued that there is little systematic empirical research on trafficking in persons (Carling, 2006; Laczko and Goździak, 2005; UNICEF, 2003; UNICEF et al., 2002; Goździak and Bump, 2008). The lack of empirical research in this field is particularly evident in the case of Nepal. For this reason, I have had to rely on the ‘grey literatures’ of governments, NGOs and INGOs (as mentioned above). Unlike the academic research, this literature makes use of inadequate methodologies and is guilty of conceptual ambiguities in its generalisation of trafficking phenomena. To overcome the conceptual ambiguities, the legislations and other official government guidelines and Acts were thoroughly reviewed to identify missing information.

Given the challenges inherent to the grey literatures, the adoption of the triangulation approach has been an important strategy to facilitate cross-checking of findings and ensure the validity of the research (UNODC, 2004). Questions of ‘who speaks for whom’, ‘about what’ and ‘how’, are important concerns in contemporary work on methodology (Ryan-Flood and Gill, 2010: 2; Ali, 2015: 784). As mentioned earlier, the interviewees were chosen based on their special expertise on the topic of interest

(particularly the topics of ‘child trafficking’, ‘children’s rights’, and ‘child protection’). Interviewing experts in the field ‘can serve to shorten time-consuming data gathering process, particularly if the experts are seen as “crystallization points” for practical insider knowledge’ (Bogner et al., 2009). Careful consideration was given while selecting the interviewees (ranging from human rights activists, government and NGO officers to independent consultants).

However, the power relations between the researcher and the researched can be altered during the research process (Scharff, 2010). Glucksmann (2010: 206) argues that, when research is based on interviews with authorities representing their organisations, the interviewees hold more ‘power than the researcher’ and that they ‘look after their own interests and control what information to reveal or withhold’. The issue of interviewees’ positionality was treated cautiously. Sanchez Taylor and O’Connell Davidson (2010: 46) argue that ‘the researcher not only sees, but is seen by the research subject, and this too impacts on the research process’. On several occasions during my field work, I reflected upon the power relations in the field with reference to my positionality, particularly as a PhD researcher from the west. In many instances I was asked questions about my situations—for instance ‘What’s it like to live in England?’, ‘Can you tell me how I can apply for a PhD in England?’ and so on. My interviewees saw the relevance of my research in the Nepali context and were very supportive (for example, directing me to relevant documents and inviting me to their workshops). Not only did the interviewees share their insights and knowledge of the responses to child trafficking with me, but also share the trajectories of their ‘thinking’ that have shaped their responses- which indicates that they potentially experienced the research process as ‘empowering’ (Opie, 1992 in Scharff, 2015: 85).

However, ‘since they [interviewees] are the storytellers, they can easily reveal the parts they choose to narrate, while restricting the parts they do not want to expose’ and ‘may simply hold different image/perception/ideas’ (Ali, 2015: 791-192). To overcome possible bias, I had to pay special attention to what was being narrated and ask follow-up questions. For example, one of the interviewees explained the identification strategies as follows: ‘for example, because Nepal shares an open border with India—in case of suspicion...they are stopped and intervened and stopped from going’. The interviewee did not elaborate the context in detail. I then, after a while, asked the same question (i.e. ‘what about identification of the victims?’), to which he answered that ‘doubt is expressed only when the child is travelling alone or in the process of trafficking...also, [if] the child will not disclose information due to fear ...we have to identify the symptoms’. I again intervened and asked ‘what do you mean by symptom?’ He responded: ‘symptoms like...she could be scared and quiet and she could be found abandoned etc.’. This assisted in grasping some of the missing points in the answers, and in extracting richer and more nuanced analysis (Ali, 2015). It also made me aware that ‘interviewees do not always tell their stories in a predicted or conventional manner’ (Essers, 2009: 172 in Ali, 2015: 792).

4.7 Ethical Considerations

The main ethical considerations relate to issues of the research participants’ rights and welfare, along with the researcher’s obligation to the subjects. Kumar (2011:248) suggests that it is important to look at ethical issues in relation to ‘research participants’, ‘researchers’ and the ‘sponsoring organisations’. With regard to research participants, certain situations could pose ethical problems if not addressed properly, which includes: collecting information, seeking consent, providing incentives, seeking

sensitive information, the possibility of causing harm to participants, and maintaining confidentiality. Similarly, considering the researcher, areas of ethical concern include: avoiding bias, providing and depriving individuals of treatment, inaccurate reporting, and the inappropriate use of information.

Many of the ethical guidelines issued by professional academic associations emphasise the significance of gaining the informed consent of all participants in research (Mason, 1996). The ethical guidelines include: The British Psychological Society (BPS), The American Sociological Association (ASA), The Social Research Association (ASA), and the British Sociological Association (BSA) to name just a few (Flick, 2011). The study proceeded within the boundaries of the Data Protection Act (1998), University of Essex's ethical guidelines and the guidelines of British Sociological Association (BSA).

Child trafficking is not an easy topic, nor is it easy to work in the field – there are numerous stumbling blocks such as identification of key persons working in anti-trafficking programmes. The following strategies have been applied to ensure that ethical codes and practices are maintained in the study. Consent forms were presented to and signed by each informant before the interview and focus group (see Appendix 6). Moreover, the interviewees and focus group participants were provided the opportunity to decide whether to participate in the investigation by being given information and an explanation of the benefits, rights, risks and dangers involved with their participation. Similarly, consent for being recorded was obtained at the beginning of the interview and focus group. The consent forms were signed by the interviewees and focus group participants indicating that they give their informed consent to participate in the research. They were provided with a copy of the written consent for

their records. It was ensured that all interviewees were aware that their participation was entirely voluntary and they were free to withdraw at any time without prejudice and without providing a reason.

Two of the interviewees were sceptical of audio recording. I respected their decision and took notes during their interviews. The procedures for safeguarding anonymity were explained carefully; this included informing the interviewees and focus group participants that the information provided by them will only be used for the purposes of this study and will be completely confidential in order to avoid any negative impact on their daily life or in the future. Also, as discussed earlier, I have provided randomly identified numbers so as to preserve anonymity and to safeguard the confidentiality of the interviewees and focus group participants. The names or other disclosive information about the individual participants or organisations have not been included.

The decisions regarding access, re-access and gaining consent can be an on-going ethical dilemma in the research process. For instance, issues of the representation of individual voices, gaining 'consent forms' from the interviewees, and the bias involved in the gatekeeper's choice of which interviewees they refer, are some of the ethical concerns. Miller and Bell (2002) have suggested that using a 'research diary' to document access, re-access and gaining consent is another way of ensuring high ethical standards in the research process. I maintained a field note dairy as well.

There are two main reasons victims of trafficking have not been interviewed in this study: firstly, this is due to the ethical issues involved; and, secondly, because the focus of the research is on practitioners'/professionals' responses rather than on victims' perceptions. Prior trafficking studies (such as Kelly and Regan, 2000 and ECPAT UK, 2001) were based upon professional's opinions of the trafficking situation in the UK,

rather than on trafficking victims'/survivor's experiences. Similarly, the study conducted by the National Society for the Prevention of Cruelty to Children (NSPCC), to explore practitioners' understandings of responses to trafficked children and young people, has not interviewed children and young people because of the complex ethical issues involved (in Pearce, 2011).

4.8 Transcriptions of interviews and translation

60 interviews and one focus group discussion were transcribed by myself after the completion of each piece of fieldwork. Because the interviews were conducted in Nepali, I then translated them into English. It was very demanding to render certain Nepali words into English without significantly changing their meaning. For this reason, I have left some Nepali words intact alongside their translation. Although this process entailed an extra stage of research while transcribing, in retrospect, I had a huge advantage as I knew precisely what the interviewees were referring to when I was formulating themes and categories. It also helped me when categorising the main themes, based on the interview guide (see Appendix 1, 2, 3 and 4) (for instance, 'destination of trafficking', 'factors contributing child trafficking', and 'vulnerable children' among others).

4.9 Reflections on data analysis

Data processing and analysing is considered a challenging and exciting phase of the qualitative research process (Spencer et al., 2012). Merriam (2009) states that data analysis in qualitative research is intended to provide an answer to the specific research question(s). There are three ways to analyse the data: (1) developing a narrative to describe a situation or event, (2) identifying main themes from the field notes, interview transcripts and quoting them accordingly, and (3) quantifying the main theme to

provide significance (Kumar, 2011:277). Data analysis is carried out in different traditional approaches, including: ethnographic accounts, life histories, narrative analysis, content analysis, conversation analysis, discourse analysis, analytic induction, grounded theory and policy and evaluation analysis (Spencer et al., 2012).

Among these analytical approaches to the qualitative paradigm, the study applied content analysis. According to Berg (2009), content analysis is a process of careful, detailed, systematic examination and interpretation of data in an effort to identify patterns, themes, biases and meanings. Broadly speaking, qualitative data analysis is a process of searching for patterns and relationships in the data by comparing individuals' stories and experiences. In fact, data analysis is a way of making sense out of data and involves consolidation, reduction and interpretation of what people have said and what the researchers have seen and read. These meanings and understandings constitute the findings of the study.

Berg (2009) states that the categories in a content analysis are determined either inductively or deductively, or by the combination of both. In the inductive approach, the researcher immerses themselves in the existing documents with a view to identifying the themes that are pertinent to the study. By contrast, studies based on the deductive approach, use various categories drawn from theories and documents assessing the hypothesis. However, in many circumstances, it is difficult to define the relationship between a theoretical perspective and hypothesis as it involves both inductive and deductive approaches. Content analysis is generally achieved through the use of a coding frame (Berg, 2009). The purpose of coding frames is to organise the data and identify key findings from the open coding (David and Sutton, 2004).

The initial approach to the data has followed Charmaz's suggestion (2006:47), asking 'what do the data suggest? Pronounce? Assume?' and 'from whose point of view?' While analysing data, it was interesting to find that the testimonies of different interviewees appear to contradict each other. This was found when the interviewees explained the child trafficking phenomenon in Nepal. The two different scenarios of how the problem of child trafficking was perceived has been discussed (Chapter 5). An NGO officer stated: 'For example, a child is being kidnapped from home, drugged or lured for better opportunity...it is like they are literally coming to our country, stealing our daughters and selling them' (N8, April 2014). By contrast, an INGO officer stated: 'We see in the media that a family sells a child etc., but now trafficking is not limited to the poor nor restricted to unprivileged people. Even educated people are vulnerable...' (IG3, April 2014). When analysing my findings, these two differing accounts of child trafficking phenomenon – the 'victimhood' narrative and the 'agency' paradigm – were presented. These findings thus provided my analysis with a newer perspective, as I was able to establish how these two diverse and contradictory assumptions on trafficking narratives lead to varied responses (Chapters 7 and 8).

Thematic analysis was employed 'for identifying, analysing, and reporting patterns (themes) within data' (Braun and Clarke, 2006: 6). The interview transcripts, field notes, and documents collected have been thoroughly studied. A summary was then prepared on the basis of the major themes from the interview guide (e.g. destination, trafficking process, the role of perpetrators, causes of trafficking vulnerabilities, and so), which then helped in naming an early set of categories/themes.

In the study, the data collected from the field have been organised and coded manually. Each theme is assigned a code, using numbers or keywords. This process of generating indicators that are potentially relevant in answering the research question is called

coding (Merriam, 2009). In the study, the data collected from the field has been organised and coded manually. Each theme is assigned a code, using number or keywords. For instance, a word document was created for each theme/code covering education, gender, caste and ethnicity etc. The main advantage of the coding system is that it allows researchers to use words, phrases, and ideas directly from the text and capture emerging themes and explore them further in the study. This process has been helpful for analysing and discussing the categorised themes to make comparisons and identify contrasts among the interviewees. Given this, the data analysis in this research has followed both a 'top-down' literature review approach and a 'bottom-up' fieldwork approach. Chapter 5, 6, and 7 therefore present the thematic analysis of the data, as emerging from the different coding patterns employed.

4.10 Conclusion

This chapter has outlined the research design of the study. The underlying philosophical assumptions were discussed and justified. This doctoral study aims to understand the problem of child trafficking (and responses to child trafficking) through the perspectives of the anti-trafficking community. Semi-structured interviews and FGD were used as the main data collection method, and document analysis was used as a secondary data collection method. This chapter has also attempted to provide some reflections on my fieldwork in Nepal, the samples used, and the ethical considerations involved, as well as the data analysis strategies utilised. The following chapters discuss the findings.

Chapter 5: Nepali Perspective on Child Trafficking: *The findings from within*

For example, a child is being kidnapped from home, drugged or lured for better opportunity... poverty does play a role. This is done unwillingly, even if girls agree to go for better opportunities. That is why child trafficking in Nepal is done in quite a distinct manner compared to other countries. It is like literally coming to our country, *stealing our daughters and selling* [emphasis added] (N8, April 2014).

We see in the media that a family sells a child, etc., but now trafficking is not limited to the poor, and restricted to unprivileged people. Even educated people are vulnerable; they know what situation they would be in, yet they go for it. You cannot just look *from a perspective of having sympathy towards the victim*. In a global scenario and economic development, you have to look from the demand and supply side. Basically people who are in these situations, labour trafficking or sex trafficking, have become a commodity for the people who earn from them – more than human sentiment, the individual becomes a commodity for that person to earn money [emphasis added] (IG3, April 2014).

5.1 Introduction

The above statements are two different scenarios of how the scope of the problem of child trafficking is understood in Nepal. The first, expressed by a programme director of a local NGO, is illustrative of a common assumption of the ‘victimhood’ narrative (Chapter 3). The second, expressed by a programme manager of an INGO, reveals a very different understanding and response. This interviewee’s reply engages with the ideas of the ‘agency’ paradigm that has been gaining recognition in the trafficking discourse. Such a prevalence of diverse and contradictory assumptions on trafficking discourses/narratives lead to varied responses.

Scholars argue that despite the increasing recognition of the trafficking phenomenon, there exists consistent dispute among the government, NGOs and INGOs over the scope of the problem (O'Brien et al., 2013; Vijayarasa, 2015; O'Connell Davidson and Anderson, 2006). For example, Vijayarasa (2015:4) argues that 'misconceptions remain about the most dominant forms of human trafficking and the most dominant characteristics of its victims' among the anti-trafficking community, as well as within academic circles. She further suggests that a key cause of such misconceptions has been the way that victims have often been perceived as 'uneducated, poor, naïve and susceptible to deception', with a widespread emphasis on sexual exploitation (Vijayarasa, 2015:4). Ambiguities in depicting the victims being abducted and abused are, however, emphasised in previous work (O'Connell Davidson and Anderson, 2006; O'Brien et al., 2013).

This chapter aims to reassess some of the important issues as argued for in recent work, including the current trends of child trafficking, and the trafficking process and the role of the perpetrator. In particular, I will analyse the causes of trafficking and different forms of vulnerabilities, and unpack (and challenge) some of the existing presumptions of child trafficking in Nepal. This exploration is important as it sets the scene in which the responses to child trafficking can be examined. The remainder of the chapter is structured as follows. At the outset, the estimation of trafficking by different organisations is discussed. Next, I will address both traditional and emerging destinations of children trafficked from Nepal. The trafficking process and the perpetrators will then be discussed. Finally, I will provide an in-depth analysis of the causes of trafficking vulnerabilities of children, and thereafter draw some concluding remarks.

5.2 How big is the trafficking problem?

Studies show that trafficking is a hidden phenomenon, and obtaining reliable statistics is therefore a challenging endeavour (Aronowitz, 2009; Salt, 2000; Anderson and O’Connell Davidson, 2003). Lee (2011:17) states that trafficking estimates are often based on the volume of trafficking drawn from government organisations or NGO databases of known victims. She further highlights that ‘the data depends upon how trafficking is defined, who is responsible for trafficking and what the political bias might be’ (Lee, 2011:17).

In the case of Nepal, the data collection of trafficking is generated from a diverse range of sources – from INGOs and NGOs, through to government and police databases. These organisations often make reference to the large scale of trafficking of women and children within and outside the country. The current status of knowledge about the extent of trafficking in Nepal reflects a number of factors. Since the late 1990s, the various estimates (or guesstimates) have been forwarded by different NGOs and INGOs, focusing mainly on sex trafficking of women and girls.

Child Workers in Nepal Concerned Centre (CWIN), an NGO working in the field of children’s rights, estimated that 5,000 to 7,000 Nepali girls are trafficked to India annually for prostitution, although how this was calculated remains uncertain (in Pradhan, 1996). In comparison to this figure, a significantly high number of trafficked girls and young women has been reported by the International Labour Organisation (ILO). ILO’s (2002) report estimates that approximately 12,000 girls and young women, the majority of whom are under 16, are trafficked every year to Indian brothels. Aronowitz (2009), however, questions the ILO estimation on account of the lack of clarity of method that the organisation has applied. During the interviews it was noted

that most of the estimations provided by both NGOs and INGOs were obsolete as new forms of trafficking are emerging in the country, which are discussed below. For example, an NGO officer questioned the applicability of the ILO's figures:

ILO's estimation of child trafficking is more than 15 years old and does not have a source. The trends have changed now; before we had *Kamalari pratha* [bonded labour] which has been controlled, says the policy, but not much is reported on this trend of trafficking or on cross-border trafficking, Sindhupalchowk and Nuwakot trafficking, external trafficking and internal trafficking – ILO data does not address these trends (N18, August 2015).

As the above quotation suggests, a problem with most of the estimates is that they exclude the trafficking of boys or girls trafficked for purposes other than the sex trade and those trafficked to countries apart from India. Nevertheless, conversations with numerous officials of the government, NGOs and INGOs working in anti-trafficking clearly demonstrate that the estimations provided by CWIN and ILO were regularly referred to by NGOs.

What is apparent from these figures is that there is no clear distinction made between trafficking as opposed to prostitution by 'choice'. This conflation of trafficking and prostitution in the trafficking discourse is not uncommon (Sanghera, 2005:11), and it is these definitional and methodological challenges that have made it rather difficult to estimate accurate numbers of victims involved in the trafficking industry (Salt, 2000; Anderson and O'Connell Davidson, 2003; Goodey, 2012).

One of the best examples of efforts of data collection in recent years comes from the Nepal Office of the National Reporter on Trafficking (ONRT), which was established in 2002 under a Memorandum of Understanding between the Ministry of Women, Children and Social Welfare (MoWCSW) and the National Human Rights Commission (NHRC). The ONRT was set up as an independent mechanism for data collection, for monitoring the incidence of trafficking, and for coordinating national, regional and

international efforts to combat trafficking (NHRC, 2008). The office of the NHRC, with the support of the ONRT, has been producing annual reports on *Trafficking in Persons, Especially on Women and Children* since 2005, using a range of sources, including an NGO's record of interception, rescue, rehabilitation and repatriation, as well as missing persons applications recorded by Nepal Police.⁷ The NHRC reported the figure of 11,500 cases of trafficked victims or attempted cases of trafficking in 2011.

In comparison to other figures presented earlier, the NHRC has made a more concerted effort to capture the extent of trafficking using a wide range of sources, but has, however, had limitations. Many of the problems lie in the methodologies of data gathering. Four key problems were highlighted during the interviews. First, the methodology applied to calculate the figures is not explained. Second, the data combines different types of trafficking and conflates illegal migration, migrant workers and missing people. For instance, in its study, the NHRC (2012) claims that almost 700 children are missing in Nepal every year, and of those missing children, 43 per cent of them are never found. Therefore, there is a linkage between trafficking and missing children in Nepal (NHRC, 2012). Recording missing persons as trafficked victims can, however, be misleading (Sanghera and Kapur, 2000), and may further complicate the identification of these groups as victims. There is a need to consider these peculiarities and the problem of the 'missing' in the trafficking discourses, which should be explored further. Third, the data gathered through the border interception may be misleading due to the existence of 'double-counting' by the NGOs. Kaufman and Crawford (2011:661–

⁷ G3b, August 2015.

662) argue that ‘the NGOs inflate the trafficking statistics by counting all the interceptions as rescues’. Such is evident in a statement of a government officer:

If we look at the border interception, for instance, in Banke, there are 5–6 NGOs; one person is intercepted 3–4 times by different organisations and this is reported multiple times for one case; the case is then higher in the report. This duplication of data is reflected in the NGO’s report (G3b, August 2015).

This situation reflects that it is difficult to rely on misreported and unconfirmed information provided by NGOs. Fourth, the existing data, which are based on NGO records (of rehabilitation and repatriation), may have been built on the registered cases in which NGOs have offered assistance. However, questions are raised about the extent to which such organisational data can adequately represent the number of trafficked victims (Aronowitz, 2009:20).

Other useful sources that offer an insight into the extent of trafficking incidence are provided by the Ministry of Women, Children and Social Welfare (MoWCSW). The MoWCSW’s *Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal* of 2013c provides information on cases of trafficking derived from police records and court cases – i.e. 188 police cases and 748 Supreme Court cases (although the high number could possibly indicate the cases pending over the years) recorded between July 2011 and July 2012. Data collection and reporting are undertaken on a regular basis by Nepal police. For instance, they have recorded 145 survivors rescued between July 2011 and July 2012. Among these, 118 cases of trafficking were registered as forced prostitution made during cross-border interventions.⁸

⁸ P1, August 2015.

In comparison to the NHRC estimates, the MoWCSW uses a record of ‘known victims’, which although accurate, is perhaps an underestimate for the following reasons. There is a danger of using police records as a benchmark, especially when it is evident that many trafficking cases go unreported due to various reasons, such as stigma attached to trafficking or fear/threat from perpetrators, among others (see Chapter 7 for discussion on the reason for under-reporting of trafficking) . In a similar vein, Aronowitz (2009:16) concluded that the ‘compounding problem in obtaining reliable statistics is the fact that victims rarely report their victimisation, and often are unwilling to cooperate with law enforcement officials if identified and rescued’. Apart from the unreliable figures, the police data tends to focus on sex trade trafficking and fails to include other forms such as forced labour.

In summary, a number of challenges arise when trying to work with different sources. Central to this is the risk of duplication in data collection (Goodey, 2012). In turn, this impacts on the responses that are developed. The absence of adequate funding and systematic reporting and a lack of scientific research methodologies have further added to the challenges in compiling accurate statistics.⁹ Regardless of these very divergent figures, it has been acknowledged that the estimates from different sources provide a base to understand the nature of trafficking in Nepal.¹⁰ While there is a consensus among the anti-trafficking community about the clandestine nature of trafficking, no research has been commissioned to investigate the statistics of the emerging trends of it.

⁹ N13, August 2015.

¹⁰ G3a, A1a August, 2015.

5.3 Destination India, Dubai, a dance bar in Kathmandu or elsewhere?

This section will discuss traditional and emerging destinations for the trafficking of children. Attempts have also been made to shed light on the elements that have played an important role in triggering the problem of child trafficking in Nepal.

5.3.1 *Child trafficking to various Indian cities and the Chinese district 'Khasa'*

The extant discussion on the trafficking of children is confined to either the 'sex industry' and 'child labour' or the effectiveness of the systems that are put in place to control 'cross-border trafficking' to India (see NHRC, 2012; ILO-IPEC, 2001). India has for many years remained the primary destination for the trafficking of children, especially for sex work in brothels and for performing labour in circus and agricultural projects. Various reports show that trafficked children were forced to work as beggars in large Indian cities, mainly in Delhi and Bombay (NHRC, 2012). The findings of this research reinforce this fact. For instance, one NGO officer in the interview commented 'Even today, children aged 5 to 13 years are trafficked for circus performance to India from Makawanpur, Bara and Rautahat districts of Nepal... but these children might not just work as circus performers' (N17, August 2015). The interviewee further commented that 'many children contracted to circuses tend to get engaged in sex work at some point' (N17, August 2015). Crawford (2010:74) states that circus trafficking continues to be a destination for Nepali children. Along with the circus, interviewees have identified an emerging trend to traffick boys aged between 8 and 16 years for dangerous work in factories such as embroidery (*jari*) factories, garment factories, tobacco (*bidi*) factories, metal workshops and other forms of sweatshop labour in big cities such as Mumbai and Delhi.¹¹ Another example of a new form of trafficking is

¹¹ IG1, April 2014; N19; N17, August 2015.

where young women (12 – 16 years) are recruited to the entertainment sector initially in the city and sent to Indian cities.¹² They are contacted by agents who promise them jobs as dancers and are referred to as *cultural troops*.

What is striking from the interviews is that the ‘means’ of trafficking have undergone a significant change in recent years. An interviewee provided an example of this, stating that ‘the *dalal* or broker lures the children with false promises, and then once the children are removed, the parents are not told of their whereabouts’ (IG4, 2014). This shows that unlike the dominant discourse on ‘victimhood’ (Chapter 3) children are not drugged, kidnapped, or coerced during the process of trafficking, but are rather deceived in relation to work or travel across borders. A statement of an NGO officer is evidence:

The girl and boy travel together and the girl says she is going to buy tomatoes when stopped at the checkpoint, and then she returns and again says she forgot to buy cauliflower and then never returns. Once the girl crosses the border then there is a 100 per cent chance that she has been sold (N17, August 2015).

As is the case with some other forms of trafficking, the perpetrators (see section 5.5 of this chapter) establish a relationship with the family alluding to the employment opportunities for their children in order to gain their consent. One NGO officer remarked:

The perpetrators approach the family and make an effort to establish a relationship with the family, for example, *miteri saino* [friendship (closest translation)].¹³ In this process, he/she gets consent from the child’s parent. So when a child is taken cross-border, when stopped at a checkpoint, upon interrogation, the child will say the perpetrator is his/her *mith buwa* or *mith ama* [friend’s parents] (N17, August 2015).

¹² IG4, April 2014.

¹³ Miteri Saino is a unique custom of Nepal. Performing some ritual means that one’s friendship is bonded for life. This then means one is part of the family.

This process complicates the identification of victims, as in the first instance there may be some form of agreement and consent. UNICEF (2009a:17–18) states that it is therefore crucial to assess the ‘dynamics of the trafficker–victim relationship’ and ‘hence it is important to understand how trust is generated and manifested’.

Not only are Indian cities destinations for trafficked victims, the Chinese district bordering Nepal, i.e. *Khasa*, has in recent years become another destination, especially for trafficking of young girls and children for the purpose of sexual exploitation.¹⁴ An INGO officer explained how the girls are trafficked to *Khasa*:

To go to *Khasa* the girls just need to demonstrate their citizenship. The girls are taken for a short term, i.e. for a week or 10 days, in cabin restaurants. But now again it is changing; before they were taken for a week and brought back to Kathmandu, but now they stay for a longer period or stay there itself (IG4a, April 2014).

Nepali girls¹⁵ who are trafficked to *Khasa* are then placed in entertainment sectors for a short period of time (10 days or more) and transported to another place, the reason being that a Nepali citizen can travel to *Khasa* without a visa for only up to three months.¹⁶ This *Khasa* trend has resulted in a rise of ‘mobile prostitution’, a term used by Kelly (2002:33) to explain how an organised groups of girls are moved across borders for from a week to a couple of months for sexual purposes. Similar to other forms of trafficking, girls are trafficked to *Khasa* by the offering of false hopes of ‘good work’, but are eventually forced to work in cabin restaurants and dance bars.¹⁷

The changing trends in trafficking have caused problems in understanding and defining it, making it more complex in recent years; children’s decisions to migrate should

¹⁴ IG10, August 2015.

¹⁵ The interviewees have used ‘girl’ (commonly referred to as ‘*cheli-beti*’) as a blanket term to refer to all Nepali ‘girls (pre-pubescent) and young women (13-17)’. This notion of girls as *cheli-beti* is commonly in use in the trafficking discourse, blurring any attempts to distinguish girls and young women.

¹⁶ N17, August 2015.

¹⁷ N17, August 2015.

therefore be considered in the trafficking narratives and interventions. Vijeyarasa (2015:79) argues for a more nuanced approach to understanding trafficking in which a ‘combination of reasoned decision-making [...] and potential deception should be placed at the heart of any framework created to explain patterns of movement in trafficking situations’.

5.3.2 Child trafficking in Kathmandu and other cities of Nepal

Along with cross-border and external trafficking, there has also been a significant rise in internal trafficking in Nepal. Frederick et al. (2010) suggested that the number of people who are internally trafficked has now exceeded the number of those trafficked outside Nepal. This subsection strives to shed light on this growing trend of internal trafficking.

5.3.2.1 Child trafficking into the entertainment sector

There was a general consensus among interviewees that trafficking of children and young women in the entertainment sector has been on the rise. An NGO officer, for instance, remarked that the ‘entertainment sector is now known as a trafficking hub’ (N1, April 2014). It was noted during the interviews that the entertainment sector operates in various forms, for instance, cabin restaurants, duet singing (*dohori*) restaurants, massage parlours and dance bars in the urban spaces, all of which are constantly in search of girls from rural areas for business purposes. This pattern was explained by a government officer:

The entertainment sector is also a sector easily accessible to unskilled people lacking formal academic certificates and other relevant documents. The sector offers types of jobs that are made available on the basis of a personal connection and network... Brokers and perpetrators are on the lookout for such girls (G1, August 2015).

As mentioned earlier, according to the estimation of Frederick et al. (2010), between 11,000 and 13,000 girls and young women, the majority of whom are aged between 12 and 15 years, are employed alongside women in the entertainment sector, mainly within the Kathmandu valley. In fact, in recent years, entertainment sectors are no longer confined to Kathmandu, and have expanded consistently into other parts of the country through various informal establishments – beer bars, guest houses and restaurants, also known as *khaja ghar*, being some examples. Nevertheless, many of the interviewees acknowledged the complexities in identifying the cases of victims in this sector. Previous studies show that internal trafficking takes place more on a gradual basis, which is also evident in this study (Worthen, 2011; Crawford, 2010). Some interviewees noted that very often, girls are employed in this sector as waitresses, dancers and singers; while performing such duties, they are sexually exploited and eventually forced into sex work; an INGO officer, for example, stated:

For instance, a child might be brought to Kathmandu for a short period of time to work in a dance bar or a restaurant in the city... After the girl has reached the destination, the trafficker or owner will tell her that she is going to work as a waitress, dancer or domestic worker in dance bars, *Dohoris* or massage parlours, before she is forced into sex work (IG4, April 2014).

Another NGO officer explained how girls gradually become involved in the sex industry:

Initially, the girls are asked to clean dishes and are low paid for 15–20 days. They see their friends are better paid, have good food to eat and wear nice clothes, and are living with a guest. Then they realise that the other kind of work is better off. The other kind of work is sex work. Girls are then forced in a way to work in sex work – in a couple of months she gets into it (N1, April 2014).

As stated in the above quote, deceived victims are likely in many cases to accept the conditions of work at the later stage. Such practices, although apparently ‘consensual’, have therefore inherited the characteristics of trafficking. A programme director of a leading children’s rights NGO expressed a similar opinion during the interviews:

...all girls who are working in the entertainment sector are trafficked. Nobody is brought into this business to work as sex slaves, even if they have consented to work. Before, girls were trafficked by using force, threatening them, etc.... but today, girls are not brought to the city in the same manner. It is a smooth process, like, for instance, girls want to study further, they want opportunities and want to go to Kathmandu or Pokhara, and these are the common pathways. Traffickers take advantage of this. But it gets complicated when they reach their destination, and then the problems arise (N10, April 2014).

Ennew (1986:113) refers to this form of employment as ‘disguised traffic’, which:

[...]involves hiring women or girls to work away from their homes in the entertainment industry, in such jobs as dancing, cabaret performance and bar work, in which they will be likely to come into contact with prostitutes and pimps, and may become involved themselves.

Undeniably, in the context of the entertainment sector, what is distinct is that the consensual (to work in the entertainment sector as dancers or waitresses) and non-consensual (sexual exploitation) experiences/practices are intertwined and overlap. Such practices do not confer with the mainstream trafficking discourse (victimhood – mentioned in Chapter 3), in which the movement of a child is treated as with ‘direct threat’ or ‘abuse’. It is assumed that many children and young girls take up such jobs knowingly (Ennew, 1986), although ‘this does not alter the fact that there may also be many who are ignorant of these extra conditions, and are attracted by the idea of legitimate, and possibly glamorous, employment’ (Ohse, 1984, in Ennew, 1986:113).

Worthen (2011:11) argues that anti-trafficking organisations assess such situations as either ‘innocent’ girls that are duped or ‘savvy’ girls who are eager to try their luck. The latter girls are seen as being deceived in relation to ‘work expectation and working conditions, rather than victims of trafficking’. An INGO officer, for example, stated during the interviews how such a practice is ‘more complex and sophisticated in that it is rather challenging to know whether they are doing this unintentionally or forcefully’ (IG, April 2014). Concerns are expressed by some that such girls tend to be misjudged

because of their ‘mobility’; an NGO officer further commented: ‘they [the girls] go home, come back and work, etc.’ (N18, August 2015). There is a growing concern that the narratives used in internal trafficking, such as ‘freedom’ and ‘consent’, should not be conflated (Elliot, 2015:228). O’Connell Davidson (2011:463) argues that the victim–agent binary is crucial so as to understand the ‘injustice’, ‘suffering’ and ‘victimhood’ in a trafficking episode. She states that:

According to the UN Protocol, the distinction hinges on whether or not they have been moved for purposes of exploitation. But given that ‘exploitation’ is a politically contested, historically and culturally variable concept, and that even when key elements of what might constitute it are agreed, they generally range along a continuum rather than existing as either/or options (2011:465).

Such ambiguities were evident in my study. For example, one interviewee observed the ambiguity in identifying trafficking in the entertainment sector, stating: ‘it is very difficult to establish the involvement of middlemen for movement for the purpose of exploitation’ (IC, April 2014). It is important to understand that the term ‘exploitation’ has been narrowly defined and applied in practice (Chapters 6 and 7). Such understanding of ‘deserved’ (innocent) and ‘undeserved’ victim (savvy, or tainted) creates a dichotomy in mainstream approaches (Doezema, 2000, in O’Brien et al., 2013:112). This may become a cause enabling many genuine cases in the entertainment sector to go unnoticed.

Despite the debate as to whether they can be considered trafficked victims or not, the majority of the interviewees held a view that there are undeniably profound health and human rights implications of this sex industry. For instance, children working in such sectors are often exposed to various forms of exploitation in that they are forced to work long hours, usually at night, and for low wages and in adverse working conditions. An NGO officer reflecting their cases stated: ‘there is a level of debt, and the owners

often say that they cannot get out of debt, and they cannot leave without paying it back. It is a very exploitative situation' (N18, August 2015). Some revealed that 'children are given hormonal medicines in many instances to make them look mature [older] to employ them in the entertainment sector'.¹⁸ Working in such unfavourable conditions denies children of their rights (Obokata, 2006:126). These complex patterns, as experienced in the entertainment sector, raise concerns of trafficking as to whether the experiences of girls and young women working in this area are similar/different to other victims.

