



## **RESEARCH NOTE ON REPATRIATION OF VICTIMS OF TRAFFICKING<sup>1</sup>**

This Research Note (“**Note**”) addresses the legal framework governing repatriation of victims of trafficking in India, particularly regarding victims from Bangladesh and Nepal.

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## I. HUMAN TRAFFICKING: A BRIEF INTRODUCTION

India shares its borders with multiple countries, which allows it to serve as a destination and source country for trafficking. Traffickers frequently target victims from countries such as Nepal and Bangladesh which share highly porous borders with India. Female trafficked victims are often sold to the sex industry in different Indian states for forced prostitution. In India, it is key to note that entering the country without valid documents is a punishable offence under the Foreigners Act, 1956 entailing imprisonment of up to 5 years. However, where a foreign woman or child is trafficked into India, the **advisory issued by the Ministry of Home Affairs, Government of India (“MHA”) dated May 1, 2012** (the “**May 2012 Advisory**”)<sup>2</sup> states that a foreign woman or child who has illegally entered India may avoid prosecution under the Foreigners Act, 1956 if it is proven that such person was trafficked into the country against his/her free will (reproduced below):

*“Point 2(iv): It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.”*

Given that the May 2012 Advisory itself recognises that foreign victims of human trafficking are often found without valid passport or visa, this may substantiate any arguments made to explain a victim’s lack of documents. Moreover, the May 2012 Advisory also outlines a procedure that ‘may’ be followed by the State Governments/ Union Territories Administrations in cases of foreign nationals who are apprehended in connection with human trafficking; this has been given in paragraph 2 of the May 2012 Advisory, which can be referred to at the link in footnote 2. However, it must be noted that the procedure laid down in the advisory provides a mandate and general directions to the State/ UT authorities to act in the prescribed manner and does not lay down a detailed procedure in terms of how law enforcement agencies are supposed to act while dealing with foreign victims. This advisory along with the other two

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<sup>2</sup> <https://www.mha.gov.in/sites/default/files/AmdmntAdvForeign-030512.pdf>

MHA advisories, and the various resources referenced to in these MHA advisories, have been explained further in [Sub-part III of Part A](#) of the Note.

## II. DIFFERENCES BETWEEN SMUGGLING AND TRAFFICKING

*“Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons of the United Nations defines Trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or the 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 giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>3</sup>*

As per the United Nations Office of Drugs and Crime (“UNODC”), under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, the offence of trafficking consists of three elements:

- a. Act - The act of transporting, receiving and harbouring persons;
- b. Means - The use of coercive force, fraud, deception, payments etc.; and
- c. Purpose - The reason for trafficking which could be forced labour, prostitution, removal of organs etc.

As per **Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air** which supplements the United Nations Convention against Transnational Organized Crime:

*“‘Smuggling of migrants’ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”*

These are relevant for the purpose of differentiating between a victim of trafficking and a person who has been smuggled into the country. As per the UNODC, the differences between

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<sup>3</sup> [https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch\\_XVIII\\_12\\_ap.pdf](https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XVIII_12_ap.pdf)

smuggling and trafficking broadly lie in the elements of (i) consent, (ii) exploitation, and (iii) transnationality.<sup>4</sup>

a. Consent

Smuggling often occurs with the consent of the smuggled person who wishes to be brought into another country illegally due to the lack of necessary documents or inability to undergo the requisite immigration procedures. On the other hand, in trafficking, there is generally no consent by the person who is being transported to another country or even if the person has consented, such consent is procured through deception/fraud and the person is transported for purposes that are different from what was expected. Consequently, such consent is rendered useless. It is key to note that the existence of consent does not rule out the offense of trafficking. In fact, the explanation to **Section 370 of the Indian Penal Code** lays down that consent of a trafficked victim is immaterial when it comes to determining the offense of trafficking. Therefore, even if a trafficking victim had initially given consent to being transported to India and is later on exploited by the traffickers, the consent previously given becomes immaterial in determining this as a case of trafficking.<sup>5</sup>

b. Exploitation

Another difference is in terms of the control exercised over the individual after reaching the destination country. In the case of smuggling, the interaction with the smuggler most often ends upon reaching the destination country, and the smuggled individual is free to live on his own terms. On the other hand, a victim of trafficking is subjected to ongoing exploitation by the trafficker/exploiters to generate profits for them.<sup>6</sup>

c. Transnationality

Though irrelevant for the case at hand, smuggling is always transnational, whereas trafficking can occur regardless of where the victims are moved, even if it is within the same country.<sup>7</sup> The abovementioned factors may be crucial in arguing that a particular individual is a victim of trafficking and not an individual who had consented to being smuggled into the country.

### **III. ADVISORIES PERTAINING TO HUMAN TRAFFICKING ISSUED BY THE MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA**

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<sup>4</sup> Available at: [https://www.unodc.org/documents/southasia/publications/SOPs-on-TIP-India-Nepal-Bangladesh/indo\\_bangladesh\\_20\\_March\\_18.pdf](https://www.unodc.org/documents/southasia/publications/SOPs-on-TIP-India-Nepal-Bangladesh/indo_bangladesh_20_March_18.pdf)

<sup>5</sup> Ibid.

<sup>6</sup> Supra at 4.

<sup>7</sup> Supra at 4.

Three of the relevant advisories pertaining to human trafficking that have been issued by the MHA are listed below:

a. **MHA advisory dated September 9, 2009 on Preventing and combating human trafficking in India**<sup>8</sup> clarifies the Indian law pertaining to human trafficking and lists out key points of advice for the effective implementation of the laws. For capacity building of State machinery, the advisory suggests the following the training manuals and best practice compendiums published by institutions such as the Bureau of Police Research and Development, MHA in collaboration with the UNODC and the MWCD in collaboration with UNICEF.

b. **MHA advisory dated April 30, 2012 on Human trafficking as organized crime**<sup>9</sup> provides guidelines to law enforcement agencies on the manner and modalities to be implemented in conjunction with the advisory mentioned in (a). It lists key points of actions for dealing with the organised crime aspect of human trafficking in particular. It advises States on how investigations may be done systematically to tackle the issue of trafficking as an organized crime. Repatriation of the victims of trafficking has therefore not been addressed in this advisory.

c. **The May 2012 Advisory, i.e., MHA advisory dated May 1, 2012 on Preventing and combating human trafficking in India - Dealing with foreign nationals**<sup>10</sup> lays down the procedures to be followed, as a supplement to the advisory mentioned in (a) in case of the trafficked victims being foreigners. The advisory directs the conducting of an investigation into whether the victim has entered India or indulged in crimes out of free will. Accordingly, such persons will not be prosecuted under the Foreigners Act for illegal entry into India without a valid documentation and repatriation shall be pursued through diplomatic channels by applying to the Ministry of External Affairs.

The above advisories make reference to the following resources:

a. 12 resource books on “Training and Investigation on Anti-Human Trafficking” prepared as a result of pilot project between MHA and UNODC (paras 5.8 and 7.1 of the Advisory dated September 2009).

b. The Compendium of Best Practices in handling cases of human trafficking (para 5.11 of the Advisory dated September 2009).<sup>11</sup>

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<sup>8</sup> Page 6/12 onwards. Available at: <https://www.mha.gov.in/sites/default/files/AmdmntAdvForeign-030512.pdf>

<sup>9</sup> Available at:

<https://www.mha.gov.in/sites/default/files/advisory%20HT%20as%20organised%20crime%20on%200.pdf>

<sup>10</sup> Page 1/12 onwards. Available at: <https://www.mha.gov.in/sites/default/files/AmdmntAdvForeign-030512.pdf>

<sup>11</sup> Available at: [https://www.un.org/ruleoflaw/files/Compendium\\_of\\_Best\\_Practices\\_by\\_NGOs\[1\].pdf](https://www.un.org/ruleoflaw/files/Compendium_of_Best_Practices_by_NGOs[1].pdf)

c. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002<sup>12</sup> (this is explained further in [Sub-part VI of Part A](#) of the Note).

d. The “Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Especially Women and Children” that has been developed through a consultation among related Ministries and other stakeholders and adopted by the Government of India in the Ministry of Women and Child Development.

e. Supreme Court Order dated 2/05/09 in *Vishal Jeet vs. Union of India*<sup>13</sup> (this is explained further in [Sub-part III of Part B](#) of the Note).

f. The “Ujjawala” scheme – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation that was launched on December 4, 2007 by the Ministry of Women and Child Development (more information about this at the end of this Sub-part.)

g. Legal provisions in Indian statutes that may be applicable, depending on the facts of the case.

