

**THE ROLE OF NATIONAL INSTITUTIONS IN  
ADVANCING THE HUMAN RIGHTS OF WOMEN**

**A CASE STUDY ON TRAFFICKING IN THE ASIA-PACIFIC REGION**

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# THE ROLE OF NATIONAL INSTITUTIONS IN ADVANCING THE HUMAN RIGHTS OF WOMEN

## A CASE STUDY ON TRAFFICKING IN THE ASIA-PACIFIC REGION

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### Introduction

Equality is the cornerstone of every society, which aspires to democracy, social justice and human rights. In virtually all societies and spheres of activities, women are subject to inequalities in law and in fact. This situation is both caused and exacerbated by the existence of discrimination in the family, in the community and in the workplace. While causes and consequences may vary from country to country, discrimination against women is widespread. It is perpetuated by the survival of stereotypes and of traditional cultural and religious practices and beliefs detrimental to women.

On-going efforts by the United Nations to document the real situation of women worldwide have produced some alarming statistics on the economic and social gaps between women and men. Of 1.3 billion people living in poverty, 70% are women. The increasing poverty among women has been directly linked to their unequal situation in the labour market, their treatment under social welfare systems and their status and power in the family. Women are the majority of the world's illiterate. Worldwide, women work more hours than men and most of their work remains unpaid, unrecognized and undervalued. Women hold between 10 and 20 per cent of managerial and administrative jobs worldwide and less than 20 percent of jobs in manufacturing. They receive a disproportionately small share of credit from formal banking institutions. The participation of women in economic and political decision-making remains very limited. Women occupy only 10% of parliamentary seats and make up less than 5 percent of the world's heads of state. The starkest reflection of the low status accorded to women is the discrimination against them in the law. In many countries, women are not treated as equal to men - whether in property rights, rights of inheritance, laws related to marriage and divorce, or the rights to acquire nationality, manage property or seek employment.<sup>2</sup>

Violations of the human rights of women increase their vulnerability to exploitation. The rapidly growing phenomenon of trafficking is a case in point. Each year, hundreds of thousands of individuals - the vast majority women and children from less developed and transitional countries of Asia and Eastern/Central Europe - are tricked, sold, coerced or otherwise procured into situations of exploitation from which they cannot escape. These women and children are the commodities of a transnational industry, which generates billions of dollars and, almost without exception, is conducted with a frightening level of impunity and official complicity. Recent research (largely conducted from a developmental and sociological perspective) has confirmed a rapid increase in the incidence and severity of such practices as well as their highly systematic nature and exploitative effects.

The issue of trafficking in women and children is now high on the international agenda. One reason for this is the connection between trafficking and migration - particularly illegal labour migration. The link between trafficking and organized crime/criminal entrepreneurs has also provoked a number of States into taking action at the national level and lobbying for an international response. For some States and for large sectors of the relevant NGO community, the human rights and gender dimensions of the problem have provided the impetus for action.

Despite this increased attention (and perhaps because of different perceptions of the problem), attempts to deal with trafficking and related exploitation at the national, regional and international levels have been largely ineffective. Overall, current efforts reveal a marked tendency to marginalize or even to ignore the clear human rights and gender implications of the problem.

The subject of this paper is trafficking in the Asia-Pacific region as one manifestation of the broader human rights challenges currently facing women in this part of the world. The specific focus is on the role which national human rights commissions could play in combating this phenomenon. Part One of the paper provides a description of the problem. In Part Two an overview is made of recent counter-trafficking initiatives at the international, regional and national levels. Part Three explores the ways in which national institutions can contribute to these efforts.

## **Part One: Description of the problem**

In 1994, the General Assembly of the United Nations stipulated that trafficking is *the illicit and clandestine movement of persons across national and international borders... with the end goal of forcing women and girl-children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates as well as other illegal activities related to trafficking such as forced domestic labour, false marriage, clandestine employment and forced adoption.*<sup>3</sup> The draft Protocol on Trafficking in Persons Particularly Women and Children<sup>4</sup> which is currently being developed under the auspices of the UN Crime Commission, proposes the following definition: *Trafficking in persons means the recruitment, transportation, harbouring or receipt of persons, either by the threat or use of kidnapping, force, fraud deception or coercion or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another persons for the purpose of sexual exploitation or forced labour.*