Nevertheless, interviewees agreed that those working in the entertainment sector, or the potential victims of trafficking, are mainly migrants who have abandoned their homes and communities in search of a better life. Such perspectives offer a two-fold understanding of trafficking. First, children are seen as victims of trafficking if they are employed in this sector as waitresses, dancers and singers, and while performing such duties, they are sexually exploited and eventually forced into sex work. On the other hand, an understanding of the internal movement of children in the entertainment sector is based on the notion of deception (even though deception is not relevant to the definition of child trafficking under Nepali law – see Chapter 6) with regard to work expectations, working conditions and exploitation, rather than trafficked victims. It is claimed that this creates a hierarchy of victims, i.e those who are deserved victims and those who are undeserved victims (O'Brien et al., 2013; Lee, 2011). Given these ambiguities, the roles of children in the process of rational and voluntary decision-making in the pre-migratory phase cannot be ignored in the trafficking discourses/narratives. Further, there is a need for a more nuanced approach to

¹⁸ N18, August 2015; G5, August 2015.

understanding children's decisions to work (or continue to work). This also calls for the adoption of a wider definition that addresses the rights of children (UNICEF, 2009a:9).

5.3.2.2 *Factories, domestic work and other informal sectors*

The purposes of trafficking range from the exploitation of children in domestic work to forced labour of boys working in 3D jobs – dirty, difficult and dangerous (Ebbe, 2008). In the context of Nepal, 3D jobs also include child labour in stone quarries [*brick kilns*], embroidery (*jari*) factories and streets (Frederick et al., 2010). The embroidery (*jari*) factories industry has emerged as the main business for employing children. In its 11th June edition, the *Nagarik Daily* (2012), one of the largest selling national dailies of Nepal, stated that a large number of children aged 12–14 years from central *Tarai* districts are enslaved in the embroidery (*jari*) factories in the Bhaktapur district (in NHRC, 2012). In particular, children from western and remote districts – poverty riven areas of the country – are most likely to work in stone quarries (*brick kilns*) and embroidery (*jari*) factories.¹⁹ In the interviews with INGOs, it was revealed that most of the children (girls) working in embroidery (*jari*) factories are later likely to be engaged in entertainment sectors such as dance bars, cabin restaurants and massage parlours.²⁰

Children working in the domestic sector tend to encounter a wider range of abuse physically, verbally and sexually.²¹ Further, some interviewees revealed that children employed in domestic work are equally vulnerable to being exploited and trafficked in

¹⁹ IG4a, April 2014.

²⁰ IG2, April 2014; IG4a, April 2014.

²¹ 1b, April 2014; N15c, August 2015.

later years. This is also evident in the report of CWISH et al. (2009), which indicates that of a total of 1,429 child domestic workers interviewed, 47 per cent are brought to Kathmandu by a third person or a broker. 98 per cent of these children are working as domestic workers without any form of written contract (ibid.).

Nevertheless, not all children employed in factories, domestic work and other informal sectors should be considered as the victims of trafficking. Some of the interviewees raised concerns over the link and overlap between trafficking and child labour.²² In a similar vein, an NGO officer during the interviews reflected on the contemporary child labour situation in Nepal: 'If we consider the broader definition of trafficking, including labour trafficking, then all children, almost 90 per cent of children who are currently employed, are in one way or another trafficked' (N10, April 2014). This statement indicates how there are ambiguities relating to certain cultural practices (such as working children), protection and control. In a similar vein, Omoike (2010:204) argues that the common belief that child domestic workers are not in harmful work for children is rooted in societal and traditional practices. This further adds to the difficulty of understanding child labour and exploitation, and recognising trafficking.

To sum up, the interviews show that children in Nepal are trafficked for prostitution, circus work, embroidery factories, stone quarries (*brick kilns*), domestic work and other unorganised/informal sectors. These forms of trafficking identified in Nepal are in line with the UN protocol which defines trafficking as:

The movement of children for exploitation in domestic work; work in the catering and hospitality sector; factory, mine and agricultural labour; begging; and forced marriage; as well as prostitution; and also for illegal adoption[...]organ trading (O'Connell Davidson, 2011:464–465).

²² G1b, April 2014; N15c, August 2015.

This, however, has not yet been made explicit in the national laws of Nepal (Chapter 6) . In recent years, Nepal has become not just a source or a transit country, but also a final destination for trafficking of children from countries such as India, Tibet and Bangladesh.²³ The growing demand for factory and commercial sex work in Kathmandu and other big cities in Nepal is a reason for this. However, this trend is yet to be further explored in research and is beyond the scope of my research.

5.3.2.3 Nexus of children in institutional care and trafficking

Child care homes are established to provide a valuable and much needed service to children who are orphaned and are ‘at risk’. While the children’s homes system has been established to offer these children some protection, the motives of some homes in Nepal are questionable (NHRC, 2012). Firstly, several allegations have been made suggesting some institutions are treating children as commodities. For instance, a child rights officer remarked:

Child care homes run for various intentions; some have set up child care homes for a business purpose, by showing the number of children to get funding from donors to sustain their family life; whereas there are some who have set them up with a genuine effort to protect children (G7, August 2015).

Another government officer added: ‘You know they call it money making business [*dollar ko khet*] ... the owners get funding on the basis of the number of children in child care homes’ (G5, August 2015). This commodification of children, for instance, may involve buying children from their biological parents, taking advantage of the family’s impoverished situation and then selling the children to adoptive parents for profit (Next Generation Nepal, 2012). During the interviews it was revealed that parents may be approached with promises offering better education or work for their

²³ N16, N18 and N13, August 2015.

children in the city, an offer which is not easy to refuse for most parents as it could lift their children out of a cycle of poverty.²⁴

Another issue is that children are being adopted from homes and sent abroad without their parents' permission. An NGO officer stated:

Children from villages are put in children's homes for better education, but they are internally trafficked. Some children are externally trafficked too... In recent trends, in the name of inter-country adoption, children are sent to Italy and other countries and their families are unaware of this. These children are paper orphans – biological parents are unaware of this adoption. The middlemen facilitate such activities, but in reality these children are kept in vulnerable conditions in child care homes (N10, April 2014).

With an increase in inter-country adoption in recent years, numerous irregularities have unfolded, including the falsification of documents. Evidence suggests that many child care homes send children abroad as godchildren (*Dharmaputra* or *Dharmaputri*).²⁵

Inter-country adoption has therefore apparently become another stimulus to the trafficking of children in Nepal. A child rights officer, for example, reinforced this argument:

For example, what I see is that in Humla and Mugu, rural regions, children are actually not orphans, and they are made paper orphans to put them in Pokhara and Kathmandu children's homes and are placed in groups. There are so many examples of that: one is that child care homes have a selfish motive – they can show huge numbers of orphans to get donor money; this is also a form of trafficking we are experiencing in recent years (G2, April 2014).

Another issue is that in some child care homes, children are sent off to work as beggars, in forced child labour in embroidery (*jari*), in domestic work and in the entertainment sectors. These children are often living in dangerous situations, so may be either prone to trafficking or likely to experience abusive situations.²⁶ Some interviewees noted that given the fact that trafficking of women and children in Nepal is still narrowly

²⁰ G5, August 2015.

²⁵ N12, August 2015.

²⁶ G1a, April 2014.

understood as ‘sex trafficking’ (Chapter 3), children in child care homes in most cases are not considered as victims of trafficking.²⁷ Therefore, a nuanced approach to understanding the risks, vulnerabilities and exploitation of institutional children is needed within trafficking discourses.

5.3.3 Child trafficking beyond cross-borders

Studies show that the number of women and children trafficked to the sex industry has increased over time with the emergence of new trafficking destinations (Ghimire, 1994; Terre des Hommes, 2003; Sangroula, 2001; NHRC, 2011). These destinations include the Middle East, Africa, Korea and China. The various forms of trafficking identified during the interviews include *cultural troops*, labour exploitation and forced marriages. As mentioned earlier, the dance bars, duet singing (*dohoris*) and cabin restaurants²⁸ located in Kathmandu have served as good points of contact for traffickers and have provided them with a means through which to groom these girls as *cultural troops* who are then sent to various countries in the Middle East, and African and Indian cities.²⁹ An executive director of an NGO commented: ‘this has been a transit zone; they work for a year or so, and once they are trained, they have opportunities go to Middle East countries’ (N3, April 2014). An INGO officer elaborated on the recruitment process:

Cultural troops are formed by organised groups. These groups visit the local dance restaurants, *dohoris* and cabin restaurants in Kathmandu where they identify the girls, and these girls are convinced that their jobs are to dance or sing only, etc. Once they reach destinations such as Dubai, Saudi Arabia and African countries like Tanzania, Libya and Kenya, they are forced into prostitution (IG4, April 2014).

²⁷ G1b, April 2014.

²⁸ The cabin restaurants offer food and drinks and sexual services (NHRC, 2011:28).

²⁹ N3, April 2014; IG10, August 2015; P3, August 2015.

This is, however, not surprising as Oesbanda (2010:289) states that traffickers tend to thrive in such hubs and hotspots engaged with children trading to clubs and brothels abroad. In most cases, bar owners take control of girls by confiscating their passports and other travel documents so that they cannot return home. Such exploitation in the form of confiscation of documents, debt bondage, harassment and threatening behaviour may lead the girls to accept their situations (Obokata, 2006; Oesbanda, 2010). Prior work suggests that internal trafficking is linked to trade of women and children abroad; the issue has, however, been largely ignored (Hughes, 2000; UNICEF et al., 2002).

Further, it is worth noting that children are trafficked abroad not only for commercial sexual exploitation (CSE) but also for various other purposes, including domestic service and different forms of forced labour (Frederick et al., 2010). Interviewees mentioned that it is quite common in Nepal to force girls/boys into bonded labour such as camel jockeys, and engage them in other labour exploitation.³⁰

Another recent trend is the trafficking of Nepali girls to countries such as Korea and China for the purpose of marriage.³¹ The study by NHRC (2012) claims that there is an increasing demand in countries such as Korea for Nepali girls for this purpose. A senior police officer explained this process:

... fake marriage certificates are issued by the concerned local government. Most of the girls don't know who they are getting married to or their names and so on. Girls, preferably with Mongolian features, are often targeted by the bureaus through agents ... these girls are married to either Chinese or Korean men; the men pay the agency between Rs. 1.5 and 2.5 million (P3, August 2015).

³⁰ IG4, April 2014; G3b; G3a; G5, August 2015.

³¹ N16, August 2015.

These girls are considered to be victims of trafficking as they are claimed to be enslaved and physically abused, and experience a slave-like situation.

5.4 The Trafficking Process and the Role of Perpetrators

This section discusses the different phases of the trafficking process, and highlights complexities relating to the patterns of trafficking (which may well apply to both child and adult trafficking). Prior work has identified trafficking in Nepal as a small-scale crime with an involvement of a broker and a brothel owner (Crawford, 2010; Sanghera, 2012). However, my interviewees revealed that trafficking has now been identified more as an organised crime involving the engagement of a group of people in a more cohesive manner. As one NGO officer remarked, not only has ‘trafficking become an organised crime’, but ‘the group of 12 to 20 people involved in the trafficking process are much more advanced’ (IC1, April 2014).

The data reveals three distinct phases of trafficking: the *recruitment*, *transportation* and *destination* phases. As a result, the trafficking process has become complex involving layers of phases and actors. In the process of recruitment, transportation and destination a set of human rights concerns are raised (Obokata, 2006). During the interview, a police officer commented: ‘A child faces a series of human rights violations as he or she crosses these phases up until the destination phase’ (P1, August 2015). The complexities of the trafficking process and the variety of people involved in facilitating this are depicted in Figure 1 (See Appendix 11).

A middleman is involved at the *recruitment phase*, who is often known – a family member, a friend working in the entertainment sector, a neighbour or a potential

boyfriend or agent.³² Traffickers are often well known to the victims, which makes it easier to initiate the recruitment phase. They have a sort of power relation with the community enabling them to come to this frequently and be in contact with children and family.³³ Previous studies argue that almost half of traffickers are in some way familiar to the victims of trafficking (Hennink and Simkhada, 2004; NHRC, 2012). McGill (2003, in Crawford, 2012:69) states that some trafficking involves drugging, abduction by force and an involvement of family members. While only one of the interviewees mentioned that there were cases of drugging or abduction during the interviews, many of them referred to cases in which a stepmother, stepfather or in-laws were involved in the trafficking process.³⁴ In the case of cross-border trafficking, children are often approached by middlemen/brokers, who could also be distant relatives, for instance, an aunt (*phupu*), a mama/uncle or a potential boyfriend/husband.³⁵ These middlemen are employed either by recruitment agents or brothel owners.³⁶ For example, a programme director of an NGO further reinforced the argument: ‘The traffickers in the destination countries employ local agents to approach the girls... The network starts from brothels in India – they mobilise local people, network with family and develop a relationship of trust’ (N16, August 2015).

In the case of internal trafficking, the interviewees mentioned that children are approached not only by middlemen/brokers but also by girls or women (who themselves had been victims of trafficking) working in the entertainment sector. An NGO officer further explained that the strategy the brokers use in the recruitment phase concerns identifying potential areas where they can set up an advertisement. The job

³² A1a, August 2015.

³³ N16, August 2015.

³⁴ N8, April 2014; P1, August 2015.

³⁵ N14 and P1, August 2015.

³⁶ N8, April 2014.

advertisements are tailored in a way so as to make the work look attractive; lucrative jobs in dance bars with good salaries and opportunities of getting education in the city are highlighted.³⁷ These networks often operate as travel/tour businesses such as hotels and restaurants, modelling agencies and cosmetic shops. These businesses are set up to look genuine.

It was identified during the interviews that even some marriage bureaus are involved in facilitating the trafficking process, particularly in external trafficking. These bureaus lure girls and young women to travel to China and South Korea by making false promises of better life opportunities. However, once these girls reach the destination cities, only then do they find themselves being sold as maids/domestic workers (ekantipur, 2015). The selection of these girls usually takes place in Kathmandu, and physical appearances play a key part in the process.³⁸

Once recruited, the victims enter the *transportation phase*. In the process of cross-border or internal trafficking, children are usually transported by local persons or agents.³⁹ The evidence further suggests that traffickers use land routes in Nepal, usually to India, to transport children to other countries. It was assumed that the networks get wider at this stage, where a group of international agents become involved, taking the responsibility of transporting the children to international ports. In the last phase of trafficking, the *destination phase*, there are several networks involved making it more complex. A senior police officer elaborated on the involvement of such networks:

Rackets are involved in trafficking young Nepali girls to dance bars in different African countries. The transaction amount is high. The rackets have connections with countries in Tanzania, Kenya, Uganda, Malaysia, Oman, Bahrain and the UAE. Many of the members also have investment in dance

³⁷ P1, August 2015.

³⁸ P3, August 2015.

³⁹ G2, April 2014.

restaurants in Nepal, Dubai, Kenya and Tanzania. At each process, perpetrators have specific roles to play (P3, August 2015).

The complexities of external trafficking were further elaborated on by another police officer:

For example, A, B, C and D are the different levels of criminal group. A will know B, B and C will know each other, but A will not know C or D once a phase is crossed. Very often they do not know perpetrators C or D, the person involved in the destination/trafficked city (P1, August 2015).

Prior work shows that organised criminal groups exert political influence and execute corruption by bribing officials (to obtain visas) and transport workers (to transport victims) (Crawford, 2010; Segrave et al., 2009; Shelly, 2007). It has been recently discovered that other groups, organised or otherwise, including recruitment agencies, internet websites, legitimate job advertisements and marriage bureaus, are examples of the channels used by traffickers. This shows how the problem of trafficking has become more sophisticated and complex in Nepal.

5.5 Causes of Trafficking Vulnerabilities

The socio-economic and political contexts of a country can play a significant role in both prevention and detection of child trafficking. The vast majority of trafficked victims in Nepal are children living in vulnerable conditions due to extreme poverty, illiteracy and geographical isolation (Frederick et al., 2010; NHRC, 2012). Studies show that weak protection often pushes children into different forms of vulnerabilities, a phenomenon that is clearly distinct in Nepal (Frederick et al., 2010). Hynes (2010) argues that trafficking often flows from regions in which children's socio-economic positions are marginalised and child exploitation/abuse is widespread. In such circumstances, children are seen more as being at higher risks of becoming victims of trafficking given their status of being young. Similarly, Heiberg et al. (2010) argue that a weak protection system for children can push them into extreme 'vulnerabilities'. The

following section reassesses the arguments that existing child trafficking literature has put forward, taking into account the social, economic and political factors; which have not only made children vulnerable to trafficking, but have also allowed the trafficking situation to occur. In doing so, this section unpacks (and challenges) further elaboration on some of the commonly held assumptions relating to trafficking victims, as discussed in Chapter 3.

5.5.1 Poverty, desire for a better life and globalisation

Obokata (2006:122) identified that ‘poverty has a negative impact on the enjoyment of human rights as it affects economic, social and cultural rights, such as rights to work, adequate standard of health and education’. Among the empirical studies, it is claimed that poor families, who are unable to raise/feed their children or indeed themselves, often have little alternative other than to send their children to urban areas or other countries in search for jobs to ensure basic survival (Dottridge, 2004; ILO-IPEC, 2002; UNICEF, 2003; IIDS and UNIFEM, 2004; NHRC, 2008; Obokata, 2006). However, for instance, Vijayarasa (2015: 82) argues that the existing trafficking studies are based on anecdotes or rumours of family members selling their daughters to ‘exploitative labour’ due to extreme poverty. As discussed in Chapter 3, such a perspective has been predominant in the development programmes in Nepal for many years. During the interviews, an NGO officer elaborated on this commonly held assumption, stating:

In the Sindhuplachowk district, houses have metal roofs instead of thatch or wood; those families within these houses have sold their daughters to brothels in India. In Sindhupalchowk, if a girl child is born, they celebrate because they can go to India to work... there is a saying that if a daughter is born they prepare meat, and if a boy is born then pumpkin is prepared (N17, August 2015).

The above statement resembles the argument of Howard (2012:558) in which poor economic conditions are seen as a key cause for families to send their children off, creating a conducive environment for traffickers. Further, a link can be drawn between

social and cultural acceptance of ‘working children’ and their vulnerability to trafficking. Literature shows that children working is a reflection of social norms, kinship support and life skill training (Liebel, 2004; Nieuwenhuys, 2005; Alber, 2011, in Hanson et al., 2015:322). Moreover, some argue that children’s work is perceived to be beneficial for their education, health and family survival (Liebel, 2004, in Hanson et al., 2015:322). Offering a view on children’s work, an INGO officer stated: ‘I could see that children do not regularly come to school; rather, parents send them to work. Because of unawareness of this... some parents believe that their children would be better off working from an early age than going to school’ (IG2, April 2014). Despite the cultural justification of working children, most of the interviewees noted that such circumstances are prone to create vulnerabilities. Another interviewee continued: ‘I think a long tradition of children labouring to help their families at home has impacted on children’s life chances’ (G1b, April 2014). Evidence from the above statements suggests that children in the labour market are particularly vulnerable, since they could be easily drawn towards the process that may lead to trafficking. Another interviewee states: ‘If we look into working children, those children are vulnerable to trafficking’ (J1b, April 2014).

It is generally accepted that in some cases both the parents and children may have been influenced by economic circumstances, such as social deprivation and inequality, among other factors. However, Vijayarasa (2015:84) argues that ‘a more nuanced understanding of family goals, motivation and what appears to be a partial level of autonomous decision-making of some young girls’ is needed to generate a better understanding. Vijayarasa (2015:11) states that:

The relationship drawn between poverty and trafficking is a simplistic one and ignores underlying complexities, including distinctions between absolute and

relative poverty and the role of false expectations of work, pay and life abroad that may play roles in the decisions.

The above statement manifests that a ‘range of scenarios exist’ and therefore ‘relatively poor victims of trafficking are not among the poorest in their communities’ (Vijeyarasa, 2015:117). Such a relationship between absolute and relative poverty and trafficking in Nepal also requires further analysis; however, this falls outside of the scope of my study.

A number of interviewees alluded to globalisation as being a ‘push factor’ for children to look out for better opportunities.⁴⁰ Atiken et al. (2008, in Punch and Tisdall, 2012:243) argue that globalisation is not a new phenomenon, ‘but a consideration of how global processes shape the lives of children and young people’ is an emerging issue. In a similar vein, Lund (2008:146, in Punch and Tisdall, 2012:243) states that many children ‘have become more (not less) vulnerable with globalisation’. As discussed earlier (Chapter 1), modernisation and urbanisation have become the two driving forces for social change in Nepal in recent years (Liechty, 2003, in Crawford, 2010:106). Such change taking place in society has had a significant impact on children and their aspirations to live better lives.⁴¹ Many children, particularly in rural areas, are therefore abandoning their homes.⁴² Social values and norms are therefore in transition in the country, as people become adoptive to institutionalise new norms and lifestyles. Mentions were made during the interviews that in the process of this transformation and the adoption of new norms, children become easily enticed by traffickers who promise them better lives.⁴³

⁴⁰ G1b, April 2014; IG10, April 2015.

⁴¹ G1a, April 2014.

⁴² G1a, April 2014.

⁴³ G1b, April 2014; IG10, April 2015.

The emerging trend of migration in Nepal has given children and their families opportunities to look beyond their communities. Therefore, children's migratory aspirations may be shaped by the drive for better lives. In a similar vein, Boyden and Howard (2013:362) argue that the experience of children leaving their communities has nothing to do with starvation, but rather their 'proactive quest for economic opportunity'.

Dottridge (2004) argues that in the migratory process, children are particularly vulnerable to abusive forms of exploitation that may or may not involve traffickers, as they are not aware of the risks and exploitation involved in migration. An INGO officer stated:

...i.e. access to information; if children do not have the right information, then they are vulnerable to trafficking; for example, in the entertainment industry, children only see the economic gain, but they are unaware of the traffickers' involvement, and do not know that they are getting trained, etc. (N5, April 2014).

Implicit in the above statement is how naïve and poorly informed children are perceived to be in achieving economic gain. While acknowledging that some children can be easily lured, interviewees also mentioned that they often do not have access to, and in some cases lack skills and education to process, information.⁴⁴ The situation, therefore, is far more complex than how dominant discourses of trafficking have envisaged victims. Such overlap of trafficking in the migratory experiences among children has, however, received little attention in the mainstream trafficking discourses. As discussed earlier, it is also important to consider what motivates 'primary migrants' to take on active roles in deciding to abandon their homes, and what makes them vulnerable in the process. In reality, a range of scenarios are to be considered during

⁴⁴ G1b, April 2014.

the pre-departure stage, which may contribute to blurring the lines between ‘potential migrants and/or victims’ (Vijeyarasa, 2015:117).

In addition, this study also identifies ‘secondary migrants’ as children of migrants who represent the other vulnerable group. An NGO programme director commented on ‘secondary migrants’: ‘In recent years new patterns are emerging. For instance, entire families are moving to India. Once reaching India, the family members are separated; some are put in restaurants or exploitative labour conditions’ (N18, April 2014). This illustrates the case of the vulnerability of the children belonging to their parents’ circumstances. There are ambiguities as it is difficult to contextualise case to case.

5.5.2 Education

The link between access to education, school dropouts and human trafficking is well established in the literature (ILO-IPEC, 2001; UNICEF, 2003; Frederick, et al., 2010). The risk of trafficking is usually higher when the level of education among children and their parents is low. Despite the fact that education is compulsory in Nepal up to secondary school (Chapter 1), many children are deprived of education, either because they live in rural areas, do not have easy access to schools or they cannot afford expenses related to their studies.⁴⁵ Furthermore, a deeply-rooted gender discrimination in which children in general are expected to work to support their families, and girls in particular are responsible for taking care of households and their siblings, has contributed to high school dropout rates.⁴⁶ This is further exacerbated by corporal punishment of children. This remains widely practised in schools, although it was made

⁴⁵ N5, April 2014.

⁴⁶ J1c, April 2014; N10, April 2014.

illegal in 2005 (Bhattarai, 2010). It is therefore important to undertake initiative so as to address verbal and physical abuse exerted on children in schools.

During the interviews, it was noted that many lured children, and on some occasions parents, are promised better education in the city by traffickers.⁴⁷ Because of this, education is seen as the most important path to a better future (Boyden and Howard, 2013:362). Further, there are also cases in which children have been unable to finish their formal education or acquire adequate skills, which then forces them to look for alternative opportunities and accept jobs in informal sectors.⁴⁸ Education is therefore reckoned to be a crucial tool among anti-trafficking communities to prevent all forms of exploitation taking place against children, including trafficking.⁴⁹ For example, a human rights officer remarked: ‘Until and unless the government does not provide education for all in Nepal, there will always be a problem of trafficking or other social problems’ (IG2, April 2014). The statement underpins the argument of Vijayarasa (2015:100), which states: ‘substantial resources[...] are invested in reintegration programmes focused on educating victims’. Such approaches to anti-trafficking are discussed in Chapter 7.

Nevertheless, inadequate education opportunities alone can be a simplistic way of identifying the causes of trafficking (Vijayarasa, 2015). While this could be one key factor, there are some clear exceptions regarding levels of education and risks of trafficking that cannot be ignored. It was noted during the interviews that it is not just children who are out of school, but children who attend school who are vulnerable to

⁴⁸ G1a, April 2014.

⁴⁹ J1c, April 2014.

trafficking as well. A CRO, for example, illustrated a recent incident of suspected trafficking, a trend which is apparently on the rise:

One of our staff was going for a morning walk, where she found three school girls aged 13–14 who had just completed their class nine and were standing at the side of the road. Upon questioning the girls as to their whereabouts, initially they were reluctant to answer. Later they mentioned that their friends had invited them to Pokhara. She then asked who the friends were; they said their friends work in a hotel. It was suspicious. Then the girls were asked for their fathers' phone numbers but were unable to contact their families. They were then referred to a shelter... Later, when asked further, it was revealed that they had left home in the hope of finding jobs in a hotel. They were first cousins and their parents were totally unaware of this incident. They were sent back home with the help of local police (G2, April 2014).

The above quote shows that trafficking has become a far more complex phenomenon than the dominant discourses of trafficking, which are built on assuming that victims are innocent and uneducated actors, suggest (Chapter 3). This confirms Vijeyarasa's argument, where she presents an alternative understanding of 'educated victim as a risk taker' (2015:112). She further argues that 'the victims show a high degree of autonomy in the decision-making process', and 'their movement is not driven by naivety, but rather by empowerment derived from higher levels of education than their peers' (Vijeyarasa, 2015:112). This group of children attending school have, however, received very little attention in the trafficking discourses in Nepal. Given this, it can be argued that efforts should therefore be made to provide access to and improve the quality of education in rural areas in the process of developing intervention strategies.

5.5.3 Intersections: gender, caste and ethnicity

The extant literature has attempted to relate the vulnerability of trafficking with different aspects of gender inequality (Aengst, 2001; Hennink and Simkhada, 2004; Terre des Hommes, 2003; Obokata, 2006). Drawing on this, I argue that gender, ethnicity and culture intersect to reinforce children's vulnerabilities. For instance, as

discussed in Chapter 1, the perceived gap in the economy, along with the ingrained cultural beliefs segregating gender roles, have become factors making Nepali girls and young women vulnerable to trafficking (Chapter 1). Such historically-institutionalised, gender-based violence and discrimination has constructed a favourable environment for trafficking to occur in the country. However, gender-based discrimination does not affect all children in the same way, as children will have different childhood experiences based on varied ethnic groups they belong to (Heywood, 2001). Certain traditional practices such as girl child marriages, *Chaupadi* and *Kamalari* are more common with particular ethnic groups and are well established in the mainstream trafficking discourses.⁵⁰ A programme manager of an INGO commented on the prevalence of child marriage in some ethnic communities:

For example, in *Tharu* and *Madhesi*, community girls are married at a young age, i.e. 12 or 13 years. In some Nepali communities, among the *Tamang* community, when a girl child is born, it is celebrated; when a boy child is born, they mourn. Among the *Badi* community, a girl child is sold by their family with consent of their biological parents (N8, April 2014).

A number of studies have attempted to establish a link between child abuse and neglect, and children belonging to a particular origin are more vulnerable to trafficking (ILO-IPEC, 2002; Terre des Hommes, 2010; UNICEF, 2003; UNICEF et al., 2002). In particular, children from marginalised ethnic groups, subservient castes, and dysfunctional families, such as those with alcoholic parents, an absence of mothers or fathers, polygamy, divorce or remarriage, have a higher chance of ending up being trafficked (UNICEF, 2003; UNICEF et al., 2002; NHRC, 2008). This view was also shared by a social worker during the interview:

In Nepal, there has been an increasing trend of abandoned children. Family separation, single parents, divorces, stepfathers or stepmothers: children in such situations are vulnerable and have protection issues. From our [NGO]

⁵⁰ IG6, April 2014.

Helpline inquiries, what I can say is that children from *Dalit* and *Janajati* are more vulnerable (N11, April 2014).

While most of the interviewees agreed that the traffickers target children from marginalised, ethnic, low caste communities, a programme director of an NGO, for example, remarked:

Traffickers particularly target ethnic groups; for example, low caste communities, *Badi*, *Chepang*, *Tamang*, *Choudhary*, *Gandarba*, *Mousar*, *Lahor* and *Bote* are more vulnerable to trafficking. Among the *Badi* community, from my work, once the girl child is 12–14 years old, parents negotiate with brothel owners to sell their daughters, and they are sold by bidding. Therefore, we can say that in these two communities, parents willingly sell their children, i.e. parents are directly involved (N8, April 2014).

However, some interviewees conceded that trafficking has changed in recent years and is no longer restricted to lower caste groups, but is also across higher caste groups, for example, *Bahun* and *Chhetri*, among others.⁵¹ This may be due to the patriarchal values predominant in higher caste groups, which may facilitate the need to escape violence and inequality in homes (Crawford, 2010). This group, however, receives very little attention in the mainstream trafficking discourse in Nepal.

5.5.4 Birth registration: exploring the link to trafficking

As discussed earlier (Chapter 1), there is a further problem peculiar to Nepal, and that is the historically lax approach to birth registration, which works to the advantage of traffickers. As stated by Todres (2010), traffickers are in search of such easy targets, for instance, undocumented children. The fact that it is easier to falsify the age of unregistered children means undocumented children are more susceptible to trafficking and other forms of exploitation. Most of the time, a broker (*dalal*) is involved in the

⁵¹ N17, August, 2015.

issuance of false documents for such children, which is evident in the following statement of a government officer:

We often encounter cases in which the child, who looks very young, may be between 12 and 14 years old, but claims to be 18 years old. We have to issue the passport, despite our suspicions, on the basis of documents she provides such as a citizenship card. We have no choice other than to believe the parents, who are often coerced by the broker, as they do not possess a birth certificate or any other evidence to otherwise prove their age (IC2, April 2014).

This does not just mean that traffickers, and in some cases authorities, can make up ages/forged documents, but that authorities just do not know that some children even exist. There is no way of knowing how many missing children there are. Several interviewees from both the government and NGOs noted the consequences of inadequacy of systematic birth registration that have made it challenging to draw out updated and disaggregated data available to verify the age of the vulnerable or high risk children, or victims of trafficking.⁵² Ensuring all children are registered in a systematic way has continued to become a problem adding to the vulnerability of them.

5.5.5 Political instability, corruption and lack of commitment

Political instability in recent years has provided an additional impetus for the rise of trafficking in Nepal (Chapter 1). This has led to the proliferation of corruption, making it easier for brokers to influence the authorities in the falsification of documents (Obokata, 2016). Corruption has also promoted a culture of impunity in the country. Weak prosecution means that real perpetrators often escape from punishment due to political affiliation, which is discussed in detail in Chapter 7. Reinforcing the problem of political protection, discussed in the previous section of this chapter, one of the statements of a human rights officer serves as an example:

⁵² N21, August 2015; G1a, April 2014; N17, August, 2015.

Just take a look at the cases of the remote districts *Humla* and *Jumla*. Because of the perpetrators' personalities and political connections, no action was taken against them by concerned authorities. There are so many other cases similar to this one (J1b, April 2014).

Prior work has demonstrated how weak governance and corruption led to impunity, thereby creating a favourable environment for traffickers to operate (Crawford, 2010; Segrave et al., 2009). Such is clearly evident in Nepal. Lack of political commitment, corruption by the concerned authorities and weak prosecution of the perpetrators have exacerbated the problem of child trafficking in Nepal. This will be elaborated on in Chapter 7.

5.5.6 Technology

The demand for sex workers and cheap labourers in the cities as 'pull factors' of trafficking of children is well documented in the literature (ILO-IPEC, 2002). Interviews suggested that this demand for sex workers and cheap labourers has been further facilitated due to growing technological advancement such as internet chat rooms, websites and mobile phones. A government officer recalled his experience:

But now technology is an increasing problem; for instance, in girls' and boys' movement for trafficking purposes, technology plays a major role; we have received such cases and also published them in the Kantipur Nepali Daily [Nepali national newspaper]. For example, a Nepali girl in Banke was communicating with a boy in India through mobile phone, and she was later trafficked to India. In developing countries like ours, it is quite interesting to know that technology is playing such a major role (G1b, April 2014).

An NGO officer remarked: 'The traffickers contact victims through mobile phones; they send pictures to clients [Nepali or foreign] beforehand' (N10, April 2014). An interesting phenomenon was observed where, despite the fact that Nepal is still catching up with modern technology in western countries, increasing numbers of children now

have access to mobile phones, chat rooms and the internet. This indicates that technology is interlinked to trafficking of children.

5.6 Conclusion

The chapter shows how the existing mainstream trafficking discourses have been unrepresentative to cover these various new forms and patterns of child trafficking in Nepal. Despite the ambiguity in estimation of trafficking figures, the findings show trafficking of children to various destinations: from cross-border trafficking transgressing various Indian cities and *Khasa*, to other destinations in Asia and the Gulf regions. Along with the expansion of destinations (and old destinations such as India), trafficking now occurs in new forms through false marriage, mobile prostitution and cultural troops. While trafficking into sexual exploitation is still predominant, other forms of trafficking, such as circus performance, work in embroidery (*jari*) factories and tobacco (*bidi*), have significantly increased. With these emerging trends, understanding and defining trafficking have become more complex in recent years, as illustrated in this chapter.

The chapter has extended the extant work in trafficking by empirically illustrating the manner in which the 'means' of trafficking have undergone significant changes in recent years. As is evident through the findings, the movement of children with an intention to exploit them through 'abduction' and 'kidnapping' is very rare. Moreover, the findings show that multiple layers of people are involved in the process of trafficking, either directly or indirectly. Unlike the past when trafficking was driven by an individual, it is now organised and facilitated at different levels in the forms of organised crimes.

Finally, the chapter examines a myriad of causes stimulating child trafficking in Nepal, including: (i) poverty, desire for better life and globalisation, (ii) education, and (iii) intersections: gender, caste and ethnicity. By providing examples of child migrants and both school-going and out of school children, the study has demonstrated how the present situation of trafficking has become far more complex than explained in dominant discourses of it. The latter has mainly linked victims to extreme poverty, lack of education and naivety. The study therefore argues that vulnerabilities, along with their role in decision-making for better lives, should therefore be discussed within the broader and emerging trafficking discourses. Without denying the fact that particular ethnic groups – low caste communities – are vulnerable, this study empirically delineates that vulnerabilities have now extended to other social groups and castes in Nepal. The study argues that by creating ‘ideal types’, this oversimplifies the understanding of the range of causes and experiences of trafficking. Structural issues such as (iv) problems with birth registration, (v) political instability, corruption and lack of commitment, and (vi) technology have further contributed to extending the scale of vulnerability. There is a need for a more nuanced understanding of trafficking vulnerabilities in Nepal. Equally important is to acknowledge trafficking vulnerabilities as part of a continuum of migration, child labour, gender roles and other factors, rather than a distinct event. Having an understanding of such complexity of trafficking is a way of addressing it in a changing context. This exploration will be further discussed in the following chapters.

