

Advocacy Leaflet on SAARC Convention on Preventing Trafficking

ADVOCACY LEAFLET ON SAARC CONVENTION ON PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN FOR PROSTITUTION

The Prevalence of the Problem

Trafficking is responsible for the flagrant human rights abuses of the tens of thousands of women and children of South Asia who are trafficked for various purposes each year. Despite the presence of national and international laws prohibiting trafficking, the practice has flourished throughout Asia. Traffickers rely on deception, fraud, intimidation, drugs, threats, and violence to take people across borders for sale as prostitutes, forced laborers, camel jockeying, domestic servants, non-consensual organ donors, and for other nefarious purposes. Traffickers work in small, independent groups or as part of an organized crime network that operates across national boundaries.

Among the South Asian countries, Nepal, Bangladesh and Sri Lanka serve mainly as countries of origin while India and Pakistan serve mainly as countries of destination. India also serves as a country of transit. Trafficking is an international, trans-border criminal activity that requires international, trans-border law enforcement to combat. Highly-organized trafficking are able to evade the present network of laws and polices arrayed against them and commit trafficking offenses with impunity due to the lack of extra-territorial laws and swift extradition procedures. This failure of law enforcement and criminal prosecution underscores the need to develop a set of uniform regional standards and rights available to all victims of trafficking so as to protect their human rights and prosecute traffickers.

Regional Commitment to Combat the Problem

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 represents significant and substantial progress in the fight against trafficking. Although efforts to draft a Convention to combat trafficking began at Ninth SAARC Summit in 1997, it was adopted by SAARC during Eleventh SAARC Summit on 5th January, 2002 recognizing the pernicious problem of trafficking and detailing out majors in which Member State should carry out to combat trafficking in women and children from the region.

How the Convention Benefits Women and Children ?

Catalyzing changes in the national laws creating effective measures to ensure that trafficking in any form is an offence

Defines trafficking as the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations

with or without the consent of the person subjected to trafficking, thereby making these acts criminal offenses.

States that all persons who manage, maintain, provide, or finance any facility used in trafficking shall be punished.

Criminalizes all attempts of trafficking as well as assisting an act of trafficking.

Ensures appropriate penalties for trafficking with taking into account its grave nature.

Making offences punishable by penalties commensurate with the severe nature of the offence

- ▶ Mandates courts that have jurisdiction over trafficking offenses to take into account factual circumstances which make the commission of such offenses particularly grave, such as: the involvement in the offences of an organized criminal group to which the offender belongs; the involvement of the offender in other international organized criminal activities; the use of violence or arms by the offender; the fact that the offender holds a public office and that the offence is committed in misuse of that office; the victimization or trafficking in children; the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social, and cultural activities; or in the case of previous convictions, particularly for similar offences, in a territory of Member States or any other country.

*** Requires that all judicial authorities of Member States create measures to ensure the proper treatment of trafficking victims**

Assures victims confidentiality to protect them during the pendency of the prosecution and to ensure that they do not suffer further victimization when they return home.

Recommends giving victims access to translators, legal assistance, counseling and support.

Creating trafficking as an extraditable offences

Treats trafficking as an extraditable offence in any extradition treaty concluded or to be concluded between Member States.

The States where extradition is not permitted under their law, offenders to be prosecute and punished by the national court.

*** Building the capacity of the law enforcement mechanism**

Provide training and assistance to the officials to ensure the effective inquiry, investigation and prosecution of offense.

Sensitization of law enforcement agencies and the judiciary.

Granting mutual legal assistance with respect to investigation, inquiries, trials and proceedings

Share evidences and statement of witnesses, documents and records, statements and records of suspects, location and identification of person or objects, delivery of property including lending of exhibits and information regarding search and seizures.

Execute requests for assistance promptly in the manner requested by the requesting State.

Inform the requesting State in case of an inability to execute whole or part of the request for assistance and explain reasons for such failure.

Providing mechanism for the repatriation

Develop modalities for repatriation through mutual understanding of the State parties.

Provide suitable care and maintenance during the repatriation of the victim.

Ensuring legal advice and health care facilities.

Providing care, treatment and rehabilitation

▶ Establish protective homes or shelter for the rehabilitation of the victim.

- ▶ Guarantee legal advice, counseling, job training and health care facilities for the victim.

Authorize NGOs to establish protective home or shelters with a minimum standard for suitable care and maintenance.

Encourage NGOs to work on areas aimed at prevention, intervention and rehabilitation.

Assist victims in getting justice.

Creating regional cooperation

Set-up bilateral agreements for cooperation to interdict trafficking of women and children.

Exchange information regarding the agencies , institution and individuals involved in trafficking.

Exchange information to identify methods and routes used by traffickers.

Exchange information of the offender, finger prints, photographs, methods of operation, police records and records of conviction.

Establishing regional task force

Facilitate the implementation of the Convention.

Review of the implementation periodically.

Addressing the root-cause of trafficking

Create economic development efforts in trafficking-prone areas

Build awareness against trafficking through the use of media

Prohibit the projection of negative image of women

Limitations of the Convention

The definition does not capture many forms of pernicious trafficking

Trafficking occurs for purposes equally vile and reprehensible as prostitution such as forced labor, camel jockeying and domestic servitude.

As currently named and defined, the Convention does not explicitly recognize that trafficking could be for purposes other than prostitution.

The Convention does not adequately distinguish between voluntary migration and trafficking

- ▶ As presently drafted the Convention may create difficulty in distinguishing between movements and migrations that are legitimate and consensual and those that are coerced.
- ▶ The definition of the trafficking includes women who have moved within or outside her country of origin, with her consent.