These two definitions, taken together, represent the general understanding of what trafficking is all about. In plain language trafficking refers to the cross-border trade in human beings. However it means much more than organized illegal movement of persons for profit - a practice which is now commonly referred to as migrant smuggling. The critical element of trafficking is the presence of force or coercion throughout or at some stage during the process. In practice, trafficking takes place for a variety of end purposes including sweatshop labour, begging and domestic service. However, forced prostitution is the most visible end result of trafficking and many would claim that it is the most common. Unfortunately, it is not always easy to identify which cases of adult prostitution involve force and which ones do not. It is sometimes argued that *all* women and men who prostitute themselves do so as a result of some kind of force including force of circumstance through poverty or economic dependence. Others take the position that prostitution can be a valid work-choice for an adult individual and that coercion must be overt to amount to forced prostitution.

Beyond dispute are the facts. In many other parts of the world large numbers of migrant women and girl-children are trapped in situations of prostitution from which they cannot escape. Many are physically restrained. Others are intimidated in less direct ways. Perhaps the majority are tied to their situations through debt-servicing agreements which amount to little more than bondage. Root causes of trafficking are complex and will inevitably vary from situation to situation. However, the most commonly cited factors contributing to trafficking and forced prostitution include the following:

- Economic factors: such as poverty, food scarcity, unemployment and indebtedness;
- Social and cultural factors: such as violence against women and girls, gender discrimination in the family and the community and by the State;
- Political and legal factors: misguided policies - particularly relating to immigration and development, lack of appropriate legislation, lack of political will, public sector corruption; governmental hypocrisy over prostitution policies;
- Market factors: demand caused by the rapidly expanding global sex industry;
- International factors: the growing feminization of labour migration on the one hand and increasingly restrictive immigration policies of recipient countries on the other; increased power and involvement of transnational organized criminal networks.

Uniting all of these different “causes” is the discrimination and inequality, which serve to prevent women and girl-children from exercising power over their lives.

One of obstacles to the development of effective solutions is the lack of reliable data on the scope and extent of trafficking. Significant research has, however, been undertaken in this part of the world - particularly in South and South-East Asia. While numbers vary from study to study, the existence of a serious problem is beyond dispute<sup>5</sup>. Increasingly stringent structural adjustment programmes and the economic downturn of recent years have coincided with a reported rise in the number of cases of trafficking and forced labour as well as a spreading of the problem to areas which were previously less affected<sup>6</sup>.

It is important to acknowledge at the outset that trafficking is a problem, which affects and implicates all countries of this region in one way or another. It is neither fair nor appropriate to point to certain "culprits" without acknowledging the existence of a market in which there are both buyers and sellers. At the risk of oversimplification most countries in this part of the world - indeed most countries represented at this Meeting - can be classified as either countries of origin, countries of transit, or countries of destination. An example of a country of origin would be Nepal. International agencies estimate that 100,000 to 200,000 women from Nepal are trafficked into exploitative situations of prostitution in the Northern and Central cities of India. It is also estimated that an additional 5,000 women and girl-children enter these trafficking networks annually. Patrilineality-caused landlessness amongst women, unemployment and under-employment, intense income poverty, widespread gender discrimination (both *de jure* and *de facto*) and the growing acceptance of the inevitability of migration are factors serving to encourage this trend. Traffickers are increasingly recognizing Nepal as a profitable source for the domestic and tourist-based sex trade with India and other countries of South-East Asia.

Australia is an example of a country of destination for women trafficked from Asia. In the past few years, national and international non-governmental organizations have uncovered a complex web of trafficking networks operating from or through China, Jordan and Thailand. Hundreds of women have been discovered in situations amounting to forced prostitution, debt bondage or servitude. The trade is said to be well entrenched in all capital cities of Australia and the numbers of actual victims are presumed to be much higher than officially acknowledged. Recently, similar reports have begun to emerge from New Zealand.

Classifications and definitions often fall short when they come up against reality and the same is true in this situation. In many parts of Asia trafficking is also an *internal* phenomenon involving movement between rural areas and cities. Some countries are simultaneously points of departure, transit and destination for trafficked person. Thailand, Vietnam and Cambodia are cases in point. Government officials in Cambodia have estimated that there are over 14,000 women and children working as prostitutes in Phnom Penh alone. NGOs estimate that 35% of prostitutes are under 18 and 40% are Vietnamese. Up to 86% of this group were said to be forced into prostitution - sold or deceived by someone offering them a job as a factory worker or domestic helper or paying off a debt. Cambodian, Vietnamese and Burmese women and girls are regularly trafficked into Thailand to work in the sex industry and large numbers of Thai women and girls are in turn trafficked to Japan, Australia and Western Europe.

