

## Appendix 2

### Human Trafficking and Transportation (Control) Act, 2064 (Nepal)

**Preamble:** Whereas it is expedient to control the acts of human trafficking and transportation, and to protect and rehabilitate the victims of such activity by enacting law, the 'Legislature-Parliament' has enacted this Act.

#### **Part 1 PRELIMINARY**

**1. Short Title , Jurisdiction and Commencement:**

- (1) The title of this act is 'Human Trafficking and Transportation (Control) Act, 2064.
- (2) This Act shall commence immediately.
- (3) This Act shall remain in operation throughout the country and anyone committing an offence against Nepali citizen under this Act from foreign land shall also remain within the purview of this Act.

**2. Definition: Unless the subject or context otherwise requires, in this Act-**

- (a) "Offence" means an act committed under Section 3 of this Act.
- (b) "Center" means a rehabilitation center established under Section 13 of this Act.
- (c) "Victim" means a person who is sold, transported or put into prostitution.
- (d) "Child" means children who have not reached the age of eighteen.
- (e) "Exploitation" means an act of keeping human beings as slave and bonded and this word also implies to remove human organ except otherwise determined by existing law.
- (f) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules enacted under this Act.

#### **Part 2 PROVISION OF OFFENCE AND INVESTIGATION**

**3. Human beings not to be trafficked and transported:**

- (1) No one shall commit or make others commit human trafficking and transportation.
- (2) If anyone commits an act under subsection (1), that shall be deemed to have committed an offence under this Act.

**4. Acts considered as Human Trafficking and Transportation:**

- (1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking:
  - (a) To sell or buy a person for any purpose,
  - (b) To force someone into prostitution, with or without financial benefit,

- (c) To remove human organ except otherwise determined by law,
- (d) To engage in prostitution.
- (2) If anyone commits any of the following acts, that shall be deemed to have committed human transportation:
  - (a) To take a person out of the country for the purpose of buying and selling,
  - (b) To take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostility, allurements, influence, threat, abuse of power and keep him/her into one's possession or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.

#### 5. Reporting:

- (1) If anyone knows that the offence under Section 3 of this Act is being committed or may be committed, he/she can report to the nearest police office.
- (2) If the person who reports under subsection (1) puts written request to remain unnamed, the police office which registers the report should maintain his/her confidentiality.

#### 6. Certifying the statement:

- (1) If the person reporting under Section 5 is a victim, the police office should take the statement immediately and the victim shall be taken to the nearest district court to certify the statement as soon as possible.
- (2) If a police officer brings to certify a statement under subsection (1), the district judge, notwithstanding anything contained in the existing law and even if the offence related with that statement does not fall within the jurisdiction of that district court, shall certify the statement after reading it aloud and noting any additional details of the case.
- (3) If the statement of the victim is certified under subsection (2), the court can take the certified statement as evidence even if the victim does not appear in the court.

#### 7. Arrest and investigation:

- (1) If any act considered to be an offence under this Act is being committed or may be committed or attempted in a house, land, place or a vehicle, and if there is a chance the offender will escape or evidence relating to the offence will disappear or be destroyed if immediate action is not taken; notwithstanding anything contained in the existing law, a police officer of the rank sub-inspector or higher may prepare a report and carry out any of the activities listed below at any time:
  - (a) Enter, investigate or seize such house, land, place or vehicle.
  - (b) Break or open windows or doors in order to carry out the necessary activities in case he/she faces obstruction and opposition in performing the duties,
  - (c) Arrest or investigate any person engaged in such activity without an arrest warrant,
  - (d) Seize and gather evidence found in such house, land, place or vehicle.
- (2) When carrying out such activity under subsection (1), police personnel shall, if possible, identify representatives of local bodies or otherwise those present at the time of activity as witnesses and provide a copy of the details of the activity to the owner of the house, land, place or vehicle.

8. Prosecution in custody: Notwithstanding anything contained in the existing law, and except to the offences under clause (d) of subsection (1) of Section 4, the court should keep the accused in custody while prosecuting cases on other offences that fall under Section 4.

9. Burden of proof: Notwithstanding anything contained in the existing law, a person accused of an offence under this Act shall provide evidence proving that he/she did not commit the offence.

10. Right to keep separate legal professional: If a victim wishes to keep an additional legal professional to represent his/her case during court hearings, he/she has the right to be represented by a separate legal professional for an offence under this Act.

11. Provision of Translator and Interpreter : If the working language used by the concerned court and office in dealing with an offence under this Act is not understandable by the victim, he/she can manage for the translator or interpreter with the permission of the court.