Chapter 6: The Construction of Child trafficking legislation and the influence of anti-trafficking organisations in Nepal

6.1 Introduction

This chapter focuses on the construction of current anti-trafficking legislation and policies in Nepal. In particular, it explores how the prevailing legislation and policies corresponds to governments' commitments to promoting an international human rights framework to address child trafficking. In doing so, the chapter extends the childhood debates (as discussed in Chapter 3) and addresses questions such as: What are the various child trafficking legislations and policies? How does legislation and policies address the rights of trafficked and vulnerable children? Are legislation and policies guided by underlying assumptions? In addition, the chapter examines the influence of the key players (government, NGOs, INGOs, anti-trafficking networks and media) in shaping the trafficking debates, discourses and practices. In relation to the rest of the thesis, this chapter serves as a starting point for drawing out several issues relating to the terminology used in legislation which has contributed to creating conflicting practices (discussed in Chapter 7 and 8). In addition, analysing the influence of anti-trafficking organisation on trafficking debates and practices, I have contextualised the varied responses presented in the following chapter.

The chapter begins by discussing the principles laid out in the United Nations Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. This will be followed by a discussion of the international treaties and conventions ratified by Nepal. Then, trafficking is defined nationally (and some of its problems are addressed), and the legislative approaches to child trafficking are presented, as well as the prevailing

victim-centric measures that are in place. The last part of the chapter examines the role played by anti-trafficking organisations in combatting the problem of child trafficking in Nepal.

6.2 United Nations Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

Central to the CRC is the acknowledgement of the vulnerability of children. Twum-Danso (2009:110) argues that ‘in order to enjoy the rights to which they are entitled as human beings equal to adults, they also require rights that protect and make provisions for their welfare’. Children’s rights are therefore discussed in relation to four general principles: provision of appropriate support and services for their healthy development; protection from exploitation and abuse; prevention of harm to children; and participation in decisions which impact them (Twum-Danso, 2009; Drew, 2009; Stainton, Rogers, 2009). However, the ‘four Ps’ principles discussed in the CRC has not remained without critics. For instance, Stainton Rogers (2009) argues that protecting children from harm may limit their participation in decision making. As Archard (1993) illustrates, there are two types of rights relating to children. The first type of right (i.e. provision and protection) is predicated on the assumption that children rely on others for their needs. Adults are therefore responsible to provide education, healthcare, food, shelter and to protect the children from harm. The second (i.e. the participation) advocates that children are capable of accessing and exercising their rights. However, Franklin (1995:6) states that much of the initial debates on children’s rights are rather philosophical and conceptual in nature. It is therefore argued that the notion of children’s rights is more rhetorical than action oriented (Franklin, *ibid*: 6).

The four principles which guide the general rights of children are further reflected in several articles (Article 11, 32, 34, 35 and 37). For instance, Article 34 of the CRC explicates that the State should ensure ‘protection of the child from all forms of sexual exploitation and sexual abuse. This requires all appropriate national, bilateral and multilateral measures’(see Appendix 12). In a similar vein, Article 35 requires State parties to take ‘all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form’(see Appendix 12). Article 36 is concerned with victim support and mandates the State to:

Take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of, among other things, any form of neglect, exploitation or abuse. Such recovery or reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child (See Appendix 12).

Issues relating to trafficking are further discussed in the CRC’s Optional Protocol—the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC), which is discussed below.

The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC)

The term ‘trafficking’ is not explicitly mentioned in the OPSC protocol. Nevertheless, the protocol provides a broad definition of ‘sale of children’. Article 2 of the OPSC has defined the sale of children as ‘any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration’(see Appendix 16). State parties are therefore required to:

To prohibit, criminalise and appropriately punish the relevant acts, to establish appropriate jurisdiction over offenses; and to prosecute offenders (Article 4(3))(see Appendix 16).

In addition, the Protocol includes provisions urging State parties to offer legal assistance to the victim (Article 6) and protect the rights of child victims and witnesses

in the criminal justice process (Article 8)(see Appendix 16). It is claimed that the OSPC has acknowledged most of the circumstances in which children are trafficked.

The ratification of the CRC and its Protocol implies that the State is required to ensure provisions in the national law as well as its implementation to protect children's human rights, especially those who have been victims of crime (UNICEF, 2009b; Twum-Danso, 2009). Scholars argue that a large number of developing countries, however, have failed to implement CRC in practice (Freeman, 1992; Twum-Danso, 2009). (Key challenges to the implementation of the international human rights framework are discussed in Chapter 7.).

6.3 International treaties and conventions ratified by Nepal and the domestic law

In recent years, Nepal has witnessed significant legislative and other policy developments as a part of process of integrating international human rights frameworks. The country has ratified several international treaties and agreements for addressing the issues of trafficking in persons.⁵³ As mentioned in previous chapters, Nepal is one of the first countries in South Asia ratify the CRC. The CRC has been in force in Nepal since 14 September 1990. To ease the implementation of the CRC, Nepal has ratified both Optional Protocols (i.e. Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography) on 8 September, 2002. These efforts

⁵³ The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified in 1995, and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1991. In addition, Nepal has ratified several other conventions concerning children's rights including: the ILO Convention No. 105 concerning Abolition of Forced Labour in 2007; and the ILO Convention No. 182 concerning Worst Forms of Child Labour in 2004 (See Committee on the Rights of the Child, Concluding observations: Nepal, 2012:6-8).

show that the country has taken children's rights seriously in terms of adopting the UN conventions.

In addition to this, the country has pioneered two regional Conventions of the *South Asian Association for Regional Cooperation (SAARC)*⁵⁴ in 2006: the *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*⁵⁵ and the *Convention on Regional Arrangements for Promotion of Child Welfare in South Asia* (see Committee on the Rights of the Child, 2012:8). These treaties urge the member states to embed provisions in their national laws to protect children from any form of exploitation and trafficking (Article 4). Moreover, being part of these regional treaties, the state parties have a responsibility to encourage and support bilateral and multilateral agreements and cooperation among the SAARC nations (Article 6) (see Committee on the Rights of the Child, 2012:8). Nepal has been playing an important role in the SAARC-level regional task force meetings (see National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children, 2012).

Elliot (2015: 166) states that along with the conventions, the Trafficking Protocol has become a guidance for the combating of trafficking and has helped to ensure full respect is given to the rights of the individual victim. One of the aims of the Trafficking Protocol has been “[t]o protect and assist the victims of such trafficking, with full respect for their human rights” (Elliot, 2015: 166). Gallagher (2010: 84) states that special protection for trafficked children is central to the Protocol and therefore States are required to consider ‘special needs of child victims including appropriate housing, education, and care’. This Trafficking Protocol is yet to be ratified by the government

⁵⁴ The SAARC countries include Nepal, India, Pakistan, Bangladesh, Sri Lanka, Bhutan and the Maldives.

of Nepal. However, the definitions of trafficking used in Nepal reflect many aspects of the Trafficking Protocol (discussed later in the chapter).

In addition, the country has adopted the *Human Rights Standards for the Treatment of Trafficked Persons* (1999) developed by the Global Alliance Against Traffic in Women (GAATW), the Foundation Against Trafficking in Women, and the International Human Rights Law Group. This document contains standards issued by the international human rights instruments, and international legal norms focusing on a victims' rights perspective (GAATW et al., 1999: 1). Although the standards have not differentiated women, men and children in their account of trafficked persons, however, it is acknowledged in the standard that 'special rights and needs of children should be protected according to the principles contained in the Convention on the Rights of the Child' (GAATW et al., 1999: 2).

The government has initiated a number of policies and other legal and institutional arrangements for the protection of the rights of children after 1990. Along with the provisions found in the Constitution of Nepal, two legal provisions for protecting and promoting children's rights have been adopted: the *Children's Act* (1992) and the *Child Labour (Prohibition and Regulation) Act* (1999). The *Children's Act* brought together all child related issues into one Act that domesticated the Conventions into law. Implicit in the Act is the view that what is in the best interests of children is paramount. Children's welfare should therefore be safeguarded: their views should be heard and the rights and responsibilities of their parents (and other legally responsible adults) should be respected (Baldwin, 2000). The government is required to enact timely legal provisions in order to protect the rights and interests of children for the physical, mental and intellectual development of children (see Children's Act, 1992). The Act is more

explicit when it comes to the protection of children from exploitation. Further, the *National Child policy* was developed twenty years later, in 2012, to focus on realising international commitments to addressing the challenges that children face in Nepal. A section on ‘child protection’(discussed later in this chapter) has been incorporated within the *National Child Policy* which ensures prioritisation of child protection programmes within the budgets and annual programmes of the appropriate Ministries, local bodies and government agencies (see National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children, 2012:4).

More recently, the government has introduced two action plans relating to child trafficking; these are the *National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children* (2012) and the *National Plan of Action for Children* (2004/05-2014/15). The former policy deals with trafficking by focusing on five important components: ‘prevention’, ‘protection’, ‘prosecution’, ‘capacity building’ and ‘coordination’(see National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children, 2012:4). Particular attention has been paid to ensure that the programmes formulated for both survivors and children at risk should be guided by the principles of respecting and protecting rights. The latter, developed in 2004, has adopted a comprehensive approach to child development and protection, including strategies to protect children from sexual harassment, exploitation and trafficking.⁵⁶

All of these developments suggest that Nepal has acknowledged the importance of international standards to promote a human rights framework. However, there remains

⁵⁶ National Plan of Action for Children, NPA 2004-2014. MoWCSW. Approved by the Council of Ministries, Government of Nepal, on 3 September, 2012 and implemented.

a question as to whether or not the country has enforced these standards. (This issue is discussed in Chapter 7.) The chapter now turns to the development of legislative responses to child trafficking. It is important to consider the development of the anti-trafficking legislation that has had a significant impact on the mainstream trafficking framework.

6.4 The legislative approaches to child trafficking

Vijayarasa (2015:57) argues that the ‘trafficking phenomenon is shaped not only by current laws but also by former ones’. This section will provide an analysis of the importance of the ‘law’s role in influencing trafficking debates and analyse how legislation reinforces mainstream approaches to trafficking’ (ibid.:43).

6.4.1 Defining trafficking

Trafficking in Nepal had been acknowledged long before the country ratified the international conventions and treaties. Trafficking of persons was declared an offence during the reign of king Rana Bahadur Shah in the eighteenth century (FWLD, 2014). The *National Code* issued in 1853 prohibited the slave trade, human trafficking, and the act of separating children from mothers and selling them in Indian markets (IIDS and UNIFEM, 2004). Subsequently, the 1963 *Country Code* codified the trafficking of persons as a criminal offence (see *Country Code*, ‘Muluki Ain’, 1963: 381). The trafficking of people out of the country was defined as a crime by the *Country Code* (ibid.: 381). The separation of minors (below sixteen years of age) from their legal guardians or lure the minors without the consent of the guardian, was also categorised as a crime (ibid.: 381). At around the same time, the system of making people subservient, as a slave or a bonded labourer (*Kamara and Kamari*), was prohibited and

punishable (ibid.: 381). Particular attention was paid to the ‘buying and selling’ component of trafficking. The *Country Code* was intended to combat cross-border trafficking and therefore did not apply to people being trafficked internally, from rural to urban areas.

In 1986, specific legislation was developed: the *Traffic in Human Beings (Control) Act*. This legislation, for the first time, offered a specific definition of trafficking (Article 4) as an act ‘to sell a person for any purpose’, ‘take a person abroad with an intention of selling her/him’ and ‘to have a woman engage in prostitution by persuasion or enticement or deception and fraud or pressure, or to encourage anyone to be engaged in such acts’ (in Sanghera and Kapur, 2000: 25). However, the Act has drawn criticism for conflating trafficking with prostitution, and ignoring the victims and their needs (Sanghera and Kapur, 2000; IIDS and UNIFEM, 2004; FWLD, 2014). Although these initiatives show Nepal’s early commitment to combat the problem of trafficking in persons, legislative and policy objectives were – at least until the signing of international conventions and standards – geared towards crime control rather than victim protection.

Having reflected on these problems in Nepali law, the government has made some changes. In 2007, the 1986 *Traffic in Human Beings (Control) Act* was replaced by the *Human Trafficking and Transportation (Control) Act* (hereafter HTTCA) (see National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children, 2012). Most of my interviewees agreed that the HTTCA has been the most comprehensive and progressive piece of anti-trafficking legislation enacted in Nepal. Unlike the previous Act, the 2007 Act has focused on the means and purpose of trafficking. In particular, the HTTCA has made a distinction between human trafficking

and human transportation (American Bar Association, 2011; NHRC, 2012). For instance, Section 4(1) of the Act defines trafficking as:

- Selling or purchasing a person for any purpose.
- Use someone into prostitution, with or without benefit.
- Extract human organs, except where allowed by law.
- Engaging in prostitution as a client (see HTTCA, 2007 Nepal. s 4).

Section 4 (2) of the Act defines human transportation as:

- Take a person out of the country for the purpose of buying and selling.
- Take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurements, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody.
- Take any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation (see HTTCA, 2007 Nepal. s 4).

This definition of trafficking partially complies with the Trafficking Protocol, although it does not include ‘other forms of sexual exploitation’, ‘forced labour’ and the clause on ‘consent’ (American Bar Association, 2011:2).⁵⁷ The definition is no longer restricted to transnational or cross-border trafficking, but also applies to internal trafficking. This is important because the HTTCA can also be applied to cases where women and children are trafficked from rural areas to urban areas in Nepal.

6.4.1.1 Child as a special case?

The HTTCA has defined a ‘child’ as an individual under 18 years old (see HTTCA, 2007 Nepal, s 2(d)). This definition is in contradiction with other legislations. However, it is important to note that the status of adolescents apparently falls in a grey area in Nepal (UNICEF, 2006). That is to say, adolescents are in some aspects still treated as a child, but they are expected to behave/perform as an adult (ibid). An

⁵⁷ The maximum punishment is twenty years imprisonment and a fine of two hundred thousand rupees; the minimum is one year for human transportation (HTTCA 2007, Nepal. s.15:6).

underlying issue concerns the ambiguities in the existing Nepali legal system when setting the boundary between adulthood and childhood. The HTTCA has raised the age for the definition of a child from 16 to 18 (as compared to the previous Trafficking Act) so as to make it consistent with the CRC. Other Acts however still only consider someone ‘a child’ if they are under the age of 16. For example, the *Children’s Act* 1992, has defined the term ‘child’, as a person who is under the age of 16 (Article 2(a)) (see (see Committee on the Rights of the Child, 2012:6), as do other Acts such as the *Nepal Citizenship Act* 1963 and the *Begging (Prohibition) Act* 1962 and the *Child Labour (Prohibition and Regulation) Act* 1999 (MoWCSW, 2013d:10). Similarly, the age of sexual consent for girls is 16; for boys, no age is prescribed (Heiberg et al., 2010). Conversely, children are not allowed to get married without parental consent until they reach the age of 18 (Plan Nepal et al., 2012). Despite these confusions within the legal context, some interviewees were of the view that this age discrepancy was not a problem and that people under the age of 18 are considered ‘children’ in practice.⁵⁸

Although the HTTCA does not explicitly mention ‘consent’ within its legal definition, most of the interviewees reiterated the fact that ‘child’s consent is no consent’.⁵⁹ A programme manager statement evidences this point:

Since a woman is an adult, if she has given consent then it is not exploitation or trafficking. But in the case of children, even if a child has given consent, then it should be considered as trafficking. Women should not be seen as an individual who needs protection, whereas children need guidance and protection (N12, August 2015).

Such an interpretation of child trafficking seems to be in conformity with the definition under the Trafficking Protocol (Chapter 2). Samarasinghe (2008:74) points out that such understanding ‘entails a dependency of the child on the adults, mainly parents,

⁵⁸ J1c, April 2014.

⁵⁹ A1b, August 2015; IG3 April, 2014; IC1 April, 2014; N12, August 2015; N16, April 2015; N10, April 2014.

community and the state to protect her/him from practices that are deemed harmful for the well-being of the child'. This perception is reflected in the CRC as the 'ideological, strategic, and operational need to make distinctions between children and adults' (Sanghera, 2005: 13). Sanghera (2005:13) further notes that:

Children are deemed "innocent" and in need of special protection and assistance in making decisions. It is believed that minors cannot be expected to act in their own best interest as their ability to exercise full agency is not yet entirely developed.

The 2012 National Child Policy for example states that:

[...] children are immature, [and] dependent on others for their living. They cannot think of what is right or wrong. As a result, they become vulnerable to various kinds of abuses. Children require proper care and attention by others. Primary responsibility for their nurture, care, development and protection rests with parents and guardians (National Child Policy, 2012:1).

Undoubtedly, children are viewed as being in need of protection and guidance. The assumption of what childhood *should be* – as facilitated by international discourses on 'childhood' and 'children's rights' – have, however, overlooked the dynamics of varied childhoods (Chapter 3). For example, as discussed in Chapter 5, some children (migrant children and working children, among others) in fact make the choice to escape unhappy and poor lifestyles. In such a context, Vijayarasa (2015:84) argues that 'by framing all consent as irrelevant, the Trafficking Protocol lends itself to a conclusion that all such migratory movement of children should be prohibited'. However, in reality, such an account 'ignores the complexities whereby such migration may be voluntary, beneficial, valued by children and their parents alike' (ibid.:84). Children's experiences of migration or those who find themselves in vulnerable situations therefore indicate a more complex process than the neat consent-coercion dichotomy (The preceding chapters discuss this in more detail).

Vijayarasa (2015: 42) further argues that ‘trafficking provisions at the national, regional and international levels’ have frequently failed ‘to define human trafficking in a manner that reflects the stories and sufferings of individual victims’. She further argues that ‘legal provisions attempt to create neat categories’ that confine victims and their experiences into distinct groups by determining who does not meet the legal standards for trafficking (ibid.:41). With this background in mind, the following section considers the terminologies that create conflicting practices.

6.4.2 ‘Ideal Victim’ and the Law: Problems with terminology

Some of the terms are left vague, ambiguous or undefined in the law and as such they tend to reinforce the notion of the ‘ideal victim’ as mentioned in the mainstream trafficking approaches (Chapter 3). Such ambiguities can be found in many Acts, but the focus here is on the HTTCA and the Children’s Act. Based on the findings (as discussed in Chapter 5), it can be argued that there is a need to reconsider the notion of ‘victimhood’ in order to accommodate those victims who do not fit within the legal definition of trafficking.

6.4.2.1 Immoral profession, prostitution and the victim

In the 1992 Children’s Act, the only provision relating to the issue of trafficking is Article 16(1) that prohibits the involvement of children in any ‘immoral profession’(Children’s Act, 1992: 7). However, the definition of ‘immoral profession’ has not been specified in any legal documents. The data suggests that it is related to trafficking for sexual exploitation. Similarly, the wording used to define trafficking practices within the HTTCA raises some issues with regard to identifying victims since

it places too much emphasis on ‘sex trafficking’. For example, section 2 of HTTCA defines a victim as a ‘person who is sold, transported or put into prostitution’(HTTCA,2007 Nepal. s 2(c)). A senior government officer remarked that: ‘The word *Bhesiyavidhi* [prostitution] in the HTTCA is rather inappropriate’ (G3a, August 2015). This refers to the abolitionist perspective, in that no distinction has been made between trafficking and voluntary commercial sex work (Uy, 2011; Limoncelli, 2009) (Chapter 2).

Prior work has demonstrated that the problems of using such language is due to the underlying assumptions of what constitutes an ‘innocent victim of trafficking’ or ‘victim of sex abuse’ (Melrose, 2013). In particular, Melrose (2013:15) argues that the ‘grammatical construction of CSE [commercial sexual exploitation] discourse establishes in language that young people concerned are *always* and *inevitably*, passive objects or “things”’. As discussed earlier, constructing young people as ‘passive objects’, implies that they cannot be perceived as social actors (Melrose, 2012 in Melrose, 2013:15). Elliot (2015:188) states that there are chances in which genuine cases could be ‘slipping through the net and being misidentified’ (Elliot, 2015: 188). Some young people may not be envisaged as victims because ‘they have something “wrong” with them *as children* or *as victims*’ (Melrose, 2013:17). (The consequences of these ambiguous terms are further discussed in Chapter 7.). A comprehensive understanding of the vulnerability of ‘trafficked children’ is therefore yet to be developed.

6.4.2.2 Ambiguities of exploitation and trafficking

Another issue which has remained ambiguous in the existing law is related to the term ‘exploitation’. Elliot (2015:71) argues that ‘the terms used to elucidate the minimum standards of “exploitation” envisaged by the legal anti-trafficking regime may vary between contractual parties’. For instance, Section 2 in the HTTCA defines the term ‘exploitation’ as an act whereby a human being is kept as a ‘slave and bonded’, or as an act of removing a ‘human organ’(HTTCA,2007 Nepal. s 2(e)). Slavery and its related practices can be understood to entail an ‘element of control, of ownership’ and to have ‘the status of commodification’ (Elliot, 2015:83). Such notions of slavery have overshadowed other forms of exploitative practices in which victims may not explicitly be enslaved or bonded. The narrowness of scope found here – both in terms of interpretation and application – will be discussed in the next chapter. As Vijeyarasa (2015:41) argues, it is not easy to separate one form of exploitation from another, which is evident in the HTTCA.

As discussed earlier, the distinction between the trafficking of children and child exploitation in its various forms (as found in the institutionalisation of children, child migration and child labour) is rather blurred. Ongoing debates about the relationship between trafficking and child labour furnish another example. A government officer commented on this:

If we look at UN Protocol, the Nepali Act has not taken all forms of labour exploitation into account. Child sexual abuse is not seen as trafficking...there is no clarity about labour exploitation or sexual exploitation because the Act does not include child labour (G3b, August 2015).

The HTTCA fails to address different forms of child exploitation, all of which have the potential to make children the victims of trafficking.⁶⁰ Gallagher (2010:49) argues that the

[...] absence of a standard measure of what constitutes “exploitation” is a major cause of definition fluidities. For example, in the case of children, how unpleasant or exploitative does an employment situation have to be before it is possible to say that a child was recruited or moved [...] “for purpose of exploitation?”

There is a general agreement regarding the ‘seriousness threshold’ (Gallagher, 2010:49) used ‘as a first indicator to draw a line between trafficking-related exploitation and other, less severe, forms of exploitation of children, such as child labour’ (Sax, 2018:253) . For instance, Elliot (2015: 143) argues that:

The nature and degree of the exploitation in question, and relevant factors such as coercion and deception, are clearly relevant to determining on which side of a blurred line the activity in question will fall.

Nevertheless, the working conditions (that are socially and legally accepted) in different sectors in Nepal have further complicated the distinguishing of trafficking from other exploitation practices. The HTTCA provides very little illumination as to the parameters of what may actually constitute sexual and labour exploitation. (Chapter 7 highlights these issues in more detail.)

Such clarity in the definition of ‘exploitation’ is important for prosecuting traffickers. While a component of the HTTCA’s definition of trafficking is ‘buying and selling’, the inclusion of ‘exploitation’ in the general definition remains an important factor in establishing an offence when prosecuting ‘traffickers’.⁶¹ However, the narrow use of

⁶⁰ G2, April 2014; G7, August 2015.

⁶¹ The maximum punishment is twenty years imprisonment and a fine of two hundred thousand rupees for buying and selling a human being; ten years imprisonment and a fine of fifty thousand rupees to one hundred rupees for forcing into prostitution, with or without financial benefit (HTTCA, 2007. s(15a and b):6) . The minimum punishment is one to two year of imprisonment for taking a person from one place to another within the country, and two to five years of imprisonment for taking out of the country for the purpose of exploitation (HTTCA 2007, Nepal. s.15 (f):7).

the term ‘exploitation’ in the HTTCA leads to difficulties in prosecuting traffickers who have coerced victim into forced labour or other forms of exploitation (Chapter 7). Interviewees noted that many traffickers have subsequently escaped prosecution by taking advantage of such ambiguities. It is therefore important to extend the definition of trafficking beyond sexual exploitation, bonded labour and organ removal in order to more properly align with the Trafficking Protocol.

6.4.3 Victim-centred measures

Despite such ambiguities in terminology, there is evidence of an increasing effort by the government to adopt a victim-centric approach in recent years. In contrast to the previous focus on crime control in the law (FWLD, 2014:19), the HTTCA has made significant changes in relation to victim-centred provisions. There are several victim-centred measures which are worth mentioning. Some provisions include ‘burden of proof, compensation, victim protection and rehabilitation and reintegration to support the victim’ (A1a, August 2015). Moreover, special attention has been paid to guaranteeing the confidentiality of the victim’s identity and other information relating to the victim (HTTCA, 2007 Nepal. s 20) .This indicates a move towards introducing a more holistic support for victims, as well as creating a hostile environment for traffickers—which helps to combat the problem of trafficking in Nepal.⁶² (The extent to which these provisions of the HTTCA are implemented in practice is discussed in Chapter 7.).

However, it was noted during the interviews that the compensation system is flawed. The HTTCA states that perpetrators of trafficking that have been found guilty of such

⁶² IC1, April 2014; N12, August 2015.

crimes should pay a fine and their property should be seized. Raising their concerns over compensation, interviewees noted that some of the people involved in transporting children (such as ‘public vehicle staff’) do not own any assets or property from which compensation can be drawn. What is more, even when compensation is available, only half goes to the victim and the remaining amount is transferred to the states’ rehabilitation fund. An INGO officer remarked:

It’s the government’s responsibility to compensate the victims as the perpetrators cannot afford to pay them [victims]...the government could claim the amount from the trafficker once he/she can afford to pay (IC1, April 2014).

There is an ongoing campaign by NGOs for immediate and full compensation for the victims in order to ease any necessary reintegration process.⁶³ However, some interviewees noted that the provisions of the HTTCA have not gone far enough.⁶⁴ For instance, the HTTCA does not specifically address children’s concerns and needs—instead, it only addresses trafficking in general.⁶⁵ Some interviewees have even called for a separate Act to address child trafficking in order to fill the gaps of the HTTCA.⁶⁶

Some interviews however noted that a separate Act may not be necessary as some of the issues of child trafficking have been addressed in the 2012 National Child Policy.⁶⁷ For instance, section 8.6 requires the government to combat ‘all forms of physical and mental abuses against children’ (see National Child Policy, 2012:9). In addition, the government is mandated to adopt ‘effective measures to curb child trafficking for any purpose’ (8.7), and to arrange for the security of the ‘children rescued from trafficking and ensure his or her rehabilitation in [the] family or community’ (8.8). Particular emphasis is placed on promoting support for children who are ‘in need of immediate

⁶³ A1b, August 2015.

⁶⁴ N12, August 2015; G3a, August 2015.

⁶⁵ IG3, April 2014.

⁶⁶ G1b, April 2014; G3a, August 2015.

⁶⁷ A1b, August 2015; IC1, April 2014.

protection and security' (8.27) (see National Child Policy,2012:14).This is an important development in that it signals the efforts made by government to incorporate child trafficking within the broader issue of child protection.

To sum up, the contemporary legislative approaches to trafficking in Nepal demonstrate significant improvements when compared to the pre-CRC era, particularly in respect to adopting a more victim-centric approach to trafficking. With the enactment of legislations and policies, the problem of child trafficking has drawn much attention in Nepal. However, analysis of legislative approaches to child trafficking in Nepal indicates ambiguities around definitions such as 'age', 'victim', and 'exploitation'. These ambiguities have led to varied responses in identifying victims in practice (which is discussed in Chapter 7). Along with the government, NGOs, INGOs and UN agencies are the main agents in Nepal advocating the development of policies and anti-trafficking strategies and programmes. To understand and contextualise the varied responses to child trafficking in Nepal, it is therefore imperative to highlight the role played by some of the key organisations working in the field of anti-trafficking. This is discussed in the following section.

6.5 The influence of the government, NGOs, INGOs, donors and the media

This section reviews the role of several actors engaged in anti-trafficking interventions, including: key executive and legislative arms of the government, non-governmental organisations, international non-governmental organisations, and the media. Analysing the influence of anti-trafficking organisations on trafficking debates, discourse and practices will provide context for the varied responses explored in the following chapter.

6.5.1 Government anti-trafficking agencies

6.5.1.1 Ministry of Women (now Ministry of Women, Children and Social Welfare (MoWCSW))

An important endeavour undertaken in Nepal to address children's issues has been the restructuring of the Ministry of Women to form the Ministry of Women, Children and Social Welfare (MoWCSW). The MoWCSW has the prime responsibility to use 'all means possible' to make sure that children are not trafficked' (Ministry of Women, Children and Social Welfare and Central Child Welfare Board, 2015:22). The MoWCSW is the authorised agency responsible for developing, coordinating and monitoring anti-trafficking policies and programmes in Nepal. Many interviewees, however, raised concerns about the effectiveness of the MoWCSW. For instance, an interviewee representing an INGO stated that: 'the MoWCSW programmes have continued to be focussed on women's issues. Only a small unit within the ministry has been handling children's issues' (IG1, April 2014). Thus it seems the organisation designed to deal with children's issues is merely paying lip service to them. The interviewees noted that the MoWCSW is one of the most 'overburdened' organisations given that it is tasked with handling most of the issues related to women, children, and the elderly.⁶⁸ The total budget of the MoWCSW for the fiscal year 2010-2011 was 1.189 million Nepali Rupees (USD\$ 14 million), which represented less than 1 % of the national budget, and of this total budget only 8% was allocated to children (Ministry of Women, Children and Social Welfare and Central Child Welfare Board, 2015:22). So, despite being a focal point of the institute, it happens to be 'the least resourced' unit.⁶⁹ As a result, most of the child trafficking interventions are funded by INGOs and

⁶⁸ N10, April 2014.

⁶⁹ N10, April 2014.

UN organisations. The funding constraint on state organisations signals the limited commitment made by the government in addressing child related issues.

Along with the MoWCSW, the government has established and rearranged some of the existing bodies by granting them added responsibility to deal with children's issues. These agencies include the Department of Women's Development (now Department of Women and Children), the Women Development Offices (now Women and Children Offices), and other child protection bodies such as the Central Child Welfare Board (CCWB) and District Child Welfare Committees (DCWB) (American Bar Association, 2011). The next section discusses the role of some of the key institutions.

6.5.1.2 Central Child Welfare Board (CCWB) and District Child Welfare Boards (DCWBs)

The CCWB was established immediately after the promulgation of the Children's Act in 1992. The agency started its work prior to the establishment of the MoWCSW. Consequently, there was an absence of the institutions and mechanisms needed to address children's issues at the district level. CCWB is a statutory body, responsible for formulating plans and policies for children, coordinating Ministries and NGOs, and facilitating the implementation of child related activities (CCWB, 2014). However, concerns were raised that the CCWB has been acting as an implementing body; as a NGO officer remarked: 'CCWB should work closely with civil societies- this should be their role rather they also work as an implementation body' (N21, August 2015).

Such complexities and overlapping roles of authorities have had an adverse impact on the way child trafficking interventions are executed and how child protection issues are articulated. Further, the role of the CCWB as a coordinating body is not without critics.

A key issue relating to this is the lack of authority/power of the CCWB compared to other ministries. In fact, the CCWB is authorised to work under the guidance of the MoWCSW. Some interviewees raised concerns about the ability of the CCWB to perform a coordinating role with powerful actors, such as the Ministry of Home Affairs and the Ministry of Finance.⁷⁰ Moreover, the major activities undertaken by the CCWB are supported by the international community, including UNICEF, Save the Children and Plan International.⁷¹ Continuing the activities of the CCWB after the project has finished, therefore, has become an issue of concern.

At the district level, there are District Children Welfare Boards (DCWBs) operating in all 75 districts (CCWB, 2014). The role of DCWBs is to act as a coordination body, which involves liaising with NGOs offering support to victims. Another important role envisaged for the DCWB concerns the ‘coordination with NGOs in anti-trafficking work’ (N16, April 2014). Cases of trafficking are also reported to the DCWBs, and it is the responsibility of these boards to refer them to organisations that provide rehabilitation services.⁷² All DCWBs have a secretariat, which are termed ‘Child Rights Officers’ (CROs). Ellis and Franklin (1995:89) argue that the appointment of CROs ‘reflects the positive belief that children should have an advocate or champion to promote their rights’.

Interviewees mentioned a number of problems hindering the proper functioning of these boards at the district levels. The CROs and the chairperson of each committee are overburdened with administrative tasks. The fact that one chairperson represents several boards means that he/she is unable to devote all his/her time to the activities of

⁷⁰ IG1, April 2014; IG2, April 2014.

⁷¹ N21, August 2015.

⁷² N16, April 2014.

the boards. Another limitation of the DCWB concerns the inadequate support of the government. For instance, CROs who are mainly responsible for protecting the rights of the child are funded through INGOs. The majority of the development activities that the CCWB and the DCWB undertake depend upon donor support, with a limited budget from the government.⁷³ All of these problems and resource constraints have weakened the DCWB.

6.5.1.3 Women and Children Offices (WCOs)

The Women and Children Offices (WCOs), which is an implementing agency of the Department of Women and Children, operates in all 75 districts of the country. While the CCWB and DCWBs are coordinating boards, the WCOs have served as the focal agencies at the district level for implementing issues relating to women, children, senior citizens, and persons with disabilities. The WCOs work in anti-trafficking interventions at the district level through the District Committee for Controlling Human trafficking (DCCHT) (see Appendix 13). A major task assigned to the WCOs is to raise issues around trafficking to the Committee.⁷⁴ Some interviewees conceded that the WCOs is a ‘good concept’, but reiterated the fact that many of the agencies have become rather passive due to a lack of adequate funding.⁷⁵

6.5.1.4 Nepal police- Women and Children Service Directorate and Women and Children Service Centres (previously known as Women cell) and the Central Investigation Bureau (CIB)

The Women and Children Service Directorate, under the Criminal Investigation Department of the Nepal Police, has been set up to provide women and children access

⁷³ G7, August 2015.

⁷⁴ G3b, August 2015.

⁷⁵ N16, April, 2015; IC1, April 2014.

to the justice system and create a conducive environment for the reporting and investigation of trafficking cases. The Directorate transfer complex cases, in which it is difficult to identify the victim, to the Crime Investigation Bureau (CIB).⁷⁶ In addition, Nepal Police have established 240 Women and Children Service Centres, operating in all 75 districts and 7 metropolitan circles within Kathmandu valley.⁷⁷ A senior police officer commented on the importance of the centres:

The directorate aims to ensure fair and specialised services for women and children, and provide the victims with services with support. Victims are reluctant to come to the police, and if they are not treated well by them, they could be re-victimised...so to address this, our aim is to provide a victim-friendly environment to provide protection and fair treatment to women and children, whether offender or victim (P1, August 2015).

