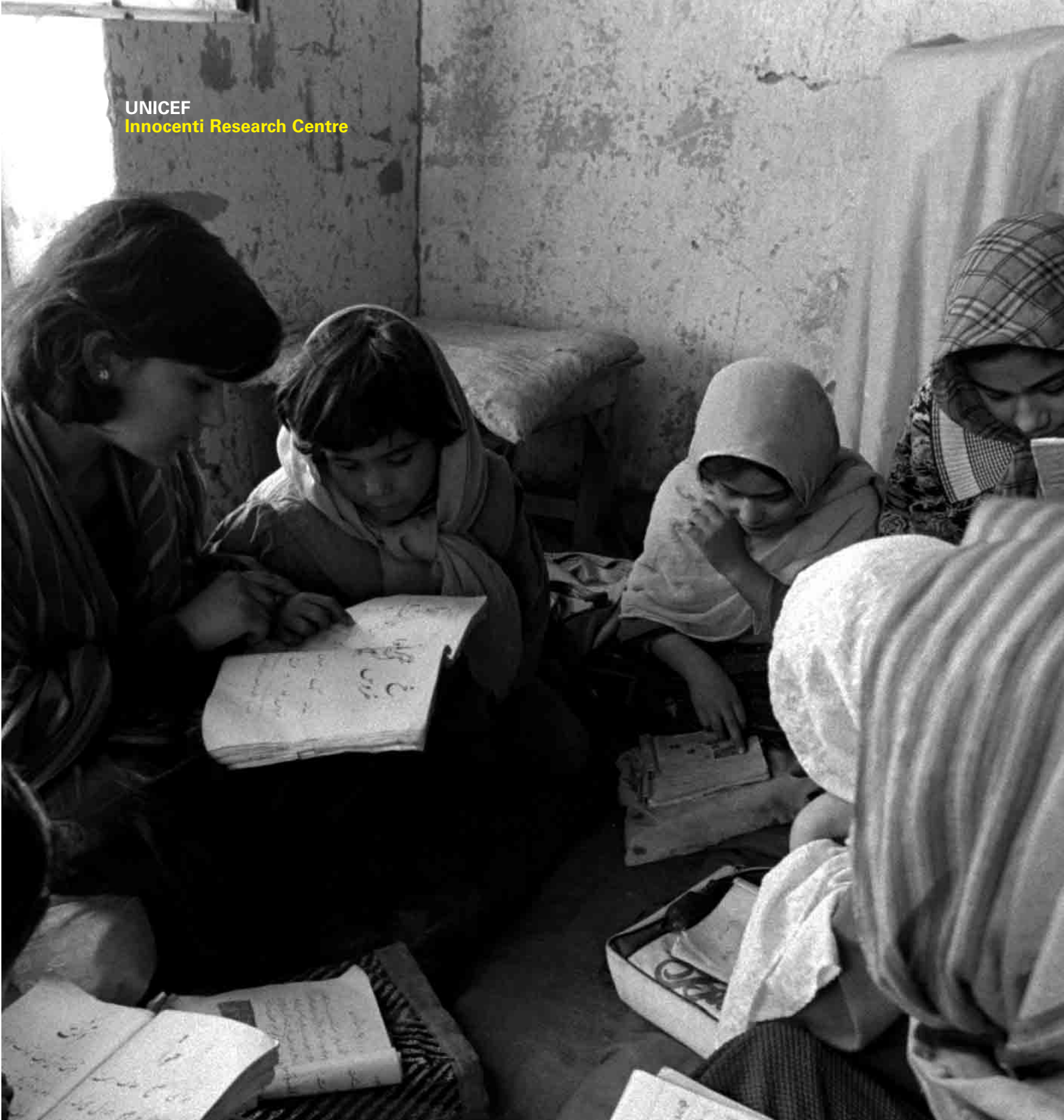


UNICEF
Innocenti Research Centre



TRAFFICKING FOR SEXUAL EXPLOITATION AND OTHER EXPLOITATIVE PURPOSES

For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY

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Some preliminary findings of research
funded by the Japan Committee for UNICEF

For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY

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The UNICEF Innocenti Research Centre

The UNICEF Innocenti Research Centre in Florence, Italy, was established in 1988 to strengthen the research capability of the United Nations Children's Fund (UNICEF) and to support its advocacy for children worldwide. The Centre (formally known as the International Child Development Centre) helps to identify and research current and future areas of UNICEF's work. Its prime objectives are to improve international understanding of issues relating to children's rights and to help facilitate the full implementation of the United Nations Convention on the Rights of the Child in both industrialized and developing countries.

