

**Expert Group Meeting on**  
**“Trafficking in women and girls”**  
**18-22 November 2002**  
**Glen Cove, New York, USA**

## **Trafficking in women and girls**

Prepared by\*

Justice Sujata Manohar  
Focal Point on Trafficking in Human Beings  
National Human Rights Commission  
(India)

(Consultant)

\*The views expressed in this paper, which has been reproduced as received, are those of the author and do not necessarily represent those of the United Nations.

**CONSULTATION PAPER ON**  
**“TRAFFICKING IN WOMEN AND GIRLS”**

**- Sujata Manohar\***

1. The focus of this consultation paper is on strategies and programmes to combat trafficking, highlighting best practices. The paper contains an overview of the activities falling under “trafficking”, the reasons for the vulnerability of victims, the local and international legal framework, the effectiveness or otherwise of the police in combating trafficking, the sensitivity of the police, the administration and the judiciary to gender-related crimes, the nature and adequacy of rescue operations and their effectiveness; rehabilitation programmes of the State Government or NGOs., prevention of re-trafficking, and some successful strategies.

**Trafficking:**

2.1 Trafficking in women and girls is one of the most corrosive forms of violation of human rights. It results in gradual total destruction of a woman’s personal identity, and her right to live as a free human being in a civilized society. The victim is subjected to violence, total humiliation and violation of personal integrity. The victim of such devastating violence may also end up with life-threatening HIV/AIDS, STD or a lifetime of trauma, drug addiction or personality disintegration. It is a denial of the right to liberty and security of person, the right

---

\* Retired Judge, Supreme Court of India. Currently, Member, National Human Rights Commission, India and its Focal Point on Women’s Human Rights with special emphasis on Trafficking in Women and Girls. The views expressed are personal.

to freedom from torture, violence, cruelty or degrading treatment, the right to a home and a family, the right to education and employment, the right to health care – everything that makes for a life with dignity. Trafficking has been rightly referred to as a modern form of slavery.

2.2 Unfortunately, trafficking in human beings is also the fastest growing form of transnational organized crime. It thrives on the fact that many countries do not have adequate laws against trafficking. The laws when enacted, often do not recognize a trafficked person as a victim. The victim is treated as a criminal while real criminals go scot-free or the laws do not take adequate care of the human rights of victims. The law may provide for prosecution and punishment of women and girls found soliciting in public places, it may provide for prosecution and punishment of pimps and brothel keepers. But it may not impose an obligation on the law enforcement agencies or the State to provide safe shelters for rescued victims, may not provide for counselling, vocational training or measures for reintegration of the victim with family or society. The laws do not always provide for compensation/rehabilitation allowance from the State or from the exploiter to the victim. The laws also often do not impose an adequate punishment on the traffickers, pimps, brothel-keepers or clients. This makes it much less risky for organized crime syndicates to indulge in human trafficking. It is estimated that

next to drugs trafficking and arms trafficking, this is the third most profitable operation<sup>1</sup>.

2.3 Globalization has facilitated freer movements of people, goods and services across international borders, unwittingly resulting in easing even clandestine operations such as human trafficking. The contemporary situations of armed conflict or internal disturbances also lead to trafficking. Women and children are disproportionately targeted during such situations and constitute a majority of victims. During conflict women and girls are vulnerable to sexual violence and exploitation including torture, rape, forced pregnancy, sexual slavery, enforced prostitution and trafficking [Report of the Secretary General on Women, Peace and Security to the Security Council, of 16 October 2002 (S/2002/1154)]. Women and children also constitute a majority of the world's refugees and internally displaced persons, creating further vulnerability which can be exploited by traffickers.

### **Extent of Trafficking:**

3.1 About half of international trafficking involves South East Asia and about a quarter involves Central and Eastern Europe and countries of the former Soviet Union<sup>2</sup>. In Europe, the major countries of origin identified to-date include Albania, Belarus, Bulgaria Croatia, Hungary, Latvia, Lithuania, Poland, Russia,

---

<sup>1</sup> "Human Trafficking: How to address the Issue" An information brochure issued by Joint Women's Programme, India.

<sup>2</sup> "The New Slave Trade" by Deborah Mesce

Romania, Slovakia, Ukraine and the former Yugoslavia<sup>1</sup>. Within Europe trafficked persons have been found in large numbers in Austria, Belgium, East Germany, Hungary, Italy, the Netherlands, Poland, Spain, Switzerland, Turkey and the United Kingdom. It is widely agreed that the economic and political dislocation following the disintegration of the Soviet Union has spread trafficking of individuals from Eastern part of Europe to Western Europe and North America. Children have been trafficked from Albania into Greece and Italy for the purpose of forced labour<sup>2</sup>. In South Asia trafficking takes place from Nepal and Bangladesh as well as Sri Lanka into India. India is a receiving country as well as a transit and sending country. Victims are trafficked from India to the Middle East and further abroad. In South East Asia the principal countries of origin have been identified as Afghanistan, Bangladesh, Myanmar, Cambodia, China, Indonesia, Nepal, Philippines, Thailand and Vietnam. The principal countries of destination in the Asia-Pacific region are Australia, New Zealand, China including Hong Kong, India, Malaysia, Pakistan, Singapore, Taiwan and Thailand<sup>3</sup>. In West African countries, civil strife has led to trafficking of young girls to be exploited by the militia as well as trafficking of boys for the purpose of fighting. Angolan, Congolese and Nigerian syndicates are said to be involved in trafficking<sup>4</sup>. In North