Many of these centres have appointed female police officers to handle trafficking cases.⁷⁸ However, not all districts have the provision of Women and Children Service Centres and not all centres have female police officers.⁷⁹ In addition, a Human Rights Unit has been set up within a department of the Nepali Police in 2003, with a view to ensure the protection and promotion of human rights (Women and Children Service Directorate, 2015).

6.5.1.5 The National and District Committee to Combat Human Trafficking

Another pertinent initiative undertaken by the government in addressing trafficking has been the establishment of a national anti-trafficking coordination committee regulated by the HTTCA (see HTTCA, 2007 Nepal. s 23). The following committees are, at present, working on trafficking related issues across 75 districts and 225 communities: the National Committee on Controlling Human Trafficking (NCCHT), the District

⁷⁶ P3, August 2015.

⁷⁷ P2, August 2015; IG10, August 2015.

⁷⁸ G3b, August 2015.

Committees on Controlling Human Trafficking (DCCHTs)⁸⁰ and the Village Committees for Controlling Human Trafficking (VCCHTs) (see Appendix 13).

The NCCHT is constituted under the chairmanship of MoWCSW, with representatives from line-ministries and NGOs, and aims to protect women and children from trafficking.⁸¹ The NCCHT plays an important role in the following: identifying trafficking-prone areas, conducting awareness raising programmes, collecting trafficking data and disseminating relevant information, and rescuing and repatriating trafficking victims (HTTCA Regulations, 2008 r.4). An NGO officer, however, stated that ‘there are no representatives from NGOs specifically working on child trafficking or child rights issues, nor representatives from children’s clubs’ (G3b, August 2015). The lack of representation from these child focused organisations has weakened the efforts of promoting child centric anti-trafficking policies and programmes. The 75 DCCHTs are chaired by a Chief District Officer (CDO), with members including the Women and Children Officer (WCO), district government attorney, chief of district police and a representative from the Federation of Nepali Journalists (HTTCA Regulations, 2008 r.6). These committees are designed to act at the local level. Despite the assigning of such responsibilities, at least some of these committees are neither fully institutionalised nor operationalised throughout 75 districts. Commenting on their effectiveness, a children’s rights officer stated:

The committee is there, but I do not think it is working actively because, when the trafficking cases are filed in the CDO office or the police, there is a system followed by the police which functions independently—therefore, the committee’s role does not have any influence. Even before the committee was set up, the trafficking cases were handled by the police, and this it is still the case even now (G2, April 2014).

⁸¹ G3b, August 2015.

Part of the on-going problem is that the district and village committees are poorly resourced and deprived of proper office space. Interestingly, most of these government level mechanisms, such as national and district level committees, are also supported by bilateral and donor agencies.⁸² In addition, the interviewees mentioned that the programmes of these committees are yet to be evaluated and it is therefore rather difficult to judge their effectiveness.⁸³ Despite all the drawbacks, there was a general consensus among the interviewees that the committees have attempted to provide a holistic approach to anti-trafficking work, both at the district and central levels.⁸⁴

6.5.2 NGOs, INGOs and anti-trafficking networks

Since the 1990s, NGOs in Nepal have played a leading role in responding to the problem of the trafficking of women and children (Samarisinghe, 2008: 85). NGO intervention was first observed in 1996 when 128 Nepali girls were rescued from brothels in India (see Pradhan, 1996) (Chapter 3). At present, more than 100 NGOs are working in collaboration with government agencies and donors to address trafficking and to offer justice to the victims.⁸⁵ However, the majority of NGOs are based in Kathmandu, with only a few based in remote areas where they are needed the most (Hannum, 1997; Malik et al. 2008 in Crawford, 2010: 113).

⁸² G3a, August 2015; N13, August 2015.

⁸³ G3b, August 2015.

⁸⁴ N10, April 2014.

⁸⁵ Some of the major NGOs include ABC Nepal, Maiti Nepal, Child Workers in Nepal Concerned Center (CWIN), Shanti Rehabilitation Center, the Women Rehabilitation Center (WOREC), SAATHI, HimRights (Himalayan Human Rights Monitors), the Center for Legal Research and Resource Development (CeLRRD), Shakti Samuha (the only survivor's organisation), and the Legal Aid and Consultancy Center (LACC) among others (IIDs and UNIFEM, 2004).

The influence of NGOs in shaping key anti-trafficking debates, discourse and practices can be analysed from different perspectives. To begin with, interviewees claimed that the scope of the activities that NGOs have undertaken is much wider than those of the government. The focus of these activities varies from one NGO to another, however, depending on the funding mechanisms and their affiliation to anti-trafficking networks.

An analysis of the functioning of NGOs reveals that the majority of them are very much dependent on donor funding for executing their activities. This gives donors the power to impose their mandates and policies, thus directing the work of NGOs (Vijayarasa, 2015; Obokata, 2006). There are nineteen UN agencies, INGOs and other international agencies involved in anti-trafficking initiatives in Nepal (IIDS and UNIFEM, 2004). They are offering financial and technical support to facilitate interventions (IIDS and UNIFEM, 2004) and have contributed to shaping the ‘understanding of issues that fall within their mandates’ (Vijayarasa, 2015:28). UN agencies – including UNDP, UNICEF and ILO-IPEC – have become frontrunners in addressing the problem of the trafficking of women and children in Nepal. Other INGOs – including PLAN International, Save the Children Alliance, Asia Foundation and World Education – have their own agenda when it comes to addressing trafficking.

In recent years, the US government has appeared as an important global player in this area, contributing to the global trafficking discourse (Hudlow, 2015:276). They have done so by providing funding to implement the ‘3 Ps’—prevention of trafficking (awareness raising, training and education), protection of victims (rescue and reintegration including provisions of shelters and counselling) and prosecution of traffickers. The ‘Combating Trafficking in Persons (CTIP) Program’ in Nepal, which is funded by the United States Agency for International Development (USAID), is one of the key projects focusing on interventions related to the ‘3 Ps’. The activities of

NGOs – as well as the government and INGOs – have been guided by the ‘global anti-trafficking framework’ which is drawn from the ‘3 Ps’ (Samarisinghe, 2008:85). (This will be discussed in more detail in Chapter 7.).

Consequently, anti-trafficking debates, discourses and practices in Nepal are focused mainly on sex trafficking. An interviewee explained that the ‘trafficking of girls for sexual exploitation has been the most common and discussed phenomenon in Nepal’ (N1, April 2014). Crawford (2010:115) argues that the sex trafficking phenomenon has received recognition due to an increase in the flow of donor funding (Crawford, 2010:115). For example, the study by IIDS and UNIFEM (2004) states that money spent on anti-trafficking initiatives in Nepal in 2001 exceeded USD\$ 2.5 million. Referring to the case of Ghana, Guinn (2008, in Vijayarasa, 2015:30) suggests that there was a clear indication of how NGOs would see child trafficking as an issue with funding opportunities. Guinn further argues that ‘the pursuit of donor resources may skew NGO priorities towards addressing issues of particular concern to funders, such as “favouring efforts to help children or address sex trafficking”’ (2008, in Vijayarasa, 2015:29).

Furthermore, access to services varies within regions, depending on donor funding. This has become a debatable issue in Nepal. One of the interviewees claimed that, ‘no matter how many projects are planned, it will only be maintained for the duration of the project or for as long as it is implemented by the NGOs’. Given the project-based nature of NGOs, their sustainability in the long term has been questioned.⁸⁶

⁸⁶ IG1a, April 2014.

Nevertheless, NGOs have played a key role in filling the gap left by the government's partial protection of vulnerable children and victims of trafficking.⁸⁷ Interviewees pointed out that 'NGOs have become rather territorial' (IC1, April 2014). Concerns were expressed in the interviews that 'there is a lack of coordination among them and that all NGOs are working independently' (N10, April 2014). This is also evident in previous studies where it has been observed that there is little coordination between NGOs, often resulting in duplication of efforts (Crawford, 2010; Obokata, 2006). Crawford (ibid: 113) argues that, due to the proliferation of NGOs, many compete for the same funding scheme. Concerns have therefore been raised as to whether the approaches adopted by NGOs are genuine or merely part of a "numbers game" (Crawford, ibid: 114). However, the monitoring of NGOs' activities, expenditures or administrative costs is rather ambiguous as there is lack of agreed criteria to guide evaluation (World Bank, 2004 in Crawford, ibid: 113). Some interviewees, however, mentioned that the reason for a lack of coordination was because there are no referral guidelines that can assist the anti-trafficking organisations to forge an effective and coordinated approach. Interestingly, one of my interviewees mentioned that a few anti-trafficking organisations do co-ordinate their activities with each other – informally – on some occasions. An NGO officer stated: 'The NGOs referred support cases to other institutions based on mutual understanding; for instance, cases are referred through letters, emails or via text messages' (N19, August 2015). Consequently, most NGOs offer programmes either on an ad hoc basis or based on a mutual understanding between organisations.

⁸⁷ N16, April 2014.

The focus of NGOs' activities is also influenced by the ideologies of anti-trafficking networks that the NGOs are affiliated with. Most NGOs that work in the field of anti-trafficking are affiliated to at least one of the two anti-trafficking networks working in the country: the Alliance against Trafficking in Women in Nepal (AATWIN) and the National Alliance against Girl Trafficking (NAGT)—both are engaged in creating awareness, lobbying and campaigning against the problem of trafficking in Nepal (Pradhan, 1997 in Crawford, 2010). Samarasinghe (2008: 86) argues that these two anti-trafficking networks are focused on preventing sex trafficking. There is a key difference between them, however: while the former has adopted the rights-based approach (which subscribes to the view that women have the right to choose to be a commercial sex worker), the later condemns any form of commercial sexual activity. This ideological diversity may result in different practices (Crowhurst, 2006). In particular, they have shaped the types of programmes being implemented to address the trafficking phenomenon in the country (Samarasinghe, 2008).

6.5.3 The Media

Media involvement has also been important for reaching children and their families at the grass-roots level. Interviewees mentioned that the media has played a key role in the prevention of trafficking in Nepal (for example, by raising awareness of the pertinent issues) and in the prosecution of traffickers. Nepal has witnessed a significant increase in the reporting of trafficking cases in the national media in recent years. For instance, in the year 2009 -2010, 215 news items were covered by the nine leading daily newspapers concerning foreign migration, trafficking in persons and violence against children.⁸⁸ A human rights officer stated the role of mainstream media: 'The

⁸⁸ Sharing workshop on GVB and TIP, August 2015.

media plays an important role and has maintained professionalisms these days. A lack of research on media is however clearly evident in the literature. Central to the coverage of media has been the issue of foreign labour migrants (J1a, April 2014). Another government officer added:

The media play an important role if they have clarity in trafficking issues: how sensitise are they towards this issue, whether they have adequate information, and whether they have done enough media research. The media should play a role but there are so many serious child and women trafficking issues that do not get reported in the media. This is lacking (G1a, April 2014).

Interviewees claimed that some of the news coverage has ‘backfired’ by putting potential victims in danger. For instance, on many occasions, the media has published the names, addresses and photos of the victims along with the reports⁸⁹—violating any ‘right to confidentiality’ or ‘right to privacy’. Hence, although the media has in many cases contributed to national anti-trafficking responses (e.g. by reporting and disseminating information), the way they have carried out their work is questioned. Significant concerns were raised during the interviews that the media discourse was not victim-centred. For instance, an independent consultant referring to her research noted:

I have done research on cabin restaurants and dance bars [entertainment sector] in various media discourses; there is huge media coverage, but from a moralistic perspective. For example, “our society is going down some other path”, “our girls are spoilt”, but trafficking or exploitation of the child was never mentioned in the media articles. Even today, in Kathmandu, victims themselves are accused, the case is taken under Public Offence Law, and they are arrested (IC1, April 2014).

Another INGO officer added: ‘We see in the media that the family sold the child etc. but now trafficking is not limited to the poor nor restricted to unprivileged people... still the bulk of the media discourse and discussion is on cross-border sex trafficking’ (IG3, April, 2014). This shows how media discourses contribute to reproducing ‘sex

⁸⁹ N5, April 2014; IG2, April 2015.

slave' stories, despite the fact that they are often problematic representations of the phenomenon of child trafficking. As noted earlier, previous studies have shown that there is a disproportionate emphasis placed on the forms of trafficking that are directed at sexual exploitation (Chuang, 2010; Gulati, 2011 in Vijayarasa, 2015:34). Again, as suggested earlier, Vijayarasa (2015:34) argues that media portrayals of the 'innocent victim' and the 'sex industry that has exploited them' are problematic. O'Neill (2001:162) argues that media reporting of the 'traffic' of Nepali women and girls to Kuwait is an example of this stereotype—which is upheld in the Nepali anti-trafficking community (Chapter 3). The study demonstrates how the scheme conflates trafficking with forced prostitution. He states:

The girls and their families are [...] both presented as childlike innocents who were victimized by more powerful and more knowledgeable agents who prey upon that innocence (O'Neill, 2001:162).

It is further argued that the media's approach mirrors the 'rescue industry' which is guided by the assumption that 'the entry of all women into the sex industry is predominantly forced and that trafficked women are only too happy to be rescued, reintegrated or rehabilitated' (Vijayarasa, 2015:36). Some of the debated issues relating to such assumptions will be discussed in the following chapters.

6.6 Conclusion

This chapter has critically examined the construction of child trafficking legislation and policies in Nepal. The findings show that the government is proactively adopting the international conventions, including the CRC and its optional protocols (among others)—which is in contrast to with many developing countries. de Waal (2002) argues that:

There are questions that need to be asked about the motivation of governments ratifying in conventions and the extent to which they do it as a symbolic act in order to increase their status in the eyes of the international community (in Twum-Danso, 2009:125).

Following the adoption of the CRC, the government has introduced many other important acts to tackle trafficking and execute interventions. In recent years, the government and anti-trafficking organisations have recognised the importance of developing a comprehensive child protection strategy, coordinating the activities of government and NGOs, as well as formulating an effective legislative framework for the protection of trafficked children (Heiberg, et al., 2010). The policy incorporates multiple agencies as part of the effort to implement child protection mechanisms (see Appendix. 14). The responsibilities are also assigned to other government agencies (both at national and local level).

The development of legislative approaches to child trafficking in recent years has encompassed the following: trafficking of persons/children for the purpose of sex work; debt bondage or slavery; and unlawful organ removal. Despite this, some terminologies (for e.g. immoral professional, victim and exploitation) reinforce the notion of an 'ideal victim' (see Chapter 3) adopted in various acts, including the Children's Act and the HTTCA. Vijayarasa (2015:64) argues that the use of terms like 'prostitution' or 'women and children' in the law 'affects the broader discourse on trafficking as a whole and reinforces the mainstream trafficking framework'. Such language tends to heighten 'the stigma faced by victims' and contribute to 'perpetuating the female victim archetype' (ibid: 64). A hierarchy of victims are therefore constructed, distinguishing 'those who deserve to be rescued and those who do not' (O'Brien et al., 2013:81).

Further, several ambiguities have been identified in the existing Nepali legal system in terms where the boundary between adulthood and childhood is set. The situation allows anti-trafficking organisations to pick and choose legal terms and different mechanisms. It is also important to consider the debates identified in the earlier chapters about the universal notion of childhood. As Samarasinghe (2008:47) argues:

Applying globally accepted definitions of a “child” and the associated conceptual understanding of “childhood” in understanding the situation in Nepal, highlights a certain troubling disjuncture between the conceptual basis of the legal definition of a “child”, and the grounded cultural and traditional norms on the subject prevalent in Nepal.

With the enactment of certain legislation and policies, the problem of child trafficking has drawn much attention in Nepal. For instance, the MoWCSW is primarily responsible for developing, coordinating and monitoring anti-trafficking policies and programmes in Nepal. Given the fact that the nature of trafficking has become increasingly complex, various government bodies (CCWB, DCWBs, WCOs and others), NGOs, INGOs and the media have become involved in anti-trafficking interventions.⁹⁰ However, since these organisations are driven by different motives (e.g. different aims and objectives, as well as different funding requirements), their responses to the problem vary. While it is encouraging to observe anti-trafficking agencies (both governmental and non-governmental) collaborating through government networks (e.g. NCCHT) and other anti-trafficking networks (e.g. AATWIN and NAGT), a lack of coordination has led to varied responses to trafficking, including a duplication of efforts.

Despite some perceived discrepancies among legislations and policies, the contemporary legislative approaches to trafficking in Nepal demonstrate significant improvements when compared to the pre-CRC era, particularly in respect to adopting

⁹⁰ G1B, April 2014.

a victim-centric approach to trafficking. The legal responses to the trafficking of children in Nepal indicate that the legislation enacted in the wake of the international conventions and discourses can, however, be problematic and may fail to address the root problems. The following chapter examines the current responses to child trafficking and vulnerable children taking the broader socio-economic realities into account in implementing a human rights approach.

Chapter 7 : The Limits of the Current Responses to Child Trafficking

We have to work in the best interests of the child because the trafficked child has full potential, just like other children. Based on the interests of the child, the child should be given access to education, technical education, life skill training etc. If given life skills training she/he can protect himself/herself (IG10, August 2015).

It [international human rights framework] doesn't fit but we must make it fit in our context. It is difficult now...things are changing in a positive direction. We have to work on this issue (G3, August 2015).

7.1 Introduction

The above statements exemplify a common concern that anti-trafficking organisations in Nepal hold regarding the application of the international human rights framework to the efforts of trafficking intervention. The previous chapter (Chapter 6) showed how the prevailing legislation and policies correspond to governments' commitments to promoting an international human rights framework while addressing child trafficking. One of the main themes developed in the earlier chapters concerns the difficulty of formulating a 'universally accepted' understanding of rights and responses that fit in the local context (Bissell et al., 2007; Fontana and Grugel, 2015; Kaye and Winterdyk, 2012; Obokata, 2006). Within the debates, a key concern is the universal notion of childhood and its applicability in the Nepali context. As discussed in Chapter 3, there is no single view of childhood in Nepal and that children's experiences are varied, depending on their social and economic status and geographical location. Apparent ambiguities in the existing Nepali legal systems – in terms of where the boundary between adulthood and childhood are set (Chapter 3 and 6) – have been observed. This chapter further contributes to the examination of current responses to child trafficking (when implementing a human rights approach) by taking into account the broader context of socio-economic realities. In doing so, this chapter analyses the limitations

of the current responses to child trafficking as offered by governments, NGOs and INGOs. Moreover, the factors undermining such responses are investigated by incorporating the perspectives of all actors involved (governments, NGOs and INGOs).

The chapter begins by briefly presenting the background of the anti-trafficking interventions in Nepal. This is followed by an analysis of the key programmes offered by the government and NGOs (most of which are supported by INGO funding). These include: monitoring and interception programmes; awareness raising programmes; the rescue, rehabilitation and reintegration of victims; and the prosecution process. The chapter provides insights into the extent to which such programmes have benefitted trafficked and vulnerable children, as well as analysing the perceived limitations of promoting international human rights standards. Despite the adoption of international guidelines, the findings of this chapter reveal inconsistencies in the programmes offered by governments and NGOs which result in unintended consequences. After delineating the challenges and contradictions faced in practice, the chapter concludes that there is very little evidence to suggest that the human rights approach has been effectively applied to benefit trafficked children and children in vulnerable situations.

7.2 Anti-trafficking interventions

The ‘Three Rs’ – rescue, rehabilitation and reintegration – has been one of the most important areas of interventions since the late 1990s. As mentioned earlier (Chapter 3 and 6), the issue of rehabilitation and reintegration came to prominence in 1996 when 128 Nepali girls were rescued from brothels in India (Pradhan, 1996). ABC Nepal, Maiti Nepal, CWIN, Navajyoti and WOREC were key NGOs providing immediate

shelter and relief to these victims.⁹¹ The rehabilitation programmes were focused on providing medical support (for instance, HIV and AIDS test) and other support to help them reintegrate in the society. However, these NGOs drew criticism, mainly due to their failure to protect the rights of the victims. An NGO officer shared her experience of working on the issue at that time:

There was a series of human rights violations, from rescue to reintegration. The girls were tested HIV and AIDS without their consent, and the test results were published by the organisations. The information and photos of the girls were widely covered in the media. Such interventions re-victimised them (A1a, August 2015).

Such concerns over human rights, when responding to trafficked victims, are now central to the national agenda. Several new NGOs – for example, the AATWIN (see Chapter 6) – and survivor organisations – like Shakti Samuha⁹² – were established in 2004, with a focus on developing a human rights basis for anti-trafficking interventions.⁹³ Anti-trafficking programmes, which form the foundation of anti-trafficking strategies in Nepal, are not only based on the ‘Three Rs’, but have also expanded to incorporate the ‘3 Ps’ (prevention, protection and prosecution) with a view to combatting the problem of trafficking based on international guidelines (Chapter 6). Below, I discuss the key programmes offered by governments and NGOs, which deploy a human rights approach, and note their limitations as well as their implications for trafficked and vulnerable children.

⁹¹ A1a August 2015.

⁹² Shakti Samuha is an organisation founded and run by women who are survivor of sex trafficking in Nepal. This organisation is an outcome of a 2007 annual National Conference of Trafficking Survivors (Crawford, 2010:174).

⁹³ A1a August 2015.

7.2.1 Border monitoring and interception programmes: early intervention?

Border monitoring and interception has been one of the key prevention strategies of governments and NGOs for decades. Nepal shares an open border with India: there is no visa restriction on travel, work or trade. For decades, people have utilised the open border by travelling to India for education, employment, religious pilgrimages and for other purposes. Often, people cross the border for trading of household items. NGO and INGO reports show that traffickers have exploited the open border to traffic children and women to the red light areas in large Indian cities (Ghimire, 1994; Terre des Hommes, 2003; NHRC, 2008). NGOs introduced monitoring programmes at the borders, in collaboration with the government, to intercept travellers (particularly women, children and young girls) at the borders—a prevention strategy which is significant even today. These interception activities are mostly carried out by leading Nepali NGOs, including: Maiti Nepal, ABC Nepal and WOREC (in collaboration with Nepal police).⁹⁴ Trained NGO workers, police officers and trafficking survivors are placed at the border stations in the ‘trafficking prone areas’ with financial support from international donors (Frederick, 2005:139). Most of the women, young girls and children are intercepted when suspicions are aroused.⁹⁵ The practice of border monitoring and interception has played an important role in preventing trafficking of women and children. However, these practices are not without problems—this will be discussed in the following section.

⁹⁴ P2, August 2015.

⁹⁵ P3, August 2015; N17, August 2015; P1, August 2015.

7.2.1.1 *The arbitrary nature of identifying victims*

There appear to be no established criteria through which child trafficking in Nepal can be identified. As a result, NGOs, police and government agencies have varied approaches to facilitating border interception activities.⁹⁶ During interviews with police officers, it was revealed that, on most occasions, the border staff and police checks focus on identifying whether the victim is an ‘underage girl/boy’.⁹⁷ A police officer explained the standard procedure:

For example, if a child is taken, the police ask questions regarding whether the child knows the person he/she is travelling with, their relationship with them, the reason for travelling on the bus and other public transport, and for being at the checkpoint etc. Because Nepal shares an open border with India, when there are suspicions, there is an intervention where they are detained and stopped from travelling (P1, August 2015).

It is interesting to note that the social workers, community members and officers at the border checkpoints often rely on their experience and instinct when deciding whether or not they are dealing with a case of trafficking or a possible victim of trafficking. An NGO officer remarked:

We have learnt to spot suspicious activity through our many years of experience, for example: if the behaviour of the person who is transporting the child is different or suspicious; if the person carrying an ID card or taking the child is mostly in a hurry; if the person gets aggressive; or if they give false information about their travel plans. Also, some pretend to not know the child; when the NGO worker asks the child who has accompanied her/him, and she/he points at the person sitting on the last seat, this makes the case suspicious – why is the person sitting separately whilst travelling together? (N17, August 2015).

This statement confirms the arbitrary nature of the identification process.⁹⁸ The common criteria for interception is limited to determining whether certain individuals look ‘suspicious’ and/or appear to be ‘innocent victims’ (Frederick and Kelly, 2000:64

⁹⁶ P1, August 2015.

⁹⁷ P1 August 2015; P2, August 2015.

⁹⁸ P1, August 2015; IG3, August 2015.

in Crawford, 2010:140). Such arbitrariness means it is very easy for victims to simply slip through the net. Another problem relating to interception processes concerns the assumption of an ‘ideal victim’. This is discussed below.

7.2.1.2 The ‘ideal victim’: Innocent, naïve, and/or passive?

Based on the interviews, the factors that arouse suspicion when trying to identify potential victims include: ‘whether she is a village girl, the way she speaks, her gestures and whether she is alone or accompanied’ (N19, August 2015).⁹⁹ Segrave et al. (2009:53) argue that ‘the construction and utilisation of the “real” victim paradigm has been compounded by prejudices held by officers making these decisions, particularly in relation to gender, race and ethnicity’. Similar views were reiterated by interviewees involved in border interception activities. The construction of the victim as a ‘village girl’ or an ‘innocent or underage child’ has therefore become the main guide in border interception, despite the fact that critics have argued that this is misleading. As discussed in earlier chapters, such attempts to construct the ‘child’ as a passive subject of exploitation is well established in prior work (Melrose, 2013; O’Connell Davidson, 2005; Montgomery, 2001a). For example, Melrose (2013:22) argues that: ‘The discourse [on child sexual exploitation] is incapable of acknowledging the agency of these young people since the language positions them always and inevitably as passive objects/victims’. For example, Melrose (2013:22) highlights how, in the context of the dominant discourse on child sexual exploitation, young people are often considered ‘incapable of acknowledging the agency [...] since the language positions them always and inevitably as passive objects/victims’.

⁹⁹ N19. August 2015.

Lee (2011:65) argues that ‘victims who do not fit an idealised notion of vulnerability tend to be rendered invisible’. As discussed in previous chapters, the notion of an ‘ideal victim’ can therefore be problematic in that it may lead people to overlook those who do not fit this notion. This also means that children who fail to match this image of an ‘ideal victim’ are not perceived as victims at all (O’Connell Davidson, 2011). Such difficulties were clearly reflected in the interviews, which are discussed in the following section.

7.2.1.3 Conceptual challenges: migration, exploitation and trafficking

There are concerns over deciding the status of children who are subjected to migration, exploitation and trafficking. Vijayarasa (2015:27) argues that the mainstream approach ‘fosters a gender stereotypical perspective’ in which ‘the victim of trafficking [...] is not a voluntary, decision-making migrant but rather is a duped, naïve and innocent woman whose vulnerability is exploited’. Identification is extremely difficult during border interception because the victims (or potential victims) are intercepted before the exploitation takes place (a key characteristic which distinguishes trafficking from other forms of migration) (Gallagher, 2010:283). The line between trafficking and migration are apparently blurred, making it difficult to ascertain whether someone is a migrant or a victim of trafficking. It is even more complicated when it comes to a child. Heiberg et al. (2010:38) argue that it is difficult to differentiate between a child who has been trafficked and those that have experienced exploitation or abuse in the context of migration. This is because ‘the intention to exploit a child is often difficult to determine, particularly since the relationship between a victim and trafficker is not [...] fixed’ (UNICEF, 2009a:7). Some argue that careful consideration should be paid by the border officials ‘not only to identify people whose migration has been facilitated by

third parties, but then to also speculate on whether those parties have the requisite intent to exploit' (McAdam,2012:38).

Interviewees also mentioned that in most of the cases, children are intercepted because of their status as a 'child', with insufficient regard to the gravity of their situation. Sanghera (2005:6) points out that it is problematic to believe 'all persons under 18 years of age constitute a homogenous category—children'. The 'indicators' (mentioned above) used by the officers to identify victims are often biased, in that they are based on commonly held assumptions, and/or fail to understand the presence of 'choices'. Despite these ambiguities in understanding and distinguishing 'trafficking' and 'migration', some of the interviewees firmly believed that a child (below the age of 18) should not be categorised as a case of migration. For example, an independent consultant stated: 'in the case of a child, we have to assume that there is cheating involved, lured by jobs and given false hopes about the process of migration—these elements contribute to the understanding of trafficking' (IC1, April 2014).

If the importance of a child's 'choice' is overlooked, the right of a child to seek work can be easily challenged. In some circumstances, young people may be 'making constrained, but rational choices within the context of highly diminished circumstances and opportunities' (Melrose, Barrett and Brodie, 1999; q.v. Scott and Skidmore, 2006; Montgomery, 1998; O'Connell-Davidson, 2005 in Melrose, 2013:15).

Evidently, focus on the status of the 'child' and 'movement' has led programmes to concentrate more on migration and less on child protection (Chapter 3). An NGO officer illustrated this point: 'if a girl under the age of 18 tries to cross the border, she will be stopped and will not be allowed to cross the border without her parents or if she is not fully documented etc.' (A1a, August 2015). It has been suggested that there is a

need to look beyond the label ‘victim’ so that interventions address not only cases related to coercion but also those where children go with a trafficker even when not coerced (UNICEF, 2009a: 20). Accepting this reality is imperative to the prevention of child trafficking and other forms of exploitation. With a lack of training and resources to control these challenges effectively, border interception activities may remain questionable.

Along with border monitoring programmes, the government and NGOs also pursue prevention strategies concerned with imparting information, education and communication (IEC) and awareness-raising programmes at the national and local level—all with the financial and technical support of international donor agencies (MoWCSW, 2013e: 149).

7.2.2 Awareness-raising programmes

The awareness-raising programmes of NGOs are presented at various levels, both in the community and schools.¹⁰⁰ Awareness-raising programmes include activities such as door-to-door campaigns, training workshops (on conceptual clarity, legal awareness, crime prevention and the criteria used to identify risks and victims of trafficking), public activities (such as rallies, street dramas, peer education and billboards) and community sensitisation programmes (on the causes and consequences of human trafficking and the role of the family and community)(MoWCSW, 2013e:156).The celebration of National Anti-trafficking Day in August every year is another example of a public-awareness programme being facilitated by the government and NGOs.¹⁰¹

¹⁰⁰ N17, August 2015.

¹⁰¹ G3a, August 2015; G3b, August 2015; P1, August 2015.

Further, the government has recently introduced ‘human trafficking’ into the national curriculum, as part of an awareness-raising programme designed for school children. The school curriculum incorporates a chapter on ‘trafficking’ and ‘forced sex work’ in the text book for the Grade 10 social studies class (MoWCSW, 2013c:29).

Despite these positive initiatives from NGOs and the government, they are not without critics. Some interviewees raised concerns that similar prevention programmes have been carried out for many years.¹⁰² Frederick (2005:137) argues that the reason for this is because it is convenient to support the existing interventions without altering the existing activities. These activities, devoted to prevention programmes, are focused on awareness raising that targets specific groups, such as ‘women and adolescent girls and ethnic groups’ and are ‘concentrated on high trafficking prone’ districts in Nepal.¹⁰³ These existing prevention measures have suffered due to the lack of a criteria for being ‘at-risk’ (Frederick, 2005:137). Prior studies suggest that existing activities are developed based on the personal judgement of experienced NGO workers, but without sound research on target groups, regions or criteria for being ‘at risk’ (Frederick, 2005; IIDS and UNIFEM, 2004). Crawford (2010:132) argues that awareness-raising programmes are often designed based on ‘the discourses of “backwardness” and “ignorance” fostered by the development industry’.¹⁰⁴

Interviewees noted that some of the awareness campaigns – in an attempt to create public awareness of trafficking – were fuelled by moral sentiment.¹⁰⁵ A programme coordinator of an anti-trafficking organisation commented that: ‘One of our staff

¹⁰² A1b, August 2015.

¹⁰³ N18, August 2015; A1a, August 2015.

¹⁰⁴ Development industry is referred to the NGOs that have been viewed as Nepal’s ‘social enterprise’ (Crawford, 2010:132).

¹⁰⁵ A1b, August 2015.

members had seen a billboard near the border area that stated: “it is a sin to buy and sell children and women” (A1b, August 2015). This moral dimension is also highlighted by O’Neill (2001:161), who suggests that NGOs in Nepal perceive ‘the persistence of trafficking of young prostitutes [...] as an enormous moral problem that the whole country faced’. Such moralisation of trafficking – encapsulated in billboards and leaflets – is sustained by a prevalent understanding of the nature of trafficking (that it is primarily for the purpose of prostitution) and by subscribing to a victim archetype (discussed above). O’Brien (2013:315) concedes that the ‘intention may be grounded in a genuine desire to draw attention to a significant injustice and foster greater popular support for the upholding of the human rights of individuals facing risks in crossing borders’. However, he points out that such anti-trafficking campaigns can exclude those that do not fit the restricted view of trafficking victims (ibid.). As this study also shows, the ‘problem of child trafficking’ and the ‘experience of trafficking’ are equally overshadowed by these campaigns. In particular, chapter 5 has shown that the views about trafficking that underwrite these campaigns are unrepresentative of emerging patterns—such as children trafficked into the entertainment sector and trafficking aimed at other forms of labour exploitation occurring within the country.

Interviewees mentioned that the changing nature of the trafficking problem and the impact of globalisation on trafficking is not represented in the prevention programmes.¹⁰⁶ For instance, one of the contributing ‘push factors’ of child trafficking has been the advancement of modern technology (e.g. the desire for mobile phones and nice clothes)(Chapter 5). This changing nature of the trafficking problem – led by the rise of globalisation – is not represented in the prevention programmes. In relation to

¹⁰⁶ N18, August 2015.

this issue, various scholars have pointed out that the growth of sensitisation programmes at a global level ‘have been critiqued for their failure to deal with the root causes of rights violation’ (Shepler 2005; Cheney, 2007; White 2007 in Pells, 2012: 430). Awareness-raising programmes should, therefore, consider vulnerabilities along with their role in the process of making decisions about a potentially better life, within the broader and emerging trafficking discourses. In fact, Crawford (2010:133) argues that there is no proper evaluation of the impact of such ‘awareness raising’ programmes and the extent to which such programmes provoke a ‘change of attitudes’ in any meaningful way.

7.2.3 Emphasis on rescuing victims

As mentioned earlier, rescue programmes have been one of the key areas of intervention for many decades. The Nepali government – in collaboration with NGOs (including Maiti Nepal, CWIN, Shakti Samuha and ABC Nepal), INGOs (including TDH), and supported by the Indian government – have initiated several cross-border rescue programmes (American Bar Association, 2011). In the past, the Nepali government and NGOs have undertaken ‘rescue missions’ which focus on raiding certain locations, primarily brothels in India (Hennick and Simkhada, 2004; WOREC, 2009; Agenst, 2001). Although well-intentioned, such ‘raids conducted by local law enforcement agencies are an ineffective means of locating and identifying trafficked persons’ (Ditmore and Thukral, 2012 in Vijayarasa, 2015:32). The way the government and NGOs have emphasised rescue missions has, in some ways, reproduced the narrative of ‘innocent and passive victim’ (discussed in Chapter 3)—which is counter to the very essence of the principles of human rights. This approach is particularly problematic within Nepal. The discussion below focuses on different aspects of rescue

programmes within the country (particularly in the entertainment sector), the significance of which is largely contested.