The Centre's publications are contributions to a global debate on child rights issues and include a wide range of opinions. For that reason, the Centre may produce publications that do not necessarily reflect UNICEF policies or approaches on some topics. The views expressed are those of the authors and are published by the Centre in order to stimulate further dialogue on child rights.

The Centre collaborates with its host institution in Florence, the Istituto degli Innocenti, in selected areas of work. Core funding for the Centre is provided by the Government of Italy, while financial support for specific projects is also provided by other governments, international institutions and private sources, including UNICEF National Committees.

The opinions expressed are those of the authors and editors and do not necessarily reflect the policies or views of UNICEF.

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I. INTRODUCTION

1. Background

There is a long history to the commitment of UNICEF and of the Japan Committee for UNICEF to the issue of trafficking. In Japan, particular efforts have been made to promote advocacy and awareness-raising of this child rights violation, as well as to support efforts towards the ratification of relevant international instruments, the enactment of national legislation and the development of an Action Plan against Commercial Sexual Exploitation of Children. The leadership role of Japan in the organization of the Yokohama Conference is clearly indicative of national interest in the protection of children from trafficking, and from sexual exploitation.

Most recently, the Japan Committee for UNICEF worked together with the Japanese tourism industry, to strengthen the protection of children from sex tourism. In March 2005 leaders of the Japanese tourism industry signed a code of conduct squarely committing the industry to respecting and protecting the rights of children globally. This was a landmark effort, and very much the result of lobbying and advocacy efforts of the National Committee in Japan.

It is against this backdrop of both concern and action that the Innocenti research is underway. The research builds on the methodologies used by the Innocenti Research Centre (IRC) in researching trafficking in the African and European contexts. It adapts the methods to the South Asian reality and aims to enable their use by colleagues and research partners. Most importantly, the research focuses on 'what works' in families, communities, and among and between governments.

2. Summary

The problem of trafficking of children for exploita-

tive purposes has for long been recognized as a matter of concern. Among the most significant developments in child protection and the promotion of children's rights over the last decade is the dramatic increase in efforts to eliminate this phenomenon. The international community has enhanced the normative framework designed to prevent and combat this serious child rights violation, and governments across regions are setting in place new legislation, action plans and mechanisms to combat this plight in a vigorous manner. The issue of trafficking attracts attention among local media, the general public, civil society organizations, NGOs, police bureaux, state departments and foreign ministries of some of the most powerful nations. As a result, tangible action is being taken, including 'rescues' of trafficked children, patrols to detect child victims, criminal laws to prosecute traffickers. Although data remain fragmentary, there is substantial evidence that these actions are having an impact.

In the midst of this increased attention and diversity of interventions there is 'the child'. Possibly migrating in search of a better life or rewarding work, misled or abducted by traffickers and ultimately exploited, he or she must be the central focus of concern. For UNICEF, the protection of the child from this form of exploitation is a subject of the greatest urgency.

The present publication shares the preliminary findings of a study being conducted by the IRC, with the support of the Japan Committee for UNICEF on the protection of children from exploitation, with an emphasis on the practice of trafficking. This research initiative is particularly focused on South Asia. Included in the preliminary findings is a case study from yet another region, Latin America and the Caribbean. This case is included as an illustration of a coordinated effort to prevent and combat the sexual exploitation of children for the purposes of sex tourism in the Dominican Republic.