The Convention fails to absolve coerced individuals from any criminal liability that might attach to acts they were forced to do

The Convention assumes that trafficked persons can be charged with crimes and arrested. It imperils not only the right of voluntary migration, but the rights in general of trafficked victims, who as a consequence of being trafficked have been forcibly deprived of their rights, freedom and dignity.

The Convention fails to make adequate distinctions between women and children

The Convention has not been able to make clear that women have full autonomy and decision-making capacity.

The Convention does not give adequate consideration to the special vulnerability and needs of children.

The Convention does not adequately address the persistent problem of government attorney's failure to prosecute trafficking cases

The Convention places no limits on the discretion of government attorneys in their decision to prosecute.

The Convention does not address the needs of women who choose not to repatriate

Victims often do not wish to return to their country of origin for fear of the social stigma attached to having been trafficked or for the same reasons that induced them to leave the first place.

The Convention has no provision for victim compensation

Compensation is vital to successful reintegration into society. Without compensation for the victim and their families, they may suffer severe physical, psychological and economic damages as a consequence of being trafficked. Criminal prosecutions and penalties do not compensate victims and their families for such sufferings.

The Convention does not require that traffickers be charged for all crimes committed

Traffickers often commit many crimes beyond the trafficking. Ensuring effective prosecutions that result in significant penalties will send a strong message that trafficking will not be tolerated.

The Convention has an inadequate monitoring body

The Convention provides for an inadequate mechanism to ensure that Member States meet the requirements imposed by the Convention. One of the chief benefits of the Convention, that of regional coordination, is defeated if there is no body with the power to monitor and report on efforts of the individual States. Without strong and permanent monitoring mechanism, the Convention will be merely a piece of paper.

How the Convention be Improved

Rename the Convention

The Convention should be renamed as “SAARC Convention on Preventing and Combating Trafficking in Person, Especially Women and Children” to expand the area of the Convention.

Expand the definition of trafficking

Make the definition of trafficking inclusive of all forms of trafficking. The definition of trafficking should be broadened to include an element of coerced transportation or recruitment and an element of forced labor or other slavery-like practices for which the person is forcibly transported or recruited.

To effectively stop trafficking, the definition should include recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Ensure that trafficking is distinguished from voluntary migration

The Convention’s definition of trafficking should include clarification that trafficking occurs when there has been coercion. It does not depend on which profession that individual is engaged, but instead depends on whether that individual has consented to move.

Ensure that victims are immune from criminal liability for any Acts that arise out of the trafficking

UN Special Rapporteur on Violence Against Women Ms. Radhika Kumaraswami states, “.. rather than criminalizing prostitution, only the exploitation of the prostitution should be criminalized. Criminalization of prostitution results in the double victimization of women because she, and not the traffickers, becomes the main target of police action.”

Ensure that victims’ rights are vindicated

Due to consistent failures to prosecute trafficking offences, government attorneys should be required to report in writing the good faith basis for their decision to not go forward on a trafficking prosecution. Such reports should be filed with the treaty monitoring body and a copy to be provided to the victim as well.

If a government attorney chooses not to prosecute a trafficking case, the victim should be empowered to proceed to the court to institute a trafficking prosecution. For purposes of receipt of services such as repatriation, reintegration and rehabilitation, the status of “victim of trafficking” should not be dependent upon the prosecution of a trafficking case.

Ensure voluntary repatriation

The Convention should require Member States to repatriate victims only with the victims’ informed consent.

Ensure that services are available

Victims who choose to return home face numerous obstacles to their reintegration into society. The lack of appropriate support and access to resources places them at high risk of suffering, further abuse and exploitation and may prevent a successful transition from being a trafficking victim to being a normal member of society.

Encourage State Parties to enact laws that provide compensation to the victims

States should allow victims to initiate administrative and legal proceedings against traffickers to obtain redress for all the harms they have suffered.

Prosecute traffickers to the limits of the law

The Convention should require the Member States to investigate intensely and bring all possible charges for crimes committed in addition to trafficking, which

many times include rape, sexual and other forms of assault, abduction, torture, cruel, inhuman, or degrading treatment, slavery, or slavery-like practices, forced or compulsory labor, servitude, debt bondage and forced marriage.

Monitoring mechanism

A Treaty body should be created to ensure that implementation of the Convention is consistent and effective. Such a monitoring mechanism should be independent. The treaty body should include a Regional Rapporteur against trafficking and members who are experts in the fields covered by the Convention. This treaty body should be free to act in an independent capacity and free from interference from Member States' governments. Member States should periodically report their progress to the committee on the legislative, judicial, administrative and other measures that have been taken to give effect to the provisions of the Convention. The body should have the power to make recommendations and comments on the progress of implementation.

Why Should the Convention be Ratified ?

Eliminating Trafficking Requires a Unified Effort

Eliminating trafficking in any country of the region is not possible unless it is eliminated in every country in the region, thus making cooperation and coordination among governments imperative. Indeed, the Convention will not enter into force unless every country ratifies it.

Signing the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution on January 5, 2002, governments of the SAARC region has demonstrate their political commitment to recognize the problem of trafficking. However, there is a need to ratify the Convention to reflect their commitment in practical realization.

Ratification Would Send a Strong Signal of the Region's Commitment to Combat Trafficking

The Convention has the potential to create a forum for international cooperation among the countries of South Asia to fight against trafficking. Citizens of every country suffer as victims of trafficking, irrespective of whether that country is a country of origin, transit, or destination. Therefore, every government has an obligation to its citizens and neighbors to eradicate trafficking.

Regional Convention Would Permit the Development of Standards that Will Unify the Fight Against Trafficking

If vested with the proper protections and guarantees of victims' human rights, the Convention would stand as a framework of standards around which the appropriate law enforcement mechanisms may be built and applied.