

## The Role of National Human Rights Institutions in Combating Trafficking

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Trafficking in women and children is inextricably linked with violence against women and violation of women's human rights. Trafficking is clearly addressed in the Beijing Platform for Action under Strategic Objective D3: Eliminate trafficking in women and assist victims of violence due to prostitution and trafficking. The Platform also calls on governments to consider the ratification and enforcement of international conventions on trafficking in person, on slavery, and to take appropriate measures to address the root factors including external factors, that encourage trafficking.

The 23<sup>rd</sup> Special Session of the UN General Assembly entitled "Women 2000 : Gender Equality, Development and Peace for the 21<sup>st</sup> century" in its outcome document recognized that gender based violence, torture, sexual abuse, sexual slavery and exploitation, international trafficking in women and children, forced prostitution and sexual harassment; as well as violence against women and girls resulting from cultural prejudice, racism and racial discrimination, xenophobia,

pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti religious extremism, are incompatible with dignity and worth of the human person. To combat them is a major challenge before the defenders of human rights.

In the last decade, there has been a growing support in the Asia-Pacific Region for the creation of National Human Rights Institutions. Mrs. Mary Robinson, the previous UN High Commissioner for Human Rights had urged all NHRIs to establish a focal point on trafficking. The establishment of a focal point on trafficking and women's issues by NHRC, India in 2000 was in response to this appeal. A recent support for combating trafficking has come from the Council of Europe which has adopted Convention on Action against Trafficking in Human Beings in June 2005 this year. The present conference brings together NHRIs of the Asia-Pacific region for better protection of the human rights of victims of trafficking and proper law enforcement against traffickers.

I am very happy that the Asia Pacific Forum has mobilized the support of so many National Human Rights Institutions in the cause of combating trafficking. Looking to the clear violation

of several major human rights involved, it is obvious that National Human Rights Institutions must create a role for themselves in combating and eliminating trafficking in all its forms.

The UN Optional Protocol to Suppress, Prevent & Punish Trafficking in persons, especially women & children defines trafficking in very wide terms to cover any form of exploitation of human beings, especially vulnerable human beings such as women and children.

Article 3 of the Protocol which is generally known as Palermo Protocol on Trafficking, requires the following three elements to be present before any movement of persons can be considered as trafficking.

1. There should be a movement of person-whether through recruitment, transportation, transfer, harbouring or receipt of a person.
2. The movement should have an element of force, threat or coercion or an element of fraud or deceit including abuse of power by a person in a position of authority or guardianship over the victim.

3. It should have an element of exploitation which can be sexual exploitation, forced labour or forced services or practices similar to slavery such as bonded labour, begging or use of children as camel jockeys. Sexual exploitation would also include paedophilia and pornography. According to the UN Office on Drugs & Crime, about 77% of persons trafficked are trafficked for sexual exploitation while 23% are trafficked for labour exploitation. Trafficking, according to UNODC, usually starts as a migration process, but when legal migration is not possible, illegal methods are resorted to, making such migrants susceptible to traffick. There is an allied Protocol against Smuggling of Migrants by Land, Sea and Air which is also, therefore, relevant. These protocols have a focus on trafficking as an organized crime. For the victims, however, what is more important is a focus on their human rights. The SAARC Convention on Preventing & Combating Trafficking in Women & Children for Prostitution which is the only regional convention on the subject in our region and is limited to prostitution, has a broader human rights approach which covers state responsibilities and inter state cooperation for rescue and rehabilitation of victims.

Let us look at some of the violations of human rights involved in trafficking. In the first place, as a result of trafficking there is a 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. It affects the victim's right to health and healthcare. The victim of such devastating violence may also end up with life-threatening HIV/AIDS, a lifetime of trauma, drug addiction or personality disintegration. It is a denial of the right to liberty and security of person, the right to freedom from torture, from violence, cruelty or degrading treatment, the right to a home and a family, the right to education and employment, the right to move freely, the right to healthcare, reproductive rights, in fact, everything that makes for a life with dignity. The UN Convention on the Rights of the Child covers rights for the children which are violated when children are trafficked. Therefore the NHRI have a clear role to play in dealing with issues relating to trafficking.