The IRC research is informed by two fundamental, practical objectives which are widely shared by partners concerned with trafficking. First is the aim to understand more about 'what works' in child protection efforts, and especially in the prevention of trafficking for sexual exploitation. Second is the interest to support and promote the mobilization and engagement of families, communities and local government in the prevention of trafficking and the effective reintegration of child victims. The latter interest is inspired by a number of sources, including initiatives promoting good local governance for children's rights, such as the 'Child Friendly Cities' initiative which aims at the implementation of the United Nations Convention on the Rights of the Child (CRC), including Article 35 which specifically addresses child trafficking.

Research on child trafficking and sexual exploitation is challenging because of the complex, clandestine, sensitive and changing nature of the practice itself. Information must be gathered from many different sources, official statistics and beyond; this data must be validated; linkages and explanations need to be developed and tested; and conclusions and lessons must be considered in consultation with stakeholders. Building on the experience of previous research, this study is being carried out in cooperation with a wide network of partners at the international, regional and local levels.

Though still in its early phase, three conclusions are already emerging from the research:

- First, it continues to be problematic to determine the exact numbers of victims of trafficking and the severity and consequences of the problem, in any region of the world. This is partly due to the lack of a clear national priority to the collection of such data. However, there are also some very real difficulties to gathering numerical data on a reality as hidden and multi-layered as the trafficking of children, in particular when it is associated with a cross-border phenomenon. It is further difficult to translate these numbers into a meaningful understanding of the concrete effects on children's lives;
- Second, there is a global proliferation of law and policy addressing child trafficking. Though this cannot be assumed to indicate a corresponding decrease in the numbers of children trafficked, it does reflect a significant increase in public consciousness and political will to address this child protection concern;
- Third, the two case studies under consideration – one in Southern India and one in the Dominican Republic – indicate that it is possible to achieve real results through citizen and governmental action to prevent the exploitation of children. Essential ingredients for a positive outcome appear to include community engagement, local government leadership, and in the case of the Dominican Republic, international cooperation.

As the research unfolds in 2005, these early conclusions will be further explored and tested in other Asian countries. Regional mapping of the problem

will continue, along with the preparation of a series of case studies. These case studies will examine such issues as community policing and local community engagement in the prevention of child trafficking; cross border trafficking and bilateral arrangements between governments to prevent child trafficking and assist victims of trafficking.¹

3. Methodology

The methodology for this study builds on IRC research in both Africa and Europe. Most importantly, it relies on the partnership of UNICEF regional and field offices, as well as National Committees. Cases studies, such as the two included in this paper, are largely the result of a review of existing literature and other materials. These are collected and analyzed, and subsequently validated by colleagues and other experts in the field. For the present research a particularly strong partnership has been promoted with UNICEF colleagues in the South Asia Regional Office.

For the most part the balance of the research uses a flexible process that was followed in both Africa and Europe. This includes, first, a desk review to establish a baseline of publicly-available information. Account is taken of studies, annual reports and other relevant documentation produced by governments, academic and research institutions, United Nations agencies, international organizations, regional institutions, and non-governmental organizations. A database is developed on the basis of the information gathered, and organized according to country. Generally the categories for information storage include: perceptions and analyses of the phenomenon, flows and patterns of trafficking, key players, current legal framework, policies, actions and programmes. In the Asian context the categories have yet to be determined.

Recent and emerging policy and programming trends are reviewed and analyzed at international, national, and local levels. Some of that data is presented in this paper. Information gathered is organized in such a manner to allow the sharing of data within a specific control and validation system. The use of multiple sources of information permits cross-checking of the validity of information collected and ensures that the different sources of information correlate with each other.

Consistent with the past experience, and based on secondary data collection, country issue papers (CIPs) are produced. Each paper addresses general information on child trafficking in the country concerned on: patterns, legal framework, and other policy responses. CIP length depends on information available. Drafts are subsequently sent to national focal points (one per country identified in collaboration with UNICEF Offices) for validation and integration, with a request to identify major national key informants (at least 10 per country).

Collaboration is of paramount importance. Technical research assistance is provided to UNICEF Country

Offices and National Committees for UNICEF, as required. Research institutions, organizations, and experts involved in research on child trafficking in the particular region under research are contacted for information sharing and potential collaboration. Partnership with UNICEF Offices at HQ, Regional and National levels is enhanced, as well as collaboration with other initiatives to monitor responses to trafficking in human beings.

