

A Mapping Study: Institutional Mechanisms to Tackle Trafficking in Persons in Afghanistan

Introduction

Since 2001, a number of projects funded by donors including the US Department of State have been implemented to enable the Afghan government to address various aspects of human trafficking crises in Afghanistan.¹ Initially, the focal area of these initiatives was the global “3P” paradigm: 1) Prevention of human trafficking, 2) Protection of the victims and 3) Prosecution of the convicted offenders. Therefore, the projects have provided its support to develop the anti-trafficking laws and create the ‘High Commission for Combating Crimes of Abduction and Trafficking in Persons.’ In addition, they provided services to victims, supported victims and offered trainings to Afghan law enforcement and judicial officials. Besides a considerable level of success achieved over the past decade, many challenges remain unaddressed.

The latest report ‘Trafficking in Persons’ published by the US Department of State classifies Afghanistan as a source, transit and destination country for men, women and children subjected to forced labor and trafficking for sexual exploitation.² It also found that the Afghan government does not fully comply with the minimum standards for the elimination of human trafficking; however, it acknowledges that significant effort is being made to reach that point. This policy note summarizes the findings of the Mapping Study conducted by the Afghanistan Research and Evaluation Unit (AREU) and the Security Governance Group (SGG) in 2015 and 2016. It presents recommendations for the Afghan government as well as for the international community to take the necessary measures to build the capacity of the Afghan government and equip it with the required tools to make the response robust and comprehensive.

Methodology

Both primary and secondary data was utilized to generate the final product of the original Mapping Study. The primary data is based on an analysis of Key Informant Interviews (KII) and Focus Group Discussions (FGD) conducted in three provinces: Herat, Nangarhar and Kabul during 2015 and 2016. However, this policy note was informed with updates that came from a five brief meetings of the author with the key stakeholders in February 2018, while the secondary data was produced through an intensive desk review of the existing literature related to ‘Human Trafficking in Persons’ issues in Afghanistan. Kabul was selected as most polices are formulated and implemented there. Nangarhar and Herat were selected to understand regional trends and the institutional responses to human trafficking as they provide two of the main entrance gates to Afghanistan, namely Turkham and Islam Qalal borders. Both KIIs and FGDs were conducted based on a guideline developed through a consultation process between GGS and AREU. KIIs were primarily conducted with the representatives of governmental departments engaged in human trafficking issues as well as representatives from international organizations supporting the Afghan government in this regard. The participants of the FGD were mainly female human rights activists. There were a number of constraints and limitations including access to the data on Human Trafficking in Persons in the Ministry of Interior, High Commission for Combating Crimes of Abduction and Trafficking in Persons or the Afghanistan Independent Human Rights Commission. Another constraint was reaching out to the victims of trafficking as most of them avoid talking to researcher about their cases because of the cultural sensitivities.

¹ Justice Sector Support Program – JSSP of the U.S. Department of State, Public awareness program of the IOM, Regular shelter home for the victims of human trafficking of the Hagar International, Child Protection Action Network – CPAN of the UNICEF.

² The 2015 Trafficking in Persons Report of the U.S. Department of State: Office to Monitor and Combat Trafficking in Persons. Available at <http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm>; retrieved on July 31, 2015, at p. 64.

Findings

The phenomenon of ‘Human Trafficking in Persons’ in Afghanistan

The literature review for this study highlights human trafficking in persons as a widespread challenge in Afghanistan that presents various threats to human security in Afghanistan. This also means that combating human trafficking cases must be met with robust responses covering the “3P” paradigm focus areas properly.

Prevention

The “Law on the Campaign against Abduction and Human Trafficking” adopted in 2008 was the first step made by the Afghan government in combatting human trafficking. The three elements of the international definitions—act, means and purpose—were added into the Afghan definition, too. Nevertheless, this law was less comprehensive in its scope. Thus, although it was covering the “3P” paradigm to combat human trafficking; it was revised and has been enforced since January 29th 2017. The foremost change in the revised version is acknowledging *Bacha Bazi*³ as children trafficking, which was not the case of 2008 law. Also, its definition seems closer to the UN Palermo Protocols. However, some confusions still exist. For example, it uses “*De insan qachaq*” (Pashto) or “*Qachaq e insan*” (Dari) for trafficking that creates conceptual confusion even among the senior government officers and prosecutors because the Pashto and Dari terms implies the phenomenon of smuggling of migrants and migration, in general.