---

<sup>1</sup> Background Paper of the Advisory Council of Jurists on Trafficking, the Asia Pacific Forum of National Human Rights Institutions, 2002

<sup>2</sup> Report of the International Organization for Migration (IOM) on Trafficking in Human Beings in South Eastern Europe.

<sup>3</sup> Background paper of the Advisory Council of Jurists on Trafficking, The Asia Pacific Forum of National Human Rights Institutions, 2002.

<sup>4</sup> BBC News/Internet/23 November 2000

Africa, it is generally believed that the old slave trade (Arabs and Blacks) in modified form still continues though there is little official data available. There is some information available on the movement of Nigerian women and girls into the European sex industry [see the International Organization for Migration (IOM) reports]. Trafficking is fast becoming a crime without borders.

3.2 In addition, there is considerable internal trafficking within Asian and Latin American countries and elsewhere. Estimates of the extent of trafficking vary. There is little reliable data. The IOM states that in 1997, an estimated 175,000 women and girls were trafficked from Central and Eastern Europe and the newly independent States<sup>1</sup>. The US State Department estimates that at least 700,000 persons, especially women and children, are trafficked each year across international borders. The impact of migrant trafficking in Canada is estimated at 8000 to 16000 persons per year arriving illegally. Young Asian women from Thailand, Taiwan, the Philippines, Malaysia and other areas are so trafficked. Vietnamese and Chinese mafia are said to be operating in brothels in Toronto. Women from former Soviet Union have also been trafficked to Canada. Children from Honduras are smuggled into Vancouver by drug rings<sup>2</sup>. A survey conducted in India by the Central Social Welfare Board in 1991 in six metropolitan cities indicated that the population of women and children in commercial sex was between 70,000 to 100,000 of which about 30% were below the age of 18. The

---

<sup>1</sup> The report on Trafficking in Human Beings in South Eastern Europe prepared by IOM.

<sup>2</sup> Canada – Fact book on Global Sexual Exploitation, <http://www.globalmarch.org/virtual/library/catw/factbook/canada/html>.

National Human Rights Commission of India, in the course of its Action Research (currently under way, in collaboration with the Institute of Social Sciences, Delhi and UNIFEM) has noted that women and girls are trafficked to India from the adjoining countries of Nepal, Bangladesh and Sri Lanka. Every year, approximately 5000 to 7000 Nepalese girls are trafficked into red light districts of Indian cities<sup>1</sup>. The National Human Rights Commission for New Zealand has reported trafficking of women and girls from Thailand into New Zealand for sexual exploitation. As the report of the U.N. Secretary General of 25 January 2002 on “Integration of the Human Rights of Women and the Gender Perspective: Traffic in Women and Girls” points out, “The problem of trafficking and the web of human rights violations it embraces present some of the most difficult and pressing issues on the international human rights agenda. Complexities include different political context and geographical dimensions of the problem, ideological and conceptual differences of approach, the mobility and adaptability of traffickers; different situations and needs of trafficked persons; the inadequate legal framework; and insufficient research and coordination on the part of the actors involved – at the national, regional and international levels.”

3.3 Before one can identify strategies to combat trafficking in women and girls, it is first necessary to be clear about the definition of trafficking and its relation to other allied activities such as migration and refugee movements. It is also necessary to identify the victims of trafficking and the reasons for their

---

<sup>1</sup> Information Brochure of National Human Rights Commission, India on “Trafficking in Women and Children”.

vulnerability – their age and gender, the regions from which they are trafficked, social, economic or political compulsions including local customs which make these victims vulnerable to traffickers, and the impact of national calamities on vulnerability. The legal infrastructure required for combating traffickers and trafficking, state of law enforcement agencies in different parts of the world and the sensitivity of the police, the administration and the judiciary in dealing with crimes related to trafficking also need examination. It may be necessary to evolve international minimum agendas for proper law enforcement. However, a purely law enforcement approach to trafficking ignores the enormity of human rights violations of victims. It is, therefore, necessary to keep the focus on the victim, the need for preventive measures, for early rescue operations, proper law enforcement, measures for rehabilitation of the rescued and the fixing of responsibility for rehabilitation.

### **International Human Rights Law and Trafficking:**

4.1 Two international instruments which directly deal with trafficking are the United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons especially Women and Children which supplements the Convention against Transnational Organized Crime (Palermo Trafficking Protocol) and the SAARC Convention<sup>1</sup>, 2002 on Combating Trafficking in Women and Children for Prostitution. The Convention against Transnational Organized Crime has an allied Protocol against the Smuggling of Migrants by Land, Sea and Air, which may also be relevant. While the

---

<sup>1</sup> Has not yet come into force.