7.2.3.1 Police raids in the entertainment sector – a problematic response?

Most of the interviewees working on programmes focusing on the entertainment sector, were of the opinion that such raids take little consideration of how this intervention may impact young women and children. For instance, an INGO officer remarked; ‘although the police have made efforts by regulating the closing times of the entertainment sector, sometimes we [INGOs] are not happy with the way police raids are conducted in the Thamel area...it [sex work] can be hidden in a guest house or in a hotel room’ (IC1, April 2014). Another issue related to police raids is the lack of an established mechanism to identify victims. There were also concerns that the rescue operations within the entertainment sector were conducted in a similar way, regardless of whether the victim is a child or an adult. A government officer explained:

For example, if a raid on a massage parlour results in the arrests of both a 21 year old woman and a 13 year old child, the government does not provide specific support to that child—everybody is treated in the same way. They do not even try to identify the accurate age of the child (G7, August 2015).

Moreover, some interviewees argued that the procedure of police raids often depends upon the specific officer’s attitude towards the situation. As such, the rescue process is unpredictable. An NGO officer noted, for example:

Even within the government it [the rescue process] depends on the police and administration. Some children are rescued if the police officers are genuine and also investigate the dance bars and restaurants. ...but there are some police officers who rescue children and bring them back to the same place [bar and restaurant] because he is given money to do so. Therefore, it [the outcome of the raids] depends upon who goes to the rescue (N17, August 2015).

The police raids are also criticised because employers attempt to protect themselves arguing that the ‘girls are driven by their own desire and free will to make money’ (IG4a, April 2014). Such assumptions can establish a hierarchy of victims: ‘deserved’

and ‘underserved victims’ (Elliot, 2015:189). Elliot (2015:189) argues that: ‘this ill-conceived perception of victim compliance is highly damaging to the identification process and demonstrates a need for education and training among certain officials’.

This is a highly problematic issue, as Vijeyarasa (2015:33) has argued:

Where distinctions between non-coerced sex workers and trafficked victims are made, rescue and raids are treated as the lesser of two evils, with the potential harm to some sex workers justified by the rescue of trafficked victims.

In such circumstances, victims are perceived as either those ‘who must be rescued or deviants who must be reformed/punished’ (Chew and Wijers, 1999:243). Such interventions therefore pose additional risks and vulnerabilities. There are, however, myriad reasons why children and women may choose to work (or continue to work) in the entertainment sector and therefore cannot be identified as ‘underserved victims’(Chapter 5). A lack of understanding of the underlying causes of specific ‘choices’ can lead to victims not being identified.

7.2.3.2 Poverty, shame and stigma

As discussed earlier (Chapter 5), problems such as poverty, lack of opportunity, and illiteracy have led many Nepali children to seek work in the entertainment sector—a sector that employs girls who might otherwise remain jobless (Maiti Nepal, 2010).¹⁰⁷

A NGO officer remarked:

For example, when we try to rescue children from a hotel, the owner of the hotel tells us that we [NGO officers] can take the child...but at least the child has food to eat, even if it is leftovers from a couple of days ago. The situation at the workplace is better than their home. So, this is the dilemma we face: how do we make their situation better than their home, where they are abused in the family and cannot meet basic needs etc. (N16, August 2015).

¹⁰⁷ N1 April 2014; N3 April 2014 and N9a April 2014; IG10, August 2015.

Thus, identifying the extent to which children working in the entertainment sector are considered victims is not an easy task. Hynes (2010) argues that children tend to leave a situation of abuse, which denies them of their childhood. Pearce (2009:48) points out that it is crucial to consider whether children and young people are capable of giving informed consent or of exercising their right to escape—such as poverty, war or violence—where children are most vulnerable. In the absence of such capabilities, interventions that are intended to help children can instead lead to worse outcomes for children (Pearce et al., 2009; Bourdillon et al., 2010; Morrow and Pells, 2012). Vijayarasa (2015:33) argues that ‘economic considerations are also frequently ignored by the rescue industry model’.

Furthermore, many girls continue their work in the entertainment sector because of *self-stigmatisation*: they often hold the perception that once, they are in such profession, they cannot get out of it or work anywhere else—which further encourages them to stay and accept the kind of work they do.¹⁰⁸ Elliot (2015:188) argues that consent or compliance appears in a variety of forms. For instance, victims may refrain from escaping or calling for external help; as such, their ‘willingness’ to stay can be seen as their ‘choice’.

7.2.3.3 *Victims do not self-identify*

Situations in which some victims refuse to identify themselves as being trafficked in the entertainment sector is, therefore, not unusual. A senior government officer provided further evidence:

There are victims who accept their situation or the victims who do not accept it. The victims will not identify their situation immediately, especially girls working in dance restaurants, massage parlours etc. Girls mostly work on a

¹⁰⁸ N1, April 2014.

contract basis... Initially, girls work in dance bars in Kathmandu on a contract basis; they make contact with owners and try to go abroad (Interview with G3a, August 2015).

Interviewees also mentioned another situation in which girls, having spent several years in the entertainment sector, tend to adapt to their situation. They feel better off staying in this line of work. This is partly because of the access to city life and other work opportunities available to them, but also simply because of habit. Pearce et al. (2013:78) argue that, in such situations, the trafficked victims may internalise and normalise being abused and exploited. This is also echoed in the UNICEF study (2009a:18), which states that:

Many children may not regard the work that they do as exploitative because they do not have, or do not perceive themselves as having alternative options. They may believe that they are in control of their working relationships and/or deriving some benefit from this work. This is particularly true of children subject to high levels of poverty and socio-economic inequalities, who are so desperate that they believe they would be worse off if they did not work and therefore do not contest or challenge their exploitation.

However, this 'willingness' of victims to work in these sectors needs to be examined in detail. Scholars have argued that dominant discourses in trafficking have failed to accommodate the realities and choices of women and girls (Worthen, 2011; Kempadoo, 2005). These realities are extremely complicated since they include the factors that draw women and girls to sex work and inclines them to continue to work in this sector (Busza, 2004:232).

During an interview, it was mentioned that children working in the entertainment sector can develop some form of attachment to the trafficker and come to consider them '*guardian angels*'. A CIB officer stated:

A girl from a village changes her name from *RamKumari* to *Rama*. The perpetrators entice the victims, they invest in them by sending them to beauty parlours to do their hair and makeup, give them mobile phones and in so many ways girls believe that the traffickers are their well-wishers who will fulfil her

dreams. Traffickers invest in dance schools and, once they are trained dancers, they work as dancers (P3, August 2015).

The above quote suggests that some trafficked children do not believe themselves to be abused, exploited, or trafficked. As stated by Pearce et al. (2013:82), this is evidence of how the victims form an attachment to their traffickers when a ‘grooming process’ is involved. Understanding victim behaviour in trafficking is paramount since it creates a barrier in the form of a psychological web (Elliot, 2015:186). Some children who are trafficked at an early age develop a psychological phenomenon – the so-called *Stockholm syndrome* – which introduces complexities in the understanding of victim behaviour within a trafficking nexus (Elliot, 2015:186). Pearce et al. (2013: 82) gloss ‘Stockholm syndrome’ as ‘a paradoxical phenomenon whereby hostages feel empathy towards their captors’. This psychological phenomenon was highlighted by a programme manager of an INGO:

... there is something called Stockholm syndrome... in the case of internal trafficking, the owner would actually pimp the girls to have sex with other people and keep the money for themselves. But what happens when girls are in a difficult situation is that the owner of such establishments becomes their guardian angel or helps them when they are in a bad situation etc. Therefore, it is kind of like Stockholm syndrome. The girls can actually move out and say they do not want to do this, but still they stick to the same place or owner. Therefore, this can be psychological as well... this psychological aspect must be considered too (IG3, April 2014).

It is therefore important to understand that young people’s (especially young women’s) experiences of being trafficked are shaped by their individual journeys, their relationship with the traffickers, and the geo-political, cultural, religious, and gendered narratives in which they have been inculcated since childhood (Pearce et al., 2013:78). It is therefore important to be aware of the personal circumstances while providing them with effective protection and alternatives.

7.2.3.4 *An alternative narrative: from 'child-saving' to child rights*

The alternative narratives to the rescue activities, offer an insight into the growing acceptance of the 'agency/resilience' of those involved. Wells (2015:23-25) argues that such a shift in approach, from a 'child-saving' discourse- where children are perceived as 'innocent victims of circumstances beyond their control'- to a 'child rights' discourse, is now a trend. Some interviewees expressed their concern that raids (mentioned above) may push the activities of the entertainment sector even further into unsafe practices. An NGO officer, for example, emphasised the importance of 'regulating the entertainment sector so as to discourage the girls from adopting street-based prostitution' (N5, April 2014). In a similar vein, Boyden et al., 1998 (in Huijsmans, 2008:336) state that rigid measures, such as police raids, may have adverse consequences. This process of victim identification through police raids and rescue missions by welfare agencies are driven by the assumption that trafficked victims tend to be identified as victims and rescued (Lee, 2011:69). O'Connell Davidson (2011:472) observes that the:

Dominant discourse on "child trafficking" does not question or challenge these contradictions. Instead it seeks to free the "trafficked child" from their snare by abstracting her from the economic and political inequalities [...] It invites us to grieve the fate of "trafficked children" precisely because they are [...] "unwilling and unknowing victims", snatched from the safe and protective arms of their families".

Alternatively, some NGOs and INGOs – for instance SAATHI, Change Nepal, Child and Women Empower Society (CWES), Biswas Nepal, TDH and World Education – have been advocating a 'soft approach'. This approach emphasises children's 'voluntary withdrawal' from the entertainment sector.¹⁰⁹ As an INGO officer explained: 'We believe in a soft approach, even though a hard approach is needed in

¹⁰⁹ IC1, April 2014.

some critical cases'. But the soft approach helps women and children motivate themselves to get out' (IG4, April 2014). She further elaborated on this approach:

Our main focus is to create a protective environment for children. Our main goal is to withdraw the children who are in exploitative situation. We cannot free all children from exploitative situation, since not all are willing to get out too. We are committed to choice awareness—our role is to raise their awareness, empower them to build their confidence and self-esteem and, sooner or later, they will get out. After the training they receive from us, children are empowered to identify their problems and seek solutions. This means that it is an effective and sustained withdrawal (IG4, April 2014).

The soft approaches pursued by the NGOs and INGOs are seen as more accommodating as it focuses more on child rights than 'child-saving'. It has emphasised the importance of empowering and assisting victims by providing educational support, vocational training, and psycho-social counselling. Despite the adoption of the soft approaches, rescuing children from the entertainment sector is not without challenges. Interviewees mentioned that there are cases in which rescued children have returned to situations from which they were saved due to personal circumstances.¹¹⁰ An INGO officer stated:

For example, girls aged 14 or 15 years old working in entertainment sector have been sexually exploited. These girls might be willing to work in this sector, despite their situation, for number of reasons... it is very difficult to convince them to make any kind of change because they are earning money; the challenge is to motivate them to withdraw (IG2, April, 2014).

Despite these difficulties, this shift in approach (taken by NGOs and INGOs) shows a growing acknowledgement of the 'agency' of the victimised.

¹¹⁰ N9a April 2014.

7.2.4 Rehabilitation and reintegration

There are primarily two types of rehabilitation services for victims of trafficking: temporary shelters (also known as transit homes) and rehabilitation homes (NHRC, 2011:188). Due to the limited support offered by the government,¹¹¹ victim support is impossible without NGOs, which in turn are dependent on donor funding (Pearson, 2002:217) (Chapter 6). Centres and shelters in Nepal are operated by Maiti Nepal, SAATHI and ABC/Nepal. They have been providing various types of support to the victims of trafficking with a view to empowering them, including: rehabilitation, psychological recovery, vocational training and education, legal support and income generating activities (UNICEF, 2008)(Chapter 6). These centres and shelters work towards the reintegration of victims into their family and society at large. The next subsection provides an analysis of the various support programmes offered to child victims, as part of complying with the provisions set out in international guidelines (Article 36, CRC see Chapter 6).

7.2.4.1 Adults, child victims of trafficking and victims of various forms of exploitation are housed in one place

These rehabilitation centres accommodate both women and child victims of trafficking. Victims from a broad age range – from 7 to 40 years old – are accommodated in the same facility centre.¹¹² It is interesting to note that these centres are not exclusive to the victims of trafficking, but are also open to victims of domestic violence and rape, as well as HIV and AID survivors.¹¹³ It is therefore often difficult for NGOs to provide bespoke provisions so as to attend to the specific needs of children. Thus, it is rather

¹¹¹ Government supported centres are run by NGOs in Kathmandu, Kailali, Banke, Chitwan, Jhapa, Sindhupalchowk, Parsa and Rupendehi (MoWCSW , 2013c).

¹¹² G5, August 2015.

¹¹³ N17, August 2015.

difficult to assume that the general standard procedures set for child victims are met by the shelters/rehabilitation centres. There is no systematic record of the rehabilitation and reintegration activities, nor the effectiveness of these programmes.

7.2.4.2 Limited cohesive support of children in need

It was evident during the interviews that providing education support to child victims is a priority. A programme officer working in a rehabilitation centre stated the importance of education to a child victim:

Education is the first priority: we have children from class 3 to women studying bachelor degrees. But, if some do not want to study because of many years out of education, we provide skills training with job placements. We give them options. We try to send children below 18 to school rather than give them training. They go to public or private school, depending on funding (N17, August 2015).

The above quote reveals that not all victims want to take up the option of education and opt for training instead. Upon asking what types of support the centres offer, an NGO officer stated: ‘We offer sewing and baking classes, as well as training to be a waiter, an auto rickshaw driver and to work in a beauty parlour. We also provide seed money to those who receive bakery and beauty parlour training’ (N17, August 2015). The extent to which the centres are able to meet the complex needs of child victims was not clear. The training programmes offered by the NGOs, such as low-income generating and traditional skills, have been characterised as ‘time-wasting exercises’ and ‘gender stereotypical tasks’ (WOREC, 2009; Joshi, 2004 in Crawford, 2010:147).

Another issue mentioned during the interviews was that these centres are limited as to what they can actually offer due to resource constraints. Since the government’s financial support is minimal, the resource gap is filled by NGOs (for example, ABC Nepal, SAATHI, Maiti Nepal) through donor funding. It is therefore imperative to keep in mind that the availability of funding has a direct impact on what support centres can

offer.¹¹⁴ Most of the rehabilitation centres run by NGOs lack the capacity to keep the children for a long period of time. An NGO officer stated:

The government support is for a duration of 6 months to 1 year. But we cannot tell children who have been trafficked at a very small age to leave after 1 year. We have children who have been living in our centre for 8-10 years. For example, one of the children's family could not be identified, and is still with us at the centre. She has lived with us for all these years and now is in grade ten (N17, August 2015).

Family reintegration is an integral component of victim support—but it is not without challenges. A NGO officer highlighted this by stating:

In the case of children, it is particularly challenging as they cannot be immediately reintegrated. Once a child is trafficked, it is very difficult to return to the country compared to adult victims: once the child victim is rescued and returned he/she will be in an extremely vulnerable condition (N17, August 2015).

Studies reveal that victims of trafficking commonly face rejection, stigma and discrimination from their family and their communities. A widespread perception in the community is that victims are exposed to sex work and have contracted HIV (Crawford and Kaufman, 2008; Terre des Hommes, 2003; Sahara Group, 2004). An NGO officer stated:

If girls are missing for a long time, parents do not want to accept them. Even if they do accept their child, the community makes it hard for them—the family face a lot of stigma. The attitude of the community is that, if the child is sold and away for a long time, she might have HIV or AIDS, which might be transmitted to everyone (N17, August 2015).

Such challenges with reintegration mean that the centers in some cases may need to provide long term support. An NGO officer elaborated on this:

It is difficult to find an alternative solution if the child cannot reintegrate into the family and/or the family does not support the child. If the girl is not ready to be reintegrated, then where do we send the girl? This is a problem we face in our work (N 19, August 2015).

¹¹⁴ IC1, April 2014.

When a project terminates, these centres and shelters refer the children to child care homes for example.¹¹⁵ However, as discussed in Chapter 5, many child care homes are badly run with inadequately trained staff and poor infrastructure, all of which has contributed to further victimisation.

Although the NGOs have played a crucial role in supporting victims, the rehabilitation programmes and outcomes of reintegration require proper evaluation. Crawford (2012:147) suggests that the lack of resources limit NGO efforts to provide ideal care, education, training and the required long-term support. These constraints have made it difficult for the government and NGOs to reach the ‘ideal international standards’ of protecting the rights of children.¹¹⁶

7.2.5 In pursuit of justice: the prosecution process and outcomes

Most of the interviewees acknowledged and accepted prosecution as central to anti-trafficking intervention. In recent years, the government’s efforts to provide assistance to victims during the prosecution process has intensified. Several agencies have been made responsible for enforcing laws related to child trafficking: the Nepal police, Women and Children Centres, the Central Investigation Bureau (CIB) and the judiciary (Chapter 6). In addition, several bespoke measures have been codified in the law (HTTCA): certifying statements, in camera-hearings, and victim and witness protection (Chapter 6). This section aims to analyse the measures intended to assist victims. This will be done by highlighting different actors’ experiences of the criminal justice process, from reporting and investigation to the outcome of prosecution.

¹¹⁵ N17, August 2015.

¹¹⁶ N18, August 2015.

7.2.5.1 Challenges in reporting, investigating and court proceedings

The Concluding Observations (2012) of the Committee on the Rights of the Child expressed concern over a lack of adequate measures for identifying, reporting and investigating cases of child trafficking in Nepal. As discussed in Chapter 5, the number of cases registered is significantly lower than the actual number of victims being trafficked.

7.2.5.1.1 Inadequate facilities

As mentioned earlier, the Nepali police have so far set up 240 Women and Children Service Centres with a view to providing victim-friendly environments for reporting and investigating trafficking cases (Chapter 6). However, a key problem has been the variation in the way services are provided. For example, not all 240 Women and Children Service Centres have the same facilities or trained female staff to handle cases.¹¹⁷ Interviewees mentioned that many victims do not come forward as there is no qualified or trained staff (particularly female officers) who could provide child friendly services.¹¹⁸ This particular issue is discussed further at a later point in this chapter. Elliot (2015:214) states that ‘it is impossible to conceive of victims coming forward in order to help initiate or assist with criminal proceedings against traffickers’. Even when victims do register a complaint, the process is not without challenges. For instance, an NGO officer stated that: ‘Not all courts have a separate room for in-camera hearing, and the ones that do have in-camera hearings are not functioning well. In-camera hearing rooms have big windows, where people can see what is happening inside the

¹¹⁷ G2, April 2014.

¹¹⁸ P1; A1b, August 2015.

court room.’ (N15a August 2015). Apart from inadequate facilities, several explanations were provided by interviewees regarding the challenges that reporting, investigating and court proceedings face.

7.2.5.1.2 Perspectives on non-cooperation of the victims

Across 25 interviews with those involved in the pursuit of prosecutions – including members of NGOs and the government, as well as public prosecutors, lawyers, and human rights activists – the discussion of challenges revolved around victim’s unwillingness to cooperate. Several explanations were offered to account for this: cultural issues (e.g. shame and stigma), fear of reprisals from traffickers, problems of mistrust with police authorities, confidentiality, and privacy. These explanations are discussed below.

Cultural issues: shame and stigma

As stated previously, victims of trafficking that are returned face high levels of stigma and discrimination (see Crawford and Kaufman, 2008; Chen and Marcovici, 2003; Mahendra et al., 2001; Terre des hommes, 2003). Most victims are hesitant to disclose their identity upon returning home due to the fear of being humiliated (Adhikari, 2011). It is therefore common among victims not to report their cases to the authorities. Reporting the case is even more complicated when the victim is a child. An NGO officer commented:

A child cannot file a case, their guardian is responsible for this... If the parents say that they don’t want to file a complaint then the case doesn’t go forward. This is because parents have custody of the child ... We do not have a provision for legal custody... the HTTCA does not have a provision for legal custody in trafficking cases. Children have to stay with the parents (or guardian, uncle, or

other relatives)—if they say no, then the case cannot be filed (A1, August 2015).

The above quote shows that the decision to register the case is based on the parents, guardians/ relatives or with the concerned organisations. In the case of child victims, it is often their families who are more scared of the social stigma and often try to hide any victimisation.¹¹⁹

Fear of reprisals from traffickers

Traffickers are often members of the local community and are known to the victims and their families. Their access to victims and their families has on many occasions enabled them to threaten the victims. An INGO officer, for example stated: ‘If the victim files a trafficking case, the victim or the parents have to put themselves at risk to register the case; the perpetrator is usually a family member or neighbour... victims feel reluctant to register the case’ (A1a, August 2015). Threats and reprisals from traffickers (aimed at both victims and their families) have been investigated in previous research (Hales and Gelsthorpe, 2013 in Elliot, 2015:186).

NGOs have *their own* explanations for the non-cooperation of victims. An NGO officer stated: ‘trafficked victims are generally from poor families and the middlemen usually settle the case informally by giving the victim or the family a small amount of cash’ (A1a, August 2015). Consequently, in such cases, suggestions are made that victims would rather use informal mediation mechanisms ‘to settle cases of human trafficking, as they feel that informal mediation is far more discreet and swift’ (FWLD, 2014:34).

¹¹⁹ G2, April 2014.

Re-victimisation: problems of mistrust with law enforcement officers

There are reasons to believe that law enforcement officers lack the confidentiality, privacy and sensitivity which are required when dealing with these cases. While the government and NGOs have similar mechanisms in terms of rescuing and identifying potential victims, the decision-making process in the investigation ultimately rests on the authority of the police (Segrave et al., 2009: 66). Whether they are dealing with a child or an adult, the investigation or case processing system conducted by the police is similar.¹²⁰ Often, the victims in such investigation processes are treated as ‘criminals’, ‘either because of their involvement in prostitution or their status as illegal immigrants’ (Elliot, 2015:162). Such criminal justice approaches foster the myths and assumptions which were highlighted in Chapter 3. A government officer explained this further:

Confrontation with the police is challenging because it can be intimidating; they can scare victims off by talking to them as though they were criminals. Police do not listen to them; their attitude towards them is harsh. Even if they would like to file a complaint, they [the police officers] are all male (G2, April 2014).

Consequently, the process of investigation is a very unpleasant experience for child victims.¹²¹ Another NGO officer added: ‘Police use derogatory language, such as “you are a prostitute if you can sleep with others, why not me” ...trafficking victims are seen as criminals’ (A1b, August 2015). This statement is an example of how trafficking is still conflated with prostitution.

Moreover, during the court proceedings, child victims often find themselves in a situation where: ‘the system itself re-victimise them [victims]’ (N18, August 2015). They are asked intimidating questions during the prosecution, such as: ‘Do you get

¹²⁰ J3, August 2015.

¹²¹ A1a, August, 2015.

sexual satisfaction when serving a client?’ (N12, August 2015). This demonstrates that the training among law enforcement officers is inadequate, resulting in poor awareness of the victims and their experiences. The way victims are dealt with – including law enforcement’s attitude to victims – is highly damaging to the investigation and court proceedings. A common concern among the interviewees was that victim-centred responses are often dependent upon the extent to which the judges and the public attorneys are sensitive enough to the issue.¹²²

Issues of confidentiality and privacy

The HTTCA specifies that confidentiality and privacy of the victim should be maintained (Chapter 6). However, this is yet to be put into practice.¹²³ For example, a government officer stated, ‘if a girl shares her trafficking experience to a police officer or VDC member, confidentiality is not guaranteed’ (G3a, August 2015). Crawford (2010) observes that police authorities have little respect for the rights of trafficked victims; so much so, that it was common practice to disclose information about the victim, which included publishing victims’ stories and photos in the media. To trust the police and other law enforcement officers is crucial, but often missing. There is a need for social workers or NGOs to facilitate in building such trust (Segrave et al., 2009: 56).

¹²² 1G7, August 2015; N15a, August 2015; N14, August 2015.

¹²³ N18, August 2015; G3a, August 2015.

Problems with victim and witness protection

Recognising the complexity of cooperating with officials during the criminal justice procedures, a number of interviewees pointed to the importance of victim and witness protection measures. Although the victims can request protection based on ‘reasonable grounds’ (Chapter 6), there is no specific law ensuring witness protection. To address this, the Supreme Court has recently issued a directive on victim and witness protection, which is yet to be implemented in practice.¹²⁴ In the absence of protection, it has become a common practice among victims and their families to withdraw their cases.¹²⁵ An NGO officer stated: ‘Some parents appear in court, but they find themselves in a difficult position because they fear traffickers or their threats’ (A1b, August 2015). Moreover, witness protection does not guarantee that witnesses will come forward since they could still be intimidated by threats and deterred by the fact that they are required to bear certain expenses, such as transportation to the court.¹²⁶

Problems with compensation

Another important issue raised during the interviews concerns the guarantee of victim compensation. Victims can become hostile as they are not guaranteed to receive compensation. Although the law states that all victims of trafficking are entitled to compensation (see HTTCA 2007), providing compensation has proven to be rather difficult. An NGO officer explained the practicalities relating to compensation:

Even if the victim wins the trafficking case 4-5 years later, compensation is not guaranteed... if it is a child survivor then the child needs immediate help with, for instance, medical treatment, sending them to school... how long can they wait for compensation? (N15a, August 2015).

¹²⁴ N13, August 2015.

¹²⁵ IC1, April 2014.

¹²⁶ N14, August 2015.

The statement is evidence that compensation may be of little or no benefit to a victim in practice since it is often too little, too late. An NGO officer added:

But if the victim will not get compensation then why would the victim file a case; and if the middleman is willing to give 2 or 3 lakh, then why would they [the victim] file a complaint against him or her and why would they [the victim] go through all the effort? (A1n, August 2015).

Apart from the non-cooperation of victims, the prosecution process has been weakened by the way the criminal justice system works. This following section discusses these issues.

7.2.5.2 Prosecution outcomes and the impact on trafficked children

The TIP Report (2015) has stated that the number of prosecutions and convictions were disproportionately small compared to the magnitude of trafficking in Nepal. The same report shows that 475 cases were registered in the court (although this high number could possibly be due to pending cases from previous years); 203 of these resulted in convictions of transnational sex trafficking – under the trafficking Act (HTTCA) – in the Nepali fiscal year (ibid:258). The same report notes that law enforcement authorities often rely on other legislation for trafficking offences within the country (TIP, ibid: 258). The reasons for the low number of trafficking prosecutions in Nepal – and the fact that, of the ones that are prosecuted, they are mainly for transnational trafficking – are unknown due to the lack of scholarly attention to this subject. The section below attempts to explore reasons for this more in detail.

7.2.5.2.1 *Narrow conceptualisation of victims ('deserving' and 'underserving') and trafficking phenomena*

According to Lee (2011:69), expectations of what trafficked victims look like and how they act have a direct impact on the working of criminal justice investigations and prosecution. Pearce et al. (2013:10) argue that the perception of victims is often polarised: as either 'deserving' vulnerable children or 'underserving' young persons. Such is evident in Nepal. There are many borderline cases, particularly those of children exploited in stone quarries—those in embroidery factories, doing domestic work or working in the entertainment sector have been misidentified. The default perception of trafficking as a practice that requires border crossing (Buck and Nicholson, 2010)(Chapters 3 and 5) has overshadowed children trafficked within the country and for purposes other than sex trafficking. This explains why most of the cases under the HTTCA are for transnational trafficking.

The data here suggests that law enforcement agencies often lack adequate knowledge about trafficking and fail to identify many of the victims. A government officer stated that: 'Even today, trafficking is associated with prostitution, buying and selling of girls and daughters [*cheli beti wosar pasar*] and commercial sexual exploitation [*byabasayik taun soshan*]' (G3a, August 2015). This was supported by an INGO officer:

In Nepal, after the TIP [HTTCA] Act, people have been talking about other forms of trafficking. The previous Act was concerned with buying and selling of women and children to engage in prostitution. This has made it difficult for some to understand the revised definition (IG3, April 2014).

The above quote suggests that trafficking is still narrowly understood among the anti-trafficking community. It is important to note, however, that the terminology used in the existing law is, at times, ambiguous (discussed in Chapter 6). This association with

prostitution is problematic. As Chuang (1998:66) argues, trafficking cannot be confined to the phenomenon of prostitution.

The narrow portrayal of trafficking as necessarily involving forced recruitment for the purposes of forced prostitution thus belies the complexity of the current trafficking problem, and overlooks numerous victims whose experiences diverge from more traditionally recognised forms of trafficking (Chuang, *ibid*:66).

An NGO officer suggested that, in case of child trafficking within the country: ‘if a child is brought for child labour without the consent for their parents- this is internal trafficking, which is one of the components in the HTTCA...but neither the public nor the law enforcement agencies understand this as trafficking’ (N16, August 2015). Generally, the prosecution of cases related to child trafficking under the HTTCA, other than cross border/transnational trafficking cases, are rare.¹²⁷

Elliot (2015:189) suggests that, for effective prosecution, it is imperative that the relevant authorities ‘have heightened awareness of and sensitivity to the exploitative, coercive and clandestine nature of trafficking’. The complexity of child trafficking cases means that those working in the field need a comprehensive awareness of the nuances of identifying victims, including the indicators and risks involved. There is also a need to understand the way that child trafficking interfaces with other areas of law, such as child labour and foreign migration law. Narrow conceptualisation of trafficking victims has led to viewing them as either ‘deserving’ or ‘undeserving’, which has, in turn, led to law enforcement officers giving less attention to certain types of trafficked children. This is more evident in the entertainment sector than in other forms of exploitation occurring within the country. This narrow conception has further exacerbated how the criminal justice system works.

¹²⁷ G2, April 2014.

7.2.5.2.2 'Victims are weak, and traffickers are more powerful'¹²⁸

As discussed in Chapter 5, a wide network of people are involved in the trafficking of children in Nepal. This has led to several challenges in the prosecution and punishing of traffickers. An NGO officer noted that 'trafficking is conducted in an organised manner, whereby the potential perpetrators use innovative means and methods to carry out and conceal their criminal deals' (A1a, August 2015). This has made it even more difficult to obtain evidence to identify traffickers and to prosecute and punish them (Obokata, 2006: 56). As discussed in Chapter 5, some perpetrators are politically protected and therefore prosecution is further compromised. That traffickers may bribe politicians and police officials to avoid prosecution is evident in prior work (Crawford, 2010).

Another interesting issue raised during the interviews was that the criminal justice system is still 'perpetrator friendly'.¹²⁹ The judges, police officers and other authorities show more sympathy towards the perpetrators, referring them as innocent (*bichara*) rather than providing justice to the victims.¹³⁰ An NGO officer further remarked:

But our main law still suggests that, of 99 perpetrators, even if caught, not one innocent person who has not committed the crime should be punished. What this principle does is that the perpetrators will have many opportunities to escape from the justice system (N21, August 2015).

Legal support to victims is crucial to offer them protection during and after the investigation and prosecution.

¹²⁸ IG10, August 2015.

¹²⁹ N15a, August 2015.

¹³⁰ A1a, August 2015; N15b, August 2015.

7.3 Conclusion

Has the human rights approach to child trafficking worked in practice?

As discussed in the previous chapters, the universal human rights framework has become particularly problematic in a context where there is little consensus on the definition of ‘human trafficking’ and ‘childhood (transition from childhood to adulthood)’ (Kaye and Winderdyk, 2012; Mayall, 2004; Boyden, 1997) (see Chapters 1, 3 and 6). This chapter shows that various factors – such as diversity in responding to child trafficking, resource constraints, a lack of focus on local setting, and a limited consideration of children’s reality – have curtailed the impact of the international human rights framework in the Nepali context.

The efforts of governments and NGOs are, to a large extent, driven by the underlying assumptions of a ‘victim archetype’ (as shown in Chapter 3). These narratives are central to prevention, rescue and prosecution related interventions offered by governments and NGOs. The reproduction of certain narratives – such as the contrast between ‘innocent and passive’ and ‘deserving’ and ‘underserving’ victims – goes against the very essence of the rights approach and has resulted in inadvertent consequences. Such responses have failed to take into account the broader socio-economic context that the children are situated in. An important contribution of this chapter is its attempt to demonstrate the growing interest of some NGOs/INGOs in adopting an alternative framework. This framework has emphasised the ‘agency’ of trafficked children and broadens the scope of the discussion on trafficking intervention by moving beyond the ‘victim archetype’. The findings show that this approach underlines the importance of developing appropriate responses to protection by considering children’s aspirations and their desire to improve their socio-economic

circumstances. The ‘soft approach’, advocated by a number of NGOs and INGOs, largely reflects this shift from a ‘child-saving’ to a ‘child rights’ approach.

To sum up, despite governments’ commitments to promoting an international human rights framework to address child trafficking, there is very little evidence to suggest that the international human rights approach has been effectively applied in practice. The discussion chapter revisits some of the existing challenges, including some of the contradictions experienced in practice when implementing the framework; it also explores the implications of the research and suggests the direction of future interventions.

Chapter 8: Discussion: *Victimhood, Agency and Beyond*

8.1 Introduction

The empirical chapters of the thesis have re-assessed some of the important issues in child trafficking – including the current trends of child trafficking, causes of trafficking vulnerabilities and the trafficking process – in order to challenge some of the existing assumptions about child trafficking in Nepal. This discussion chapter provides an understanding of the conceptual dimension of anti-trafficking discourse and practice in Nepal, focusing on two core concepts – ‘victimhood’ and ‘agency’ (see Chapter 3) – which have underpinned current anti-trafficking legislation and practice in Nepal. This will provide an understanding of the complications and dilemmas that arise when attempting to comply with the global framework.

Next, the chapter highlights the implications of the findings for policy makers and practitioners in the development and execution of new interventions in trafficking. In doing so, the chapter suggests an approach where interventions are embedded within the community. As discussed in Chapter 5, the problem of child trafficking in Nepal is no longer restricted to a particular socio-cultural context and has extended across the country. The chapter identifies a broad range of vulnerabilities of children, some of which are simply accepted in the country. Therefore, the chapter argues that, when designing effective anti-trafficking interventions, it is imperative to take into account these local realities. Twum-Danso Imoh (2016b:473) raises an important question: ‘how do you curb a practice in societies where it is not only widespread and accepted, but also where the government lacks the capacity to enforce laws introduced?’ In the context of Nepal, where a lack of financial and human resources limits current anti-trafficking efforts (Chapter 7), can there be an alternative way to act as an agent of

change? The complex and interconnected nature of the problems faced by anti-trafficking efforts mean that local and community-based strategies are needed as much as international ones (Oebanda, 2010: 293). In what follows, community-based children's clubs and local child-protection mechanisms are discussed. More specifically, the key role they play in protecting children from discrimination, abuse, and exploitation, as well as their role in promoting children's rights, is discussed. Little attention has been paid in the existing literature to the role of local-level institutions in protecting the rights of children, particularly in anti-trafficking interventions in Nepal. This section intends to fill this gap in the literature. The remainder of the chapter is structured as follows: I will begin by succinctly presenting the 'troubling contradictions' identified in the national response to child trafficking in Nepal; I will then discuss the implications of the findings and suggest possible future interventions.