The Philippines is the second largest exporter of legal labour in the world. At the same time it has become a country of origin for persons trafficked into other countries of Asia, Europe and the Americas. The absolute numbers involved are sobering. For example, it has been estimated that several thousand Filipinos are trafficked to work as prostitutes in Japan each year. Thousands of Bangladeshi women are said to be trafficked into Pakistan each year and even more Pakistani boy-children end up as bonded labourers in the Middle East. The UN Special Rapporteur on Violence Against Women has reported on the increase in kidnapping and selling of women within China for the purposes of forced marriage. Cross-border trafficking also occurs from China to and through Vietnam, Burma, Macau and Thailand.

## **Part Two: Current responses**

The purpose of this Part is to give a brief overview to current responses to the trafficking problem outlined above. An evaluation will also be made of the effectiveness of these responses with a view to identifying areas where further efforts are needed.

## **A. International responses**

International human rights law has not been able to deal with the trafficking issue systematically or consistently. Many of the early slavery conventions have been invoked in the trafficking context although their application in practice has been limited by the fact that they pre-date most modern practices relating to trafficking. The only directly relevant international convention dealing with trafficking dates back to 1949<sup>7</sup>. It has weak enforcement mechanisms and has not been ratified by many States. Those States that have ratified the Convention have not found it a particularly useful instrument to combat trafficking. Prohibitions on forced prostitution and exploitation of the prostitution of others have been incorporated into the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This instrument obliges States Parties to take all appropriate measures including legislation, to suppress all forms of traffic in women and the exploitation of prostitution of women<sup>8</sup>. Under the Convention on the Rights of the Child (CRC), States Parties are to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form<sup>9</sup>. Children are also to be protected from all forms of sexual exploitation and sexual abuse<sup>10</sup>. The provisions of CEDAW and CRC have, however, only been utilized sporadically. Part of the problem is clearly the lack of a definition of trafficking and a fundamental disagreement on the question of prostitution to which trafficking has traditionally been linked.

Other provisions of international human rights law are also relevant to the trafficking issue. These include the prohibition on forced labour, which is contained in the ILO Abolition of Forced Labour Convention as well as the two International Covenants, the European Convention on Human Rights and the Inter-American Convention on Human Rights. International law also forbids debt bondage<sup>11</sup> - a practice, which is commonly employed as a means of compelling women and girls to remain in prostitution and female migrant workers to remain with abusive employers.

In terms of the human rights mechanisms themselves, attention to trafficking is generally superficial and sporadic. Some of the treaty-bodies (Human Rights Committee, CEDAW Committee and Committee on the Rights of the Child) have occasionally raised trafficking-related issues in the context of their examination of States parties reports. The Commission on the Status of Women has also dealt with trafficking and, through its work, brought the issue to the attention of the General Assembly. The principle body dealing with trafficking is the relatively low-profile Working Group on Contemporary Forms of Slavery which is a subsidiary body of the Sub-Commission on Protection and Promotion of Human Rights (itself a subsidiary body of the Commission on Human Rights). While the Working Group has not been particularly sensitive to the human rights of women, its focus is gendered to the extent that many practices identified as contemporary forms of slavery affect women and girl-children disproportionately. Forced prostitution (in the context of "exploitation of prostitution" and "trafficking") has always been on its agenda and, through the Working Group, is therefore the subject of regular resolutions adopted by both the Sub-Commission and Commission on Human Rights. In 1992, the Working Group elaborated a comprehensive Programme of Action for the Prevention of the Traffic in Persons and the Exploitation of the Prostitution of Others. This document was finally adopted by the Commission on Human Rights in 1995 but has not been implemented or otherwise followed up.

Another important mechanism concerned with trafficking is the Special Rapporteur on Violence Against Women. In her first report, submitted to the 1995 session of the Commission on Human Rights, the Special Rapporteur examined the phenomenon of prostitution and trafficking from the perspective of gender-based violence and human rights. This issue was again taken up by the Special Rapporteur two years later - both in her annual report and in the context of a special mission, which she undertook, to Poland. The Special Rapporteur will devote her next annual report (2000) specifically to the trafficking issue. In this context she will be conducting field missions to Nepal, India and Bangladesh later this year.