Palermo Trafficking Protocol mainly deals with trafficking as organized crime, the SAARC Convention, though limited to prostitution, has a broader human rights approach which covers State responsibilities and inter-State cooperation for rescue and rehabilitation of victims.

4.2 The SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution, 2002, gives a narrower definition of trafficking focussing on trafficking for prostitution. Under Article 1(3) trafficking means the moving, selling or buying of women and children for prostitution within and outside the country for monetary or other considerations with or without the consent of the person subjected to trafficking. Sub-clause (5) defines “persons subjected to trafficking” to mean women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage or any other unlawful means. Therefore, other forms of trafficking such as trafficking for domestic work cum sex slavery, for debt bondage, for labour, for begging, camel jockeying and such other forms of slavery-like practices are not included in the SAARC convention. The convention however deals with the human rights of victims, and emphasizes the need to strengthen cooperation between countries in providing assistance for rehabilitation and repatriation of victims.

4.3 The UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 has been signed by 73 State parties. The Convention, however, has been widely considered as inadequate since

it fails to distinguish between consensual and forced prostitution and it also does not cover modern forms of forced prostitution. The Palermo Protocol has referred to some of these problems in the Preamble, stating, “.....despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons”.

4.4 The Universal Declaration of Human Rights adopted by the UN General Assembly in 1948 provides in Article 4 that “no one shall be held in slavery or servitude; .....slavery and the slave trade shall be prohibited in all their forms”. The International Covenant on Civil and Political Rights, in Article 8 reiterates the prohibition on slavery and the slave trade as set out in the Universal Declaration of Human Rights. It also further stipulates that no person shall be held in “servitude”, a term broader than slavery. The International Covenant on Economic, Social and Cultural Rights in article 6 recognizes an individual’s right to employment or work which he can choose freely, and in Article 7 to the entitlement of everyone to just and favourable conditions of work. Article 35 of the Convention on the Rights of the Child enjoins State parties to take all appropriate national, bilateral and multilateral measures to prevent abduction of, the sale or traffic in children for any purpose or in any form. The Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography now expressly deals with this subject and enjoins State parties to take appropriate

measures to protect the rights and interests of child victims of these practices at all stages of the criminal justice process. Article 6 of the Convention on the Elimination of all Forms of Discrimination against Women, enjoins State parties to take all appropriate legislative and other measures to suppress all forms of traffic in women and exploitation of prostitution of women.

4.5 The ILO Convention 182 on the Worst Forms of Child Labour (1998) defines in Article 3 the worst forms of child labour as comprising all forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour including forced or compulsory recruitment of children for use in armed conflict. It also includes the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances and any work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

5. This paper is based on the wider definition of “trafficking” provided in Article 3<sup>1</sup> of the Palermo Protocol on Trafficking. Trafficking involves -

- (i) Movement of persons – recruitment, transportation, transfer, harboring or receipt of a person,
- (ii) It must have an element of force, threat or coercion, or an element of deceit or fraud (which vitiates any voluntary movement by the victim). This also includes abuse of power by a person who has the position of authority or control over the victim. The vulnerable position of the victim, whether a child or a woman, is clearly brought out in such situations. A person in a position of power or authority may be bought over by money or other inducements. A guardian may force a child into marriage or may perform a fraudulent marriage of his ward. He may dedicate a girl child to a deity for prostitution. Or he may be a victim of deceit or fraud.

---

<sup>1</sup> **Article 3:**

**For the purposes of this Protocol:**

- (a) “Trafficking in persons”, shall mean the recruitment, transportation, transfer, harbouring 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.
- 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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
  - (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
  - (d) “Child” shall mean any person under eighteen years of age.

- (iii) The third element in the definition is the element of exploitation which can be sexual exploitation, forced labour or forced services, slavery or practices similar to slavery which may cover activities such as bonded labour, debt bondage, begging or use of children as camel jockeys. Sexual exploitation would also include pornography and paedophilia. One of the activities specifically referred to in the definition is removal of organs. Another problem area is widespread exploitation of women and girls who are mentally handicapped for prostitution or sex slavery. This activity, it is submitted, is covered by the extensive definition of “exploitation” in Article 3.
- (iv) In the case of children, any recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered as trafficking. The definition therefore includes different kinds of activities which include sale of women, girls and even babies (for adoption) by persons in a position of authority over them or by intermediate traffickers. It would also cover kidnapping of children and abduction of women and girls. This would fall under trafficking by use of force or coercion. The element of force or coercion also covers debt bondage or other forms of bonded labour. It can also be looked upon as abuse of economic vulnerability. A custom of offering women and girls in prostitution, or trafficking by

an entire tribe or village or by certain backward communities, it is submitted, would also be covered by the definition since such practices contain elements of group pressure and vulnerability. The category of trafficking by deception or fraud includes activities such as inducing a person to accompany a trafficker on a promise of a lucrative job, performance of “false” marriage, luring children who have run away from their homes (for various reasons such as domestic violence) and tempting them to accompany traffickers to a place of sexual exploitation.