There are various provisions from Indian statutes that are applicable to cases of human trafficking in India. A generic list can be found in the “Standard Operating Procedure (SOP) Combating Trafficking of Persons in India,” prepared by the National Human Rights Commission, India (“NHRC”) in 2017 (“NHRC SOP” – this is explained further in [Sub-part IV of Part A](#) of the Note, where all SOPs have been listed and described).<sup>14</sup> Some extracts from this document have been reproduced below:

### **INDIAN PENAL CODE, 1860**

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<sup>12</sup> Available at: <http://un-act.org/publication/south-asian-association-for-regional-cooperation-saarc-convention-on-preventing-and-combating-trafficking-in-women-and-children-for-prostitution-2002/>

<sup>13</sup> *Vishal Jeet vs. Union of India*, 1990 AIR 1412. Available at: <https://indiankanoon.org/doc/653695/>

<sup>14</sup> Standard Operating Procedure (SOP) for Combating Trafficking of Persons in India, published by the National Human Rights Commission India (NHRC) in 2017. Available at: [https://nhrc.nic.in/sites/default/files/sop\\_CTPI\\_19012018.pdf](https://nhrc.nic.in/sites/default/files/sop_CTPI_19012018.pdf)

## 6. LAW ENFORCEMENT AND LEGAL PROVISIONS

This section lays down the details of relevant laws applicable in cases of trafficking. (Adapted from MHA Advisory F.No. 15011/20/2012-ATC (CF-154675) on 12-August-2013)

### INDIAN PENAL CODE (IPC) 1860 : SECTION 370 AND 370 A Trafficking of Person

Whoever for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or receives, a person or persons, by—

First- using threats, or

Secondly- using force, or any other form of coercion, or

Thirdly- by abduction, or

Fourthly- by practicing fraud, or deception, or

Fifthly- by abuse of power, or

Sixthly- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

#### Note :

- The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.
- The consent of the victim is immaterial in determination of the offence of trafficking.

Section	Provision	Punishment
370 (2)	Punishment for offence of trafficking.	Rigorous imprisonment of 7 years, extendable to 10 years and liable to fine.
370 (3)	Punishment for the offence of Trafficking of more than one person.	Rigorous imprisonment of 10 years which may be extended to life and shall also be liable to fine.
370 (4)	Punishment for the offence involving trafficking of a minor.	Rigorous imprisonment of 10 years which may be extended to life and shall also be liable to fine.
370 (5)	Punishment for the offence involving trafficking of more than one minor.	Rigorous imprisonment of 14 years which may be extended to life imprisonment and shall also be liable to fine.

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Section	Provision	Punishment
370 (6)	Punishment for a person convicted of offence of trafficking of a minor in more than one occasion.	Imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life and shall also be liable to fine.
370 (7)	Punishment for public servant or a police officer involved in trafficking of any person.	Imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life and shall also be liable to fine.
370A (1)	Punishment for a person who engages a trafficked minor for sexual exploitation.	Rigorous imprisonment for 5 years which may extend up to 7 years and shall be liable to fine.
370A (2)	Punishment for a person who engages a trafficked person for sexual exploitation.	Rigorous imprisonment for 3 years which may extend up to 5 years and shall be liable to fine.

### INDIAN PENAL CODE, 1860

Section	Provision	Classification
166A	Public servant disobeying direction under law	Imprisonment for minimum 6 months which may extend to 2 years and fine Bailable, Cognizable
167	Public servant framing an incorrect document with intent to cause injury	Imprisonment for either description for a term which may extend to 3 years, or with fine, or with both. Bailable, Cognizable
302	Punishment for murder	Death or imprisonment for life and fine Cognizable, Non-bailable
307	Attempt to murder	I – Imprisonment for 10 years and fine II – Imprisonment for life or imprisonment for 10 years and fine III – Death or imprisonment for 10 years and fine Cognizable, Non-bailable
308	Attempt to commit culpable homicide	I – Imprisonment for 3 years or fine or both II – Imprisonment for 7 years or fine or both Cognizable, Non-bailable
313	Causing miscarriage without woman's consent	Imprisonment for life or imprisonment for 10 years and fine Cognizable, Non-bailable
314	Death caused by act done with intent to cause miscarriage	Imprisonment for 10 years and fine Cognizable, Non-bailable
315	Act done with intent to prevent child being born alive or to cause it to die after birth	Imprisonment for 10 years or fine or both Cognizable, Non-bailable
316	Causing death of quick unborn child by act amounting to culpable homicide	Imprisonment for 10 years and fine Cognizable, Non-bailable

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NATIONAL HUMAN RIGHTS COMMISSION, INDIA

## THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956		
Section	Provision	Punishment
3	Punishment for keeping a brothel or allowing premises to be used as a brothel	On first conviction – rigorous imprisonment for a term of not less than 1 year and not more than 3 years and also with fine which may extend to 2000 Rs
		Second or subsequent conviction – rigorous imprisonment for a term of not less than 2 years and not more than 5 years and also with fine which may extend to 2000 Rs
4	Punishment for living on the earnings of prostitution	Imprisonment for a term which may extend to 2 years, or with fine which may extend to 1000 Rs, or with both,
		In case of a child - imprisonment for a term of not less than 7 years and not more than 10 years.
5	Procuring, inducing or taking person for the sake of prostitution	Punishable on conviction with rigorous imprisonment for a term of not less than 3 years and not more than 7 years and also with fine which may extend to 2000 Rs,
		If any offence committed against the will of any person - imprisonment for a term of 7 years shall extend to imprisonment for a term of 14 years
		In case of a child - the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than 7 years but may extend to life. In case of a minor - rigorous imprisonment for a term of not less than 7 years and not more than 14 years.

## MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999 (page 45/78)

45 / 78			
MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999			
Section	Provision	Punishment	Classification
3 (1) (i)	Punishment for organised crime that leads to death of a person	Death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lakh;	Cognizable and non- bailable
3 (1) (ii)	Punishment for organised crime that <b>does not</b> lead to death of a person	Imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lakh.	Cognizable and non-bailable
3 (2)	Punishment for conspiring or attempting to commit or advocating, abetting or knowingly facilitating the commission of an organised crime or any act preparatory to organised crime	Imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.	Cognizable and non- bailable
3 (3)	Punishment for harbouring or concealing or attempting to harbour or conceal, any member of an organised crime syndicate	Imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lakhs.	Cognizable and non-bailable
3 (4)	Punishment for a person who is a member of an organised crime syndicate	Imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs	Cognizable and non-bailable
3 (4)	Punishment for a person who holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds	A term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.	Cognizable and bailable
4	Punishment for a person who person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for	Imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture	Cognizable and bailable
20	Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass an order for forfeiture and attachment of property. That all or any properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government, free from all encumbrances.		



## More About the “Ujjawala” Scheme

- Summary of the scheme:<sup>15</sup> The new scheme has been conceived for the purpose of preventing trafficking on the one hand and promoting rescue and rehabilitation of victims on the other. It envisages the objectives of the scheme being achieved through the collective efforts of the implementation agencies and thus provides a method of granting financial assistance to these agencies for carrying out such objective(s). These efforts seem to undertake Rescue, Recovery, Repatriation and Integration (“RRRI”) initiatives with the help of other private agencies, like NGOs (the scheme is being implemented mainly through NGOs).

- More details on the latest scheme:<sup>16</sup>
  - EFFECTIVE: April 1, 2016.
  - OBJECTIVE OF THE SCHEME: To prevent trafficking of women and children for commercial sexual exploitation and provide rescue, rehabilitation services, reintegration and repatriation of cross-border victims to their country of origin.

- IMPLEMENTING AGENCIES: The implementing agencies can be the Social Welfare/Women and Child Welfare Department of State Government, Women's Development Corporations, Women's Development Centres, Urban Local Bodies, reputed Public/Private Trust or Voluntary Organizations. The organization must have adequate experience in the field of trafficking, social defence, dealing with women and children in need of care and protection, children in conflict with law, etc.