8.2 'Troubling contradictions' in national responses

In this section I have drawn on the concept of 'troubling contradictions' – a term introduced by Melrose (2013:17) – to analyse the positions taken by different agencies on the construction of notions of childhood(s). I have also traced the implications of these positions in the formulation and articulation of responses to child trafficking interventions. Melrose (ibid: 17) used this term in the context of child sexual exploitation to explain how the dominant discourse makes victims appear either as 'passive objects/victims' or as children/victims that have 'something "wrong" with them *as children or as victims*' (italics in the original). This study also highlights the tension between victimhood and young people's agency in relation to the identification of trafficked victims and service provision (Pearce, 2009:45-46). The section below presents these 'troubling contradictions' in detail.

8.2.1 Victimhood Approach Framework

In Chapter 3, I demonstrated that the trafficking narrative in Nepal has been built on the notions of ‘innocence’, ‘passivity’ and ‘naivety’. This dominant narrative reflects a *stereotypical image* of the victimised child (for instance, *Gita* and *Maya* as passive, fair skinned, village girls) constructed on the basis of the underlying values and assumptions of the ‘gendered’ and/or ‘ethnic child’. Policies and practices are largely influenced by this image of an ‘ideal victim’ (Chapters 6 and 7). As a result, they have proved to be inadequate at resolving the emerging trends in child trafficking (Chapter 5) and at grasping the realities of victim’s needs (both social and economic). For example, most of the prevention programmes are targeted at women and children belonging to specific ethnic groups. What has emerged from the findings is that child trafficking is far more complex than the dominant discourses on trafficking – which view victims as ‘innocent’ and ‘illiterate’ – will allow. The empirical evidence indicates that those vulnerable to trafficking are no longer restricted to children from certain social groups. Several different types of vulnerable children have been identified, including working children, migrant children, and children in institutional care. The study suggests that the narratives have tended to oversimplify our understanding of the causes and lived experiences of trafficking. Therefore, it can be argued that continuing with the perception of an ‘ideal victim’ is problematic, as not all children are perceived as victims (O’Connell Davidson, 2011:59).

The agencies’ responses are not properly equipped to protect young people as intended since they draw upon ‘only partial truths’ about the victims (Melrose, 2013:10). The findings suggest that there still exists ‘pre-sociological’ discourses about children, presupposing them to be either an ‘evil child’ or an ‘innocent child’ (James et al., 1998).

Pearce et al. (2013:10) argue that this kind of dichotomy results in seeing the ‘young person as a “victim” at one end of spectrum and [...] as a “perpetrator” of crime at the other end of the spectrum’.

Lee (2011:65) has referred to Christie’s (1986) key features of the ideal victimhood: ‘the victim is weak and vulnerable’; the victim is in a location where ‘she cannot be blamed for being’; the victim is conducting a ‘respectable project’ and the victim is unfamiliar with the perpetrator. If any of these features are lacking, victims are considered ‘underserving’. As a result, Hoyle et al. (2001:326) argue that not all victims are considered equal: some of them are deemed to be ‘ideal’ and others are not, highlighting the negative ramifications of the ‘social construction of victimhood’. O’Connell Davidson (2005:52) argues that the assumption of children as a homogenous group (characterised by their ‘passivity, helplessness, dependence and irrationality’), as embedded in the trafficking narratives, has made it impossible to imagine children as capable of making their own choices. While the categorisation of the ideal victim of trafficking cannot be ignored, some children are excluded from the epithet ‘ideal victim’ if they are seen to make certain lifestyle choices (e.g. abandoning their families and staying in their condition of exploitation). This mainly applies to children working in domestic environments, factories (*zari* and *brick kilns*) and the entertainment sector (Chapter 5).

It is therefore important to understand the complexities associated with children at risk (i.e. who are vulnerable to being trafficked). For example, some of the girls and young women working in the entertainment sector are not considered ‘ideal victims’, as they have ‘freedom’ of movement and the power to terminate employment whenever they

wish to. There are, however, many reasons why girls and young women may choose to work (or to continue to work) in the entertainment sector, and therefore should not be identified as underserved victims (Chapter 7). Unfortunately, there is often little understanding of the limited choices available to children, which leads to the belief that they are willing participants in their situation. In this case, they are not recognised as trafficked and even perceived as ‘evil children’. As argued by Melrose (2013: 13), ‘the reasons for becoming involved are complex’ and, as O’Connell-Davidson (2005:46) has stated, ‘there may be “no simple or single answer” for this’ (O’Connell-Davidson, 2005:46). Interestingly, the language used by interviewees/stakeholders in my study does not allow a distinction between pre-pubescent and young women to be made (and thus constitutes a homogenous category) (Chapters 5, 6, and 7). The word ‘girl’ is applied more broadly to anyone below the age of 18.

A number of issues have been raised in this thesis that need to be considered in relation to both policymaking and practice. For instance, certain terms (e.g. victim and exploitation) used in Nepali law (Chapter 6- HTTCA) clearly indicate how certain legislative approaches reinforce the assumptions of a ‘victim archetype’ (Vijeyarasa, 2015). As the findings of this thesis show, the problem with the idealised view of the victim (as, for example, ‘passive’ or ‘innocent’) is that any child that fails to meet this extreme standard is denied the status of ‘victim’ and instead held fully accountable for their actions—subsequently, they are dismissed as ‘prostitutes’ and treated as ‘criminals’ (Chapter 7). The dilemma is elaborated by Montgomery (2001a:27), who argues that children who ‘develop strategies for fighting back or coping’ are often seen with ‘great unease’.

Another problem relating to ‘victimhood approach’ is that they do not explore the consequences of children’s socio-economic conditions. Ignorance of these conditions has led to the development of inadequate programmes, like rescue missions and police raids. This thesis has shown the inadequacy of these programmes by revealing, for instance, how police raids in the entertainment sector have resulted in more harm than benefit to victims.¹³¹ This is further evidenced by the comments of an NGO officer: ‘Police raids are not a solution. At times, even when we are working according to our best intentions, the result can have negative consequences’ (N3, April, 2014). The discourse and practice underlying ‘victimhood approach’ has promoted particular kinds of interventions that contradict international human rights standards.

Although, the ‘victimhood approach’ is still widespread among anti-trafficking organisations, some organisations in recent years have started advocating an alternative response. This alternative narrative has received little attention in trafficking studies. The section below explores the construction of the ‘problem’ of child trafficking, which focus on the agency/resilience of children involved (Chapter 3). It is argued that such alternative perceptions have contributed to a shift in the discourse of trafficking and a resulting shift in the types of trafficking interventions.

8.2.2 Agency Approach Framework

The notion of agency is used to conceptualise ‘consent’ in the trafficking narratives. As discussed in Chapter 2, critics argue that the definition of child trafficking in the Trafficking Protocol undermines a child’s ‘consent’ as well as the child’s own sense of ‘agency’ (Bornavick, 2010; Huijsman, 2008). The findings show that children’s

¹³¹ IC1, April, 2014.

experiences are more complex than the fixed notions of ‘consent’ or ‘coercion’ can grasp. There exists a dilemma among agencies as to whether someone should be identified as a trafficked child or a migrant child, especially when a child’s ‘choice’ to migrate or work for a better life is considered (Chapter 5). As evident in Chapter 5, children working in the entertainment sector, or other informal sectors, are mostly migrants who have abandoned their home and community in search for a better life. These children’s decision to believe traffickers and follow them (Kelly, 2002) in order to fulfil their needs of employment, care and attention, should be taken into consideration when executing interventions. The complexity of the situation is further evidenced by the fact that children’s agency – as exercised in their decision to leave home for better opportunities – has often been misinterpreted as ‘consent’ in trafficking interventions. Either way, it can be argued that, despite the element of deception, the children’s decision-making right should not be downplayed when developing interventions (UNICEF, 2009a). This complicates anti-trafficking programmes. Application of the core of the ‘agency approach’ enables an understanding of children, especially their family goals, motivations and decision-making activities (as diminished as they may be). The thesis shows that this ‘agency approach’ broadens the scope of the discussion beyond the ‘victim archetype’. In addition to helping identify children who do not ‘fit’ into the category of ‘victim’ (as discussed above), this can help to develop appropriate responses which are better able to protect them (see Chapters 1, 5 and 7 for discussion on children’s situation and the exploring causes of the trafficking vulnerabilities). De Saas Kropiwnicki (2008 in UNICEF, 2009a:19) argues that:

Even though children may be victims of abuse, exploitation and trafficking, one cannot make assumptions about their capacities and capabilities. They are still

‘agents’ who, through their decision-making and actions, develop various strategies to escape and survive adverse experiences.

Similarly, Honwana, in her work (2006:161-162) on ‘Child Soldiers in Africa’, argues that:

Children and youth should not all be cast as passive victims of these assaults on themselves [...]. Young people respond to the exigencies of war with resourcefulness and – for better and for worse – a substantial degree of adaptability [...]. Even in the extreme conditions of military camps, some children were able to exercise what I call “tactical agency” [...] to cope with their particular circumstances [...]. Young people’s own energy, adaptability, and resilience can be counted on to make the most of whatever opportunities they are given.

Pearce (2009) argues that recognising children’s agency in adverse circumstances is crucial. It can therefore be argued that, without addressing the ambiguities of the children’s situation, interventions are more likely to lead children to further victimisation (Pearce et al., 2009; Bourdillon et al., 2010; Morrow and Pells, 2012). As argued by some scholars (e.g. Coleman and Hagell, 2007; Pearce, 2009), risk cannot be seen in isolation from resilience. The interventions should therefore be developed not only by encouraging young people to understand risks they face but also by considering ‘how much they themselves can cope with’ (Pearce, 2009: 90). This illustrates the importance of considering the risks, protective factors, and the manner they promote resilience in adverse circumstances.

The findings show that the programmes that fit within the ‘agency approach’ is not widespread. Proponents of the ‘agency approach’ argue that certain types of intervention, such as police raids, may further jeopardise and re-victimise children. By contrast, the ‘soft approach’ proposes a voluntary withdrawal of victims from their situation, and thus a shift from ‘child-saving’ to ‘child rights’ practice (Chapter 7). Such programmes envisage children as ‘social actors’ (O’Brien, 1997; Reimer, 2003;

Melrose, 2013). As Turton (2013:82) argues, although ‘broader social structures have [a] significant impact on protecting children’, there is still the issue of how victims find their right to a voice. Kitzinger (2015) argues that the empowerment approach is important to enable children to identify abuse and exploitation. The ‘agency approach’, along with systematic research evaluating the significance of this approach, is perhaps a way forward in trafficking interventions. Hence, as stated by Goździak and Bump (2008: 16), ‘the recognition of the coexistence of agency and vulnerability is particularly important in the child trafficking domain’. The chapter proceeds by highlighting the implications of the findings and suggesting possible interventions in a local context.

8.3 Implications of the findings and suggested interventions: *The way forward...*

Despite some improvements, national responses have failed to consider the realities of all ‘trafficked children’ (as well as children who are at ‘risk’ or ‘vulnerable’) by overlooking the importance of children’s socio-economic conditions. A number of implications can be drawn from the findings in the empirical sections; these can be used to challenge and improve trafficking interventions and therefore improve child protection. Some of these implications are presented in the following sections.

8.3.1 Reconceptualising childhood

Moving beyond the children’s rights rhetoric – which has been institutionalised in the anti-trafficking discourse – requires a rethinking of the notion of childhood. The western conception of the child as ‘innocent and happy’ has become dominant when formulating legislation and other regulations relating to children in Nepal (see Chapter

6). An NGO officer stated: ‘childhood is a stage of innocence, before adulthood, and unaware of what is good or bad’ (N2, April 2014). It is emphasised that there is a need to perceive childhood as something that should be cared for, loved and protected by parents and the state—a view which contradicts ‘the idea of the unhappy child’ (Holland, 1992 in Ennew, 1995:202). Holland (1992) states that:

The unhappy child does not have an adult to depend on – to be powerful on its behalf or, if it needs to be rescued, to put it back into childhood which, in ideological terms, stands for happiness, play, innocence and some kind of essential goodness in human nature (in Ennew, 1995:202).

Scholars argue that the western notion of childhood has marginalised alternative notions (Boyden 1997; Montgomery, 2001a). Nepal exemplifies this by adopting the western notion of what childhood *should be* and attempting to embed international discourses on childhood in national regulations. Thus the varying dynamics of childhood(s) (including the specific social and economic status of children, as well as their geographic location) have largely been overlooked. Since children are tied to ‘their socio-economic circumstances’ (Pells, 2012:436), formulating trafficking interventions based on a universal western notion of childhood can be problematic.

Bissell et al. (2007:22) argue that:

The values and objectives of child rearing and development, the nature of care arrangements, children’s competencies and vulnerabilities and their experience of childhood, are highly variable both within and across cultures, with the consequence that views on how best to protect children are similarly diverse.

The findings show that the experience of children in Nepal has been very different from those in the West. The findings of the thesis have delineated many pitfalls that follow from an ignorance of the socio-economic conditions in which children live. As a result, implementing the vision of ‘better protection of children’ in reality has become challenging. As discussed in Chapter 1, children’s experiences in Nepal are shaped by

multiple socio-economic and cultural factors such as child labour, bounded labour (*Kamaiya*), institutional care, and child marriage, among others. With minimal state intervention and an absence of a welfare system, children have very different experiences than most children in western countries. Moreover, not all children in Nepal who are vulnerable to trafficking are entirely dependent on adults. Many of them have been undertaking several responsibilities, both inside and outside their home, from an early age. These experiences of Nepali children have challenged western notions of childhood— notions which are, arguably, ideological. The western conceptualisation of the child has failed to address the experiences of children who are exposed to abuse, neglect, and poverty, while being deprived of state protection. As stated by Howard (2012:566), it can therefore be argued that any attempt to promote a globalised notion of childhood, without considering the local context and changing economic structure, is unlikely to generate positive results. More attention should be paid to unfolding these perceived contradictions between norms and realities, as well as other factors that facilitate child trafficking (such as poverty, discrimination and weak child protection mechanisms).

It is therefore important to relate childhood to a particular social context (James et al., 1998; Jenks, 2005; Stainton Rogers, 2009). Bourdillon et al. (2010:15) argue that the interpretation of the CRC ‘must be flexible enough to accommodate different childhoods and emerging understanding[s] of childhood’. This thesis raises questions as to whether alternative conceptions of what constitutes (a good) childhood – specifically those articulated in contexts other than the western one – should be endorsed. Does a deprived child correspond to an unhappy child? How do children themselves view their situation? There is a need for policy makers and practitioners to understand the specificity of children’s experiences in Nepal and the corresponding

variations in conceptions of childhood. Such an understanding may help enhance the effectiveness of anti-trafficking interventions and address broader vulnerabilities.

8.3.2 Implications for Policymakers

It is evident from the empirical work that addressing the problem of child trafficking in Nepal requires some policy interventions from regulatory bodies. In particular, the findings show that, despite the attempts to deploy human rights standards in Nepal's national legislations and policies (such as Children's Act 1992, HTTCA 2007 and National Child Policy 2012), several ambiguities have been identified in the existing Nepali legal system. The study shows that national laws should be harmonised as well as there being a need to revise the existing anti-trafficking laws. A lack of harmonised law has resulted in twin deficiencies: on the one hand, there is weak prosecution and therefore perpetrators go unpunished for the crimes they commit; on the other hand, victims do not get adequate support (Chapter 7). There are opportunities for improving procedures, including legal support to victims, access to compensation, and victim and witness protection. Developing trust within the criminal justice system is a crucial factor. It is essential that victims are supported by programmes that allow them to fully cooperate with the investigation and prosecution process. It is important to close the gaps in the existing legal provisions—for example, by defining the meaning of 'child' (Chapter 6). Nepal needs to ratify the UN protocol for systematic identification criteria of trafficking victims.¹³² In addition, the nature and extent of the problem of child trafficking should be acknowledged when revising legislation and policies (Chapters 5 and 6).¹³³

¹³² A1a, August 2015.

¹³³ N16, August 2015.

In relation to trafficking data, there is a need for the government to mobilise the existing mechanisms to retrieve data on the situations children find themselves in, including vulnerable children/high risk children.¹³⁴ For instance, the MoWCSW could establish a mechanism to attain data from Women and Children Offices (WCOs), which are located in 75 districts in the country. The WCOs gather data in their respective districts on rescue, rehabilitation and reintegration of trafficking victims. The systematic compilation of such data could be valuable in generating a clearer picture about the scope of child trafficking in Nepal.

How the problem of child trafficking is understood implicitly determines which policy should be adopted to address the problem more effectively. The thesis argues that understanding trafficking vulnerabilities entails competently analysing the consequences of migration, urbanisation/globalisation, and the factors involved in the process. In recent years, the governments, NGOs and INGOs have recognised the importance of developing an overall child protection strategy: coordinating child protection activities and formulating an effective legislative framework for the protection of trafficked children (Heiberg, et al., 2010), as well as other vulnerable children and children at risk. The introduction of the 2012 Nepal Child Policy (20 years after the ratification of the CRC) provides an example of this recognition. The policy has emphasised the role of multiple agencies in developing child protection mechanisms (see Chapter 6). With the enactment of this policy, the responsibility to incorporate child protection programmes also lies on other government agencies (both at the national and local level). The National Child Policy has also included a number

¹³⁴ IG10, August 2015.

of Ministries within the remit of child protection: the Ministry of Health, Ministry of Education, Ministry of Labour and the Ministry of Federal Affairs and Local Development (Chapter 6). The government should ensure that the National Child Policy is properly implemented.

8.3.3 Implications of Responses

The findings show that effective change in trafficking intervention may not be achieved by narrowing anti-trafficking interventions. What is important is to protect all vulnerable children delineated in the study. The thesis further highlights the need to move beyond an overwhelming focus on anti-trafficking interventions as informed by the global ‘3 Ps’ framework. This study shows that the vulnerabilities among children in Nepal is far more complex than explained in the dominant discourses on trafficking (see Chapter 5). Unless the policies and programmes are integrated within the broader issues of child protection (e.g. birth registration, health, education, and prevention of harmful practices/exploitative work), children in Nepal may continuously be victims of trafficking and other forms of exploitation.

The causes and consequences of child trafficking must be addressed by adopting broader perspectives. One of the most important issues discussed in the thesis is the challenges facing birth registration (Chapters 1 and 5). Some interviewees noted that the government has taken this issue seriously and that there are ongoing attempts to register the birth of children. The government has also set up a system in which all children need a birth certificate for school admission.¹³⁵ However, this intervention does not include children who are already in school. One way of promoting the birth

¹³⁵ G7, August 2015.

registration system is to sensitise the community and family to the importance of birth registration.¹³⁶

This study has shown that the entertainment sector has become an ‘epicentre’ of child trafficking in Nepal. The government has responded to this growing problem by issuing two regulations: *The Directives to Control Sexual Exploitation among Female Workers in Dance Bar Restaurants and the Like Business, 2,065 (2008)* and *The Code of Conduct for the Night-time Entertainment Industry, 2,065 (2009)* (NHRC, 2011; Frederick et al., 2010). These two regulations contain several provisions to protect the rights of girls and women. *The Code of Conduct* has also emphasised issues such as the provision of an identity card and a work contract, as well as declaring minimum wages for workers in the entertainment sector.¹³⁷ Nothing, however, is mentioned about the trafficking phenomenon in either document. More importantly, both documents lack provisions which enable any sort of distinction between women and children in the entertainment sector to be made.¹³⁸ To implement these regulations, a Monitoring and Action Committee (MAC) has been established. The MAC has allocated the following to be responsible for monitoring the entertainment sector: the Chief District Officer (CDO) (as the chairperson), the police, and Women and Children officers.¹³⁹ Similarly, the National Women’s Commission is another agency responsible for monitoring the entertainment sector, including dance bars, massage parlours and other informal sectors. Limited resources mean that monitoring is not done regularly.¹⁴⁰ Robust

¹³⁶ G4, August 2015.

¹³⁷ G4, August, 2015; G5, August, 2015, IG2, April, 2014.

¹³⁸ IC1, April 2014.

¹³⁹ G5, August 2015.

¹⁴⁰ G4, August, 2015; G3a, August, 2015.

monitoring is indispensable for the timely identification of the victims of trafficking in the informal sector.¹⁴¹

Furthermore, one way to promote a holistic approach to child trafficking in Nepal is to strengthen the coordination among the various ministries, NGOs and INGOs. As discussed in chapter 6, the establishment of NCCHT within the MoWCSW can be considered a good example. However, the NCCHT is a coordination body with a limited number of agencies as members of the committees. Therefore, NCCHT should open its doors to more agencies working on anti-trafficking and/or child rights issues.¹⁴² In addition, strengthening coordination should not be confined to the participation and interaction of stakeholders in various events. It should provide a platform where these stakeholders can work effectively to combat trafficking.¹⁴³ For instance, although there have been efforts from different ministries, a more proactive role is required from them to address trafficking—by allocating more of its resources, for example.¹⁴⁴ An INGO officer elaborates on this point: ‘It is like everybody’s game, but nobody is taking responsibility. Therefore, there is no clarity in roles and responsibilities and no clear policies and mandates’ (IG10, August 2015). Therefore a more concerted effort from different ministries is needed.¹⁴⁵

Coordination among the NGOs should also be further strengthened. As shown in Chapter 7, some of the intervention programmes – such as border-monitoring – are carried out by a number of agencies. To avoid overlapping programmes, there is a need for proper coordination among these agencies as well as a need for a well-established

¹⁴¹ IC1, April, 2014.

¹⁴² G5, August 2015.

¹⁴³ IG10, August 2015.

¹⁴⁴ A1, August 2015.

¹⁴⁵ G3b, August 2015.

monitoring system. Referring to the findings, it can be argued that multiple agencies are involved in identifying victims; however, identification remains a challenge. So a clear official identification mechanism should be in place and the referral system should be strengthened.¹⁴⁶ More importantly, a system should be in place to protect children who are in extremely vulnerable situations—such as children who live in geographically challenged areas, children at risks, and children belonging to ethnic minorities.¹⁴⁷ Unless governments allocate adequate financial and human resources to support children in vulnerable conditions, protecting children from trafficking will remain a challenge.¹⁴⁸

8.3.3.1 Importance of child budgeting

The government is obliged to ‘undertake all appropriate legislative, administrative, and other measures for the implementation of children’s rights’, following Article 4 of the CRC (See Appendix 12). Moreover, the government should ensure the use of ‘the maximum extent of their available resources’ (Gore, 2004:1). Budgets are allocated based on the ‘government’s objectives, policy decision, and approved laws’ (*ibid.*: 1). It is crucial that the budget is revised from the perspective of children’s rights. This will have an impact on how the budget is distributed. The reason for this is due to the fact that:

any increases in one part of the budget (for example, higher spending on child protection measures or on social security) are usually only possible if there is one or both of the following: a decrease in another part of the budget (for example, decrease in military spending), or an increase in revenues for the government (for example, increase in income taxes) (*ibid.*: 2).

¹⁴⁶ N17, August 2015.

¹⁴⁷ N21, August 2015.

¹⁴⁸ IG10, August 2015; N21, August 2015.

While it is evident that there are various systematic problems (due to ongoing political instability and inadequate institutional capacity), insufficient economic resources have also been a pertinent problem in Nepal. As Kaime (2011: 138) argues,

[...] resources set aside for implementing human rights obligations are often paltry in comparisons to other projects considered as being of national priority such as development. In many cases, the implementation of human rights obligations voluntarily entered by the state parties is left to foreign aid organisations and the international non-governmental organisations.

Although children constitute more than a quarter of the population (Chapter 1), the budgetary expenditure is low compared to other groups. This is because children are not considered to be a priority on the national agenda (evident in developed countries as well). CRC ensures the role of government as a duty bearer: responsible for protecting children (along with the family), the community, and international and national organisations.

However, it is the government that is ultimately responsible for formulating budgetary and policy decisions to ensure that the programmes related to the continuity of children thrive. It is evident in the interviews that the government offices overseeing child related programmes lack adequate funding. Moreover, other government institutions, such as the Women and Children Office – which is responsible for overseeing children issues – is also under-resourced—forcing them to combine children’s issues with that of women. An NGO officer remarked: ‘Women and Children officers face many challenges too because of lack of infrastructure. For instance, they do not have a computer in the office, nor a vehicle to rescue in case of emergency situations and so on’ (N21, August 2015). Consequently, the budget constraints weaken the mechanisms needed to function effectively. Lansdown (2001:92) argues that inadequate spending on children weakens their position to lobby and influence public agendas and

expenditures. The data suggest that budget allocation for child-related programmes is often spent on other developmental programmes. According to an NGO officer, the Ministry of Federal Affairs and Local Development (MoFALD) has assigned to local committees the responsibility to oversee child-protection programmes. The local committees are responsible for allocating 10% of the local budget on child-related issues. However, the budget is often misused and priority is given to infrastructure development (e.g. construction of roads and water supply), claiming that this will benefit the children more.¹⁴⁹ In such situations, as Mathew (2007: 340) suggests, ‘child budgeting’ could be an important strategy to address disproportional budgeting by prioritising the direct relevance of children’s issues. Nepal has yet to take on this kind of suggestion. According to Mathew (ibid: 396):

“Child budgeting” is an attempt to disaggregate the nation’s budget and to estimate how much government intends to spend – or has spent – on children in the national budget. This helps us to see the extent of government’s investments in children and to estimate how far government has been able to fulfil its obligations and commitments to them and to meet their specific needs [...]. [I]n India it is being systematically applied.

This procedure could be helpful in ensuring proper allocation of funds to child protection within an overall national child budget in Nepal. The government has set up a *Child Protection Grant* to improve the overall situation of children in Nepal.¹⁵⁰ However, it was noted that the child protection grant – which is available in the form of an emergency fund – is minimal.¹⁵¹

¹⁴⁹ N21, August 2015.

¹⁵⁰ G7, August 2015.

¹⁵¹ N21, August 2015.

8.3.4 Embedding interventions within communities: the importance of local institutions

In the context of preventing the recruitment of child soldiers in Africa, Honwana (2006:39) suggests that ‘it is vital to reinforce local understandings and norms about notions of childhood and child protection [...] as well as to consider the intersections between international and local understandings’. She states that:

To be more effective and meaningful, the intervention programs undertaken by the international community have to make the effort to go beyond [...] universalizing notions of childhood. They must be open to new strategies for addressing the problem. It is crucial that such programs pay attention to the context and specificities of the culture (Honwana, *ibid*: 163).

Kaime (2011:141) further suggests that there is a need to identify complementary institutions for executing effective interventions within local communities. In Nepal, child protection committees and community-based children’s clubs have been playing a key role, as gatekeepers, in community interventions. I will briefly present the role of local child-protection mechanisms – such as the Ward Child Protection Committees (WCPCs), the Village/Municipality Child Protection Committees (VCPCs/MCPCs), and the Community Child Protection System – that were highlighted during the interviews with the officers (from the government, NGOs and INGOs) who are responsible for protecting children from discrimination, abuse, and exploitation, as well as the promotion of children’s rights.

8.3.4.1 Local Child Protection mechanisms: Ward Child Protection Committees (WCPCs), Village/Municipality Child Protection Committees (VCPCs/MCPCs), and the Community Child Protection System

With the enforcement of the 2009 Guidelines (Implementation) for Programmes on Protection and Promotion of the Rights of the Child, a number of committees have been

set up across the country to protect and promote the rights of children. These committees include the Ward Child Protection Committees (WCPCs) and Village/Municipality Child Protection Committees (VCPCs/MCPCs).¹⁵² In their report, the Ministry of Women, Children and Social Welfare (MoWCSW) and Central Child Welfare Board (CCWB) (2015: 34) state that at present there are VCPCs and MCPCs in 1191 VDCs/municipalities in 50 districts (out of 75 districts) in Nepal. The findings show that all local committees are responsible to collate information on vulnerable children (such as orphans, disabled children and children at risks) and facilitate grass-roots level prevention programmes, as well as economic/livelihood programmes targeting children and families at risk.¹⁵³ In addition, they are tasked with signposting victim support programmes to relevant agencies.¹⁵⁴ Although these committees are playing an important role in coordinating activities among local-level mechanisms, effectiveness of their activities are not without critics. For example, it was noted by an NGO officer that poor infrastructure and inadequate financial and human resources are common problems for these local committees—therefore limiting their ability to execute their duties effectively.¹⁵⁵ Moreover, since most of the activities/training of the VCPCs/ MCPCs and WCPCs are funded by INGOs and donor agencies, these mechanisms could discontinue once the project ends—consequently, leaving very little impact on children.¹⁵⁶ A senior officer of an NGO observed: ‘What has been happening so far is that the activities of VCPCs and MCPCs are carried out until the budget is exhausted’ (N21, August 2015).

¹⁵² A1a, August 2015.

¹⁵³ IG8, August 2015; IG10, August 2015.

¹⁵⁴ G7, August 2015.

¹⁵⁵ N21, August, 2015.

¹⁵⁶ N21, August, 2015.

The community child-protection system was identified in the study as an informal system. This system is facilitated by community members including children, women, men, neighbours, and traditional and religious leaders amongst others. They are expected to play a crucial role in child protection issues such as: raising awareness, influencing social practice and behaviour, identifying and reporting vulnerable children, and signposting various victim support services. More importantly, this informal system involves the communities reporting cases they have handled to local NGOs or to local government authorities, such as the police (MoWCSW and CCWB, 2015:38). As Kaime (2011:151) has argued, engagement of both formal and locally developed institutions is crucial for protecting the rights of children. Thus, there is a need to strengthen the basic structure of the committees/institutions and informal systems.

Given that local child protection mechanisms work very closely with communities, it is crucial to strengthen (and empower) these mechanisms. The two ministries, MoFALD (responsible for CFLG) and the MoWCSW (responsible for other child protection mechanisms), should work in coordination so that children's issues can be addressed holistically.¹⁵⁷ Empowering the VCPCs and DCPCs would ensure a bottom up approach, as promoted by scholars (such as Reynaert et al., 2015; Kaime, 2011; Twum-Danso Imoh, 2016a). A crucial advantage of this approach is that it corresponds to local realities. The findings also show that the local budget for women- and children-related issues specified by the government are not properly mobilised and are used for other infrastructural developments, such as construction of roads, water supply and so on. In addition, the VCPCs and DCPCs should act as advocacy and lobbying agents to

¹⁵⁷ IG10, August 2015.

ensure that those resources are properly used for the benefit of the children in the community.¹⁵⁸ An integrated role for these local-level mechanisms is necessary to pursue effective intervention. Pells (2012:434) argues that local knowledge and understandings of the problems are paramount to tackle barriers and to further strengthen existing skills and capabilities. Therefore, there is a need to strengthen and empower these local-level mechanisms.

8.3.4.2 Children's and Young People's Role in Advancing Children's Rights: The case of Community-based children's clubs

Stanton Rogers (2009) argues that different perceptions and understandings of children and young people – especially in terms of their needs, rights, and value in society – lead to different kinds of social policy and approaches to care and welfare. Some scholars claim that children's and young people's need for protection from adults would substantially be reduced if they had more access to social, economic and political resources—thus granting them more autonomy and respect. However, issues related to child protection (e.g. against harm and exploitation) have resulted in some confusions and ethical dilemmas. Lansdown (1996) and Willow (1997) argue that:

It is a procedural right that has increasingly been recognised as necessary if children are to move beyond their traditional status as recipients of adult care and protection and become social actors entitled to influence decisions that affect their lives (in Lansdown, 2001: 95).

There has been an ongoing recognition that children and young people have the right to participate in the processes and decision-making that affects their lives. How they view their daily lives is significant. Therefore, it is argued that it is incumbent upon policy makers to listen and learn from children and young people directly. Children

¹⁵⁸ IG3 April 2014.

and young people are capable of exercising agency and utilising their own resources in developing strategies for their protection (Lansdown, 2010). Children's clubs in Nepal serves as an example.

8.3.4.2.1 *Children's clubs in Nepal*

The emergence of children's clubs in Nepal provided a conducive environment for children's and young people's rights to participation, as well as challenging discrimination, abuse and exploitation. Jagriti Child Club Nepal (JCCN) is the first children's club in Nepal, registered in 1992. Today, there are more than 17,000 children's clubs.¹⁵⁹ The proliferation of children's clubs in Nepal is seen as part of child-led initiations on issues such as health education, waste management and environmental protection (Theis and O'Kane, 2005: 159). These children's clubs are credited for promoting children's roles in society (Theis and O'Kane, *ibid*). The child rights officer elucidated the importance of children's clubs by pointing out that the 'concept of children's clubs came into being from the children themselves... the idea that children should be involved in decision making, particularly when the issues directly impact children' (G2, April 2014). In an interview with the founder of the first children's club, three main kinds of children's clubs were mentioned: *individual-level clubs*, *school-based clubs*, and *community-based clubs* (see Appendix 15).

Theis and O'Kane (2005:162) state that in Nepal children and young people are encouraged to come together and express their opinions – through the venue of children's clubs – about the decisions affecting their lives. Since their establishment, these clubs have been gradually institutionalised at the national level.¹⁶⁰ To ensure the

¹⁵⁹ N20, August 2015.

¹⁶⁰ IG10, August 2015.

institutionalisation of the children's clubs, the government of Nepal has developed a Child Participation Guide book (2007).¹⁶¹ The MoWCSW, with the support of National Planning Commission (NPC), have also drafted guidelines to strengthen participation in these clubs. Moreover, all clubs are affiliated to the District Child Welfare Board (DCWBs).¹⁶² These clubs have formed networks: the Village Network of Children's Club (VNCC), District Network of Children's Club (DNCC) and National Network of Children's Club (NNCC).¹⁶³ These different networks tend to share problems and experiences amongst each other and organise events together.

In addition, Consortium of organisations working for child participation has been formed. This includes community based children's clubs, government, NGOs and INGOs (such as UNICEF, Save the Children Norway, Plan International and World Vision International). However, it was noted in the interview that not all clubs have a permanent set up or resources, and have therefore ceased activity.¹⁶⁴ Lansdown (2001: 95) further argues that listening to children and young people is an important element in their protection. This requires listening to what children and young people say, as well as respecting their views. This will encourage children and young people to take responsibility and acquire confidence to challenge any abuse of their rights (*ibid.*: 95).

8.3.4.2.2 Challenging discrimination, abuse and exploitation through the activities of Children's clubs

The way children and young people participate in Nepal takes many forms. It should be noted, however, that the significance of such participation has been questioned

¹⁶¹ See Child Participation Guide Book (2006) Government of Nepal. Ministry of Women, Children and Social Welfare. Central Child Welfare Committee.

¹⁶² G7, August 2015.

¹⁶³ N20, August 2015.

¹⁶⁴ N20, August 2015.

(Lansdown, 2010; Theis and O’Kane, 2005; White and Choudhary, 2012). Some of the main activities were noted by participants in a focus group made up of members from children’s clubs include: ‘public speaking, art competition, and club management training’.¹⁶⁵ A president of the National Network of Children’s Clubs remarked:

This platform allows them to discuss the issues of child rights violations – such as child abuse, exploitation and violence – through various mediums such as, like we said earlier, street drama, role plays, the publication of wall magazines [*bhite patrika*] and newsletters, and interaction and discussions and so on ...Children’s clubs play a major role in tackling the problems children and young people face (FGe, August 2015).