**Strategies:**

6.1 In order to evolve effective strategies to combat trafficking, differences in kinds of trafficking must be borne in mind since trafficking networks, routes and end destinations differ, depending on the nature of trafficking. The strategies for rescue and rehabilitation will also differ. Since rescue and rehabilitation are particularly difficult in this area, and complete rehabilitation does not take place in a substantial number of cases, it is important to have effective prevention strategies. For this purpose, it is necessary to ascertain -----

**Who are trafficked and why?**

6.2 There is a link between gender discrimination, poverty, deprivation and trafficking. Throughout the world, there is gender discrimination in some form or the other. Poverty has a feminine face. Discrimination also means for the girl child, deprivation of education, lack of economic opportunities, an early marriage,

early child bearing and risks to health and well being. Discriminatory laws deprive women of becoming owners of land, affect their right to inheritance, making them vulnerable and susceptible to the lure held out by traffickers for a better life style elsewhere. Lack of education among women and girls, particularly in the poorer and more orthodox parts of the world, denies women not merely opportunities of earning, it makes them ill-informed, illiterate, and ignorant about the risks they run if they decide to migrate from their known surroundings to the unknown.

6.3 Women who face discrimination within their family and outside are often ill treated or subjected to domestic violence. Such women are easy victims for traffickers. Amongst women, single women, divorced women and widows are far more vulnerable to trafficking since they are dependent on their families for support and survival, and are usually unwanted and looked upon as a burden. The same is true of orphan children. Poverty coupled with vulnerability arising from discrimination, is one of the main reasons why women and girls are trafficked. Newborn baby girls are sold in adoption by tribals, villagers or slum dwellers in poverty-stricken areas. Women and girls are also sold to traffickers by the male members of the family in order to earn some money or obtain a share of their future income. However, a common mode of trafficking now is through fraud and deception, e.g. where the marriage of a daughter requires a crippling amount dowry, marriage to an unknown outsider who does not demand a dowry becomes a welcome option to a poor family which may feel that it has done its duty of getting

the daughter married, irrespective of the fact that the family may never see her again. Or a rich relative or acquaintance may offer education and a job in the city to a young child in a poor family. Single women may be offered jobs as domestic workers.

6.3.1 The other group of vulnerable women are women migrants who may have voluntarily migrated to urban areas in search of employment. Most of them are deceived into migrating in the hope of getting jobs for domestic work and in the entertainment industry and end up in prostitution. Such migration may be within the country or transnational. Many of these women migrants may be illegal migrants smuggled into the country to which they have migrated because strict immigration policies may not permit migration. Illegal transnational migration creates a further pocket of vulnerability because such women do not have a ready access to the police or the law enforcement agency or even to non-governmental organization for help. They are afraid that their illegal status will be exposed and they will be forced to go back to their country of origin without any backup so that they may be re-trafficked. Migrant women also find it difficult to communicate with the outside world because of their lack of language skills and their inability to communicate.

6.3.2 Another group of vulnerable women and girls are refugee women and girls who may have fled their country to escape armed conflict and are in refugee camps. They are vulnerable not only to the militia in their own country but are also



in danger of exploitation from those who may be in charge of refugee camps, and peace keepers who may be supplying aid to these camps.

6.3.3 The same is true of women and girls who are internally displaced either on account of internal strife or on account mega development projects. Deprivation of their homes and the protection it offered, and migrating to an unknown territory pose special dangers.

6.3.4 Calamity-stricken areas, hit by earthquakes, floods, cyclones etc. also attract traffickers who will promise attractive jobs and income if the women and girls migrate to urban areas from the calamity stricken area where economy has been disrupted.

6.4 A country riven by internal strife or external war may find its economy destroyed and its social structures damaged, driving the young to seek “fortune” elsewhere by means which may be legal or illegal. The fact that a large number of victims of trafficking come from poorer classes - tribals and similar groups, or from disturbed areas shows the close link between poverty, deprivation and trafficking.

6.5 The globalization of the economy and of the media have in many ways torn the traditional social and economic fabric that held people together and have tempted those who are vulnerable to migrate elsewhere, exposing them to the risk of becoming a commodity which may fetch money or income to the unscrupulous. Disintegration of rural communities makes it easy for women and children to be

trafficked from such communities. The disintegration of the Soviet Union and the consequent disruption of the economy of the region has made the women of the region vulnerable to trafficking.