- The implementing agencies may seek (financial) assistance for one or more of the components as mentioned under the scheme. While applying for a particular component(s), the implementing agencies should provide justification for selecting the specific components and the location of projects (different components are prevention and RRRI). It is to be noted that the implementing agency has to bear 10% of the project cost.

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<sup>15</sup> <https://wcd.nic.in/schemes/ujjawala-comprehensive-scheme-prevention-trafficking-and-rescue-rehabilitation-and-re>

<sup>16</sup> <https://wcd.nic.in/sites/default/files/Ujjawala%20New%20Scheme.pdf>

## IV. BILATERAL AGREEMENTS BETWEEN INDIA AND BANGLADESH/NEPAL

### a. MOU BETWEEN INDIA AND BANGLADESH

A Memorandum of Understanding (“MoU”) between India and Bangladesh<sup>17</sup> on Bilateral Cooperation for Prevention of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking was signed in June 2015. **Article 2 (f)** of the MoU provides that if any means such as threat, use of force, coercion, abduction, fraud, deception, exploiting other vulnerabilities, or giving or receiving payments/benefits are employed to achieve consent/control over a victim, the consent given by the victim is rendered void. **Article 6 (c)** of the MoU sets forth a Standard Operating Procedure (“SOP”) to be adopted by governments for the Rescue, Recovery, Repatriation and Integration (“RRRI”) of victims, which is also referenced in **Article 1** (Scope of the MoU) and **Article 4** (Protection of Trafficked Women and Children). As per **Article 5** of the MoU, Anti-Trafficking Cells and Task Forces must be set up in respective countries.

We have not been able to find this SOP at the national level for either country. However, we observed that some states in India have set up state-level Task Forces and formulated their own cross-border SOPs to facilitate the process of RRRI of Bangladeshi victims in the state. In accordance with this, we have found that:

- The West Bengal Task Force on RRRI was established in 2007 to facilitate, monitor, oversee and expedite the repatriation of victims of trafficking from West Bengal to Bangladesh.<sup>18</sup> Moreover, an SOP for RRRI was enacted by the Government of West Bengal.<sup>19</sup>

*(Please refer to the next page for the SOP)*

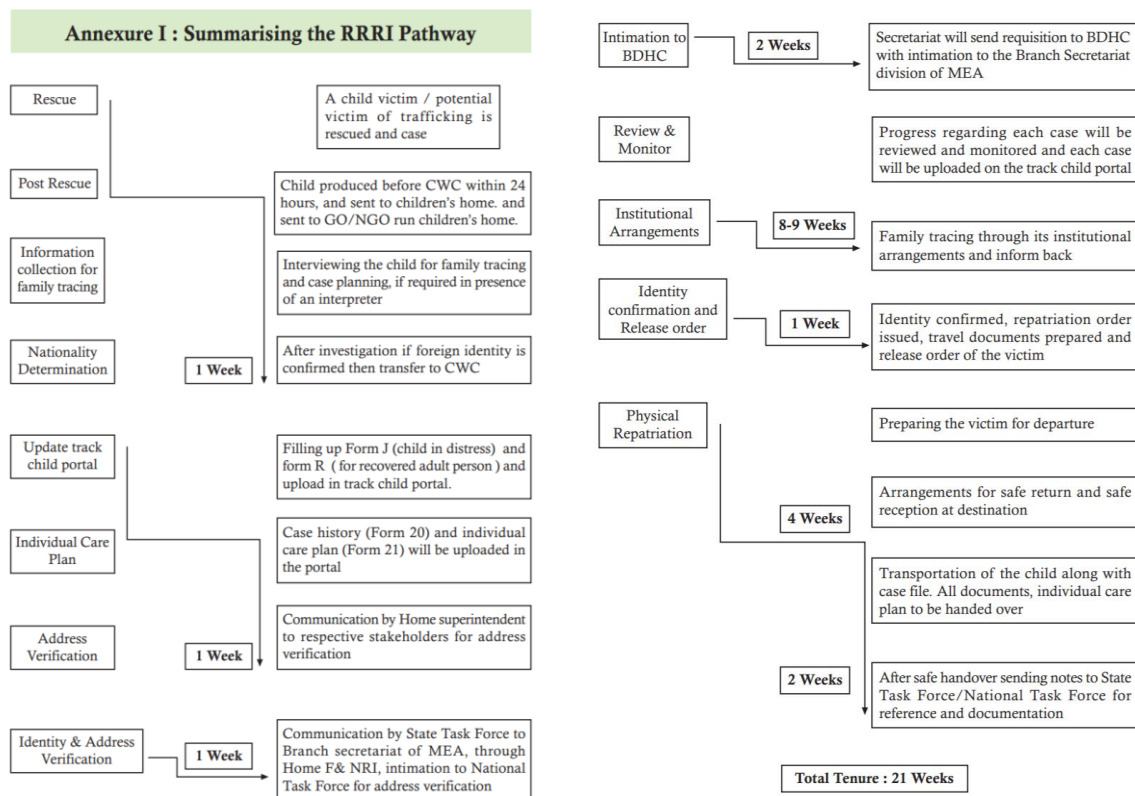
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<sup>17</sup>[https://hcidhaka.gov.in/pdf/bi\\_doc/MoU\\_between\\_India\\_and\\_Bangladesh\\_on\\_Bilateral\\_Cooperation\\_for\\_Prevention\\_of\\_Human\\_Trafficking.pdf](https://hcidhaka.gov.in/pdf/bi_doc/MoU_between_India_and_Bangladesh_on_Bilateral_Cooperation_for_Prevention_of_Human_Trafficking.pdf)

All resources by the WB Task Force available at: [http://wbcdwdsw.gov.in/User/imp\\_docs](http://wbcdwdsw.gov.in/User/imp_docs)

<sup>18</sup> <http://wbcdwdsw.gov.in/User/about#>

<sup>19</sup> [http://wbcdwdsw.gov.in/wbtf\\_link/pdf/operational-guideline.pdf](http://wbcdwdsw.gov.in/wbtf_link/pdf/operational-guideline.pdf)



- The Government of Maharashtra also set up a State Level Task Force and formed Standard Operating procedure (SOP) for RRRI.<sup>20</sup>

*(Please refer to the next page for the SOP)*

<sup>20</sup> Page 3 to 9 of <http://www.egyankosh.ac.in/bitstream/123456789/39331/1/Unit-3.pdf>  
Also see <http://justiceandhope.org/wp-content/uploads/2017/02/2.-SOP-for-CWC-Maharashtra.pdf>

**Annexure A**  
**The Standard Operating Procedure for RRRI and cross border**  
**trafficked victims**

S. N.	RRRI Process	Procedure	Agency	Time Frame Responsible
1.	Identification and rescue of victims	After identification of victims of trafficking collectivity carrying out the rescue operation as per the provisions of Immoral Traffic Prevention Act 1956.	Police, NGOs, Community	It is an ongoing process
2.	Post rescue procedure	A. Production before magistrate for the order of age verification and safe custody B. Placement in proper shelter home. C. Production before magistrate/CWC to order jail/home investigation and family tracing. D. The information should be shared with the State Task Force.	Police Magistrate Superintendent/ P.O. Superintendent/ P.O.	24 hours
3.	Information collection for family tracing	A. Intervening victim to collect the information for family tracing, identify nationality and antecedents. B. The task force will share the information with relevant task force in India to verify the nationality, trace the family. C. The task force will communicate with High Commission of Bangladesh, the	Probation officer, NGOs  Task Force  Task Force	15 days  Immediately  1Month

	Indian High Commission in Bangladesh, relevant NGOs in both countries MEA and relevant authorities of police and Border Security Force		
4./Administrative process	A. Confirmation of Nationality by Bangladesh Government. B. Issuances of repatriation order/consent/ letter form Ministry of Home Affairs, Government of Bangladesh C. Issuances of NOC from GOM. D. Issuances of travel documents by Bangladesh High Commission. E. Issuances of release order from shelter homes. F. Issuances of leave the country Permission/notification from Foreign Registry Officer(FRO)	Bangladesh Bangladesh GOM Bangladesh High Commission CWC GOM GOI	2 months
5.Physical repatriation	A. Communication with BSF or immigration authority in the Airport and other counterpart for arrangements for repatriation. B. Physical transfer of victims to the Repatriation point(Land border or Airport). Handing over to the relevant authority by endorsing hand over note. C. Reception of victim on the other side of the border (Bangladesh) at Airport or Border post	Task Force Police, NGOs Bangladesh Government	1 week

Restoration and Repatriation

**The RRRI Process**

Rescue ≥ Identification ≥ Placement in shelter home ≥  
Production ≥ before Magistrate/CWC ≥ Ascertain Nationality ≥ Home  
Investigation ≥ Issuances of Repatriation order ≥ Permission of  
MEA ≥ Issuance of travel permit ≥ Fro Clearance ≥ Actual  
repatriation ≥ Handing over of victims to Bangladesh  
Government ≥ Integration victim.