Outside the human rights system a number of important initiatives are taking place - the majority relating to the organized crime or migration aspects of trafficking. The most significant of these is the development of a *Protocol to Prevent, Suppress and Punish on Trafficking in Persons Especially Women and Children* and a *Protocol Against the Smuggling of Migrants by Land, Air and Sea*. The Protocols will be attached to the *Convention Against Transnational Organized Crime*, which is currently being drafted under the auspices of the UN Crime Commission. Member-States of the Asia-Pacific region are strongly represented in the drafting process. The High Commissioner for Human Rights has analysed both protocols from a human rights perspective and has made specific recommendations for improvement to the draft text<sup>12</sup>. The call for increased attention to the human rights of victims of trafficking and smuggling has been accepted in principle by governments involved in the drafting process.

## **B. Regional Responses**

While trafficking does occur between continents it remains essentially a regional issue. There is a consequential need to focus on regional and sub-regional approaches which aim, *inter alia*, to coordinate legislation and to improve cross-border cooperation - particularly as this relates to law enforcement and victim protection. The major intergovernmental organizations involved in preventing trafficking and assisting victims (such as the International Organization for Migration, UNICEF and the UN Development Programme) have recognized the importance of a regional approach in their programme planning. In the Asia-Pacific region each of these organizations has undertaken a range of studies and implemented a number of projects<sup>13</sup>. A particularly important initiative is the UNDP Project on Trafficking in Women and Children in the Mekong Sub-Region, which recently began implementation. The Project, which covers Cambodia, China, Laos, Burma, Thailand and Vietnam, aims to prevent trafficking and assist victims through building up national capacities and promoting cross-border cooperation.

South Asia will shortly have the world's first regional treaty on trafficking. The issue of trafficking in women and children was first taken up by South Asian Association for Regional Cooperation (SAARC) at a Foreign Ministers Meeting held in December 1996. At the Ninth SAARC Summit, held in the Maldives in May, 1997, participants adopted a resolution on trafficking in women and children that called for the elaboration of a regional convention. The Government of Bangladesh took responsibility for elaborating the first draft that was discussed at a technical meeting held in Kathmandu in September 1997. The second and current draft of the Convention was produced by the Government of India and discussed within an Expert Committee meeting held in Delhi in June 1998. The draft Convention was considered by the SAARC Heads of State or Government at the Tenth SAARC Summit, held in Colombo in July, 1998. The relevant paragraphs of the Colombo Declaration are reproduced below:

**Para. 61:** *The Heads of State or Government recalled that the Ninth SAARC Summit expressed concern at the trafficking of women within and between countries and pledged to coordinate efforts of Member States to take effective measures to address this problem. In this context they welcomed the finalisation of the draft text of the Regional Convention on Combatting Trafficking in Women and Children for Prostitution and noted that this would be a vital instrument in dealing with this problem. They approved that the Convention be signed at the Eleventh SAARC Summit.*

**Para. 63:** *The Heads of State or Government were also of the view that the scope of the Convention should be broadened to cover purposes other than prostitution.*

The final draft (which does not include the amendment requested in paragraph 63) is scheduled to be presented for signature at the Eleventh SAARC Summit to take place in Kathmandu in November 1999. The draft has attracted considerable attention from human rights NGOs and women's groups throughout South Asia - all of whom have expressed concern at some of its provisions. Specific concerns relate to the fact that the definition of trafficking is very narrow (limited to prostitution and to women and children); that women and children are dealt with in exactly the same way; that consent is irrelevant to the question of whether an individual has been trafficked; that automatic repatriation of trafficked women and children is assumed; and that support and assistance provisions are weak.

These issues will no doubt be subject to further discussion and hopefully resolved. In the meantime, it is important to support and encourage regional and sub-regional approaches to eliminating trafficking. The general SAARC approach could prove a useful model for other Asia-Pacific fora such as ASEAN.

### **C. National Responses**

National responses to trafficking, particularly on the part of governments, have been weak in this region as in all others. This is a reflection of the invisibility of these practices as well as of a general reluctance on the part of governments to acknowledge that their women and child nationals may be victims of large-scale forced prostitution or that such abuses are, in fact, happening within their own territories. Laws that do attempt to prevent trafficking and forced prostitution often have a negative focus on the victim - by, for example, providing for immediate deportation of women discovered in such situations. Some of the other approaches, which have been taken by Governments of this region to resolving the trafficking problem, have been similarly counterproductive. In several countries, migration legislation has changed to prevent women of "trafficable age" from leaving the country in search of work. This is a clear example of discrimination and a violation of the right of all persons to leave their country and to legally migrate to another. Many governments have sought to address trafficking by cracking down on migrant prostitution. In the absence of safeguards and support structures, these responses have invariably caused great distress and hardship to marginalized and vulnerable communities - further isolating and endangering victims of trafficking while doing nothing to apprehend or punish traffickers.