### **Part 3**

#### **PROVISION OF RESCUE, REHABILITATION AND RECONCILIATION**

12. Act related to Rescue: Nepal government shall manage for the rescue of any Nepali citizen sold in the foreign land.

13. Rehabilitation Center:

(1) Nepal government shall establish necessary rehabilitation centers for physical and mental treatment, social rehabilitation and family reconciliation of the victim.

(2) Any organization can obtain permission as stated to establish and run rehabilitation center to address the objectives under subsection (1). Nepal government shall make regular and effective monitoring of that organization and rehabilitation center established by it.

(3) Nepal government can provide economic support as well as other assistance, as stated, to the center run under subsection (2).

(4) Center shall manage for the social rehabilitation and family reconciliation of the person stationed at the Center.

(5) Center should manage for the medical treatment and consultation service and facility to the victims.

(6) No one shall make the victim in the Center engage in any work against his/her wish.

(7) Management, operation standard, monitoring of the rehabilitation center, skillful training and employment, rehabilitation, family reconciliation shall be carried out as prescribed.

14. Rehabilitation Fund:

(1) Nepal government shall establish a rehabilitation fund for operation of the rehabilitation center established under subsection (1) of Section 13.

(2) The fund established under the subsection (1) shall receive contributions as follows:

(a) Funding received from Nepal government,

(b) Funding received from national and international organizations, and individuals,

- (c) Half of the payment received as fines under Section 15.
- (3) Management and operation of the rehabilitation fund shall be as prescribed.

#### **Part 4**

### **PROVISION OF PUNISHMENT AND COMPENSATION**

#### **15. Punishment:**

- (1) Any person who commits an offence as stated under Section 3 shall be punished as follows:
  - (a) 20 years in prison and a fine of Rs 200,000 for selling or buying a human being,
  - (b) According to the degree of offence, 10 years to 15 years in prison and a fine of Rs 50,000 to Rs 100,000 for forcing into prostitution, with or without financial benefit,
  - (c) 10 years in prison and a fine of Rs 200,00 to Rs 500,000 for removing human organ except otherwise determined by law,
  - (d) One month to three months in prison and a fine of Rs 2,000 to Rs 5,000 for a person engaged in prostitution.
  - (e) For a person who is involved in transportation of human being for the purpose of buying, selling and engaging in prostitution-
    - (1) 10 years to 15 years in prison and a fine of Rs 50,00 to Rs 100,000 for taking a person out of the country. 15 years to 20 years in prison and a fine of Rs 100,000 to Rs 200,000 for taking a child out of the country.
    - (2) 10 years of prison and a fine of Rs 50,000 to Rs 100,000 for taking a person from one place to another place within the country . 10 years to 12 years in prison and a fine of Rs 100,000 for taking a child from one place to another place within the country.
  - (f) One years to two years of prison for taking a person from one place to another within the country, and two years to five years of prison for taking out of the country for the purpose of exploitation under clause (b) of subsection (2) of Section 4.
  - (g) Except otherwise written in clause (e) and (f), seven years to ten years of prison for a person committing an offence under clause (b) of subsection (2) of Section 4.
  - (h) The person engaged in provocation, plotting and attempting an offence of human trafficking or transportation or an abettor of that offence shall get half out of full punishment envisioned for that offence.
- (2) Notwithstanding anything written in subsection (1), the punishment in the following circumstance shall be as follows:
  - (a) If a same person is involved in buying or selling and forcing into prostitution, with or without financial benefit; he/she shall be entitled for punishment under both offences,
  - (b) If a same person is involved in buying or selling or forcing into prostitution, with or without financial benefits, and in an offence under clause (b) of subsection (2) of Section 4, he/she shall be entitled for punishment under both offences,
  - (c) Notwithstanding anything written in clause (b), if a same person is involved in an offence under clause (b) of subsection (2) of Section 4 and in transporting a human being from one place to another place within Nepal or outside the country for the purpose of buying, selling or forcing into prostitution, with our without financial benefits; he/she shall be entitled for punishment under both offences.

(3) If an offence under Section 3 is committed by a public post holder; in addition to the regular punishment for that offence, he/she shall get 25 percentage additional punishments.

(4) If anyone commits an offence under Section 3 with a person under his/her protection or guardianship or if the victim is relative of the offender as incorporated in the Chapter of Incest in Civil Code, he/she is entitled for ten percentage more additional punishment besides regular punishment under the Act.

(5) If anyone commits an offence under Section 3 repeatedly, for every offence he/she shall get additional one-fourth punishment in addition to the regular punishment.