Findings are analyzed to develop research papers, and these are included in the IRC child trafficking web-site. They are also disseminated throughout UNICEF, as well as among partner organizations and to key policy-makers. Existing research methodologies that are used in child trafficking research and

applied to existing data sources are constantly reviewed and adapted to the context under research. Particular consideration is given to methodologies employed in previous research on Africa and to the creation of synergies with the research project on child trafficking in Europe.

The afore mentioned CIPs are sent, together with a questionnaire on perceptions, actions and detailed data, to all the stakeholders identified at the national level. Each CIP, together with information collected from the stakeholders, is the basis for the preparation of Child Trafficking Country Information Baselines to inform regional and sub-regional preliminary analyses of child trafficking in the region.

II. LAW AND POLICY ON CHILD TRAFFICKING IN SOUTH ASIA

1. Definition

One of the biggest challenges to the prevention and elimination of the trafficking of children is ‘conceptual clarity’ among the many interested parties. When there is a lack of a shared understanding of what trafficking really means, there can be confusion in terms of the nature and extent of intervention. In this regard, the international community has decisively moved the process forward over the recent years. On the one hand, it has condemned child trafficking for any purpose and in any form through the Convention on the Rights of the Child. On the other, it has introduced an internationally-agreed definition on trafficking in the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

TRAFFICKING

- (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 the subparagraph (a) of this article shall be irrele-

vant where any of the means set forth in the 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 the subparagraph (a) of this article;

- (d) “Child” shall mean any person under eighteen years of age.

Trafficking is quite often equated with sexual exploitation, but it is important to acknowledge that not all trafficking results in the sexual exploitation of women and children. Indeed trafficking takes place for a range of exploitative purposes, including labour or fraudulent adoption.

2. Law and policy efforts and perspectives²

Trafficking in human beings has become a focus of concern in many South Asian countries. Several recent legal and policy initiatives have been undertaken by different states in the region, in order to address this phenomenon. In September 2004, governments from the South Asia region organized in Colombo, Sri Lanka, a Mid-Term Review of the Implementation of the Yokohama Commitments in which a significant stock taking exercise of these important measures was promoted, and areas of priority concern were identified.

Claims that ‘millions of children’ are trafficked each year, and the desire to immediately address the problem through stringent laws, and law enforcement, are repeatedly made by governments the world over, including in South Asia. At the same

International Law

The Convention on the Rights of the Child 1989 (CRC) has been ratified or acceded to by all SAARC countries. It provides the most important legal framework for policy responses concerning the safeguard of children's rights. The CRC defines the "child" as a person below the age of 18 years. It calls on governments to adopt all necessary measures to ensure the realization of children's human rights, including their protection from any form of abuse and exploitation. The Convention addresses child trafficking specifically in one of its articles (article 35), but other of its provisions are similarly relevant to ensure the effective protection of the child – including the child's protection from discrimination on any ground (article 2); from economic exploitation, as foreseen in article 32 "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development; as well as from all forms of sexual exploitation and sexual abuse, in particular the exploitation of children in prostitution or pornography" article 34).

CRC principles and provisions have been complemented by two Optional Protocols approved by the General Assembly on 25 March 2000: "On the Involvement of Children in Armed Conflict" and "On the Sale of Children, Child Prostitution and Child Pornography". The latter (Optional Protocol) has a particular relevance to trafficking in children. Bangladesh and the Maldives are the only South Asian countries to have ratified the protocol. Afghanistan, Nepal, Pakistan, and Sri Lanka have signed the Optional Protocol, but have yet to ratify it.

As indicated earlier, specific provisions on children are also set out in the United Nations Palermo Protocol that entered into force on 25 December 2003. To achieve an effective protection of children from trafficking, the Protocol should be read together with the Convention on the Rights of the Child.

The International Labour Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182 defines trafficking for sexual and labour exploitation as one of the worst forms of child labour. Pakistan, Bangladesh, Nepal and Sri Lanka have all ratified the Convention. Also of primary importance is the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption when addressing the traffick-

ing in children for the purpose of international adoption. The Convention has been ratified by India and Sri Lanka.