## **b. AGREEMENT BETWEEN INDIA AND NEPAL**

Presently, a bilateral agreement by way of an MoU or treaty does not exist between India and Nepal for the specific purpose of preventing and combating human trafficking. However, there have been news reports that an arrangement similar to the one between India and Bangladesh (as described in the previous section) is desired by both countries and is seemingly underway.<sup>21</sup>

It is relevant to note that India and Nepal have entered into the Indo-Nepal Friendship Treaty, 1950, a significant bilateral treaty of “Peace and Friendship” signed in July 1950 to provide for an open border between the two countries.<sup>22</sup> Each country agreed to grant to nationals of the other country “*the same privileges on matters of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.*” This arrangement has rendered the border between the countries more porous, thereby exacerbating the human trafficking problem.

<sup>21</sup> See

<https://www.reuters.com/article/india-trafficking-nepal-bangladesh/after-bangladesh-india-wants-anti-trafficking-pacts-with-nepal-gulf-states-idUSKCN0S11I320151007>

<sup>22</sup> Extracted from page 11/42 of Standard Operating Procedures to Counter Cross Border Trafficking in Persons: India – Nepal (For First Responders) Page 28-31. (Published by UNODC). Available at: [https://www.unodc.org/documents/southasia/publications/SOPs-on-TIP-India-Nepal-Bangladesh/indo\\_nepal\\_20\\_March\\_18.pdf](https://www.unodc.org/documents/southasia/publications/SOPs-on-TIP-India-Nepal-Bangladesh/indo_nepal_20_March_18.pdf)

As of 2018, the different bilateral agreements and MoUs that Nepal has signed with various destination countries are:<sup>23</sup>

**Box 3.4 Bilateral agreements and MoU between Nepal and different destination countries**

Destination country	Year of agreement	Nature of agreement
Qatar	2005	General Agreement
UAE	2007	Memorandum of Understanding
Republic of Korea	2007	Memorandum of Understanding
Bahrain	2008	Memorandum of Understanding
Japan	2009	Directive
Israel	2015	Joint Pilot Program
Jordan	2017	General Agreement

Source: MoLESS, 2018.

Moreover, although beyond the scope of this Note, such an MoU was signed in 2019 between India and Myanmar on bilateral cooperation for the “Prevention of Trafficking in Persons; Rescue, Recovery, Repatriation and Re-integration of victims of Trafficking.”<sup>24</sup>

**c. SOPs PREPARED BY INDEPENDENT ORGANIZATIONS**

Various other SOPs have been prepared in the form of independent reports by non-governmental sources, and while they do not have formal sanction under any bilateral agreement, for practical purposes they may be applicable to victims from both Bangladesh and Nepal. The relevant portions of these reports have been mentioned below:

**(i) SOP by ARZ Foundation**

An SOP book was published in 2016 by ARZ Foundation, an NGO working in the anti-trafficking field.<sup>25</sup> It contains numerous resources relating to trafficking in persons for commercial sexual exploitation. Following are the suggested SOP given in this manual:

<sup>23</sup> National Human Rights Commission (NHRC) of Nepal, *NATIONAL REPORT ON TRAFFICKING IN PERSONS IN NEPAL*, prepared by the Office of the Special Rapporteur on Trafficking in Persons (OSRT) Nepal (September, 2018). Available at:

[www.nhrcnepal.org/nhrc\\_new/doc/newsletter/NHRC\\_National\\_Report\\_TIP\\_in\\_Nepal\\_September\\_2018.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_National_Report_TIP_in_Nepal_September_2018.pdf)

<sup>24</sup> See <https://www.aninews.in/news/national/general-news/cabinet-approves-india-myanmar-agreement-on-human-trafficking20191127134049/> and [https://www.pmindia.gov.in/en/news\\_updates/cabinet-approves-mou-signed-between-india-and-myanmar-on-bilateral-cooperation-for-prevention-of-trafficking-in-persons/](https://www.pmindia.gov.in/en/news_updates/cabinet-approves-mou-signed-between-india-and-myanmar-on-bilateral-cooperation-for-prevention-of-trafficking-in-persons/)

<sup>25</sup> STANDARD OPERATING PROCEDURES on Trafficking in Persons for Commercial Sexual Exploitation for Law Enforcement Agencies, Government and Non-Government Service Providers (Published by ARZ, 2016). Available at: <http://www.arzindia.org/docs/SOP%20Book.pdf>  
Condensed version: <http://www.arzindia.org/docs/Condensed%20SOP%20Book.pdf>

minimum period of 2 years on a monthly basis.

#### IN CASE OF VICTIM BEING A FOREIGN CITIZEN

1. In case of victim of commercial sexual exploitation being a foreign citizen, immediate action should be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.<sup>1</sup>
2. On Inquiry if it is found that the victim of commercial exploitation is from outside the country, the procedures adopted will depend on the Source Country.
3. Efforts should be made to trace the family of trafficked person back in Home Country to enable him/her to return.
4. A home Investigation report is required to be arranged with the government and non-government agencies in the Home Country.
5. The police/superintendent of shelter home/NGO should submit to the magistrate a detailed report along with all documents such as birth certificate, citizenship certificate, photographs, passport, visa etc. for final order of repatriation.
6. The order of the magistrate/CWC should direct repatriation of victims to home country and directions to Department of Women and Child Development to make all logistical and financial arrangements for Repatriation. The final order should also cite the roles of different agencies in ensuring safe passage and repatriation.
7. The final order should be shared with the concerned embassy/high commission to facilitate smooth repatriation of the victim to state of origin.
8. In case of embassy request for the custody of the victim, the superintendent should arrange for travel and escort of the victim till the embassy.
9. The escort team should preferably be comprised of two lady police constables, one matron from protective home, and one social worker.
10. The authorities in charge of repatriation shall use diplomatic channels of communication to inform the other authority as well as the concerned

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#### SUGGESTED PROCESS TO BE FOLLOWED FOR REPATRIATION TO BANGLADESH

1. Contacting NGOs in Bangladesh for tracing the families and to collect documentary evidence to establish citizenship of the victim.
2. Submit the case details, home investigation report, and documents of the victim as per the proforma to Bangladesh High Commission (BDHC).
3. Issuance of repatriation order/list/consent letter from Ministry of Home Affairs, Bangladesh.
4. Collect travel permit documents from BDHC.
5. Submit the travel documents to BDHC after taking victim's signature on the travel permit.
6. After receipt of travel permit from BDHC.
  - A. In case of FRRO at the state level, approach the FRRO for exit permit
  - B. In absence of FRRO at the state level, approach Home Department of the state from where the victim has been rescued for exit permit.
7. After receipt of travel permit from BDHC send a copy of travel permit and final order u/s 17 (3) of ITTPA to NGO in the source country.
8. Department of Women and Child at place of destination should make arrangement for travel and book tickets.
9. Submit the copy of tickets to FRRO and inform the NGO in the source country about date, time and place of repatriation.
10. FRRO to issue 'exit permit and NOC'.
11. In case of FRRO, the FRRO of destination state to inform the Home department of West Bengal (whose border is being used for repatriation).
12. Directorate of Women and Child of destination state to write to IG, Border Security Force (BSF), West Bengal, regarding repatriation.
13. FRRO of destination state to write to IG, BSF, West Bengal for repatriation.
14. Department of Women and Child Welfare of destination to escort the victim till the border points for handing over.
15. Physical handing over of the victim to Bangladeshi authority at the border point.
16. Handing over to the relevant authority by endorsing handing-over note.