In addition, Articles 10-21, and the 2nd and 3rd phrase of Article 22 of the revised law have been cancelled⁴ as of February 14th 2018 by the new penal code, but the rest of the laws remained enforced.⁵ While there are other articles existing in both laws (trafficking and penal code), none of them explain that the article of which law is applicable and which one has been cancelled? The confusion goes deeper as the same articles exist in both laws using different words / terms. For example, Article 3 of the trafficking law uses the term *Mundal* while Article 510 of the penal code uses *Ter lasa kawel* for the same purpose; however, these two Pashto terms have completely different meanings. The first word describes a situation in which one finds something without any effort, while the second word describes a situation that one gets or receives something after a struggle or effort. In other words, the first word describes an unintentional action while in the second the intention is included. Under the provision of the aforementioned 2017 law, the High Commission for Combating Crimes of Abductions and Trafficking in Persons (henceforth referred to as the High Commission) was established. Its main objective was to ensure better coordination among the relevant authorities and make effective policies to support quick and efficient responses. The High Commission functions under the supervision of the Minister of Justice and consists of 16 ministries and seven other independent government and non-governmental institutions. However, findings revealed that not all members of the HC participate regularly in the technical meetings held each month. Additionally, the High Commission lacks female representation.

The law enforcement mechanisms

The Ministry of Interior Affairs (Mol) is the agency in charge of managing law enforcement mechanisms. There are two units in the Mol apparatus: the Anti-Trafficking-in-Persons (TIP) Unit and the Afghanistan Border Police (ABP) Unit that are working at the national and sub-national levels. In addition, the National Directorate for Security (NDS) has its own units to deal with human trafficking in persons at the central and provincial levels. The fourth unit is the National Central Bureau (NCB) of the INTERPOL in Kabul.

The Anti-TIP Unit comprises 83 officers covering the entire country—a considerable number in contrast to the past. However, the number remains quite small when considering the wide scale of human trafficking challenges in Afghanistan. Apart from the number, this unit faced several other challenges including an extreme lack of resources, basic equipment and support to fulfil its role properly.

Although officially the ABP shifted to the Ministry of Defense (MoD) in late 2017, the unit dealing with trafficking remained in Mol. The ABP retains an important role in countering trafficking in persons, particularly in cross-border trafficking cases because they control all the borders check posts, airports and main entrance gates to Afghanistan. Findings from the study determined, however, that the ABP have no standard operating procedures (SOP)—specifically to work on human trafficking cases. In addition, the ABP had not received any standardized training on the topic or perhaps had been wrongly trained as there was not any working manual on trafficking. The training manual has since been developed by IOM and trainings have commenced in 2018.

3 Activities involving sexual relations between older men and adolescent men or boys

4 Penal Code. P790, (15th May 2017), Issue No: 1260, Ministry of Justice, Islamic Republic of Afghanistan

5 Key informant interview, MoJ (17th February, 2018)

The NCB Unit has a database of the necessary information on the recorded cases. This unit seems well-equipped and provided with professional trainings. However, during this study there were no cases of human trafficking crime recorded. The absence of even one human trafficking notice issued by the NCB in Afghanistan can be attributed to the limited detection and investigation of human trafficking cases throughout the country.

Protection

According to international norms, victims of human trafficking must be protected by three specific efforts: rescue, rehabilitation and reintegration. Identification of the victims and a referral system for victims are important elements of the rescue effort. Notwithstanding the necessity highlighted by most international documents to have collaboration and cooperation from government and non-government organizations to identify victims, in Afghanistan only law enforcement agencies have the right to identify the victims. Two factors that particularly hindered proper identification of victims were:

- Human trafficking cases often became conflated with other criminal cases, including abduction, rape and illegal migration.
- Several structural and technical factors, including lack of standard procedures for victim identification, affected the process of victim identification.