(6) If, during interrogation of the case, a person involved in reporting the offence under Section 5 of this Act gives contrary statement to the one earlier given by him/her or if he/she doesn't appear at the court when summoned or if he/she remains hostile and doesn't assist the court, he/she shall receive an imprisonment of three months to one year.

16. Exemption from Punishment : If any person knows of getting sold, bought or taken for prostitution or about to be sold, bought or taken for prostitution, and if he/she reasonably believes that he/she is being taken for that purpose; notwithstanding existing laws, he/she shall not be punished for causing death or injury to the person believed responsible in course of his/her attempt to flee from control. The victim must scream or shout for help or try to escape. The victim must believe that help is not available and that he/she will become a victim of the activity if something is not done immediately.

#### 17. Compensation:

(1) A court shall provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender

(2) If the victim dies before receiving the compensation under subsection (1) and if he/she does have children below the age of 18, the children shall receive the compensation. If the victim does not have any children, the dependant parents shall receive the compensation.

(3) If there are no dependant parents and minor children to receive compensation under subsection (2), the amount should be accrued in the rehabilitation fund.

#### 18. Seizure of Property:

(1) Any movable or immovable property acquired as a result of an offence under this Act shall be seized.

(2) If it is proved that anyone uses or provides to use any house, land or vehicle for any offence under this Act, that house, land or vehicle shall be seized.

#### 19. Award:

(1) If anyone is rescued or a person involved in an offence is arrested because of anyone reporting an offence under this Act or giving notice that an offence is going to be committed; the informant shall be given, from rehabilitation fund established under Section 14, ten percent of the fine levied as punishment under Section 15 as an incentive .

(2) If there is more than one informant giving information under subsection (1), the incentive amount shall be proportionately distributed.

20. Confidentiality of the informant: The name and address of the informant and the details provided by the informant under subsection (1) of Section 19 shall be kept confidential.

21. Exemption from penalty:

(1) If an accused charged of committing an offence under this Act accepts an offence and co-operates the police, public prosecutor or court to collect evidence and arrest other accused or abettor, and if he/she has committed the offence for the first time, court can reduce the punishment for that offence to him/her by maximum 25 percentages. But if his/her assistance is not proved by evidence or if he/she provides statement in court in detrimental to his/her earlier support provided to police and public prosecutor; notwithstanding anything contained in this Act and existing law, a case can be re-filed against him/her.

(2) Notwithstanding anything contained in subsection (1), according to this Section there shall be no reduction in claimed punishment in the following conditions:

- (a) If the punishment is for a principal accused,
- (b) If the case involved is trafficking or transportation of a child,
- (c) If the person is already privileged of reduction of claimed punishment.

22. Claiming the offence against morality: While framing a charge sheet in court for an offence under this Act, the concerned public prosecutor may claim the accused to have committed an offence against morality.

23. Formation of a Committee:

(1) Nepal government can form a National Committee and necessary District Committees as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control an offence under this Act.

(2) The function, duties and powers of the committee formed under subsection (1) shall be as prescribed.

24. Punishment for obstruction: Anyone obstructing an investigation of an offence under this Act shall be fined up to Rs 10,000.

25. Prohibition against disseminating confidential information:

(1) Without the consent of the victim, anyone shall not publish or broadcast the real name, photograph or any information which is detrimental to his/her character.

(2) Any person who publishes or broadcasts the name, photograph or other information under subsection (1) shall be subjected to a fine of Rs 10,000 to Rs 25,000.

26. Security: If a person provides reasonable ground and requests the nearest police office for security against any type of retaliation for reporting to the police under Section 5 or providing statement on court or remaining as a witness, that police office should provide any or all of the following protection measures to him/her:

- (a) provide security during traveling in course of attending case proceeding in court,
- (b) make arrangement to keep under police protection for certain period,
- (c) keep at rehabilitation center.

27. In camera court proceedings:

(1) Case proceeding and hearing of an offence under this Act shall be conducted in In-Camera court.

(2) Only parties to the proceeding, their attorneys or other non-parties permitted by the court can enter to the court during proceeding and hearing under subsection (1).

28. State case: Nepal government shall be the plaintiff in all cases filed under this Act, and such cases shall be deemed included in Schedule 1 of the State Case Act, 2049.

29. Power to make rules: Nepal government shall make necessary rules to implement the objective of this Act.

30. Dismissal and Protection:

(1) Human Trafficking (Control) Act 2043 shall be revoked.

(2) Activity under subsection (1) shall be considered conducted according to this Act.