A number of countries in this region are either sending countries, or receiving countries or transit countries or a combination of these. e.g. India is in all three categories. Nepal

& Bangladesh are sending countries while Australia & New Zealand are receiving countries. The NHRI will have to deal with trafficking within the nation itself as well transnational trafficking. Even internal trafficking has several facets. Reliable data relating to trafficking within the country is not always available. An NHRI can conduct its own survey either by itself or with the help of social science institutes, NGOs and the police. Since the activity is mostly clandestine it is not easy to arrive at a proper assessment of the extent of the problem faced by the country. However, research can uncover patterns of movement of vulnerable people from regions which are vulnerable to other areas, specially urban areas, where victims can be shifted and exploited.

There are several factors which make a particular region or area vulnerable to traffickers. An important factor which makes victims vulnerable is poverty. But it is not poverty alone which creates vulnerability. It has to be combined with other factors to create a kind of vulnerability that can be exploited by traffickers. These other factors are often local customs or practices which exploit or denigrate girl children and women, or create social attitudes and biases against women and girl children, making it difficult for them to acquire education, training and employment,

prevent them from accessing healthcare and often put them in an abusive situation either within the family or outside. In the course of the survey which was conducted by the NHRC of India, a number of child victims who were rescued stated that they had run away from home or had accompanied a stranger to the city from their village because of the abusive situation which they faced in the family. Such abusive situations cover not just domestic violence but also sexual exploitation of children by a relative or a neighbour, or hard labour, denial of adequate food and nourishment and the like. Social or community pressure may lead to child marriages, or marriage to an unknown person who demands less dowry. At times these practices are used by traffickers as instruments of fraud or deceit for capturing victims. Social pressure may compel a widow within the family, especially a young widow to seek a job in an urban area. Young and naive girls can be lured by promises of a career in films. Parents can be lured to part with children who are promised jobs elsewhere. Ignorance, lack of information and lack of awareness of the danger of being trafficked are factors which create vulnerability.

There are also local customs such as the custom in South India of dedicating a girl child to a deity known as Devdasi

custom; or a custom of providing dancing girls or a village or tribe forcing their girls and women into prostitution while men do not work. The vulnerability of an area increases in times of natural calamities or man-made disasters, internal disturbances or external aggression or economic instability. NHRIs can formulate preventive strategies targeted at (1) advocacy and awareness raising (2) education and (3) economic empowerment. These can be targeted at adolescents who are both potential victims and clients. (See the recommendations of the National Seminar on Trafficking in Human being held in New Delhi on 27-28 October 2005). NHRIs can work in this area in cooperation with the government, and with the civil society to provide information and education relating to the dangers of trafficking to vulnerable areas.

Apart from providing education and information NHRI can also create or promote programmes of training and education for the police and the judiciary. Trafficking is one of the fastest growing forms of transnational and national organized crime. It thrives on the fact that many countries do not have adequate laws against trafficking. The laws if enacted, often do not recognize a trafficked person as a victim. The victim is then treated as a criminal while the real criminal goes scott free. The

laws, when they deal with the traffickers, often do not provide adequate punishment while the law may provide for punishment of girls and women found soliciting in public places. In a number of cases the studies conducted have found that there is often a close link between the police and traffickers. Looking to the high stakes involved, the police can be “persuaded” to connive at the crime or even collaborate with the traffickers. This makes it difficult to apprehend and prosecute traffickers, or to secure proper law enforcement. This is where NHRI can step in to ensure that the police are able to function effectively for enforcing the law and for prosecuting traffickers. Exposure of collusion along with providing training and motivation to the police can go a long way in securing effective prosecution.

However, the prerequisite for such law enforcement is an appropriate law. The NHRIs can play a role in getting proper laws enacted and proper punishment provided in that law. Since trafficking is often a transnational operation it is very necessary that the states in this region come together to frame laws which are similar so that traffickers may not go forum shopping. These laws must provide for international cooperation in apprehending and prosecuting traffickers. The laws should have proper provisions to deal with victims who have been

victimized in a foreign country, provide arrangements for their proper rehabilitation, should specify when victims will be allowed to stay in the country to which they were trafficked. Most important, the law should internationally provide for payment of compensation to the victims by confiscating the property of the traffickers wherever it may be situated.