All the shelters run by international organizations or the Afghan government have been forced to shut down due to funding shortfalls. Nonetheless, there are still some NGO-run shelters that support women and children victims, but not men. In addition, only female victims who are referred by government agencies (for instance the Ministry of Women Affairs (MoWA), or Ministry of Labor, Social Affairs, Martyrs & Disabled (MoLSAMD)) can get access to shelters. This means there is no any referral service available for men and boys over 18 as victims of human trafficking cases in Afghanistan.

There are several ways through which reintegration and family reunification processes are undertaken across Afghanistan. Currently, in trafficking cases, reintegration and reunification face several challenges. Due to the conflation of human trafficking cases with others crimes, most victims of trafficking identify as victims of other forms of abuse such as rape and domestic violence, thereby making it even more difficult for victims to be reunified with their families. Moreover, vocational training programs that can help victims reintegrate are limited in size. Similarly, due to the lack of resources and limited availability of healthcare facilities, the Afghan government is running out of options to provide adequate healthcare for the victims of human rights abuses.

Prosecutions

As the third element of the “3P” global paradigm, prosecution of human trafficking cases is essential to combat trafficking in persons. However, the prosecution rate in Afghanistan has been exceptionally low for several reasons, including the incapability of law enforcement institutions to deduct cases, investigate the crimes and try the cases properly.

In discovering the crime of trafficking in persons, Anti-TIP units face several challenges including lack of resources and professional training. In addition, case filing is limited to the agreement of the victims. This forms a reactive investigation approach that opposed proactive investigation. Reactive investigation approaches respond to information on ongoing criminal activity obtained through intelligence gathering or witness reports that creates an urgent need to intervene. In such cases, a delayed police response can result in serious consequences for victims. While proactive investigations cause no imminent threat to witnesses, police are not obligated to respond immediately. The police units can, therefore, plan their activities to collect evidence according to operational plans and resources. Another challenge that prevents proactive investigation is the misperception against the procedure of the 72-hour deadline: it is incorrectly understood that the police have only 72 hours to complete their primary investigation before handing a case over to the Attorney General’s Office. Lack of standard procedures regarding preliminary investigation and collecting evidences are other consistent problems in the Anti-TIP Unit.

These crimes have been prosecuted by a department of the Supreme Court known as the Prosecution of Crimes against Internal and External Security (SPIES). SPIES also prosecutes other crimes such as terrorism cases, which makes it challenging for private lawyers to be physically present in the court regularly. Consequently, this often undermines the rights of a fair trial for the accused. Additionally, as the Afghan Judiciary has a history of extreme punishment due to lack of victim sensitive investigative techniques, this tendency is even more obvious in the SPIES courts. Furthermore, information pertaining to the criminal prosecution is not available publically, including the decision of the Supreme Court, unless a civil society organization is involved and permitted to monitor the trial. As a result, there is no independent oversight mechanism to ensure that judicial decisions are in accordance with the rule of law, especially in the trafficking in persons cases.

Partnership between the Afghan government and international organizations / institutions: Support of the international community has been vital to the Afghan government in all sectors. This support includes provision of legal tools, building capacity of law enforcement agencies, representatives of the High Commission and Judiciary on the topic of trafficking in persons. In addition, a number of referral mechanisms and shelters that were provided financially although they are no longer active now. However, there were some inadequacies:

- The trainings provided to the law enforcement agencies were mostly *ad hoc* and short term refresher courses or seminars.
- There was not any specific training curriculum existing on the topic of human trafficking in persons until the recently published IOM training manual in 2018.
- A number of trainings on trafficking in persons sponsored by international organizations have been postponed for the past two years due to lack of resources.
- A sustaining mechanism for protection of trafficking victims was not considered. For instance, the donor funded shelters could have been supported in a way to then transition to a particular unit of protecting TIP victims through on-budget mechanisms.