Increasingly however, governments of the region are displaying a willingness, at least in principle, to taking this issue seriously. In a number of countries legislation has been strengthened with the aim of preventing exploitation of prostitution, punishing traffickers and dealing with the organized criminal aspects of trafficking. Governments have also begun to work more closely with national women's and human rights NGOs - most of whom demonstrate a practical understanding of the trafficking situation and of the kind of solutions which are needed. In the worst-affected countries national and international NGOs work together to support the reintegration of trafficked women and to prevent further trafficking through education and sensitization campaigns. Many national NGOs are also providing much-needed practical support to victims of trafficking in the form of repatriation assistance, emergency accommodation, health-care, job assistance, and protection for families.

Also emerging is a general recognition that the root causes of trafficking must be honestly addressed. The pool of potential victims in Asia is growing exponentially because of increased poverty, lack of employment opportunities, violence, discrimination and inequality. Increasingly restrictive immigration policies on the part of more privileged states in this region and in others force individuals desperate for work into the arms of unscrupulous traders. Traffickers are able to operate with impunity because of official corruption, hypocritical attitudes towards prostitution and inefficient law enforcement. The global sex industry, which generates billions of dollars for governments as well as for organized criminal networks, is allowed to flourish without constraint. Failure to come to terms with these (admittedly more difficult) issues will prevent other anti-trafficking efforts from achieving any significant success.

### **Part Three: A Role for National Human Rights Institutions**

At the most recent meeting of the International Coordinating Committee, the High Commissioner for Human Rights noted that National Human Rights Institutions are "an under-utilized resource in the fight against trafficking". The purpose of this section is to set out some preliminary ideas on how national institutions can work to prevent trafficking and to protect the rights of trafficked persons.

The role, which an individual National Commission of the Asia-Pacific region could play in this area, will of course depend very much on the country situation. Strategies for a country of origin will necessarily be different to those for a destination country. National Institutions in countries of origin have a special responsibility in the area of *prevention*. The direction of their work must be towards ensuring that the root causes of trafficking on the supply side are addressed by the government and by the community. National Institutions in destination countries must focus their attention primarily on protection of the rights of

trafficked persons. They will also need to address root causes which create the market for trafficked persons and which allow it to flourish.

In all cases, National Institutions must base their work on a thorough understanding of the trafficking situation in their country of focus. This is the only way to ensure relevance and credibility. Non-governmental organizations working in this area can be an invaluable resource in this respect. When developing a particular approach or strategy on trafficking, National Institutions should endeavor to consult and coordinate with relevant NGOs, which are often the first point of contact and the source of most practical assistance for victims of trafficking.

In terms of overall policy and approach National Commissions can find useful direction in the two fundamental principles which underline the work of the OHCHR in this area: first: that human rights must be at the core of any credible anti-trafficking strategy; and second, that such strategies must be developed and implemented from the perspective of those who most need their human rights protected and promoted. The following more specific recommendations can also be used as standards to guide national institutions in dealing with trafficking and related issues.

- The protection of human rights and the dignity of trafficked persons and persons in prostitution must be given the highest priority;
- The definition of the term “trafficking” in laws, policies and programmes should not be restricted to prostitution but extensive enough to cover other identified purposes without ambiguity, such as bonded or forced labour, false marriage and other slavery-like practices.
- Trafficked persons should not be criminalized for the illegality of their entry or residence in countries of transit and destination, or for the activities they perform as a consequence of their status as trafficked persons.
- Victims of trafficking including those with the “illegal” immigration status should be granted protection and necessary physical and mental care by the authorities of the receiving country;
- Victims of trafficking should be provided legal and other assistance in the course of any criminal, civil and other actions against traffickers/exploiters. Government authorities should be encouraged to provide temporary or permanent residence permits and safe shelter during legal proceedings;
- The voluntary and safe return of victims, instead of the forced ‘repatriation’, should be guaranteed, particularly in the case of women;
- Women and children should be not treated identically in the rescue and repatriation process. Women have the right to personal autonomy and should not be treated as the objects of protection.
- Traffickers and exploiters as well as their collaborators must be prosecuted and adequately penalised, without compromising the rights of the victims;
- Efforts must be made to address the root causes of trafficking, including poverty, inequality, racism, and all forms of discrimination based on gender, ethnicity, class, and citizenship<sup>14</sup>.