Another important requirement which requires international cooperation is the requirement to protect witnesses and victims who give evidence against traffickers in a court of law. Their testimony is vital for securing the conviction of a trafficker. Most of these victims are threatened by the traffickers. When the victim comes from another country, her family members in another country are threatened by the traffickers if the victim decides to give evidence in a court of law. e.g Nigerian women who have been trafficked to Italy have complained of threats to their family in Nigeria. Therefore laws of both the concerned countries must provide this protection to victims and their family members. The law should also protect them from media exposure. International co-operation may be necessary for proper rehabilitation schemes, whichever be the country in which the victim is rehabilitated. Schemes of rehabilitation require intervention of NHRIs so that the schemes

adequately protect the human rights of the victims, give them medical care to overcome trauma which they have undergone, and provide counseling & treatment for other resulting psychological and physical disorders. The victims need safe housing and proper training for earning a livelihood. Children need facility for education, for reintegration with their own families after proper counselling of the family. Services such as counselling, medical care, trauma care are required even at the stage of rescue. Unfortunately such services are not available in police custody. NGOs and social workers should be allowed access to such victims. All schemes for repatriation of foreign victims and all schemes for rehabilitation of victims must provide an attractive-enough alternative lifestyle so that the victims do not fall back into the hands of the traffickers and get re-trafficked. The survey conducted by NHRC, India found that 46% of the trafficked victims had been trafficked more than once, which means that efforts at rehabilitation have to be repeated again and again in respect of the same victim. This is clear inefficiency apart from being inhuman and frustrating. In many countries, victims who need help are simply deported to their native countries without any thought being given to their rehabilitation. The sending & receiving countries need to cooperate in order to ensure that the victims are able to avail of

rehabilitation packages which should be provided by the affected countries.

There are also other programmes that NHRIs can undertake. Most of the NHRIs have a right to approach a court of law in some form or the other. Of the 12 full member of APF, only 3 do not have the power to intervene or to assist in court proceedings related to Human Rights. The other 5 new NHRI in the APF also have some kind of a right to access courts for protection of Human Rights. (See the chart). This right can be used to obtain court orders for rescuing victims of trafficking, for securing court orders for rehabilitation and for protecting victims who need to be repatriated to their countries of origin. The NHRC in India has sought the assistance of the court in many proceeding based on public interest litigation to rescue victims and to rehabilitate them and restore them to their families. The UN Conventions including the Convention on Rights of the Child have been cited in court for the protection of child victims. Child circus performers who were trafficked from Nepal and India, were rescued through court intervention by NHRC. NHRC in India had also sought cooperation from an NGO in Bangladesh when a young Bangladeshi victim was ordered to be repatriated to her home country. NHRC's request to the police to hand the

girl over to the NGO after crossing the border into Bangladesh was accepted by the police. As a result, re-trafficking of this young girl was effectively prevented.

Almost all NHRIs in this region have the power to receive and investigate complaints. They have the power to conduct investigation on their own initiative. With the exception of a couple of NHRI, others have the powers to seek information and to examine witnesses. Many of them also have the power to provide or recommend compensation. All these powers can be used effectively for the protection of victims of trafficking and for persecution of traffickers. NHRIs also have another important power. All the NHRIs have the power to advice, to make recommendations to the government and/or parliament on laws, policies and programmes which are needed. All these are needed in the area of trafficking-we need proper laws, we need appropriate government policies and programmes to reduce vulnerability, to apprehend traffickers and to rescue and rehabilitate victims. In fact, a regional convention making appropriate recommendations can form a basis for laws in different countries in the region, thus ensuring consistent laws in the region and international cooperation. The question of jurisdiction in criminal trials of traffickers also needs to be

sorted out and included in the legislation. We also need proper programmes internationally to monitor trafficking across national borders, and prevent victimization of ill-informed or uninformed migrants, specially women and girls.

These are major undertakings which NHRIs can undertake with mutual cooperation. I hope that this conference will facilitate interaction between NHRIs and lead to the formulation of recommendations which can form a basis for a regional convention on trafficking, much wider than the SAARC Convention and provide a model law which can form a basis for national legislation in this region.