CEDAW, the Convention on the Elimination of all Forms of Discrimination against Women requires state parties to "suppress all forms of traffic in women and exploitation of prostitution of women" (Article 6). It has been ratified by all SAARC countries.

Other relevant human rights treaties apply to children as well, including the International Covenant on Civil and Political Rights, which provides that no one shall be held in slavery or servitude, tortured, or subjected to cruel, inhuman or degrading treatment (Articles 7 and 8), and the International Covenant on Economic, Social and Cultural Rights, which recognizes the right to just and favourable conditions of work (Article 7). The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment holds state parties responsible for pain and suffering intentionally inflicted by or through a public official. Another relevant treaty is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which establishes international standards for protecting the human rights of migrants, and prohibits migrants from being held in slavery or servitude, or required to provide forced labour. Sri Lanka is the only South Asian country to have ratified the convention. Bangladesh has signed the convention.

South Asian governments endorsed a South Asia Strategy against Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA), in preparation for the Second World Conference against Commercial Sexual Exploitation of Children, held in Yokohama in December 2001. The document includes a commitment to develop national plans of action, enact and implement laws to combat CSEC and CSA, establish regional and national focal points and databases, hold consultations with national, regional and international stakeholders, and to improve national birth registrations. In the area of legal reform, the countries endorsed a strategy that would be rights focused, gender-sensitive and child-friendly. In addition, they agreed to ensure the registration of all births and marriages; cooperate with other governments to prosecute foreign perpetrators; and provide child-rights training for judges, lawyers, police and other law enforcement officials. In December 2001, at the time of the Yokohama Congress, South Asian delegates endorsed the Yokohama commitments, reiterating their pledge to protect children.

time, however, several of the initiatives are based on impoverished data, conflating trafficking with prostitution, and failing to distinguish between child trafficking and the situation of adults.

A central concern that emerges in a review of the available literature is that there are no accurate statistics on how children are trafficked within South Asia, or for that matter, worldwide.¹³ This reality is not unique to this region. Indeed, whatever statistics

are available they are consistently reproduced in different reports, even if sources are mostly out of date. Estimates at a global level mention that about 1.2 million children are trafficked for the purposes of labour or sexual exploitation globally.¹⁴ Even the limited information that is available in the context of South Asia focuses on trafficking in children for the purposes of sexual exploitation.¹⁵ The extent to which children are trafficked into sites of exploita-

tion through labour remains largely unavailable.

The criminal and clandestine nature of child trafficking makes it difficult to gather reliable data, but there is also a great deal of confusion in the region as to what constitutes trafficking, and how to acquire accurate information when trafficking is combined with other activities.

- Trafficking is often equated with sexual exploitation, with the result that trafficking for other purposes receives little or no attention.
- Trafficking is also often conflated with prostitution and the assumption that all prostitutes have been trafficked.¹⁶ This often results in misidentification and overestimation of the number of trafficked individuals.
- Trafficking can also be equated with clandestine migration, such as smuggling or illegal movement. As a result migrants may be misidentified as victims of trafficking or trafficked individuals being viewed solely as undocumented immigrants.
- Finally, not all countries have subscribed to the international definition of trafficking in the *Palermo Protocol*. All countries have agreed to a regional definition of trafficking that is set out in the *South Asian Convention on the Trafficking in Women and Girls for the Purposes of Prostitution, 2000* (SAARC Convention). This definition reproduces some of the connotations between trafficking and prostitution, addresses women and girls together and excludes references to young boys or other sites of exploitation, except sexual exploitation.

Conceptual and Legal Frameworks

This section of the study addresses key dimensions in the legal frameworks relevant to human trafficking in South Asia, and draws in particular from the reality in India, Nepal and Bangladesh. It considers relevant international, regional and sub-regional agreements and other commitments that Bangladesh, India and Nepal have entered into, especially on child trafficking. It identifies some gaps in existing approaches and proposes a child rights-centred framework, addressing in particular the issue of empowerment.