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## (ii) The NHRC SOP

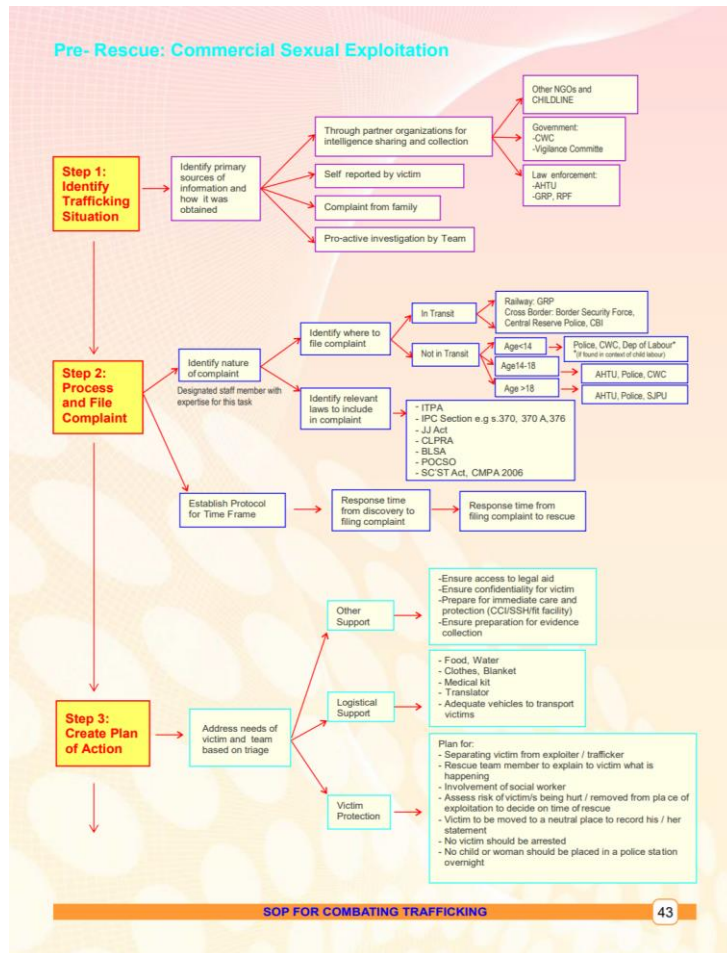
This SOP for Combatting Trafficking of Persons in India was prepared by the NHRC in 2017 with the aim of providing step-by-step guidance to anti-trafficking professionals and other stakeholders involved in identification, rescue, investigation, rehabilitation, and reintegration of victims of trafficking and the prosecution of the accused. The introduction to this document explains how it was conceived as a user-friendly tool that guides state and non-state anti-trafficking actors through the distinct but interconnected steps to ensure full protection and assistance to trafficked persons. The NHRC SOP is conceived as a working tool for practitioners and specialists of governmental, nongovernmental and civil society organisations engaged in combatting trafficking in persons at different stages of intervention levels in India.

There is a flow-chart for the process to be followed in cases of commercial sexual exploitation suggested by the NHRC SOP.<sup>26</sup>

### ● Pre-Rescue: Commercial Sexual Exploitation (Page 50)

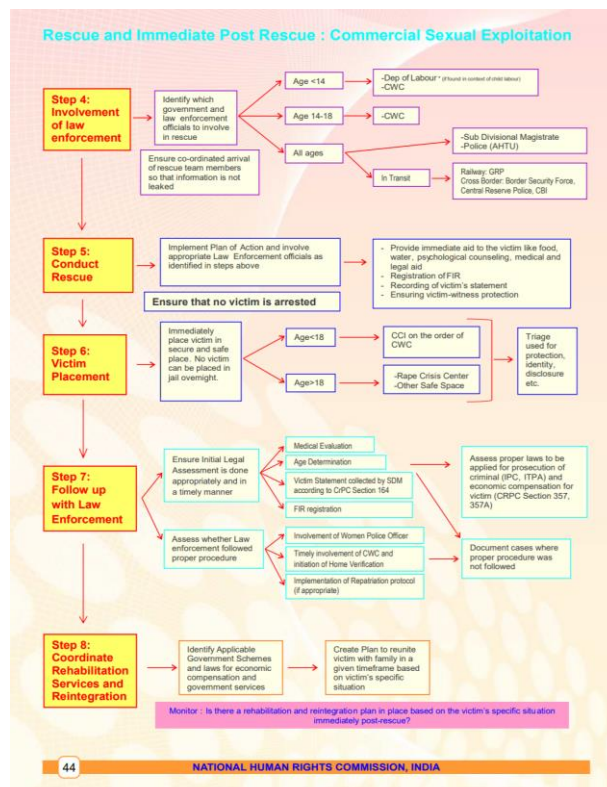
<sup>26</sup> Standard Operating Procedure (SOP) for Combating Trafficking of Persons in India, published by the National Human Rights Commission India (NHRC) in 2017. Available at: [https://nhrc.nic.in/sites/default/files/sop\\_CTPI\\_19012018.pdf](https://nhrc.nic.in/sites/default/files/sop_CTPI_19012018.pdf)



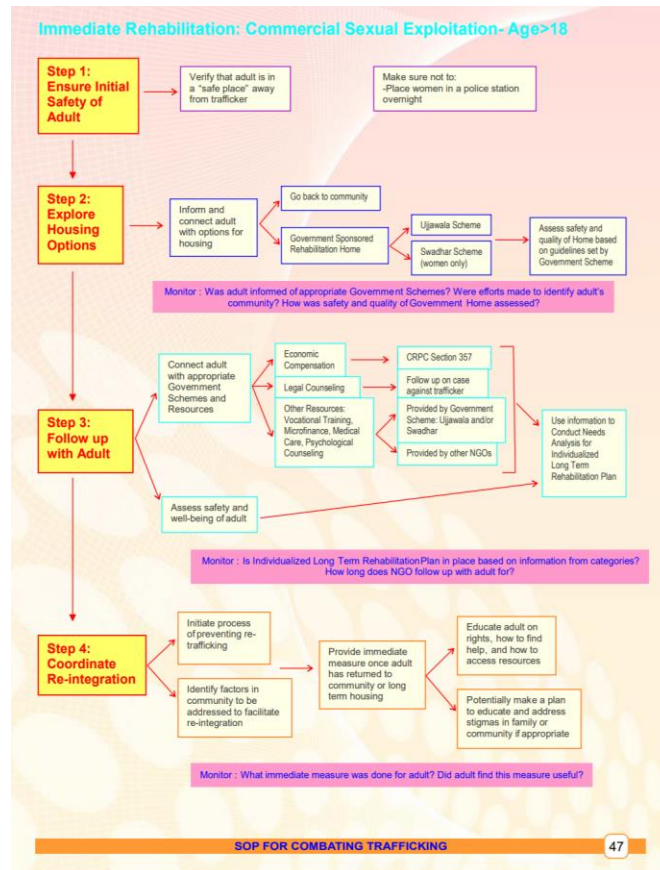


## ● Rescue and Immediate Post Rescue: Commercial Sexual Exploitation (Page 51)

- Assess whether law enforcement followed proper procedure → Implementation of Repatriation protocol (if appropriate):



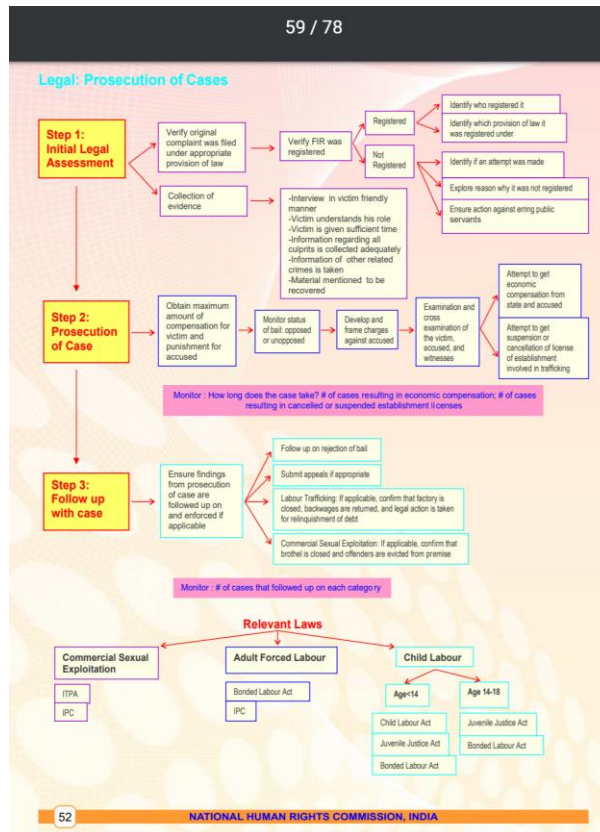
- **Immediate Rehabilitation: Commercial Sexual Exploitation- Age>18 (Page 54)**