6.6 The vulnerability of women and girls is often aggravated by antiquated laws which deny women the right to inherit land or to be owners of land. Many tribal customs also do not permit women to own land which is the main source of income in a rural community, thus making women far more vulnerable than men. In some of the tribal belts where it is extremely difficult for the tribals to have sustenance, there has developed a group willingness to use women and girls for prostitution in order to have a source of livelihood. There are other customs, particularly in South Asia, which require women to be pledged either to the feudal Lords or to the local deity and then be available for prostitution. The women are thus exploited by the feudal lords or by the priests who control the local temple and are forced into prostitution at a very young age.

6.7 Another vulnerable group is the group of women who are mentally handicapped or challenged, whether they are with their family or in an institution. The same is true of girls who may be in an orphanage or in a home for the destitute. Quite often there are no separate “homes” for girl children who are destitute and they are kept in the same protection home where rescued women are also kept. This makes these girls much more vulnerable to trafficking since the traffickers have easy access to such children.

Women and girls also lack awareness about legal protection and their legal rights which makes it difficult for them to seek help.

6.8 In most of these vulnerable zones proper law enforcement is lacking. The laws against trafficking may be inadequate, focussing on the victim rather than on the traffickers and quite often there is corruption in the law enforcement agencies which can be manipulated by the traffickers. Therefore, a lack of suitable laws and proper administration of laws makes for easy trafficking.

6.9 The pull factors from the demand zone are connected with industrialization and urbanization so that there is considerable migration of unaccompanied or single male workers from rural to urban areas in search of work. There may be few outlets for recreation and entertainment. The migrants do not visit their homes and families for long intervals leading to an increase in the demand for commercial sex. Transnational migration of such workers also creates a similar situation in the country of migration. Sex tourism has also played a part in generating demand. Easy access to vulnerable remote villages also makes it possible for the clients to access victims. Internet access has also played a considerable part in generating such a demand and making victims accessible to the clients. Hardly any laws make the client legally responsible or impose punishment. This is an aspect which needs to be discussed.

### **Preventive strategies**

7. If these are the main causes for vulnerability, preventive action must be taken in the vulnerable zones by generating economic activity which will empower women. This can also help in the fight against gender discrimination.

- (i) All major strategies must aim at economic empowerment of women and girls in these dangerous zones. It should be the responsibility of the State to ensure that proper economic programmes are launched in these vulnerable areas. It could be a programme of micro credit to these women to enable them to start small industries such as poultry or dairy farming, special training programmes in local handicrafts, weaving, or carpet making and creation of a proper infrastructure to advise women on the marketability of the goods they manufacture and suitable markets. The South Asia Strategy, 2001 formulated for the Yokohama Conference advocates economic safety nets, community based initiatives to strengthen economic security for poor and marginalised families and to offer alternative sources of sustainable livelihoods.
- (ii) The State must start industrial projects in backward areas by providing special incentives to industrialists such as tax concessions, linkages with export zones etc. This will prevent young males from migrating to urban areas and creating a demand zone for prostitutes. It will also generate employment for women.

- (iii) The State must ensure that all children – boys and girls go to school; and set up for this purpose an adequate number of accessible schools imparting relevant education. NGOs. can act as facilitators and monitors. The use of audio-visuals should be supported for enrichment of curriculum. Education of girls also impacts on early marriages and health care. The South Asia Strategy, 2001 formulated for the Yokohama Conference has also emphasized free and compulsory quality primary education as well as second chance learning as a means of improving girls' status, reducing gender discrimination and empowering them.
- (iv) There must be a campaign for public awareness of and sensitization to the issue of trafficking and the gross violation of human rights which results as a consequence. The South Asia Strategy 2001 also advocates gender sensitive mass media campaigns. The various health issues also need to be highlighted, particularly the dangers of HIV/AIDS, sexually transmitted diseases and reproductive health problems. Awareness programmes should also focus on modus operandi of traffickers, that such persons are often known to or are related to the victim's family, and the untrustworthiness of their promises. The local leaders, administrators and the local police also need to be sensitized. The media and NGOs. can play a useful role here.

- (v) The State legislatures should be asked to review their legal structure, particularly laws relating to property and inheritance rights. They should be asked to remove any legal discrimination against women, particularly in the fields of property law and the law of inheritance. Women must have a legal right to hold land or to inherit land.
- (vi) Every State party should be enjoined to examine its entire system of anti-trafficking laws and law enforcement in the area of trafficking. Anti-trafficking laws should focus on the true guilty party, namely, the trafficker, the pimp, the procurer, the brothel keeper and even the client, instead of focussing on the victim as a criminal. The victim must be treated as such and be helped as a victim irrespective of whether the victim is a national or an illegal immigrant. The South Asia Strategy, 2001 advocates for child victims, community-based child protection committees.
- (vii) The anti trafficking laws should create a strong network of trafficking police, allow for international agreements for extra-territorial jurisdiction to arrest and prosecute traffickers, or for recording evidence of the victim and witnesses.
- (viii) The anti trafficking laws should be strict with all violators – whether supervisors or peace keepers in charge of refugee camps, superintendents of homes for women, children or mental patients, or soldiers and militia-men. Compensation should be provided to the

victims in such situations (where the violators are in a position of authority over the victim) and the State held liable for heinous violation of human rights even by non-State actors. International Human Rights Law and International Humanitarian Law needs to be updated in this regard, treating gross sexual exploitation of trafficked victims as a crime against humanity, especially in the light of internal armed conflicts. Serious sexual assault must be considered a crime against humanity, as in the statute of the ICC and the Statute for the Special Court for Sierra Leone. (Jus Cogens)

