



Anti-child Trafficking Legislation in Asia: A Six-country Review

Objectives of the study

To review the national capacity and gaps in the enforcement of laws and regulations to combat child trafficking within the framework of international human rights law and to facilitate dialogue towards strengthening of law enforcement capacity.

Geographical coverage

Bangladesh, Pakistan, Nepal, Sri Lanka, Indonesia and Thailand.

International principles

- The basic elements of trafficking require that there be movement of a person or child from one location to another for the purpose of slavery, slavery like practices or exploitation.
- With regard to children, there is international consensus that the means and consent are irrelevant. The mere taking of children across borders for the purpose of slavery, slavery like practices or exploitation is an international crime.
- In the case of children, the prosecution has merely to show the transport of the child and the exploitative nature of his/her predicament.
- This approach implies a zero tolerance of child trafficking and an international consensus that no justification or excuse will be acceptable for the trafficking of children.
- International human rights law requires that states have a due diligent duty to prevent, prosecute and punish those who commit violence against women, and by implication, children.

Main findings

Progress

- Most countries of the region have adopted or are in the process of adopting effective legislation.

- Some agencies have been working on national minimum standards for care homes to be implemented by governments to ensure more humane treatment of children.

Challenges

- The working definitions in the region vary and sometimes lack conceptual clarity.
- In many countries, trafficking is seen as an umbrella concept for sexual exploitation or abuse of children, not recognising that trafficking is linked to the movement of people from one location to another.
- As a result, trafficking is seen as a broad moral standard often linked to the general punishment of any unhealthy sexual practice.
- In some countries exploitation is either defined too narrowly, not recognising the changing nature of the end products of trafficking, or too broadly, to encompass every kind of abuse so that the practicality of the definition is called into question.
- There is a lack of uniformity with regard to what constitutes a child for the purpose of trafficking and not all countries adopt the eighteen years old threshold recommended by the Convention on the Rights of the Child.
- Most of the legal frameworks deal with trafficking as a criminal issue and there is little discussion of compensation for victims from the profits of the perpetrator.
- Most countries of the region do not include welfare components at the legislative level but at the executive, programmatic level.
- Blanket “protection” strategies exist for child victims of trafficking where there is no consultation of children who are often taken into safe custody, usually to homes that provide substandard living conditions and is often akin to detention.

Recommendations

The Concept

- Address the lack of conceptual clarity by providing greater awareness and training at the regional level and timely intervention at the drafting stage by national and international experts.

Better enforcement

- Increase rates of conviction through greater capacity building and sharing of information and best practices at the international, regional and national levels.
- Accompany prosecution strategies with social legislation to fully realise the rights of individual victims.
- Continue to prohibiting hazardous and dangerous activities and strengthening monitoring mechanisms while regulating and managing other forms of employment, thereby giving children the will to survive.
- Adopt effective legislation to ensure that trafficking is recognised as a crime that it is well defined and that proper punishment is enshrined in the legislation to act as a deterrent to future traffickers.

Victims' care

- Focus on the victim and the need to empower him or her to deal with the future.
- Reorient the whole administrative and policy framework on safe custody so that children are recognised as individuals with rights and should be consulted as far as possible.
- Replace large detention homes with community oriented services that treat trafficked children who do not want to return home as rights bearing individuals.
- Continue to raise the matter of compensation (to help create funds and other incentives to support a productive childhood) at the national level to ensure that appropriate amendments are made to the legislation.
- Provide child-sensitive training to judges, police officers, lawyers and others involved in any aspect of monitoring or implementing laws related to children.
- Develop standards of care for social services and others who provide services to child victims of trafficking offences.

Prevention

- Ensure the protection of children at local level, create a caring and nurturing environment in the home and prevent poverty from becoming an excuse for the movement of people.
- Take measures to ensure safe migration channels for women and children.
- Institute more programmes for the prevention of trafficking by addressing the factors that cause migration in the first place.

Child-centeredness

- Consult working children prior to drafting legislation regarding child labor in order to ensure that their needs and concerns are taken into account and child sensitive laws are formulated.
- Develop guidelines for investigating child trafficking and other crimes related to children and child friendly procedures for the prosecution of such crimes, and create a fast track process for crimes involving children.

Regional cooperation

- Engage other countries in the fight against trafficking by signing more bilateral agreements, firstly with neighboring countries, which are a source of trafficked children, and with countries that act as destinations for trafficked children to ensure the proper treatment of these children.
- Oversight commissions must be created to ensure checks and balances in the system to prevent the corruption that is detrimental to the implementation of laws against trafficking