The collection of evidence and interview needs to be done in a victim-friendly manner, and this is given on Page 59 in the section titled “Legal: Prosecution of Cases,” in the NHRC SOP:

- **Collection of evidence (Interview) to be done in a victim friendly manner**





The Odisha Police, Crime Branch (Criminal Investigation Department) adopted the NHRC SOP on 14/8/2018 via a notification numbered 14396/CID-IAHTU.<sup>27</sup> Thus, this SOP might be relevant in assisting victims of trafficking found in this State. Moreover, this document also notes:

*“When complaint regarding trafficking or related offences is filed by victim in a place where the offence has not taken place, a zero FIR may be filed by the police station.*

*As trafficking is a continuing offence, FIR may be filed at any of the locations, where the victim is taken, at transit or at the destination.”*

<sup>27</sup> Available at: <http://odishapolicecidcb.gov.in/sites/default/files/Trafficking.pdf>

### (iii) UN Compendium of Best Practices on Anti-human Trafficking

The Compendium of Best Practices on Anti-Human Trafficking by NGO's published jointly by the UNODC and the Government of India in 2008 provides further details on the repatriation process:<sup>28</sup>

#### Repatriation – a long and tedious procedure

In India, there is no set protocol for repatriation of trafficked victims who are foreign nationals. The existing process of repatriation has evolved through the practice of NGOs and a few other stakeholders/agencies/individuals who are repeatedly faced with the need to repatriate foreign nationals trafficked to India. Further, the process of repatriation of foreign victims differs from state to state.

In Delhi, the repatriation process is set in motion immediately after the order of repatriation is issued by the appropriate authority, and in common practice, such orders are issued only after the completion of all the legal requirements. After the order of repatriation is received, the rescued victim is counseled and her address found out so that the same could be sent to the counterpart NGO in the source nation for verification and confirmation.

The counterpart NGO, after verification of the victim's address gets in touch with its Ministry of Home Affairs (MHA). The MHA in the source country, after satisfying itself of the case, issues a permission order for repatriation. The said permission order is sent to the High Commission (of the source country) situated in Delhi (i.e., the country of destination). A copy of the permission order is also given to the concerned NGO in the source country, which in turn sends a copy to its counterpart in India. Using the order, the Indian NGO then has to apply to the High Commission of the source country for the victim's travel documents. After the travel documents are received, the NGO in Delhi applies for exit permission in the MHA in Delhi. When the exit permission comes through, the NGO approaches the Foreigners' Regional Registration Office (FRRO) for endorsement of the travel documents. It is only after the endorsement that the victim is handed over to the NGO in the source country, which then hands over the victim to her family in the presence of local government authorities.

The Compendium cites examples where MHA Delhi has refused to grant exit permits even after permission orders are granted by MHA Bangladesh, compelling NGOs to seek magisterial orders for repatriation. There are instances of miscommunication with the MHA and Department of Social Welfare, Delhi that causes delay in the process.<sup>29</sup>

Similarly, in the state of Andhra Pradesh, by way of Orders GO MS 16 WD, dated April 24, 2010, the Government has provided for the Adoption of Minimum Standards of Care by Institutions & Service providers providing protective and rehabilitative facilities to victims of commercial sexual exploitation/ sex trafficking.<sup>30</sup>

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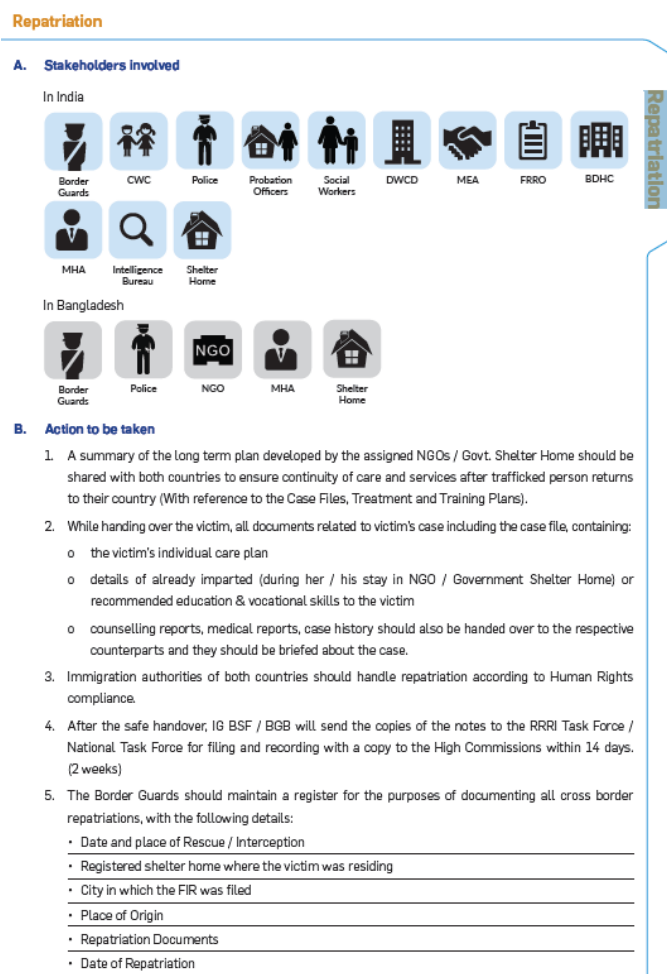
<sup>28</sup> Compendium of Best Practices on Anti-human Trafficking by NGO's. Page 133-135. (Published by UNODC). Available at: [http://www.unodc.org/documents/southasia/Trainingmanuals/NGO\\_Compendium.pdf](http://www.unodc.org/documents/southasia/Trainingmanuals/NGO_Compendium.pdf) (Same compendium, mirror link) Pg. 143 of [https://www.un.org/ruleoflaw/files/Compendium\\_of\\_Best\\_Practices\\_by\\_NGOs\[1\].pdf](https://www.un.org/ruleoflaw/files/Compendium_of_Best_Practices_by_NGOs[1].pdf)

<sup>29</sup> Compendium of Best Practices on Anti-human Trafficking by NGO's. Page 134. (Published by UNODC). Available at: [http://www.unodc.org/documents/southasia/Trainingmanuals/NGO\\_Compendium.pdf](http://www.unodc.org/documents/southasia/Trainingmanuals/NGO_Compendium.pdf)

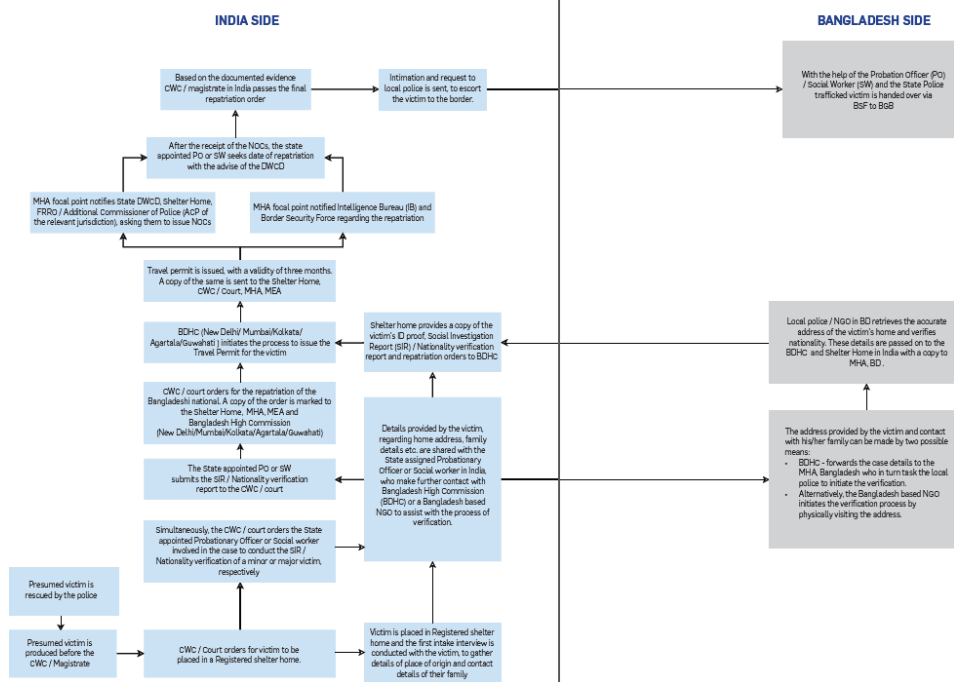
<sup>30</sup> Current Status of Victim Service Providers and Criminal Justice Actors in India on Anti-human Trafficking. Page 214-215. (Published by UNODC). Available at: [https://www.unodc.org/documents/southasia/reports/Human\\_Trafficking-10-05-13.pdf](https://www.unodc.org/documents/southasia/reports/Human_Trafficking-10-05-13.pdf)