- (ix) National laws must reflect international norms and practices,
- (x) Focus of all laws in this field should be on violation of human rights of the victim and not just on detection, prosecution and punishment of traffickers including pimps, procurers and brother keepers.
- (xi) Hence rehabilitation of victims should be a state responsibility under the law. Shelters, counselling, trauma care, health care and rehabilitation programmes must be state responsibility. In addition, community support services in these areas, creation of safe spaces for children and long term support for child victims have been recommended by the South Asian Strategy Document 2001.
- (xii) Where victims are illegal migrants or have been trafficked across national borders, the receiving State must provide temporary shelter to the victim until a safe return can be arranged. The EU Directive of

20.7.2001<sup>1</sup>, for example, lays down minimum standards for temporary protection. It provides:

- (a) Protection for a maximum of 3 years for those fleeing from armed conflict, endemic violence or systemic violation of human rights,
- (b) The victims will get a residence permit, employment authorization, access to accommodation, social welfare, medical assistance, education and access to asylum procedures
- (c) To facilitate voluntary return, exploratory visits are permitted.
- (d) Return is compulsory after 3 years but it must be consistent with dignity. Humanitarian reasons may be looked at in specific cases.

For trafficking victims, some of these directions need to be modified. Return must be a safe return. There should be no re-trafficking. Therefore, where rehabilitation in the family is not possible, the victim must be returned to a shelter home in the country of origin. If proper bilateral or multi-lateral arrangements are worked out, non-national victims can be repatriated without a wait period to agreed and suitable safe shelters in the country of origin, which will then undertake rehabilitation measures.

---

<sup>1</sup> Council Directive 2001/55/EC of 20 July 2001. Official Journal of the European Communities, L 212/12, 7.8.2001.



- (xiii) The sensitization of the police and the judiciary to issues involved in trafficking is also necessary so that we may have a correct perspective while dealing with offences under trafficking laws.
- (xiv) International networking of the police, international programmes to sensitize the judiciary and common strategies for rehabilitation need to be worked out among nations.
- (xv) The problem of corruption in the police is a more intractable problem. Unless the State displays a strong will to overcome corruption, it may be difficult to tackle corruption. It is therefore, very necessary that the civil society, the administrators, the police and the judiciary are all sensitized to the human rights which are at stake and are continuously educated to deal with traffickers strictly in accordance with law. The civil society can also play a major role here in exposing corruption or links between the police, the local politicians and the traffickers. The media can also play a very important role if it is sensitized and focuses on traffickers, pimps, and slack law enforcement in addition to focussing on the plight of the victim.
- (xvi) If law enforcement agency is going to play a part in the preventive strategy, it will have to be aligned to policing trafficking routes, checking border crossing points and creating a network of support groups that can supply information to the law enforcement agencies

about trafficking networks. This will enable the prospective victim to be rescued before the victim is actually inducted into the flesh trade. This may require international cooperation for transnational trafficking, extension of criminal jurisdiction so as to make it easy for a trafficker to be prosecuted wherever he is found and exchange of information between different States.

(xvii) Legal procedures also need to be victim friendly. The victims who come before the courts are traumatized. The child victims particularly need to be questioned differently. Their identity needs to be protected and media reporting of such trials must also respect the victim's right to privacy. The law must lay down humane and friendly procedures for the trial of cases where the victim is a child below the age of 18. The Yokohama 2001 strategies include promotion of effective child-sensitive laws and policies based on international standards. Punishment of traffickers, procurers, pimps, brother keepers needs to be exemplary and it should be possible for the court to direct the criminal to pay compensation to the victim as also restore to the victim the earnings from the victim's prostitution or servitude.

(xviii) Evolving appropriate strategies depends on proper data collection. The supply zones, their local conditions, the extent of traffic, routes of traffickers and their modus operandi, demand zones, all need to be

properly documented. This is difficult since the operations are clandestine and information is not readily available. Collaboration between the police, the administrators, the judicial administration and the NGOs. is necessary to obtain a reliable database, whether inter country or intra-country. The Yokohama 2001 strategies have also emphasized partnership-building with all stakeholders – government and non-government; local, national, regional and international. It has advocated enhancing of information base by linkages between national and international media.

- (xix) A permanent global network of trafficking police would be more effective in checking such traffic. There should be capacity building of government functionaries at all levels for effective implementation of national plans of action in this area.