Below are some specific proposals, which do not set out to be either prescriptive or exhaustive. Their purpose is to identify possible strategies with reference to the key functions with which national commissions are entrusted. Two preliminary remarks are in order. First, it is important to recall that trafficking and related practices are often invisible. Management and staff of national institutions must be proactive in their approach. Second, trafficking is essentially a gendered issue in that it affects women disproportionately. National Institutions will not be able to deal with this problem effectively unless they have integrated a gender perspective into their own programmes and methods of work<sup>15</sup>.

### ***The Educative Function***

All national commissions in the Asia-Pacific region are mandated to undertake human rights education and sensitization. Integration of trafficking issues into training and dissemination programmes should be a priority in significant source and destination countries. A broad, contextual approach should be taken where possible in order to properly incorporate and reflect the human rights and gender aspects of trafficking. Key target groups include public officials (police, prosecutors, the judiciary, immigration

officials, consulate staff) as well as civil society groups including the media, educators, NGOs and community leaders. Consideration could also be given to undertaking training-the-trainers programmes in order to empower local community groups to conduct sensitization activities - as it is these groups who are often in closest contact with victims and potential victims of trafficking.

### ***The Advisory Function***

As noted above, Governments have a critical role to play in the fight against trafficking. National Institutions can use their position, resources and authority to provide governments with inputs, which will enable them to make wise legislative, and policy choices. Priority should be given to reviewing domestic laws with a view to identifying obvious gaps and weaknesses. In addition to specific anti-trafficking legislation, attention should be given to laws relating to immigration, emigration and prostitution. Other possible areas of attention for judicial review would include the issue of extraterritorial legislation (to facilitate the prosecution of traffickers); birth registration and citizenship requirements (immediate registration and citizenship at birth in order to ensure that victims, particularly children, may exercise their right to return to their home countries); and laws relating to marriage and labour conditions. It is of course important for national institutions to go beyond the law by also including consideration of related policies and practices.

General policy advice to government on the problem of trafficking can also be extremely useful. National Commissions could, for example, propose that governments include the issue of trafficking in national development and poverty alleviation programmes as well as in National Plans of Action for Human Rights. In countries of origin they could promote specific preventive initiatives aimed at increased access of vulnerable women and girls to education and alternative job opportunities. In destination countries they could propose that sex-related industries, such as leisure, tourism, media and computer communication industries be encouraged to develop "a code of conduct" with clauses specifying monitoring and reporting mechanisms, to prevent direct or indirect involvement with trafficking.

### ***The Complaints and Enquiries Functions***

All National Commissions of the Asia-Pacific region are mandated to receive and act upon complaints of human rights violations. Most National Commissions are also empowered to undertake enquiries, on their own initiative, into particular human rights situations or issues.

Both of these powers can be extremely important in highlighting the problem of trafficking and in providing redress to victims.

In relation to individual complaints, National Commissions must remain aware of the fact that the type of complaint received will usually reflect public perception of the Institution's functions and principle areas of concern. A Commission which has never issued a public statement on trafficking, never included trafficking related issues in its training or dissemination programmes and never provided relevant policy advice to government should not be surprised if it never receives complaints on this issue. Nor should they assume that the problem does not exist on this basis alone. It is up to individual Commissions to use their other functions as a means of ensuring that the complaints procedure does in fact provide a reflection of human rights concerns within the community. Other considerations to be kept in mind include the fact that most trafficked persons are illegal or irregular immigrants. National Commissions should make special efforts to reach out to the immigrant community as normal communication channels are likely to be ineffective. The irregular status of trafficked persons will also mean that they are wary of "official" channels. National Commissions should ensure confidentiality in the complaint procedure in order to encourage trafficked persons to come forward.

General Enquiries are a particularly useful way of gathering information on difficult or sensitive issues. National Commissions in major sending or receiving countries could consider undertaking such an enquiry into trafficking. The results from a study of this kind would provide valuable information on critical but often overlooked human rights issues.

## Conclusion

In July of this year, the High Commissioner for Human Rights, Mary Robinson, sent a message to States involved in developing the first international agreement on trafficking in fifty years. The following excerpt provides a fitting conclusion to this paper.