**(iv) UNODC SOP to Counter Cross Border Trafficking in Persons: India – Bangladesh (For First Responders) in 2017**

The South Asia regional office of the United Nations Office on Drugs and Crime (UNODC) has commissioned the SOP to Counter Cross Border Trafficking in Persons: India – Bangladesh (For First Responders) in 2017. It lays down best practices to be followed at each juncture of the cycle by the border forces, police and anti-human trafficking units, NGOs, immigration authorities, and shelter homes. Following are the identified actions and stepwise procedure chart for repatriation:



#### Stepwise procedure for repatriation between India and Bangladesh



### (v) UNODC SOP to Counter Cross Border Trafficking in Persons: India – Nepal (For First Responders) in 2018:

The UNODC has published a similar SOP to Counter Cross Border Trafficking in Persons: India – Nepal (For First Responders) as well. Following are the best practices given along-with a case example:

#### V. Repatriation

##### A. Stakeholders Involved



##### B. Action to be taken

- A summary of the long term plan developed by the assigned NGOs / Govt. Shelter Home should be shared with both countries to ensure continuity of care and services after trafficked person returns to their country (With reference to the Case Files, Treatment and Training Plans).
- While handing over the victim, all documents related to victim's case including the case file, containing:
  - the victim's individual care plan;
  - details of already imparted (during her / his stay in NGO / GO Shelter Home) or recommended education & vocational skills to the victim;
  - counselling reports, medical reports, case history should also be handed over to the respective counterparts and they should be briefed about the case.
- The Border Guards should maintain a register for the purposes of documenting all cross border repatriations, with the following details:
 

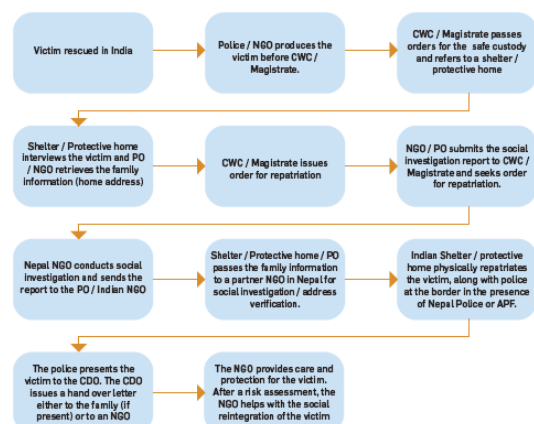
a.	Date and place of rescue / interception
b.	Shelter home from where the victim was residing
c.	City in which the FIR was filed
d.	Place of Origin
e.	Repatriation documents
f.	Date of Repatriation

##### Existing formal process

- Information on Nepalese survivor is registered at the Nepal Consulate Office by the Probationary Officer (PO) or NGO.
- Consulate officials / representatives visit shelter home for preliminary verification of Nationality with an interview.
- Details of survivor are sent to the respective CDO (Chief District officer) at his / her place of residence.
- CDO deploys law enforcement personnel for home address verification.
- Once the nationality verification is done, the CDO sends back information to the Nepal Consulate.
- The Nepal Consulate confirms back to shelter home authorities and facilitating NGO for the repatriation of the victim.
- A date of repatriation is fixed where a shelter home staff, officer from the Nepal Consulate and the PO / a social worker from an NGO member in India, escort the victim to the closest border post, closest to the victim's address.

- The Nepal consulate or the State takes care of the travelling costs of the victim.
- The victim is then handed over to the CDO and the victim is escorted by a Nepalese NGO to their address.
- If the victim cannot be restored owing to vulnerable family conditions, the CDO seeks support of Shelter Home facility and hands the victim over to the agency for care and protection.

##### Informal Process



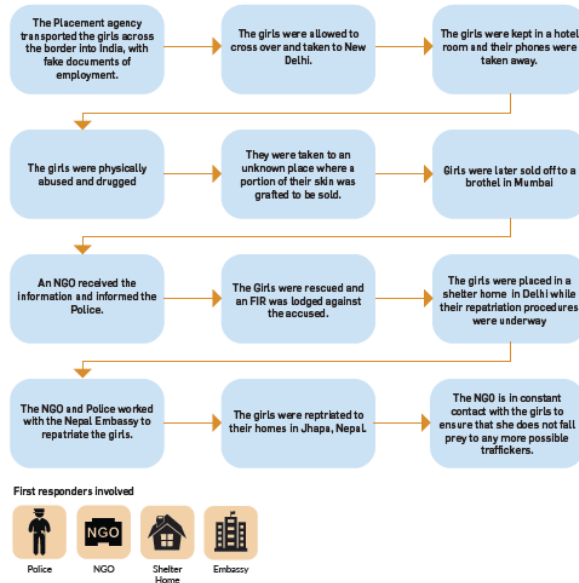
##### C. Best Practices

- The Embassy / Consulate must maintain a roster for registered NGOs that can assist in the repatriation of a victim of cross border trafficking.
- It is absolutely essential to constantly follow up with the victim after his / her repatriation. This proves necessary to keep track of the progress of the victim and help address any concern that the victim may face, at the right time.

#### D. Case Example

Asha, Manisha and Neema were three best friends from a village in Jhapa, Nepal aged 21 years each. They had just graduated and were looking out for jobs. A placement agency by the name Service Recruitments, came to their village looking for girls to hire for a job in New Delhi, India. Asha, Manisha and Neema sent in their resumes and were very excited to be part of the interviews. The three girls were informed that they were selected for the job in New Delhi and they would have to reach Delhi in two days. In their excitement, the three girls did not enquire into the details of the company, location or job description.

What happens next:



#### Key Takeaways

- Traffickers target the vulnerable; vulnerability is not restricted to economic reasons
- Trafficking is a trans-national / cross border crime and resulted in various kinds of exploitation of the unsuspecting victims
- Once all stakeholders worked in tandem, the victims were rescued, provided support and safely repatriated to their home country

#### (vi) SOP for Child Welfare Committee (CWC) under the J.J. Act, Government of Maharashtra in 2009

Unit 9 of the SOP for Child Welfare Committee (CWC) Under The Juvenile Justice (Care & Protection) Act 2000-2006, Government of Maharashtra 2009,<sup>31</sup> discusses “TRAFFICKING OF CHILDREN FOR COMMERCIAL SEXUAL EXPLOITATION.” The procedure to be followed in these cases has been provided from pages 48 to 51, which includes the definition of trafficking, a list of specific legal provisions pertaining to the prevention of child trafficking and the Special Procedures to be followed when a victim of child trafficking is produced before the Child Welfare Committee (this is a step-by-step guide of procedure to be adopted whenever a victim of child trafficking is produced before the CWC).

<sup>31</sup> Page 48/85. Available at: [nlrd.org/wp-content/uploads/2012/02/SOPCWC.pdf](http://nlrd.org/wp-content/uploads/2012/02/SOPCWC.pdf)

## V. THE REPATRIATION OF PRISONERS ACT, 2003

The Repatriation of Prisoners Act, 2003 allows for both the transfer of prisoners in India to another country and the reception of prisoners from outside of India into the country, provided that these are contracting countries. Section 2(c) of the Act defines a “prisoner” as “*a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States*”. Section 5 lays down the various conditions that the Central Government ought to consider and satisfy before passing an order for forwarding the application of the prisoner to the contracting State; per Section 5(2)(a), one of the conditions that must be satisfied is that there must not be an inquiry, trial or any other proceeding pending against the prisoner.<sup>32</sup> Under this Act, certain procedural guidelines for the transfer of sentenced prisoners under the Repatriation of Prisoners Act, 2003 were issued by the Ministry of Home Affairs in 2015.<sup>33</sup> The aforementioned Act and the 2015 MHA Guidelines on Transfer of Sentence Prisoners may be relevant in case the facts of a particular case allow for its application on the basis of these provisions.