## **8. Rescue and Rehabilitation Strategies**

- (i) Some of the immediate needs of rescued victims could be treatment for trauma, medical treatment, counselling and a safe shelter. The police station where the rescued victim is taken, can have a counsellor and a doctor for immediate help.
- (ii) Child victims in addition, need proper support and appropriate handling. A special effort should be made to trace the child's family.
- (iii) There should be international standards for shelter homes and the facilities they should have. Some minimum requirements can be:

- (a) Safety: It should be out of bounds for traffickers;
  - (b) Availability of counsellors who can deal with victims individually, can counsel their families and escort victims home wherever possible,
  - (c) Availability of trauma care and medical care, particularly for HIV/AIDS and reproductive tract infections,
  - (d) Training for vocations, jobs etc. Markets for goods produced should be available and micro-credit arrangements should be made available.
- (iv) Where repatriation to the country of origin is ordered arrangement should be made to send the victim initially to an approved shelter home in the country of origin unless the family has accepted the victim. Rehabilitation programmes can then be undertaken by the shelter home in the country of origin.
- (v) Re-trafficking must be prevented at all costs.

## **9. Some successful strategies**

- (i) New Zealand's Human Rights Commission carried out a pink slip campaign for the rescue of Thai women who had been trafficked into New Zealand. The strategy was to reach out to these women in distress who did not know the local language and could not seek help because of their illegal forced entry into New Zealand. Pink

slips in Thai and English were pasted on bus stands, railway stations and other public places offering the help of the New Zealand Human Rights Commission to the trafficked women for their rescue and rehabilitation.

- (ii) A somewhat similar strategy is being contemplated by the National Human Rights Commission in India which is currently engaged in conducting an action research on all dimensions of trafficking in India with the help of the police, social scientists, Government officials and NGOs. working in this area. It has used all these stakeholders for authentic data collection. It has created a network of nodal officers in each State in India. A proposal to install a common help line throughout the country which can be used by a trafficked victim for help is under consideration. An NGO network help line and a state police help line for children have been started in India.
- (iii) In areas where there is group prostitution such as amongst certain tribes, providing an alternate source of income has turned out to be the best strategy to prevent trafficking of women and children. For example, a tribal village in North Kerala which was traditionally a potters' village became destitute when earthen pots went out of use. It turned to using women for prostitution for livelihood. Intervention of an NGO proposing an alternative use of their skill for making ceramic tiles, proved to be a turning point. Within less than five

years, the entire village had rid itself of prostitution, the women were profitably employed in manufacturing designer ceramic tiles. Economic empowerment of women in trafficking-prone areas is an effective strategy.

- (iv) Tourism related Paedophilia seems to be controllable through strict law enforcement as has happened in Sri Lanka.
- (v) South Korea has recently adopted a public notification or identity release system to make public the identities of those convicted under the Youth Protection from Sexual Exploitation Act, 2000. The crime must be either (i) sex trade with youth, (ii) business of youth prostitution, (iii) production, import or export of child pornography, (iv) trafficking in youth or (v) sexual violence against youth. The purpose is to create public awareness and prevent such crimes.
- (vi) Calamity-affected areas will not generate traffic if properly supervised by State agencies and NGOs. A network of NGOs which has been established in India was able to prevent a group of women from the earthquake affected Kutch region being trafficked to another State in the guise of giving them employment by informing the NGO of that State which intervened and rescued the women before they were actually sold.
- (vii) Rehabilitation programmes need to be made an integral part of all development projects and the cost of rehabilitation included in the

project cost so that people who are displaced do not become vulnerable to exploitation.

(viii) The strategies which have been effectively employed by NGOs. to deal with the process of rescue and rehabilitation of victims:

- (a) One of the NGOs. in India works actively with the police in the police stations in red-light areas. It supplies counsellors to talk to victims when they are rescued and provides counselling for traumatized victims. It offers help in tracing families of each of the rescued victims. It counsels the families and ascertains whether the families are agreeable to accept the victim in the family. It also helps to take the victim back to her family.
- (b) Another strategy adopted by an NGO is visiting shelter homes or homes for women and children in order to help with vocational training programmes, to help with counselling and to help with health care.
- (c) An NGO in the State of Andhra Pradesh in India has established a shelter exclusively for child victims who are suffering from HIV/AIDS. This is a very traumatic area where the victims are doubly traumatized – first by the violence and next by life threatening illness such as HIV/AIDS. This specialized shelter home provides these

children with proper medical care, education and recreation. Unfortunately the victims are many and the rescuers and rehabilitators only a few. Therefore, it requires cooperation between State agencies as well as the civil society to evolve suitable programmes depending on local needs.

- (d) A NGO has deputed two persons to sit at a police check post at an international border to watch out for human traffic. In two months it identified about 70 suspected victims and could send them back. The trafficker however was not arrested or prosecuted by the police of the sending State.
- (ix) Women need to be heard in peace processes and processes of conflict resolution so that their concerns are not ignored.
- (x) Public Education programmes and awareness programmes for the general public as well as for the different agencies involved in prevention, rescue and rehabilitation of victims of such exploitation do play an important role in dispelling myths, sensitizing the agencies involved and the public, and supply vital information to would be victims regarding dangers of migrating to distant places in search of a job without proper verification of those offering such jobs, or of available employment.
- (xi) An effective scheme used by an NGO uses voluntary trained workers who motivate the villagers and slum dwellers to educate



young girls by sending them to local schools. The NGO also works for establishing schools if there are none. This has resulted in other unexpected benefits such as reduction in child marriages and even opposition to child marriages, and better health care.