Recommendations

Prevention

1. The trafficking law of 2017 needs to be reviewed to identify and remove all the contradictory or redundancy with the penal code. Once they are aligned, it would allow for clearer and better implementation of policies towards curbing human trafficking, smuggling of migrants / migration and abduction cases.
2. The policy enforcement powers of the Afghan government must be increased to sustain its operations by strengthening the High Commission. The High Commission requires more robust capacity to coordinate key stakeholders and disseminate information.
3. A public database on human trafficking cases should be established under the auspices of the High Commission.
4. A number of succinct measures could be implemented to enhance law enforcement capacity to address the human trafficking challenge:
 - Increase the size of the anti-trafficking unit in the Crime Investigation Department.
 - Establish standard training curriculum for specialized, senior and rank-and-file officers.
 - Develop detailed standard operating procedures (SOPs) for the ABP concerning their role in countering human trafficking.
 - Increase coordination and information sharing among units/departments, including: Crime Investigation Department (CID), ABP, National Directorate for Security (NDS) and INTERPOL.
 - Increase the resources at the disposal of Anti-TIP Units.
 - Encourage officers to undertake proactive, rather than reactive, investigations—possibly through creating an incentive system.
 - Create a public database for case management and information sharing, similar to the National Information and Management System (NIMS) or Case Management System (CMS). This database should be made public, with the exception of sensitive information such as identification of victims, key informants or witnesses for the case.
5. The Government of Afghanistan should increase public awareness through media, the education system and other relevant avenues. The government should support and fund more research on the topic.
6. Data collection should be made public and must be undertaken regularly.

Protection

1. In order to have a better victim identification mechanism, train the law enforcement officers on victim identification, establish a standardised referral mechanism and associated SOPs for all law enforcement units and increase the number of shelters available for victims.
2. A sustaining mechanism for protection of trafficking victims needs to be considered. This could be implemented through re-starting the donor funded protection shelters with a clear transition plan to make it part of the on-budget system to ensure there is particular support mechanisms for immediate safe protection as well as a transition system for reintegration of victims into society.
3. The family reintegration and reunification methods should be standardised. To do so, incorporate the detailed interview methods and guidelines for reunification, and oral interviews between victim and family members (to be conducted separately).
4. Strengthen vocational training opportunities as part of reintegration efforts.
5. Mandatory healthcare and psychological support should be extended to victims.

Prosecution

1. To uncover the crimes more efficiently and effectively, increase and incentivize proactive investigations and provide regular trainings.
2. Improve crime scene management and preliminary evidence collection standards.
3. Improve investigation of cases:
 - Standardize methods for the collection of victim testimony: for example, a testimony should take place in the presence of a social worker or third-party witness such as a local level administrative or judicial officer in the community where the victim is discovered.
 - Procedures and mechanisms for victim protection and witness protection should be established and enforced.
4. Improve Case Trials:
 - Increase access to SPIES Courts.
 - Ensure maximum sentences allowed under law are imposed, especially in cases of repeated offenders.
 - Judgements of the courts should be made public, which would require a major policy shift for the Judiciary in general.

International Partnerships Area:

1. Create long term and sustainable support programs that can focus on building the capacity of the institutions in Afghanistan: rather than temporary, impromptu initiatives.
2. Focus on creating capacity in the Afghan government to conceive, execute and integrate training programs on trafficking in persons.
3. Emphasize local ownership and engagement as a critical element of any training provided to Afghan security, law enforcement and judicial institutions, as well as CSOs and NGOs.
4. Ensure that any training materials created as part of international partnerships with the Government of Afghanistan are integrated into existing training institutions, modules and curricula.
5. Support donor funded shelters with a concrete plan for sustainability in the longer-term.

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The Afghanistan Research and Evaluation Unit (AREU) is an independent research institute based in Kabul that was established in 2002 by the assistance of the international community in Afghanistan. AREU's mission is to inform and influence policy and practice by conducting high-quality, policy-relevant, evidence-based research and actively disseminating the results and promote a culture of research and learning. As the top think-tank in Afghanistan and number five in Central Asia according to the Global Go To Think Tank Index Report at the University of Pennsylvania, AREU achieves its mission by engaging with policy makers, civil society, researchers and academics to promote their use of AREU's research-based publications and its library, strengthening their research capacity and creating opportunities for analysis, reflection and debate. AREU is governed by a Board of Directors comprised of representatives of donor organisations, embassies, the United Nations and other multilateral agencies, Afghan civil society and independent experts.

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