## VI. INTERNATIONAL OBLIGATIONS OF INDIA

India has signed and ratified many international conventions and protocols relevant to human trafficking. The following may help the case of a victim of human trafficking seeking repatriation:

- a) The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002.<sup>34</sup> (*Relevant to India, Bangladesh and Nepal*)

**Aim:** to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.

**SAARC member countries (with year of ratification):** Afghanistan (2007), Bangladesh (2002), Bhutan (2002), India (2002), Maldives (2002), Nepal (2005), Pakistan (2002) and Sri

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<sup>32</sup> The Repatriation of Prisoners Act, 2003 including amendments by Act 6 of 2011. Available at: <http://legislative.gov.in/sites/default/files/A2003-49.pdf>

<sup>33</sup> Sana Das, Repatriation of Indian Nationals from Foreign Prisons: A Barrier Analysis (Commonwealth Human Rights Initiative, 2017) page 13/254. Available at: <https://www.humanrightsinitiative.org/download/1543820056Bringing%20Them%20Home.pdf>

<sup>34</sup> Available at: <http://un-act.org/publication/south-asian-association-for-regional-cooperation-saarc-convention-on-preventing-and-combating-trafficking-in-women-and-children-for-prostitution-2002/>

Lanka (2002).<sup>35</sup> Note that the convention is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from the Asian continent.<sup>36</sup>

**How this may help a victim's case:** The SAARC Convention has largely been recognized as taking a victim-friendly or victim-centred approach. This has been acknowledged in the MHA Advisory on Preventing and combating human trafficking in India-dealing with foreign nationals dated May 1, 2012, wherein Point 2(ii) states that:

*“The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.”*

This is evident by examining the wording of the Convention and the general rights-based approach (keeping in mind the human rights of victims) adopted in drafting it. For example:

- The Preamble of the SAARC Convention states: *“EMPHASISING that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights;”*
- Article 5 advocates for providing for the protection of victims by way of maintaining confidentiality, providing victims with appropriate counselling and legal assistance.
- Article 6, clause 2 obligates States to act promptly on requests for mutual legal assistance.
- Article 7 declares the offences under the Convention as extraditable.
- Article 8 imposes an obligation on member States to train (*“provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention”*) and sensitize (*“sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention”*) enforcement officials.
- Article 9 provides for care, treatment, rehabilitation and repatriation of victims:  
*“1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin. 2. Pending the completion of arrangements for the*

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<sup>35</sup> List of countries who have signed and ratified available on page 21/80 of [https://www.unicef-irc.org/publications/pdf/ii\\_ct\\_southasia\\_analysis.pdf](https://www.unicef-irc.org/publications/pdf/ii_ct_southasia_analysis.pdf)

(South Asia in Action: Preventing and responding to child trafficking - analysis of anti-trafficking initiatives in the region. By UNICEF Innocenti Research Center, 2009)

<sup>36</sup>

<https://books.google.co.in/books?id=1xFnEyyqFupUC&pg=PA189&lpg=PA189&dq=The+convention+is+legally+binding+on+its+signatory+parties+and+is+the+first+regional+anti+trafficking+treaty+to+emerge+from+the+Asian+continent+saarc&source=bl&ots=G55xIxVUOC&sig=ACfU3U0ueZjX16yPLa-iLpBb454mCkMTaw&hl=en&sa=X&ved=2ahUKEwip4vTV0oHqAhWDzDgGHVSLCQ0Q6AEwAHoECAoQAAQ#v=onepage&q=The%20convention%20is%20legally%20binding%20on%20its%20signatory%20parties%20and%20is%20the%20first%20regional%20anti%20trafficking%20treaty%20to%20emerge%20from%20the%20Asian%20continent%20saarc&f=false>

*repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims. 3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counselling, job training and health care facilities for the victims. 4. The State Parties to the Convention may also authorise the recognised non-governmental organisations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking. 5. The State Parties to the Convention shall encourage recognised non-governmental organisations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.”*

b) The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 \* which supplements the United Nations Convention Against Transnational Organised Crime, 2000.

(\*Referred to previously in [Sub-part II of Part A](#) of the Note for its definition of ‘*trafficking in persons*’ in Article 3(a) of the Protocol.<sup>37</sup>) The Protocol has also been described as victim-friendly, based on the definition above and many of its clauses, including those providing for preventive measures (Article 9), assistance to and protection of trafficking victims in the form of victim compensation and privacy protection (Article 6), and repatriation of victims (Article 8).<sup>38</sup> In May 2011, the Indian Government ratified the United Nations Convention against Transnational Organised Crime (UNTOC) and its three protocols.<sup>39</sup>

<sup>37</sup> Page 50/92 – Available at:

<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

<sup>38</sup>

<https://books.google.co.in/books?id=1xFnEyqFupUC&pg=PA189&lpg=PA189&dq=The+convention+is+legally+binding+on+its+signatory+parties+and+is+the+first+regional+anti+trafficking+treaty+to+emerge+from+the+Asian+continent+saarc&source=bl&ots=G55xIxVUOC&sig=ACfU3U0ueZjX16yPLa-iLpBb454mCkMTaw&hl=en&sa=X&ved=2ahUKEwip4vTV0oHqAhWDzDgGHVSLCQ0Q6AEwAHoECAoQAO#v=onepage&q=The%20convention%20is%20legally%20binding%20on%20its%20signatory%20parties%20and%20is%20the%20first%20regional%20anti%20trafficking%20treaty%20to%20emerge%20from%20the%20Asian%20continent%20saarc&f=false> and <https://ssb.nic.in/WriteReadData/LINKS/Final%20Vision%20Docs8740ab3e-2462-42ea-9a64-adf9cedca5e8.pdf>

<sup>39</sup> Available at: <https://www.unodc.org/southasia/en/frontpage/2011/may/indian-govt-ratifies-two-un-conventions.html>

The three protocols under the UNTOC are:

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- The Protocol against the Smuggling of Migrants by Land, Sea and Air; and



c) The United Nations Special Rapporteur

Lastly, the Special Rapporteur on trafficking in persons has proposed a set of draft basic principles on the right to an effective remedy for trafficked persons,<sup>40</sup> which also advocate for a victim-centred approach. For example:

Principle 1 of the Draft basic principles on the right to an effective remedy for trafficked:<sup>41</sup> *“Trafficked persons as victims of human rights violations have the right to an effective remedy for harms committed against them.”*

The Report of the Special Rapporteur on trafficking in persons, especially women and children by Joy Ngozi Ezeilo (A/HRC/26/37 dt. April 1, 2014), notes that:

*“Three victim-centred “Rs” - redress, rehabilitation and reintegration; [...] Human rights in the criminal justice response 52. The Special Rapporteur has noted an important shift in attitudes towards the criminal justice aspects of the trafficking response over the course of the mandate. The development of a new international legal instrument on trafficking within a crime control framework has raised understandable concerns that this focus would diminish the attention and commitment due to the human rights of victims. It is felt that a strong criminal justice response to trafficking may conflict with a rights-based, victim-centred response. While accepting the dangers that an overwhelming focus on investigations and prosecutions may take attention away from the rights and needs of victims, the Special Rapporteur notes that a strong response from the criminal justice system is an integral part of dealing effectively with trafficking. In short, there should not be a conflict between the rights of victims and the responses of the criminal justice system, provided that the latter explicitly set out both to challenge the culture of impunity enjoyed by traffickers and to secure justice for the victims. 53. Too often, victims of trafficking are treated as instruments of criminal investigations, rather than as rights holders with a legal entitlement to protection, support and remedies. [...]”<sup>42</sup>*

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- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

<sup>40</sup> Page 38/70 of [https://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS36_en.pdf)

<sup>41</sup> Draft basic principles on the right to an effective remedy (Annex I of A/HRC/17/35). Available at: page 20/27 of <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/127/97/PDF/G1112797.pdf>

<sup>42</sup> Page 14/22: <https://www.refworld.org/pdfid/53981f7f4.pdf>