- (xii) In the case of custom of trafficking such as dedicating young girls to a deity, one of the States in India has evolved a very effective strategy by empowering the older women who were originally dedicated, to act as agents of change. These women have done commendable work to prevent young girls from being dedicated and thus thrust into prostitution. Local customs therefore have to be tackled in a manner suitable to that local area.
- (xiii) The Supreme Court in India has given directions for release of bonded labour and for a programme for rehabilitation of bonded labour, casting responsibility on the district administration for giving specific amount to each bonded labourer who is released, for his rehabilitation. This scheme however has had a limited success.

### **International Instruments**

10. The Palermo Trafficking Protocol needs to be made more protective of human rights. An additional protocol may be necessary to provide for cooperation between States in rescue operations, rehabilitation programmes, procedures for extradition, repatriation of victims and

compensation-cum-rehabilitation grants for victims to be shared between nations. It can also provide for networking for data collection and sharing of information. The mandatory “shall” in the SAARC Convention for the obligation of State parties regarding judicial proceedings, mutual legal assistance, extradition or prosecution, measures to prevent and interdict trafficking, care, treatment, rehabilitation and repatriation of victims appears preferable to the weak provision in this regard in the Palermo Trafficking Protocol.

The Recommended Principles on Human Rights and Human Trafficking<sup>1</sup> cover all key issues focussing on prevention, protection and assistance to victims, criminalisation, punishment and redress. The existing international instruments should be tested against these principles and shortcomings remedied.

**Issues for Discussion:**

In order to have a coherent and integrated approach to policies for tackling traffic in human beings, some of the issues that arise for discussion are:

- (i) Is the State liable for the actions of non-State parties? When will it be liable? The principles laid down in Velasquez Rodriguez Case can be discussed. When does the State’s duty to prevent arise?
- (ii) Does a transit State have a duty to prevent?

- (iii) Is the State “liable” for all forms of trafficking?
- (iv) Should compensation/rehabilitation allowance be paid to rescued victims? Who should pay?
- (v) Principles of burden-sharing (financial) between different States when there is transnational trafficking.
- (vi) Should there be an obligation on the traffickers to return to the victims, the earnings of prostitution, labour etc.? Who should be made legally liable? Should the duty to recover this amount be cast on the State?
- (vii) Should there be any legal liability of a client? Should the client be punished?
- (viii) Should sexual violence against women, or sex slavery be considered as covered by Jus Cogens? Should it be expressly so included in international Humanitarian Law? Or can it be done through a broader interpretation of the law?
- (ix) Should repatriation of a victim be linked with rehabilitation? Who should rehabilitate - the State of origin or the receiving State?
- (x) Who should be responsible for a safe return?
- (xi) Should trafficked illegal migrants/refugees be allowed to stay in the country of migration? Will it encourage illegal migration?

---

<sup>1</sup> Report of the High Commissioner for Human Rights to the Economic and Social Council, U.N. DOC. E/2002/68

- (xii) Should there be a legal obligation on the State of migration to allow victims who are illegal immigrants to stay and if so, for how long? Can a monetary incentive be given to the victim to return to the State of origin?
- (xiii) What kind of a transnational legal structure to prosecute traffickers is necessary?
- (xiv) Should a trafficker be prosecuted wherever found? Should he be sent back to the State where the crime took place to stand trial and be punished?
- (xv) Can extradition procedures be made simple? Is it feasible to have an agreement between nations on warrants executable across national borders?
- (xvi) Re. procedures for dealing with child victims, protecting their identity etc. Should these be prescribed in an international instrument to ensure minimum standards?
- (xvii) Should there be international standards for shelter homes and the facilities provided there?
- (xviii) Should health care of victims be State responsibility? Should there be compulsory medical tests of rescued victims? Should their right to privacy in this area be protected?

- (xix) Should there be international obligation to create public awareness as also to sensitize the administrators, and the law enforcement officers including the judiciary?
  - (xx) Should there be a State obligation to review and update its anti-trafficking laws and policies?
  - (xxi) To what extent can these objectives be achieved through a broader interpretation of existing international instruments?
  - (xxii) Is it feasible to have a new international convention/protocol on rescue and rehabilitation of trafficked victims?
  - (xxiii) Is it feasible to recommend to international funding agencies while selecting projects, to consider as a relevant factor, the project's potential to reduce the vulnerability of danger zones for trafficking?
  - (xxiv) Should there be international funding for rehabilitation and health care of trafficked victims?
  - (xxv) Should there be an International Court or Regional Courts for prosecution of traffickers in human beings?
-