*Trafficking and related practices such as debt bondage, forced prostitution and forced labour are violations of the most basic of all human rights. The right to life; the right to dignity and security; the right to just and favourable conditions of work; the right to health and the right to equality. These are rights, which we all possess - irrespective of our sex, our nationality, our social status, our occupation or other difference. Trafficking is also inherently discriminatory. In the case of trafficking into the global sex industry we are talking about men from relatively prosperous countries paying for the sexual services of women and girls - and sometimes men and boys - from less wealthy countries. This is more than a labour rights issue or an issue of unequal development. It is a basic human rights issue because it involves such a massive and harmful form of discrimination<sup>16</sup>.*

\* \* \*

## ANNEX 1

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**ANNEX 2**

**OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**



**TRAFFICKING IN PERSONS**

Information Note  
August 1999



## TRAFFICKING IN PERSONS

### INFORMATION NOTE (August, 1999)

#### **1. Background**

The Office of the High Commissioner for Human Rights (OHCHR), has recently become actively involved in the issue of trafficking in persons with a special focus on trafficking in women and children. The High Commissioner has made public her decision to give high priority to the issue of trafficking. Concrete steps - including the allocation of additional human and financial resources - have already been taken to implement this decision.

OHCHR action in the area of trafficking is currently taking place on two fronts. Firstly the Office continues to enhance the quality of its support to the relevant mechanisms dealing with trafficking and related issues. On a second front, OHCHR has developed a specific anti-trafficking programme. Additional information on both of these action-areas is provided below.

OHCHR work in the area of trafficking is based on two fundamental principles:

- < First: that human rights must be at the core of any credible anti-trafficking strategy; and
- < Second: that such strategies must be developed and implemented from the perspective of those who most need their human rights protected and promoted.

#### **2. Support to UN mechanisms dealing with trafficking**

The Special Rapporteur on Violence Against Women and the Working Group on Contemporary Forms of Slavery are both focusing specifically on the trafficking issue in 1999. The United Nations Trust Fund for Contemporary Forms of Slavery has recently received significant new contributions which is enabling it to provide a substantial number of travel and project grants to NGOs and individuals involved in the fight against trafficking. Other relevant UN mechanisms include the Special Rapporteur on the Sale of Children, the Committee on the Rights of the Child and the Working Group on the Optional Protocol to Convention on the Rights of the Child.

All of these mechanisms are serviced and supported by the Office of the High Commissioner for Human Rights. OHCHR has recently developed a system for intra-Office coordination on the issue of trafficking. Its purpose is to ensure that appropriate links are made between these various mechanisms as well as between the officers who are working with them.

#### **3. The OHCHR Trafficking Programme:**

The OHCHR Trafficking Programme was established in March 1999. Its objective is to work towards the integration of human rights into international, regional and national anti-trafficking initiatives. Emphasis is on legal and policy development. The Programme does not aim to undertake large-scale projects or to otherwise duplicate the excellent initiatives which are being undertaken elsewhere. Instead, as far as possible, OHCHR tries to act as a catalyst and a support for the work of others. The following information concerns activities of the Programme which have been developed or launched during the period March 1999 - August 1999.

At the international level OHCHR has focused its attention on the negotiation of **two Protocols to the draft Convention Against Transnational Organized Crime**. The first Protocol deals with *Trafficking in Women and Children*. The second Protocol concerns *Trafficking in / Smuggling of Migrants*. An Informal Note from the High Commissioner was prepared in May, 1999 and has been submitted to the drafting group (Ad-Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime). The Note analyses both instruments from a human rights perspective and makes specific recommendations for improvement to the draft texts. The Note formed part of the official documentation of the next meeting of the Ad-Hoc Committee which took place in Vienna from 28 June to 9 July. The High Commissioner was represented by her Trafficking Adviser at that meeting. OHCHR will be continuing to follow this initiative closely.

At the regional and Sub-regional levels, OHCHR is undertaking a number of different activities including the following:

- X        A joint **OHCHR / Council of Europe Trafficking Prevention Programme for Eastern and Central Europe** is under preparation. The Programme comprises a series of awareness-raising and training activities which commenced in June 1999. Programme emphasis will be on preventive measures - particularly sensitization of vulnerable groups and those with whom they come in contact. The Programme will focus particular attention on the situation of refugee and displaced women and girls from and in Kosovo. OHCHR, the Council of Europe are jointly funding and implementing the Programme and will conduct a joint evaluation at its completion.
  