The focus group with members of the children’s club further revealed that these clubs are engaged in several prevention activities in the community. These are similar to what White and Choudhury (2010) have referred to as ‘presentation’—including conducting rallies and interaction programmes, as well as the production of IEC materials on child helplines (104 and 1098).¹⁶⁶ Commenting on the campaign, the president of the National Network of Children’s Clubs remarked:

We had also conducted a campaign- My Body My Rights [*Agno Sarir Afno Adhikar*]. We have also broadcasted radio programmes with concerned authorities about interaction programmes on child trafficking (FGe, August 2015).

Another focus group participant added: ‘We also produce wall magazines (*bhite patrika*) and newsletters on topics like cases of abuse and trafficking, with the intention of making children aware’ (FGd, August 2015). In particular, street dramas, folk songs (*look geet*) and role plays are considered to be effective ways of communicating with children and young people in the community.¹⁶⁷ The president of the children’s club network claimed that, ‘through our initiative, we have successfully prevented many trafficking cases’ (FGe, August 2015). And these sentiments were repeated in the focus

¹⁶⁵ FGf, FGh and FGe, August 2015.

¹⁶⁶ FGe, August 2015.

¹⁶⁷ FGf, August 2015.

group, suggesting that such efforts have in fact enabled the children's clubs to prevent trafficking in their local areas.¹⁶⁸ It is therefore evident that many clubs in Nepal have become an important medium through which to raise awareness and promote advocacy on child protection issues. Other prevention activities carried out in collaboration with the Nepali Police include various awareness-raising programmes on child trafficking and other forms of exploitation.¹⁶⁹

In addition to awareness-raising programmes, prevention programmes have been extended through peer to peer education in the community. These programmes are offered in every school through the assistance of the Ward Child Protection Committees (WCPCs) Village Child Protection Committees (VCPCs) and the Parent Teacher Association (PTA). It was noted that some of the activities of the children's clubs have given more emphasis to addressing other root causes of child trafficking, mainly economic factors (Chapter 5). The focus on economic empowerment, by providing vocational training to parents, has therefore become a central component of their programme. The study by UNICEF (2008) states that meaningful participation is crucial, as it raises self-esteem and gives children more confidence to report instances of abuse and exploitation. The founder of the children's club added:

Before, the cases of abuse and trafficking used to be hidden... but now such cases are reported by the children's clubs rather than police or family. The children's clubs report to helpline including 1098, police 100, the NHRC number and others (N20, August 2015).

These clubs develop and promote the agency of children and young people by focusing on their 'commitment [...] to act on their behalf, whether to ensure their own interests or to modify the world that surround them' (Pufall and Unsworth, 2004 in Kellett, 2009:

¹⁶⁸ FGe, August 2015.

¹⁶⁹ FGe, August 2015.

51). It has been stated that terms such as ‘empowerment’, ‘agency’, ‘negotiation’ and ‘partnership’ are often used interchangeably in defining child participation (Kellett, 2009:51). This is to say that children and young people who have been empowered are capable of influencing decision-making bodies and undertake decisions that affect their life.

To sum up, although Nepal has been progressive in terms of child and youth participation, there remain several challenges. Despite the fact that children’s clubs have played a crucial role in promoting participatory rights, they are still subject to adults’ decisions. Children’s and young people’s issues have not been a priority to many developmental agencies, including the government. To strengthen their engagement, children and young people should be provided with the space, budget and support of the community, including family members and other stakeholders—all elements which are lacking in Nepal.

8.4 Conclusion

This chapter has highlighted the tensions between two discourses – those centred on the concepts of victimhood and agency, respectively – that have shaped the understanding of child trafficking and subsequently informed anti-trafficking interventions in Nepal. The existence of these two frameworks in parallel has resulted in conflicting conceptualisations of trafficking vulnerabilities—resulting in variations in practices. Careful consideration should be given to such tensions.

The chapter also presents the implications of the thesis for policy and practice. It suggests the need for: reconceptualising childhood, proper implementation of anti-trafficking law, and the harmonisation of national laws. Promotion of better

cooperation and collaboration are important factors. It is also important to develop context-specific intervention programmes and *child budgeting*. Moreover, it suggests that local institutions (local child protection committees and community-based children's clubs) could be an alternative to better protect children and may act as an agent of change in responding to broader child protection issues, both at the local and community levels.

Chapter 9: Conclusion

9.1 Introduction

In order to articulate whether the international human rights framework has been applied effectively to generate a positive impact on trafficked and vulnerable children, the thesis sets out to critically analyse the national responses to child trafficking in Nepal. This has been approached by exploring: (1) the changing dimensions of child trafficking in Nepal and the reasons for the perpetuation of trafficking vulnerabilities; (2) the development of legislative approaches to child trafficking; and (3) the limits encountered in anti-trafficking interventions. The thesis situates the national responses to child trafficking within the existing debates on ‘children’s rights’, the universal notion of ‘childhood’, and ‘cultural relativism’. This facilitates an investigation into the applicability of the international human rights framework to the reality of specific socio-economic situations. This exploration has received very little scholarly attention in Nepal.

This concluding chapter provides an overview of the main arguments and findings in relation to the research aim and questions. In particular, the chapter demonstrates the contribution of this thesis to three key areas. Firstly, the chapter discusses the implications of the findings on policy-making and practice. Second, the chapter highlights the methodological contributions and discusses the importance of contextual approaches to studying rights approach to trafficking. The third contribution discussed in the chapter is a theoretical one. The chapter concludes by illustrating areas of future research in this field.

9.2 Outcome of Analysis

Brysk (2012:85) argues that ‘rethinking trafficking’ leads to rethinking rights and ‘responsibility’ and helps ultimately to end all forms of modern day slavery. In this study, I re-assess some of the important issues in child trafficking (as argued for in recent work)—mainly, the current trends of child trafficking, the trafficking process, and the role of perpetrators. The findings show that the mainstream anti-trafficking discourse has, to a large extent, overlooked the emerging forms and patterns of child trafficking. Trafficking now occurs in new forms such as false marriage, mobile prostitution, and as *cultural troops*. While trafficking into sexual exploitation is still predominant, other forms of trafficking such as circus performance, work in embroidery (*jari*) factories, and tobacco (*bidi*), have significantly increased (Chapter 5). Moreover, Nepal is no longer considered to be just a source country and has also become a trafficking destination. Layers of people are involved in the trafficking process (although there still exists a comparatively small group of people in this process), and trafficking has become more organised and complex. Furthermore, the thesis has extended the extant work on trafficking in several ways. The thesis empirically illustrates the way that the ‘means’ of trafficking have undergone significant changes in recent years. Unlike the past, children are very rarely abducted or coerced into sexual and labour exploitation. Brokers (*dalal*) lure children and their parents, offering lucrative proposals—for instance, employment opportunities across the border and/or in big cities (Chapter 5).

Further, the study has illustrated the causes of trafficking vulnerabilities. In doing so, the study has unpacked some of the existing assumptions about child trafficking in

Nepal. Trafficking of children is often associated with ‘push and pull factors’ (Aengst 2001; IIDS and UNIFEM, 2004; Hennink and Simkhada, 2004). Child trafficking is prevalent, not only because of poverty or traditional cultural practices, but also due to weak child protection mechanisms in the country. This study observes several contributing factors such as: (i) poverty, desire for better life, and globalisation, (ii) education, (iii) cultural and traditional practices, (iv) problems with birth registration, (v) political instability, corruption, and lack of commitment, and (vi) technology (Chapter 5). Prior studies have claimed that the trafficked victims in Nepal are often living in vulnerable conditions (Frederick et al., 2010; NHRC, 2012). The findings confirm that vulnerable children are generally child migrants (both primary and secondary), working children (both those attending school and those not), children in institutional care, and the gendered and ethnic child. Some of the factors associated with children’s vulnerabilities in Nepal include unprotected work environments in a range of sectors – such as domestic work, factories, and bonded labour (*Kamalari*) – and children living with abusive parents. In the past, particular ethnic groups, mainly low caste communities, had been portrayed as vulnerable. This study delineated that vulnerabilities have been extended to other social groups and caste groups throughout the country.

Having analysed the perspectives on the child trafficking phenomenon, the empirical chapters presented the construction of child trafficking legislation and policies in Nepal. With the adoption of the CRC, the government has introduced the Children’s Act (1992), and the HTTCA (2007)—the core national system that protects children’s rights. These efforts show the importance that the country has given to children’s rights. Further, trafficking of children in recent years has been a part of child protection concerns and policies. For instance, the National Child policy (2012) has attempted to

respond to the issue by focusing on ‘prevention from harm’ and ‘protection’ (Chapter 6). However, the legislative approaches to child trafficking reinforce the notion of an ‘ideal victim’—a notion which does not take into account the emerging forms of trafficking in Nepal. Several terms used in legislation – such as victims and exploitation – have created ambiguities and conflicting practices. For example, the narrow conceptualisation of trafficking – as found in the dichotomy of ‘deserving’ and ‘undeserving’ victims – has led to law-enforcement officers giving less attention to certain types of trafficked children (Chapter 7).

In addition to these terminological issues, several other ambiguities have been identified in the existing Nepali legal system in terms of setting the boundaries between adulthood and childhood. For example, the definition of the age of a child differs in the Children’s Act (1992) (a person below the age of 16 years) and the CRC (a person below the age of 18 years). There is a disconnect between the conceptual basis of the legal definition of a ‘child’ and traditional beliefs/norms (Samarasinghe, 2008: 47). As argued earlier (Chapter 3), there is no single view of childhood in Nepal and children are grouped into different categories on the basis of their social and economic status, as well as their geographical location. Childhood is not universal and children’s experiences vary based on their socio-economic and political contexts (Jenks, 2005; James et al, 1998; Stainton Rogers et al., 1989; Mayall, 2000) (Chapter 3). Despite these discrepancies, contemporary legislation and policies are appreciated for adopting victim-centric measures (Chapter 6).

Most of the anti-trafficking interventions have attempted to employ the ‘3Ps’, all of which focus on women and trafficking for sexual exploitation (Chapter 7). Most of the intervention activities are supported by NGOs and INGOs, while government support

seems to be minimal. Approximately 100 NGOs are working on anti-trafficking interventions in Nepal (Chapter 6), but only a handful of them are focused on child-specific issues. For example, with few exceptions (CWIN, Maiti Nepal, and ABC Nepal), most of the NGOs' rehabilitation centres have no separate provisions for child victims. It is observed that the anti-trafficking donors are restricted to a few tested anti-trafficking programmes (Newcomb, 2014, in Hudlow, 2015).

Despite deploying a human rights standard in legislations/policies, there is very little evidence to suggest that the international human rights approach has been effectively applied in practice. This study has identified various other challenges for Nepal in adhering to international standards. Other (institutional and structural) challenges include: less priority on children's issues, restrictive government funding for long term support, ambiguity in the roles and responsibilities among law enforcement agencies, and lack of resources both within the existing structure and human resources (Chapter 7). The study demonstrates that the responses to child trafficking are based on certain images/assumptions about 'childhood' and 'trafficking' that need to be considered. The construction of the 'ideal victim' as 'innocent, passive, and naïve' (as found in the victimhood approach) has predominantly shaped the understanding of child trafficking as a problem and subsequently shaped/informed interventions (Chapter 8). The study argues that creating 'ideal types' of child trafficking oversimplifies the understanding of the range of causes and experiences of trafficking. For example, the findings suggest that child trafficking victims may be misidentified as migrant children, entertainment workers, or victims of sexual or labour exploitation (Chapter 5). Further, some children who are identified as trafficked victims (children in the entertainment sector have 'freedom' and 'mobility') may not have had the experiences that categorise them as

victims within the legal framework (Chapter 6). Therefore, there exists a dilemma among practitioners/law-enforcement officers in identifying a ‘trafficked victim’ and/or a child who has experienced other forms of exploitation or abuse. It is also important to note that the practitioners/law-enforcement officers were not very explicit in terms of distinguishing pre-pubescent and young women. They tend to apply the term ‘girl’ generally. As such, this shows a lack of understanding regarding the way age has actually impacted their experiences.

Moreover, the ‘victimhood approach’ does not take into account, the interdependent relationship between the child and his/her socio-economic circumstances/environment. This is problematic mainly as it contradicts the purpose of human rights. The study therefore argues that a ‘victimhood approach’ to the practice, which is the main response at the national level, may not necessarily be best equipped to address broader trafficking vulnerabilities. This is because both the new forms of trafficking and its victims are largely marginalised in this framework.

An ‘agency approach’, however, has demonstrated the importance of adopting a holistic approach (by addressing broader vulnerabilities/needs, both social and economic) and look for a solution (Chapters 7 and 8). The evidence presented shows that there is a growing acceptance of the ‘agency approach’, although the framework is at the stages of infancy. The ‘agency approach’ (employed by few organisations) conceptually broadens the scope of the discussion by moving beyond the ‘victim archetype’ and advocating for a ‘soft approach’ in the process of voluntary withdrawal (of children from entertainment sectors, as examples of good practice). Nevertheless,

the application of these two frameworks in parallel has resulted in conflict in conceptualising trafficking vulnerabilities, and hence resulted in variations in practices.

9.3 Contribution of the study

This study contributes to the body of knowledge on ‘child trafficking’ in three areas. Implications of the study’s findings on existing child trafficking phenomena, policy, and practice have been considered. The study shows how the existing mainstream trafficking discourse/narratives have been unrepresentative in terms of covering various new forms and patterns of child trafficking that have evolved in Nepal in recent years (Chapter 5). Along with the expansion of destinations (and old destinations such as India), trafficking now occurs in new forms through false marriage, mobile prostitution, and *cultural troops*. The existing national responses, informed by the ‘victimhood approach’, have been inadequate in addressing children’s vulnerabilities and needs. Such responses fail to accommodate the realities of children who are vulnerable to trafficking and other forms of exploitation, which subsequently prevents an understanding of why and how children make certain ‘choices’. It is important to depart from the narrow ‘victimhood approach’ by emphasizing alternative ways of constructing the ‘problem’ of child trafficking that promotes the agency/resilience of the children involved.

In the study, I show that Nepal has taken positive steps to address the problem of trafficking in general by ratifying various international human rights conventions that deal with trafficking of women and children. Amidst these positive developments, there are numerous challenges. While some studies stress the weakness of both domestic and international enforcement mechanisms, others have addressed the lack of an

internalisation of human rights norms in practice (Coomoraswamy and Satkunanathan, 2006; Ferguson, 2012; Jordan, 2002). By contrast, I argue that the gap between the international law/framework and national conditions (socio-economic and political) hinders implementation (Chapters 6 and 7). In this context, several challenges and contradictions are observed in applying the international human rights framework in practice (Chapters 7 and 8). Although the '3Ps framework' provides a basis for national responses to trafficking, the responses to child trafficking are predicated on certain notions of 'childhood' and 'trafficking'. It is, however, important to stress that the inadequacy of the current responses – as presented in this study – should not cast an exclusively negative light on efforts made by the governments, NGOs, and INGOs in Nepal.

Having said this, a number of suggestions have been made to address the problem of child trafficking in Nepal. I suggest that the rethinking of child trafficking using a rights approach requires re-conceptualising the notion of childhood – beyond the notions of universal childhood – and reinforcing local understandings about notions of childhood. It is necessary for policy makers and practitioners to understand the variations in childhoods and children's experience; this will encourage a holistic response and enhance the effectiveness of anti-trafficking interventions. How the problem of child trafficking is understood implicitly determines which policy should be adopted to address the problem more effectively. Further, rethinking policy and practice interventions holistically is paramount as it enables us to grasp an understanding of children and their family goals, motivation, and decisions (whoever atrophied their ability to make decisions is). There is a need for a more nuanced understanding of the overlap/intersection of the consequences of migration, urbanisation/globalisation, and labour exploitation. This understanding is important not only to identify those children

who do not ‘fit’ within the institutionalised notion of ‘victim’, but also to develop appropriate responses so as to better protect them by considering their aspiration and acknowledging their socio-economic context (Chapters 1, 5, and 7). Therefore, when designing effective anti-trafficking interventions, it is imperative to consider all these local realities. However, the ‘overarching theme of agency or decision-making in regard to children’ should not be misunderstood ‘for indifference to the suffering and plight of exploited and trafficked children’ (UNICEF, 2009a: 20). This calls for the need to go beyond the ‘victimhood approaches’, and ensure a balanced approach incorporating victimisation and resilience (Pearce et al, 2013). A careful consideration should be given to the ‘agency of the victimised’. A statement of an independent consultant reinforces this argument:

Until and unless the child protection mechanism becomes strong, the problem of trafficking will not be reduced...Also, many organisations have adopted the welfare approach. However, the approach has to be more rights based. We cannot see them as innocent, and naïve (*bichara, katthai*) etc. (IC1, April 2014).

Working exclusively within the ‘global 3Ps framework’, however, entails a serious risk of ignoring or neglecting the broader causes and consequences of child trafficking (discussed in Chapter 5). It further argues that there is need to consider the realities of trafficked and vulnerable children to better support them. As noted in the thesis, trafficking of children is a complex social phenomenon which is linked to broader child protection issues—such as child migration, children living in institutional care, livelihood opportunities for children, and abuse of children, among others. Effective change is not going to be achieved by narrowing anti-trafficking interventions. It also requires protection of rights for all vulnerable children (Chapter 5). Furthermore, unless the policies and programmes are integrated within the broader issues of child protection (birth registration, health, and education and so on), children will continue to become victims of trafficking and other forms of exploitation. This study adds to the existing

debate on establishing a link between child trafficking and child protection in promoting child-centred interventions (Bokhari, 2008; Bovarnick, 2010; Pearce, 2010; Crawley, 2006; ILO et al, 2009a; UNICEF, 2009a).

Thus, the thesis suggests the proper implementation of anti-trafficking law and the harmonising of national laws, as well as the promotion of better cooperation and collaboration among agencies so as to develop context-specific intervention programmes and *child budgeting*. The thesis suggests that local institutions (local child protection committees and community based children's clubs) could be an alternative and may act as an agent of change in responding to broader child protection issues, both at the local and community levels (Chapter 8).

Methodologically, the study adds to the call for a context specific approach to child rights, emphasising the interaction between global and local issues (Kaime, 2011; Twum-Danso, 2009; Reynaert et al., 2015; Pells, 2012). The study brings forth in discussion the importance of the specific contextual reality and its impact on the debates on childhood, children's rights, and child trafficking. Moreover, this context-specific approach enables an understanding of 'local appropriation and transformation coming from below' (Reynaert et al., 2015:7). By analysing the role of the local mechanisms (Chapter 8), this study has illustrated the importance of a localised approach to addressing child-related issues (Reynaert et al., 2015; Twum-Danso, 2009; Kaime, 2011; Pells, 2012).

Theoretically, drawing on the literature of sociology of childhood and child rights, this study has attempted to explore the approaches/responses to child trafficking in Nepal. The emergence of the 'sociology of childhood' paradigm, together with the adoption of the CRC, has urged engagement with both children's rights and the status of

childhood. Freeman (1998:433) argues that these two disciplines, ‘sociology of childhood’ and ‘children rights’, when applied together would offer a better understanding of childhood in the context of improving the lives of children. The common ground in these two disciplines is that children are seen as an active agent rather than a passive agent driven by social context (Freeman, 1998:436).

Further, Mestrum (2015:358) argues that the human rights approach complements a sociological perspective while addressing the societal context in which children are living. Drawing on the work of Brewer (1999), Reynaert et al. (2015:8) argues that:

The relationship between reality and academic research seems characterised by a perpetual ambivalence. The living realities of children and young people cannot be compartmentalised to neatly fit academic disciplines and university structures.

By emphasising interdisciplinary perspectives, a holistic understanding of children’s rights can be achieved (ibid.). However, there is a lack of such interdisciplinary studies in trafficking and the research findings are not easily accessible to policy-makers (ILO-IPEC, 2002; Human Rights Watch, 2002). The study has attempted to fill this gap. As discussed earlier (Chapter 2), trafficking studies have used various theoretical approaches—ranging from ‘push and pull factors’ to those that relate trafficking to issues such as gender (abolitionist and pro-sex perspectives), migration, and human rights. There is very limited theoretically underpinned work in the study of trafficking phenomena, particularly in the context of Nepal. This study approaches child trafficking as a complex social phenomenon, as argued by other scholars (see Lee, 2011; Hynes, 2010; Pearce et al., 2013; Kaye and Winterdyk, 2012), to unpack the broader vulnerabilities in particular socio-economic and political contexts. From a sociological point of view, child trafficking cannot be disengaged from the societal context in which it originates and persists. There are various normative and structural

factors – such as culture, tradition, family, economic situation, and limited opportunities available to children – that reproduce the problem of child trafficking in Nepal (Chapter 1).

The thesis makes an important contribution to broadening the literature on trafficking by using ‘childhood(s)’ as a social category. This has provided insights into the assumptions that inform/shape the responses to child trafficking. A certain conception of children and childhood is widely used in contemporary childhood studies (Ennew et al., 1996; Boyden, 2015; Mayall, 2000; Jenks, 2005; Stainton-Rogers et al., 1989; Qvortrup 1994; James and Prout, 1997). By discussing some of the existing debates surrounding, ‘children’s rights’, the universal notion of ‘childhood’ and ‘cultural relativism’, the study has contributed to the substance of these debates. Child trafficking is a good example of those universalised responses where rights practices have been particularly contested. The thesis shows how the application of the international human rights framework to deal with child trafficking has proven to be difficult in a complex social, economic, and political setting. Attention should therefore be paid to unpacking the challenges and contradictions of national responses in practice.

Further, prior work on trafficking has widely accepted the importance of socio-economic-related factors in creating trafficking vulnerabilities, but little attention has been paid to ‘childhood’ as a social category and the child-specific vulnerabilities in the context of trafficking in Nepal. This thesis makes an important contribution to the literature by assessing the features of the vulnerabilities of children in Nepal in relation to the status of childhood determined by social roles, gender, caste, and ethnicity. Studying the vulnerability of children in the context of trafficking in Nepal, the thesis

also contributes to the existing debate on trafficking and childhood studies (Howard 2012; Kempadoo 2005; Gallagher 2010; James et al., 1998).

Further, I believe the framework developed in this study provides a unique insight into a Nepali experience, and a useful lens to identify what is a global phenomenon (child trafficking) in a local context (such as Nepal). Additionally, the research framework developed can be transferred to other research settings (mainly in South Asia) to explain the child trafficking phenomenon and the anti-trafficking responses in diverse contexts.

9.4 An area for future research

This study is not without limitations. However, these limitations have pointed the way for further research, indicating important issues to be addressed. For instance, it shows how child trafficking has become increasingly complex and various new forms and patterns of trafficking have emerged in the country in the last decade. Illustrating these new forms of trafficking vulnerabilities, the research questions some of the existing perceptions (of victim archetype) of trafficking vulnerabilities in the country. It demonstrates the limitations of the current responses that are informed by ‘victimhood approaches’. However, an alternative explanation has received little special attention in trafficking studies. Further research focusing on alternative ways of constructing child trafficking – especially regarding the agency/resilience aspects of children – and shifting discourses would be interesting to explore. Some aspects of ‘agency approaches’ that are already identified in the study employed by some anti-trafficking organisations in Nepal – such as soft approaches, ‘voluntarily withdrawal’, and ‘case

management’ – could be considered in more detail. This is an important area of study to expand scholarship in this field.

The impact of the international human rights framework in the Nepali context has been inhibited by various factors—such as the diversity in responses to child trafficking, a lack of focus on local setting, and a limited consideration of children’s reality. In this research, I argue that it is crucial to unpack the notion of childhood – taking into account gender, ethnicity, caste, and the socio-economic context in which the children are situated in – against the responses of trafficking. This perspective is often underrepresented within the trafficking literature. As stated in prior work (Freeman 1998; Ferguson 2012; James et al., 1998), it is rather difficult to universalise the concept of childhood on the basis of the prevailing world view. I have highlighted in this research the multiple notions of childhood in Nepal, mainly by drawing on the work of Baker and Panter-Brick (2000)—in particular, their notion of ‘traditional childhood’ and an ‘urban middle-class childhood’. I take this argument further by stating that children’s experiences in Nepal also vary depending on ethnic group, caste, and gender. Although this research draws on ‘childhood’ as a social category, the analysis presented in the study could be further deepened by exploring ‘meanings’ and ‘values’ attached to childhood and children’s lives from the perspectives of local communities. Childhood studies are increasingly focused on the applicability of international standards to the protection of children (Reynaert et al., 2015; Twum-Danso, 2009; Kaime, 2011; Pells, 2012). In this regard, understanding how local communities construct the notion of ‘childhood’ and ‘children’s lives’ may provide additional insight into the challenges of applying international standards to different contexts and identifying strategies appropriate to Nepal.

Another interesting prospect for future research is to delve deeper into the linkages of responses to child trafficking within a child protection issue. The findings of this research suggest that responses should be interlinked to child protection issues so as to genuinely promote the best interests of the children. This research suggests, as others have, that the governments, NGOs, and INGOs have acknowledged the importance of developing an overall child protection strategy, coordinating child protection activities and formulating an effective legislative framework for the protection of trafficked children (Heiberg, et al., 2010) and other vulnerable children in Nepal. This recognition has resulted in the introduction of the 2012 Nepal child policy (20 years after the ratification of the CRC), encompassing multiple agencies and mechanism to protect children. It would therefore be interesting to pursue an in-depth study investigating the implementation of child protection policies in Nepal. This would include questions like: to what extent are child protection policies applied by governments, NGOs, and INGOs? and how effective are the child protection mechanisms in addressing broader vulnerabilities in Nepal?

Finally, research on children's issues has focused more on the importance of child participatory research (O'Kane, 2008; Kitzenger, 1994). For instance, James et al. (1998) argue that children's and young people's views of their lives are significant and it is therefore important to involve them in the process of decision-making that has a direct impact on their welfare and lives. It would be interesting to undertake research by focusing on children's own 'lived experience' of the trafficking problem and their experiences of the existing interventions. Such research can be facilitated by deploying innovative tools to ensure young people's voices are heard—for instance, storytelling, art, poems, and focus groups. That such tools are valuable in giving voices to marginalised groups is evident in prior work (O'Kane, 2008; Kitzenger, 1994; Pearce

et al., 2009). This approach may enable researchers to echo the unheard voices of the victims, and may contribute to augmenting an additional perspective to explore the 'fit' between young people's experience of vulnerability, resilience and responses.

Summing up, this research has been both interesting and challenging in many ways. During this research process, I became very much puzzled by contestations and contradictions in trafficking studies and gradually learned the complexities inherited by this field of research. Engaging with ongoing debates on topics ranging from organised crime and migration to gender issues and violations of human rights, I have had the opportunity to generate valuable insights into these complexities. Extending these debates further (e.g. child trafficking as a complex social phenomenon), I have unpacked and unfolded some of the contradictions prevalent in the child trafficking discourses and practices in Nepal. On this basis, it can be argued that the way this research has been approached has offered an added value in itself. I hope that this piece of research has provided new insights into the phenomenon of child trafficking, and its responses, to promote better understanding of this contemporary problem. It is imperative that we continue to improve our understanding of the complexities associated with child trafficking, as well as the challenges of the application of international human rights standards within local contexts. In the words of one my interviewees: 'The most important factor is asking the question: how can we localise the [international human rights] provisions?...Without more clarity and better indicators, such provisions will remain an imported thing' (A1a, August 2015).

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APPENDICES

APPENDIX 1

Interview Schedule for stakeholders' interview (GO rep/Independent Consultants/Children Right advocate) (Field work 1)

Date of Interview:

Interview No:

Interview Schedule Themes: 6 themes

Introduction

I. About your Organisation?

1. Can tell me about yourself:

- How long have you been in this organisation/position?
- Where have you been before you joined this organisation/position (e.g. GO, NGO, private sector, donors, UN)?
- When did your project/organisation start working in these areas (place/district or theme)?
- How long have you been working in this area-why and how did your work develop?

II. What is trafficking?

1. How do you define trafficking? (e.g. Slavery, labour, migration, sex work, moral issues, crime, security and border management issues, women issues, economic issues, law and order issues)

2. What is child trafficking?

- Why do you think this is the most relevant definition of child trafficking?

3. Who are the traffickers?

- Organised crime, small-scale crime, professionals and family members?

4. Why are children trafficked?

- Poverty, globalisation, migration, lack of education and discrimination

5. Who are the vulnerable children?

- Which gender? - What age? - Cast? - Geographical region?
- What factors makes them vulnerable?

6. What about internal trafficking?

7. Do the international definitions of child trafficking apply to the social conditions in the ground? Why not? Explain

III. The Role of Government, I/NGOs and media in stopping child trafficking and assisting children

13. How are child trafficked victims identified, protected and supported? (May be any reports on this?)

- Difficulties in identifying trafficked children?
- Equating Children with women

14. What are the government's plans to support trafficked children when they return?
 - How do you assess them?
 - On preventing trafficking
 - On raising awareness on areas of trafficking
15. What role do you think anti-trafficking I/NGOs are playing to support child trafficked victims?
 - How would you assess the programmes of anti-trafficking I/NGOs in Nepal?
16. What role does inter-organisation networking play in supporting the trafficked victims? Who are they?
 - Should it have a greater or lesser role? Why? Any suggestions?
17. NGOs agenda are driven by donors!
 - Gender issues?
 - Sex trafficking? Why? Any thoughts?
18. What about the role of media in preventing trafficking?
 - How important is it? - Any examples?
19. How has the role of GO, I/NGOs and media impacted upon the current child protection polices? - Any examples?
20. How far has Nepal's anti-trafficking work particularly with children changed over the last, say last three years or so? (Since Constituent Assembly (CA) process commenced)
21. Can you tell me whether laws/policies 'work' in practice and if not why not? What are the barriers?
22. In an ideal world what improvements would you like to see?

IV. Trafficking in Nepal- Key Issues on Child protection and Child Trafficking:

22. What are the most crucial issues for child protection in Nepal? Why?
23. In what ways are child protection issues (e.g. child best interest) important for the trafficked children?
 - How do you see trafficked victims' campaign fit within these debates?
 - What would you suggest?
 - What do you think are the most important issues for trafficked children themselves?
24. What are the child protection guidelines? - National guidelines/international guideline? Which one? Why? Any challenges in implementation or the guideline itself?
25. In your opinion, has child protection policies impacted upon how is it has shaped the child trafficking interventions or vice versa?

V. New Challenges- 'Child's Rights' and 'Child's best interest'

Children Rights?

31. What are they? Any national guidelines? Any challenges?
32. Implementing the Convention on the Rights of the Child-Who Decides about Children's Welfare?
Implementing?
- The UNCRC 'three Ps'-right to: Provision, Protection and Participation- In what ways have the organisations adopted these principles?
 - What are the responses to child trafficking and respecting child rights-?
 - How relevant is it in Nepali context?
 - What are challenges in implementing the three Ps?
33. Children in terms of protection - Do we want to protect the child or give them rights?
- How/Do they have the ability/whether children can participate?
 - What is it in term of ('Agency' and 'Participation')? Any Examples?
 - Granting children more autonomy and respect whilst continuing to protect them against harm and exploitation. What do you think? Why?
 - Children viewed as 'social actors' and 'rights-bearing citizens'. Are they? What do you think? Why?

Trafficking Interventions (In relation to child's right)?

34. Child rights approach –What does it mean?
35. What has been done and can be done for the victims' best interest? Any challenges?
36. What measures could be taken to ensure trafficked children are protected with a view of child's best interest?
37. In what ways and how have trafficked children different needs and women/men trafficked returnees? (Can you provide me any reports if available?)

VI: Status of children in Nepal

32. What is meaning of childhood? How do you define a child?
- How are they constructed in Nepali society (cultural norms/practices and children in Nepal)?
 - Any examples?
 - What are the attitudes towards children towards Children's needs/roles/expectations (based on age, gender, caste and ethnicity)
33. What ideology, world view or political position is being promoted? What behaviours or action is being justified and what behaviour or action is being prohibited or judged as bad or unacceptable? What is done about it?
- o Child marriage?
 - o The living Goddess
 - Working children (What kind of work)?
 - o Child work versus Child labour -Domestic workers/factory workers/ working in entertaining business?/Street children? /Child Abuse?
- What are the challenges of the some of the international norms concerning the rights and status of children under the convention and local practices and customs about children in Nepal?

APPENDIX 2

Interview Schedule for stakeholders' interview: (child protection- NGO-program delivery)

Date of Interview:

Interview No:

Interview Schedule Themes: 6 themes

Introduction

I. About your Organisation?

1. Can tell me about yourself:

- How long have you been in this organisation/position?
- Where have you been before you joined this organisation/position (e.g. GO, NGO, private sector, donors, UN)?
- When did your project/organisation start working in these areas (place/district or theme)?
- How long have you been working in this area-why and how did your work develop?

2. Can you tell me about the aims and objectives of organisation in terms of child protection and trafficking?

- Guiding principles or ethos and governance structures

- How/why was the organisation set up?
- How many people work for the organisation and what are their roles?
- How is the organisation funded?

3. Do you work closely with any particular NGOs/ INGOs?

-Which, why, how (grass-root, policy, direct funding (project based), or indirect-technical assistance)/

II. What is trafficking?

4. How do you define trafficking? (e.g. Slavery, labour, migration, sex work, moral issues, crime, security and border management issues, women issues, economic issues, law and order issues)

- What is child trafficking?
 - Why do you think this is the most relevant definition of child trafficking?
- Who are the traffickers?
 - Organised crime, small-scale crime, professionals and family members?
- Why are children trafficked?
 - Poverty, globalisation, migration, lack of education and discrimination

5. Who are the vulnerable children?

- Which gender? - What age? - Cast? - Geographical region?

- What factors makes them vulnerable?

6. What about internal trafficking?

7. Do the international definitions of child trafficking apply to the social conditions in the ground? Why not? Explain

III. About your work with trafficked victims:

8. Would you mind sharing information about your organisation's approach to child trafficking?

9. Can you tell me about your work to support victims to address trafficking- the specific services/support you are offering the project/service to trafficked victims?

10. Can you tell me something about the victims your organisation has been supporting?

- Number, gender/ages/situation?

11. How do you identify the victims?

- Difficulties in identifying trafficked children?

- Equating Children with women

12. What are the challenges you are facing in supporting the returnees especially the children victims?

- How do you try to deal with these?

13. What do you see as the most important types of support you/your organisation offer?

14. Given the constraints on organisations such as yours can you give me any case study examples of good outcomes?

Could you provide me any reports/case studies?

15. What about the role of media in preventing trafficking?

-How important is it? - Any examples?

16. How far has Nepal's anti-trafficking work particularly with children changed over the last, say last three years or so? (Since Constituent Assembly (CA) process commenced)

17. Can you tell me whether laws/policies 'work' in practice and if not why not? What are the barriers?

18. In an ideal world what improvements would you like to see?

IV. Trafficking in Nepal- Key Issues on Child protection and Child Trafficking:

19. What are the most crucial issues for child protection in Nepal? Why?

20. In what ways are child protection issues (e.g. child best interest) important for the trafficked children?

- How do you see trafficked victims' campaign fit within these debates?