- X        The **OHCHR Field Office in Sarajevo** is undertaking a number of different anti-trafficking activities in conjunction with local NGOs, the United Nations Mission (UNMIBH) and other international organizations including IOM.
  
- X        In March 1999, OHCHR organized two **workshops in Nepal** in the context of its on-going programme of assistance to that country. The first Workshop focused on criminal procedure and the second on the human rights of women. Both activities dealt with the specific issue of trafficking.

- X A major output of the second Nepal workshop was a project proposal for piloting a comprehensive human rights approach to trafficking in two selected regions of Nepal. The **Pilot Project on Trafficking** has been informally endorsed by the Government and will be developed and implemented in cooperation with the UNDP Office in Nepal and the UN System Task Force on Trafficking (Nepal). The project will focus specifically on strengthening the capacity of police and judicial bodies to address the problem of trafficking. It will also promote closer cooperation between Nepalese and Indian law enforcement and border authorities on this issue.
  
- X The High Commissioner is currently examining the draft **SAARC Convention Against Trafficking in Women and Girls**. The draft Convention is scheduled to be considered for adoption at the next SAARC meeting which will take place in Kathmandu in Nov. 1999. The High Commissioner has communicated her views on the draft Convention to the Heads of Government of all SAARC countries.
  
- X OHCHR is working to encourage the **National Human Rights Commissions of the Asia-Pacific region** to take up the issue of trafficking. This was discussed at an OHCHR sponsored Workshop on National Institutions and Economic, Social and Cultural Rights (Philippines, May, 1999). Further progress is expected to be made at the fourth annual meeting of the Asia-Pacific Forum of National Human Rights Institutions which is scheduled to take place in Manila in early September 1999.

#### **4. Contacts with IGOs/NGOs**

OHCHR is seeking to build alliances on the trafficking issue with the **key UN/IGO agencies and programmes** dealing with trafficking (including IOM, ILO, UNICEF and UNHCR as well as with relevant regional intergovernmental organizations) in order to: (i) further the OHCHR goal of integrating a human rights perspective into international anti-trafficking initiatives; and (ii) identify areas for potential collaboration.

Contacts have also been established with the **international NGO community** active in the trafficking issue. The recent *NGO/IGO Consultation on Trafficking and the Global Sex Industry* (Geneva, June, 1999) provided an opportunity for OHCHR to expand and build upon these contacts.

#### **5. Further Information**

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## ENDNOTES

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- 1                   Adviser on Trafficking, Office of the United Nations High Commissioner for Human Rights. Thanks to Pamela Jeffries and Rita Reddy for their helpful comments on an earlier draft.
- 2                   HUMAN DEVELOPMENT REPORT, 1995. (Oxford University Press, 1995 for the United Nations Development Programme).
- 3                   General Assembly resolution 49/166 of 23 December, 1994.
- 4                   Draft Protocol to the draft Convention Against Transnational Organized Crime, reproduced in UN Doc. A/AC.254/4/Add.3/Rev.2.
- 5                   The following figures are drawn from a range of sources including government, UN and NGO reports. All sources used are cited in the select bibliography.
- 6                   See Vitit Muntahborn, *THE TRAFFICKING IN WOMEN AND CHILDREN IN THE MEKONG SUB-REGION: LAW AND POLICY AS EFFECTIVE COUNTERMEASURES?* (Mekong Law Centre, 1997).
- 7                   Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.
- 8                   Convention on the Elimination of All Forms of Discrimination Against Women, Art. 6.
- 9                   Convention on the Rights of the Child, Art. 35.
- 10                  Convention on the Rights of the Child, Art. 34.
- 11                  Debt bondage is defined in Article 1(a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery as being “the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.
- 12                  UN Doc. A/AC.254/16 (1999)
- 13                  See reports cited in the bibliography for further information.
- 14                  These recommendations are drawn in part from the conclusions of the recent NGO/IGO Consultation, *Trafficking and the Global Sex Industry: Need for a Human Rights Framework*, June 21-22, 1999.
- 15                  The companion paper prepared by the Chief Commissioner of New Zealand, *The Role of National Institutions in Advancing the Human Rights of Women* provides important information in this regard.
- 16                  Message from the High Commissioner for Human Rights, Mary Robinson to the Ad-Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime, Fourth session, Vienna, 28 June - 9 July, 1999.