- What would you suggest?

- What do you think are the most important issues for trafficked children themselves?

21. What are the child protection guidelines? - National guidelines/international guideline? Which one? Why? Any challenges in implementation or the guideline itself?
22. In your opinion, has child protection policies impacted upon how is it has shaped the child trafficking interventions or vice versa?
23. How has the role of GO, I/NGOs and media impacted upon the current child protection polices? - Any examples?

V. New Challenges- 'Child's Rights' and 'Child's best interest'

Children Rights?

24. What are they? Any national guidelines? Any challenges?
24. Child rights approach –What does it mean?
 - What programs are child-centred in your organisation? - Any problems?
25. What has been done and can be done for the victims' best interest?
26. What measures could be taken to ensure trafficked children are protected with a view of child's best interest?
27. In what ways and how have trafficked children different needs and women/men trafficked returnees? (Can you provide me any reports if available?)

Trafficking Interventions (In relation to child's right)?

28. Implementing the Convention on the Rights of the Child-Who Decides about Children's Welfare? Implementing?
 - The UNCRC 'three Ps'-right to: Provision, Protection and Participation- In what ways have your organisation adopted these principles?
 - What are the responses to child trafficking and respecting child rights-?
 - How relevant is it in Nepali context?
 - What are challenges in implementing the three Ps?
29. Children in terms of protection - Do we want to protect the child or give them rights?
 - Children's Rights?
 - How/Do they have the ability/whether children can participate?
 - What is it in terms of ('Agency' and 'Participation')? Any Examples?
 - Granting children more autonomy and respect whilst continuing to protect them against harm and exploitation. What do you think? Why?

- Children viewed as ‘social actors’ and ‘rights-bearing citizens’. Are they? What do you think? Why?/

VI: Status of children in Nepal

30. What is meaning of childhood? How do you define a child?

- How are they constructed in Nepali society (cultural norms/practices and children in Nepal)?
 - Any examples?
- Children’s status? : where can I get the information?
 - Children’s needs/roles/expectations (based on age, gender, caste and ethnicity)
- What are the attitudes towards children?

31. What ideology, world view or political position is being promoted? What behaviours or action is being justified and what behaviour or action is being prohibited or judged as bad or unacceptable? What is done about it?

- Child marriage?
- The living Goddess
- Working children (What kind of work)?
- Child work versus Child labour -Domestic workers/factory workers/ working in entertaining business?
- Domestic servitude/ Street children/ Child Abuse?

APPENDIX 3

Interview Schedule for stakeholders' interview (INGO/Donor rep):

Date of Interview:

Interview No:

Interview Schedule Themes: 6 themes(INGO/Donor rep)

Introduction

I. About yourself?

Can tell me about yourself:

- How long have you been in this organisation/position?
- Where have you been before you joined this organisation/position (e.g. GO, NGO, private sector, donors, UN)?
- When did your project/organisation start working in these areas (place/district or theme)?
- How long have you been working in this area-why and how did your work develop?

II. What is trafficking?

How do you define trafficking? (e.g. Slavery, labour, migration, sex work, moral issues, crime, security and border management issues, women issues, economic issues, law and order issues)

1. What is child trafficking?
2. Why do you think this is the most relevant definition of child trafficking?
3. Who are the traffickers?
4. Organised crime, small-scale crime, professionals and family members?
5. Why are children trafficked?
6. Poverty, globalisation, migration, lack of education and discrimination
7. Who are the vulnerable children?
- a. Which gender? - What age? - Cast? - Geographical region?
 - b. What factors makes them vulnerable?
8. What about internal trafficking?
9. Do the international definitions of child trafficking apply to the social conditions in the ground? Why not? Explain.

III. Anti-trafficking work?

10. Can you tell me about how are child trafficked victims identified, protected and supported to ensure child's rights and best interest of the child? Any challenges?

11. What are the difficulties in identifying trafficked children?
 - Equating Children with women
12. How far has Nepal's anti-trafficking work particularly with children changed over the last, say last three years or so? (Since Constituent Assembly (CA) process commenced)
13. Can you tell me whether laws/policies 'work' in practice and if not why not? What are the barriers?
14. In an ideal world what improvements would you like to see?
- IV. Trafficking in Nepal- Key Issues on Child protection and Child Trafficking:
15. What are the most crucial issues for child protection in Nepal? Why?
16. In what ways are child protection issues (e.g. child best interest) important for the trafficked children?
 - How do you see trafficked victims' campaign fit within these debates?
 - What would you suggest?
 - What do you think are the most important issues for trafficked children themselves?
17. What are the child protection guidelines? - National guidelines/international guideline? Which one? Why? Any challenges in implementation or the guideline itself?
18. In your opinion, has child protection policies impacted upon how is it has shaped the child trafficking interventions or vice versa?
 - What important role has GO/NGO/INGO played? Any examples?
 - What about media?
 - How important is it? - Any examples? (Case of Charimaya Tamang - former trafficked survivor)
- V. New Challenges- 'Child's Rights' and 'Child's best interest'

Children Rights?

19. What are they? Any national guidelines? Any challenges?
20. Implementing the Convention on the Rights of the Child-Who Decides about Children's Welfare? Implementing?
 - The UNCRC 'three Ps' -right to: Provision, Protection and Participation- In what ways have your organisation adopted these principles?
 - What are the responses to child trafficking and respecting child rights-?
 - How relevant is it in Nepali context?
 - What are challenges in implementing the three Ps?

21. Children in terms of protection - Do we want to protect the child or give them rights?

- Children's Rights –

How/Do they have the ability/whether children can participate?

What is it in terms of ('Agency' and 'Participation')? Any Examples?

- Granting children more autonomy and respect whilst continuing to protect them against harm and exploitation. What do you think? Why?
- Children viewed as 'social actors' and 'rights-bearing citizens'. Are they? What do you think? Why?

Trafficking Interventions (In relation to child's right)?

20. Child rights approach –What does it mean?
21. What has been done and can be done for the victims' best interest?
22. What measures could be taken to ensure trafficked children are protected with a view of child's best interest?
23. In what ways and how have trafficked children different needs and women/men trafficked returnees?

VI: Status of children in Nepal

22. What is meaning of childhood? How do you define a child?
23. How are they constructed in Nepali society (cultural norms/practices and children in Nepal)?
- Any examples?
 - Children's status? : Where can I get the information?
24. What are the attitudes towards children in terms of Children's?
- needs/roles/expectations (based on age, gender, caste and ethnicity)
25. What ideology, world view or political position is being promoted? What behaviours or action is being justified and what behaviour or action is being prohibited or judged as bad or unacceptable? What is done about it?
- Child marriage?
 - The living Goddess
 - Working children (What kind of work)?
 - Child work versus Child labour -Domestic workers/factory workers/ working in entertaining business?
 - Domestic servitude
 - Street children?
 - Child Abuse?

APPENDIX 4

Interview guide (Field work 2)

Interview Schedule for stakeholders' interview:

Date of Interview:

Interview No:

Interview Schedule Themes: 6 themes

Introduction

My name is Shovita Adhikari. I am here today to ask you a few questions to generate information on the existing work in anti-trafficking activities. More specifically the interview focuses on different themes including understanding of child trafficking, your work with the victims, role of different NGOs (awareness raising, advocacy, lobbying, prevention and rescue and reintegration provided to support the trafficked returnees), key issues on child trafficking to child protection, new challenges- in terms of child rights and child's best interest (challenges with the UNCRC) and status of children in Nepal.

There are a few things I would like to discuss with you before we begin.

- Consent and Confidentiality -Singing the consent form (after the interview)-/permission to use tape recorded (before the interview)
- Any question you don't understand. Ask me to repeat it.
- Take your time
- Any question you don't want to answer just let me know and we can move on.
- If you want to take a break at any time just let me know.
- Any questions for me?

Key Themes of the interview:

General Information about the organisation

About your Organisation /Aims/Objectives

Child trafficking Context of Nepal

1. Definition/concept of child trafficking, factors of child trafficking, who are the traffickers and new trend of child trafficking?
2. Who are the vulnerable children (gender, age, Cast, and Geographical region)?

5. Child Trafficking Interventions/Practice

3. Conceptual approaches and practices of child trafficking

1. What are the various approaches to child trafficking? - Migration, organised crime, labour issues, child rights issues and child protection issue.
2. How do you/your organisation understand the problem of child trafficking? Why do you think so?
3. Does different agencies' understandings and definitions of trafficking impact on service responses to the child/young person? In what ways?

4. Child Trafficking legislation in Nepal: a critique

1. How is the current situation of law enforcement in relation to child trafficking in Nepal?
 - Children's Act 1992
 - Human trafficking and Transportation (Control) Act 2007
2. What is your opinion on the construction of the domestic anti-trafficking legislation and its alignment with international human rights treaties?

Is the existing human rights legal framework in Nepal and its compliance with ratified international human rights treaties?
3. Victim Centred approaches- is the implementation of the anti-trafficking legislation a victim-centred? Examples?
4. What are the challenges with the implementation of anti-trafficking legislation?

Implementations and its challenges

5.1 Prevention- Programmes and polices

- What are the various measures (both policies and activities) adopted by agencies to prevent trafficking of children?
- Anti-Trafficking Day; striker border controls; hoarding boards? Are information campaigns age-appropriate, gender-sensitive and in a language and medium that is understandable to child?
- What are the challenges?
- What has and can be done to address the special vulnerabilities of children?
- What are the children's action to prevent child trafficking?

| 5.2 Protection | |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.2.1 Identification | |
| 1. | Who is the 'ideal victim'? PROBE: Why? What are the identification strategies applied by the officials and NGOs to create trafficked victims' profiles? |
| 2. | How are children or young people identified by the service providers? Any guidelines? PROBE: signs of physical suffering or conditions of exploitation and abuses? |
| 3. | How is contact made with the child or young person? |
| 4. | Referral basis-who makes the referral? |
| 5. | Are different agencies involved in the identifying the victims? Please elaborate? |
| 6. | What are the difficulties/main concerns associated with the identification of child victims? |

| 5.3 Provisions | |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | What are the key provisions to support and protect trafficked children? Probe: Various kinds of support to trafficked victims including: Right to information and respect for the views of the child; Right to Privacy; Appointment of a Guardian; Family reunification and Repatriation of Child Victims of Trafficking? |
| 2. | What are the main concerns/challenges? |

| 5.4 Participation and Agency | |
|------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | What are the various mechanisms to ensure active participation of children victims? <ul style="list-style-type: none"> • During the legal proceedings (information on relevant court and administrative proceedings)? PROBE: Victims of trafficking should be given a genuine opportunity to consider their legal options (Gallagher, 2010; 317). • The provision of information of a type and in a manner that will allow them to make an informed choice? |
| 3. | Are children who are victims of trafficking involved in the plans and programmes designed to combat child trafficking? Examples? |
| 4. | What are the main concerns/challenges? |
| 3. | Child participation in policy making: <ul style="list-style-type: none"> • What are the provision of child participation in national policies? Any independent body- children's Ombudsman? |
| 5. | Any challenges? |
| 5.4.7 Agency- Examples- Child Protection Mechanism? | |
| Examples: Children's clubs/ Child Helpline 1098? | |

5.5 Identification of Rights holders and duty bearer

1. According to the CRC children are viewed as 'right-holders'? Can child victim claim that their human rights have been violated? If yes, in what ways?
2. Who is the duty bearer in protecting the victims?

Probe: Apart from the government, what **other agencies** are responsible to tackle the problem? What measures have been taken by other agencies to address this problem?

5.5 Victims centred approach

1. Is the implementation of anti-trafficking programme victim-centred? In what ways? Programmes, projects?

5.7 Child Best Interest

1. How is the principle of 'best interest' reflected in anti-trafficking interventions?
2. What measures could be taken to ensure trafficked children are protected with a view of child's best interest?
3. Does child best interest and child rights issue fit in the socio-cultural context of Nepal? Examples. What are the main concerns/challenges?
4. Best Practice?

6. Child protection system- (approaches/responses to child protection issues)

1. The current situation in addressing the child protection issues; what about the present child protection system -can we say it is a holistic centred approach-? In what ways, what has been done so far?-Any alternatives? Examples.
2. Is there a coordination body? How does it work?
3. What are the main concerns/ challenges?

APPENDIX 5

Focus group discussion (FGD) guide for children's clubs staff/members

Purpose of the focus group: (Participation and Agency- Children's Clubs)

The purpose of the focus group is to explore how the problem of child protection issues including child trafficking is tackled by the Children's clubs, which, since its establishment in Nepal. In exploring the experiences of Children's Clubs, it aims to analyse:

(a) the ways in which children and young people engage in the policy making;(b) the advantages; (c) whether and to what extent children are able to modify and transform the cultural norms in their communities via engagement with the Children's Clubs.

Examples?

Focus group discussion guide

1. Children's clubs and their roles in promoting children's rights
2. Children and young people's participation
 - Kind of participation
 - Reason for participation
3. Children and young people's involvement in decision making
 - Any examples?
4. Concerned authority's role in enabling children and young people's decision making power
 - What are the provision of child and youth participation in national policies?
5. Children and young people's agency?
6. Why children and young people's voices are neglected?
7. Problems of children's clubs
8. Obstacles to children's rights
9. Familial and communal responses to children's clubs and activities
10. What are the children and young people's action to prevent child trafficking? Any specific programmes?

APPENDIX 6

FORM OF CONSENT TO TAKE PART IN A RESEARCH PROJECT



CONFIDENTIAL

Title of project/investigation: **Rethinking Child Trafficking in Nepal: Challenges, perspectives and good practices.**

Brief outline of project, including an outline of the procedures to be used:

The purpose of this research is to explore the problem of trafficking particularly the causes and consequences of child trafficking, impact of trafficking and different approaches adopted by government and international organisations to prevent and protect child trafficked victims in Nepal. The research will address a number of issues including broad legislative and policy frameworks underpinning child protections systems and the role of different government, non-governmental organisations (NGOs) and international non-governmental organisations (INGOs) in response to child trafficking in Nepal. The research will map the different aspects of child trafficking in Nepal and also draw conclusions on challenges, perceptions and best practice.

This study is an academic one and will be shared amongst my supervisor and other appropriate members related to the University of Essex. This PhD research will be published in hard copy and will be housed at University of Essex, UK. Your participation will be taken in the form of interviews. This research will be conducted with a guarantee of confidentiality and will maintain the anonymity of the participants. Pseudonyms instead of your real name will be used in the thesis in order to protect your identity. In terms of possible risks to participants, there are virtually none. Your participation is voluntary and you also have the right to ask for more information about this study and to withdraw from the study any time during the interview without the need for providing any reasons and without any consequences. The research will be conducted fully within University of Essex's Ethical Approval of Research guidelines. The data will be destroyed after finishing my research.

I,*(Participant's full name) agree to take part in the above named project/investigation, the details of which have been fully explained to me and described in writing.

Signed..... Date.....

(Participant)

I,*(Investigator's full name) certify that the details of this project/investigation have been fully explained and described in writing to the subject named above and have been understood by him/her.

Signed..... Date.....

(Investigator)

*Please type or print in block capitals

APPENDIX 7

Request letter to recruit samples of the research

Date:

To

Subject: Request letter to recruit samples of the research.

Dear Sir/Madam,

My name is Shovita Adhikari and I am a PhD candidate in the Department of Sociology at the University of Essex. I am from Nepal and I am presently living in the UK.

The purpose of this PhD research is to explore the problem of child trafficking within the existing child protection system in Nepal. The research will address a number of issues including factors contributing to trafficking, different approaches adopted by government, non-governmental organisations (NGOs) and international non-governmental organisations (INGOs) in response to child trafficking in Nepal. Also, attempts will be made to identify the problem of trafficking in relation to the gap between the international/regional commitment and actual practice. In doing so, the research will map the different aspects of child trafficking in Nepal and also draw conclusions on challenges, perceptions and best practice.

To collect my data I am conducting a series of interviews with key organisations. With this in mind I would be grateful if you could help me get access to the key respondents. I anticipate that the interviews will take approximately 1 hour. I will conduct the first phase of my field work between 29th March-22nd April 2014. I have enclosed more details of my project and a copy of the interview schedule for your consideration.

Many thanks in advance for your consideration of this research. Please let me know if you require further information.

Kind Regards,

PhD Candidate
Shovita Adhikari
Department of Sociology
University of Essex
Email:sdadhi@essex.ac.uk

PhD Supervisor
Dr. Jackie Turton
Department of Sociology
University of Essex
Email:turtje@essex.ac.uk

APPENDIX 8

Request letter to the informants to take part in the interview

Date:

To

Subject: Request letter to take part in the interview.

Dear Sir/Madam,

My name is Shovita Adhikari and I am a PhD candidate in the Department of Sociology at the University of Essex. I am from Nepal and I am presently living in the UK.

The purpose of this PhD research is to explore the problem of child trafficking within the existing child protection system in Nepal. The research will address a number of issues including factors contributing to trafficking, different approaches adopted by government, non-governmental organisations (NGOs) and international non-governmental organisations (INGOs) in response to child trafficking in Nepal. Also, attempts will be made to identify the problem of trafficking in relation to the gap between the international/regional commitment and actual practice. In doing so, the research will map the different aspects of child trafficking in Nepal and also draw conclusions on challenges, perceptions and best practice.

To collect my data I am conducting a series of interviews with key organisations. With this in mind I would be grateful if you or one of your staff could spare the time to talk to me. I anticipate that the interviews will take approximately 1 hour. Your participation is important in order to get an in-depth understanding on this topic. You will be provided an executive summary of the final thesis when completed. I have enclosed more details of my project for your consideration.

Many thanks in advance for your consideration of this research. Please let me know if you require further information.

Kind Regards,

PhD Candidate
Shovita Adhikari
Department of Sociology
Sociology

University of Essex
Email: sdadhi@essex.ac.uk

PhD Supervisor
Dr. Jackie Turton
Department of

University of Essex
Email: turtje@essex.ac.uk

APPENDIX 9

Participants Information Sheet



UNIVERSITY OF ESSEX

Project Information Sheet

Title of Project/investigation:

Child Trafficking in Nepal: Challenges, perspectives and good practice.

About the Principle Investigator:

My name is Shovita Adhikari and I am a PhD candidate in the Department of Sociology at the University of Essex. I am from Nepal and I am presently living in the UK.

Purpose of the Research:

The purpose of this research is to explore the problem of trafficking particularly the causes and consequences of child trafficking, impact of trafficking and different approaches adopted by government and international organisations to prevent and protect child trafficked victims in Nepal. The research will address a number of issues including broad legislative and policy frameworks underpinning child protections systems and the role of different government, non-governmental organisations (NGOs) and international non-governmental organisations (INGOs) in response to child trafficking in Nepal. The research will map the different aspects of child trafficking in Nepal and also draw conclusions on challenges, perceptions and best practice.

Individual interviews:

The participants will be representatives (policy makers, government officials, programme managers, police officers and human right activists) of key organisations including donor agencies (funding bodies of anti-trafficking organisations), Kathmandu-based and international NGOs and anti-trafficking networks. The data will be collected through semi-structured interviews and focus groups.

Informed consent:

All information will be treated confidentially and participants' ensured anonymity by the use of pseudonyms. If you agree to take part in the research, you will be asked to provide written consent. You will be provided with a copy of the written consent, for your records.

Your participation is entirely voluntary and you are free to withdraw from the interview at any time without prejudice and without providing a reason.

Benefits and Risks

At the end of the project, I will conduct a workshop on the project outcomes (if requested). I will also provide you with an executive summary of the final thesis.

Prior to the interview I will discuss any queries or concerns relating to risks in terms of work and case studies. The research will be conducted fully within the boundaries of the Data Protection Act (1998), University of Essex's Ethical Approval of Research guidelines and British Sociological Association (BSA) guidelines.

Data Access, Storage and Security

If you agree, all personal data collected for the research will be digitally recorded. Recordings will be stored on password-protected University-provided PCs. This will be accessible only to my supervisor and me. The transcribed data will be held securely on a password protected university computer server which is regularly backed up.

This PhD research will be published in hard copy and will be housed at University of Essex, UK. The findings of the research will be shared at appropriate academic and professional conferences.

My contact details:

Shovita Adhikari

PhD Candidate

Department of Sociology

University of Essex

Wivenhoe Park

Colchester CO4 3SQ

Supervisor's contact details:

Dr. Jackie Turton

Senior Lecturer

Department of Sociology

University of Essex

Wivenhoe Park

Colchester CO4 3SQ

Email : sdadhi@essex.ac.uk

Email: turtje@essex.ac.uk

APPENDIX 10

Pictures from my fieldwork 2014

(Dance bars, Dohori and massage parlours) in Kathmandu and Pokhara

Pictures from my fieldwork 2015



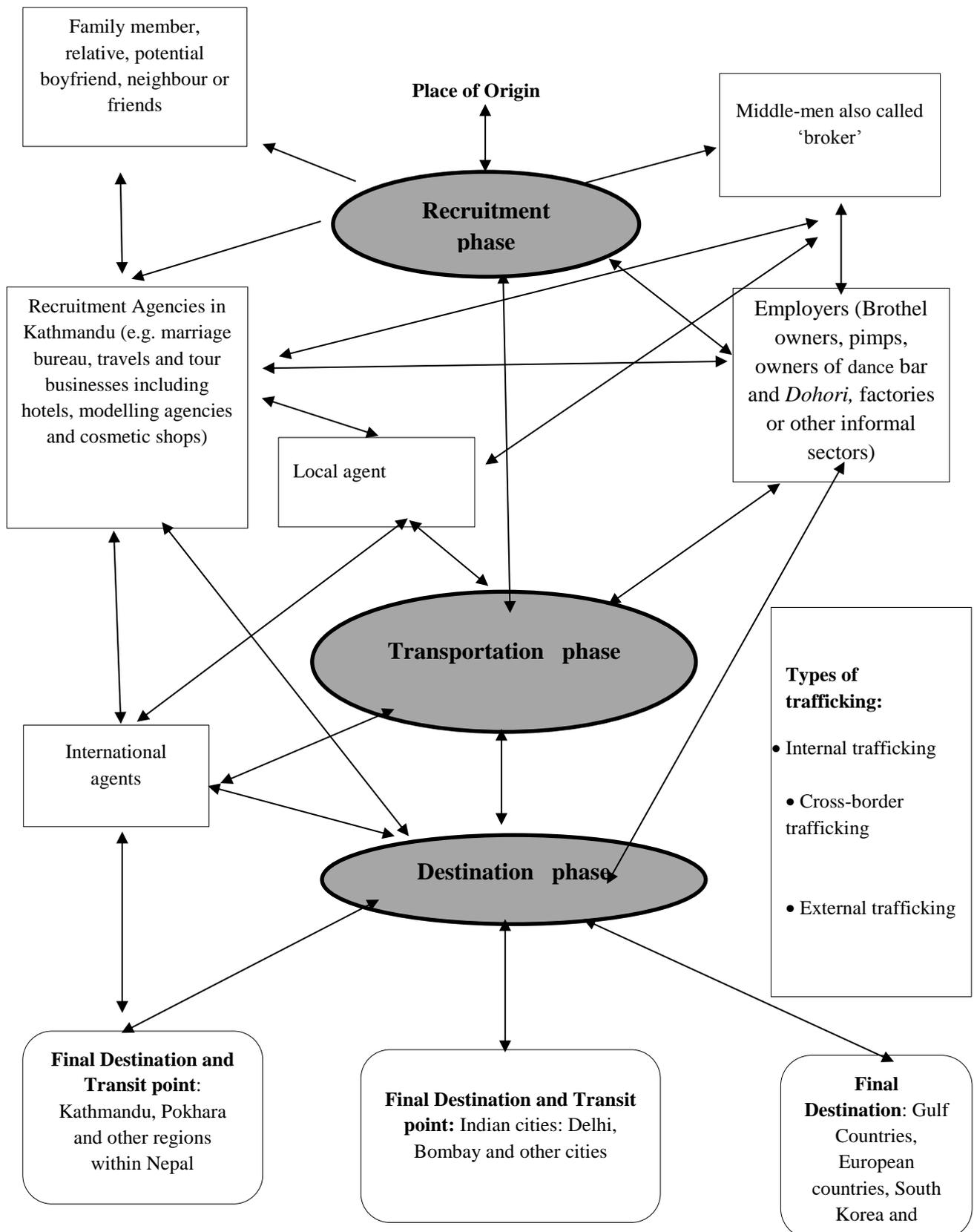
National library in rubble



Victim support facilities (Women and Children Service Centre, district court, rehabilitation home of an NGO)

APPENDIX 11

Figure 1: Conceptual framework of the modes of trafficking



APPENDIX 12

Convention on the Rights of the Child

Source: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and

Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

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

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.^{1/} The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

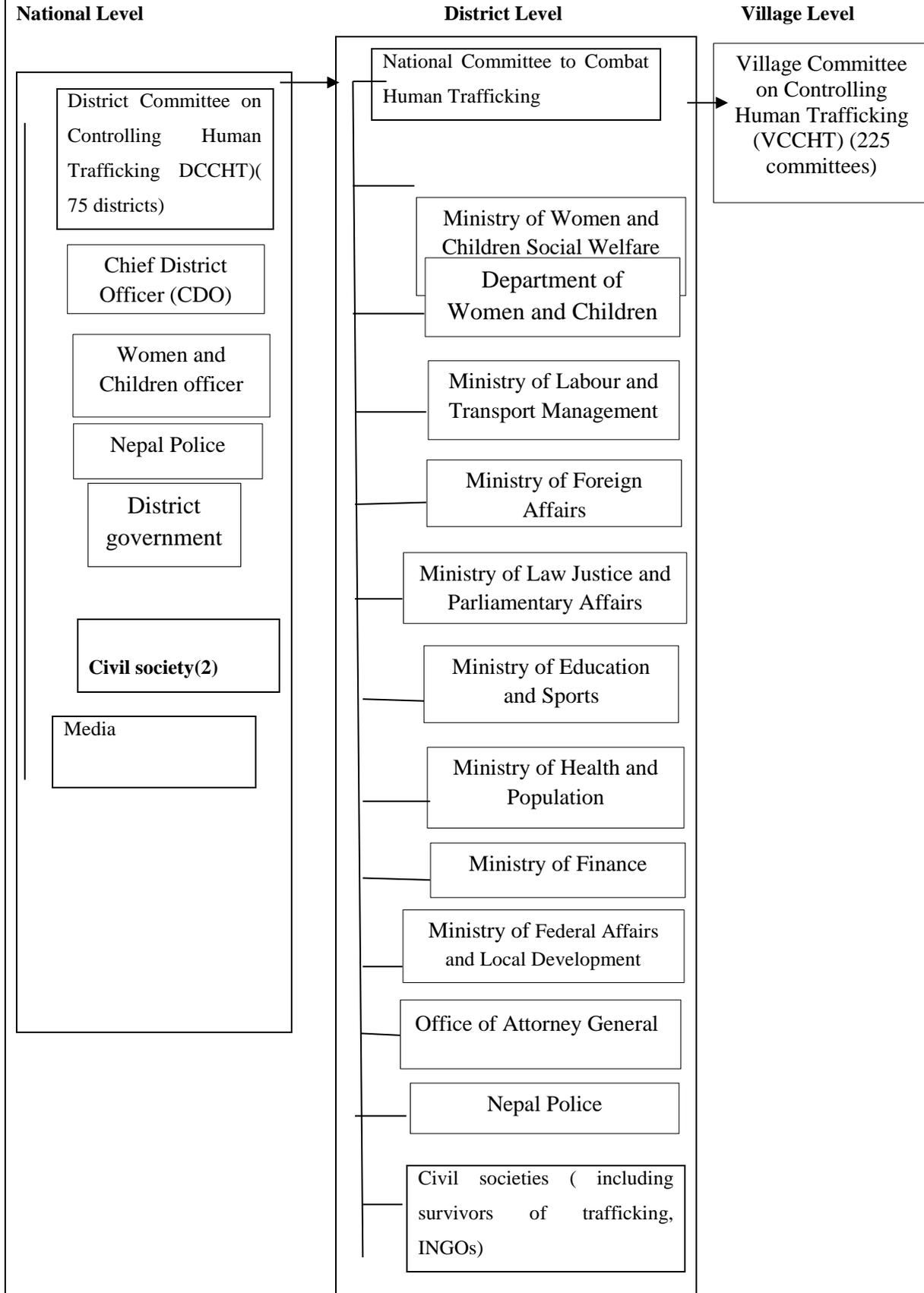
Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

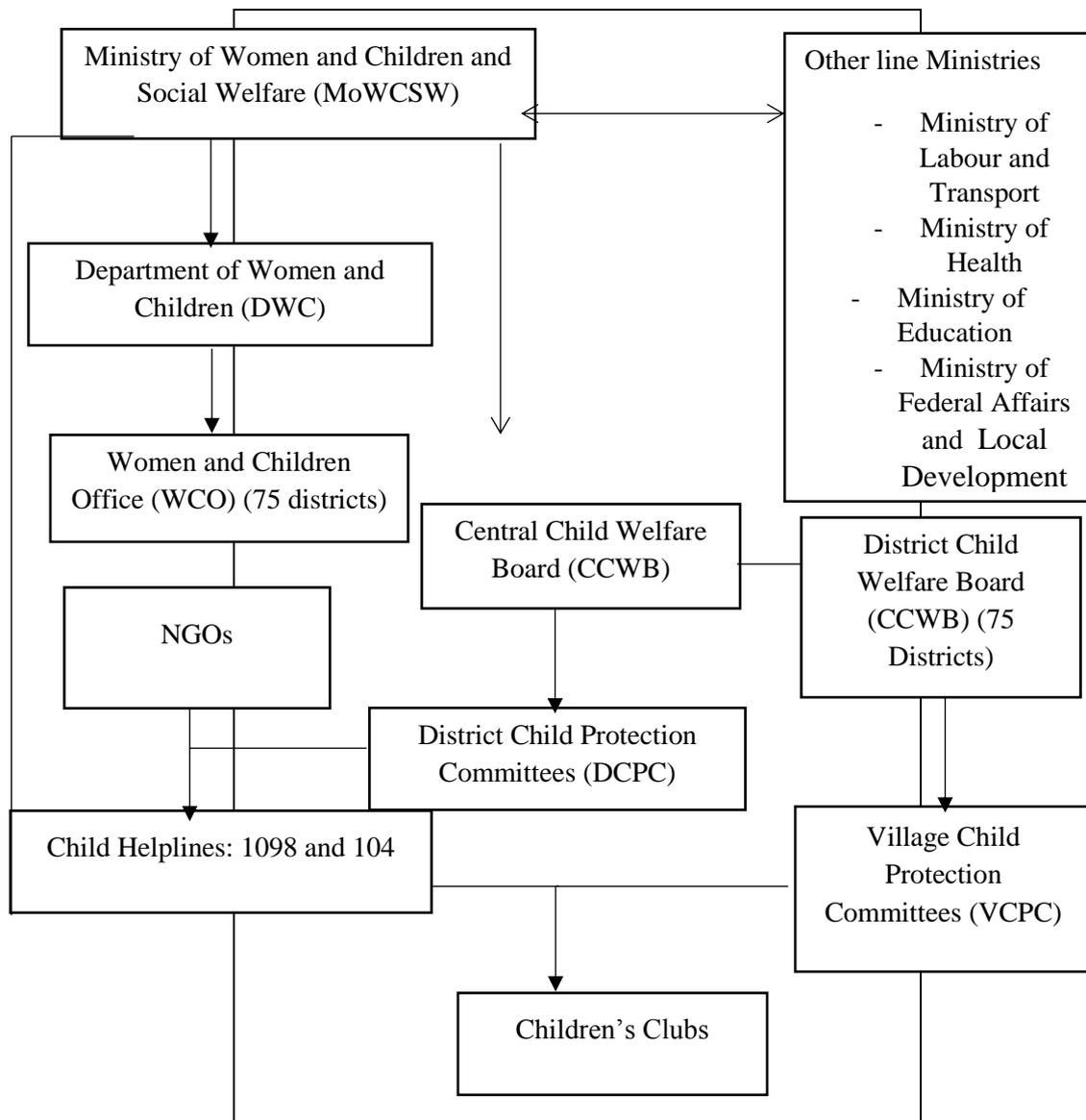
The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

National, district and village level Committees on Trafficking



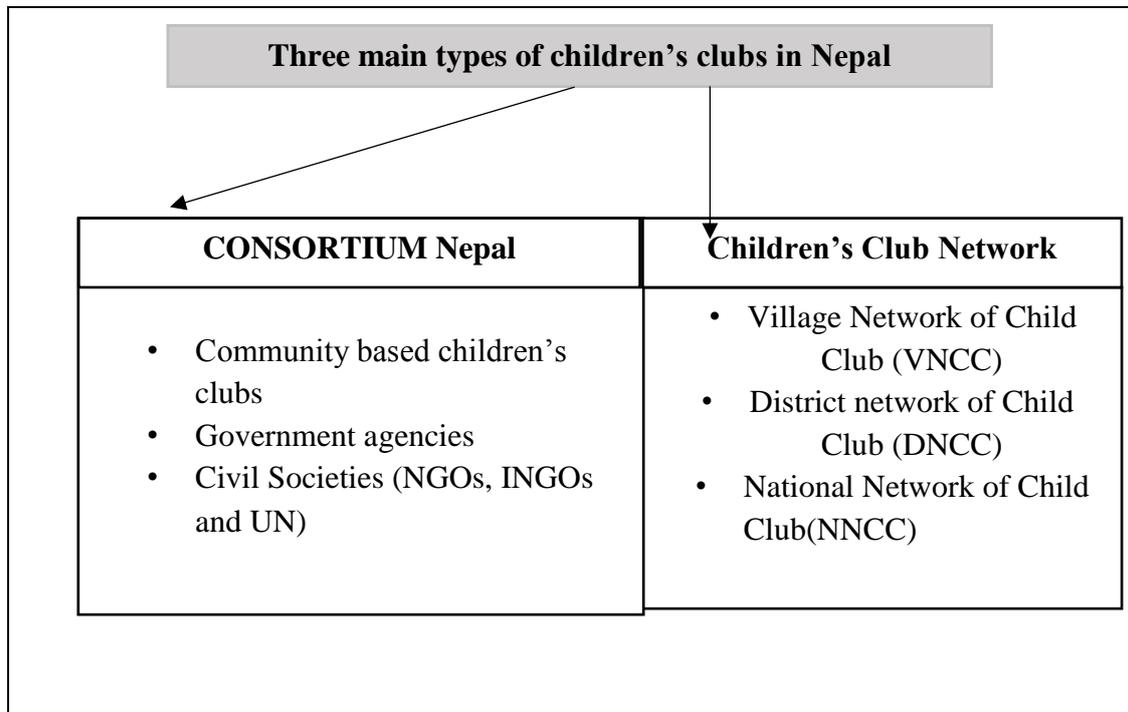
APPENDIX 14

Child Protection Mechanisms in Nepal



APPENDIX 15

Children's clubs in Nepal



Appendix 16

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Source: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization

Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that 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, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and

coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.