The following areas are considered:

- (i) A review of existing legislation, and policies for the protection of children against trafficking, and the rescue, repatriation and support of trafficked children, within the framework of international, regional and sub-regional commitments, including the recently signed South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (hereinafter the 'SAARC Convention');
- (ii) The identification of strengths and limitations of the existing legal frameworks
- (iii) The consideration of a child-centered approach.

Human trafficking is a complex phenomenon that can be linked to a number of supply and demand

factors. The consequences for its victims can include forced prostitution, slavery-like working conditions in factories or private residences, forced participation in smuggling of drugs or other illegal activities, and other inhumane conditions. Efforts to identify, analyze and combat human trafficking are complicated by the clandestine nature of the phenomenon and the resourcefulness of traffickers, who constantly shift their routes and practices to avoid detection, including by law enforcement officials and NGOs.

The legal and policy responses to child trafficking mirror the complex nature of human trafficking. A survey of available data indicates that the legal responses reflect one or more of the following conceptual approaches to trafficking, envisaging this reality as:

- (i) A moral issue;
- (ii) A law-and-order or organized crime issue;
- (iii) A human rights issue;
- (iv) A migration issue;
- (v) A labour issue;
- (vi) A poverty and development issue;
- (vii) A gender issue; and/or
- (viii) A public health issue.

As a result, a number of important challenges compromise the effective protection from this form of exploitation. Among these challenges:

- In South Asian countries, national legislation on trafficking is primarily focused on the **criminalization of trafficking** or related activities such as kidnapping, wrongful confinement, slavery or forced labour, rape and sexual assault;
- Laws are primarily linked with combating trafficking for the **purposes of prostitution**, including the South Asian Association for Regional Co-operation Convention on the Trafficking of Women and Girls for the Purposes of Prostitution ('SAARC Convention');
- Anti-trafficking initiatives in South Asia at the regional and national levels tend to focus more on **the process of trafficking**, rather than the harm to the victim that occurs during the course of trafficking. As a result, most of the initiatives concern strengthening law enforcement and border interception rather than victims protection;
- Prevention mechanisms tend to be restricted to information and awareness about trafficking, while the broader issues of safeguarding socio-economic rights, women's rights and children's rights are rarely considered;
- Protection mechanisms tend to be short-term focused and, with respect to children, insufficient attention is given to their particular needs, vulnerabilities and to the protection of their rights – including in the context of their reintegration and repatriation.

Major challenges

There are some concerns relating to the legal and policy approaches to child trafficking in South Asia, which also need to be kept in mind. Though not an exhaustive list, these include:

a) The challenge to detect trafficking at an early stage

Human trafficking is an elusive concept because of the variety of forms it can take, the number of actors who may be involved in the process, and the difficulty of detecting it at an early stage. This is often due to the fact that victims have the expectation that traffickers are supporting them and arranging legitimate work for them in another location. The fluidity of trafficking presents a challenge for those who are drafting laws to combat this phenomenon, who need to be both specific and feasible to cover a wide range of situations.

b) The lack of a common definition

There are also great differences, including as a result of the lack of a common definition among stakeholders regarding the concept of trafficking – including as to whether the consent of the trafficked person is relevant or if coercion, deception, or abuse of power over the trafficked person is a necessary ingredient; and whether a person can be assumed to have been trafficked based on the person's circumstances, such as involvement in commercial sex work.

c) The limited consideration of trafficking for the purpose of prostitution

The national laws vary considerably, though in most cases they are directly linked to trafficking of women and girls for the purposes of prostitution. In this regard, and as indicated earlier, the definition adopted in the SAARC Convention is much narrower than the one that has been set out in the UN Palermo Protocol. In fact, the definition adopted in the Palermo Protocol has made it clear that a person may be trafficked into a variety of harmful circumstances, including forced prostitution, bonded labour, or slavery-like working conditions. Whereas in South Asia, anti-trafficking laws focus primarily on prostitution, and do not require a separate showing of coercion, deception or other abuse, women and girls engaged in commercial sex work may be presumed to have been trafficked, and may be subject to 'rescue', rehabilitation, and where necessary, repatriation to their home countries, regardless of their wishes, or, in the case of children, their best interests. At the same time, the focus of anti-trafficking laws on prostitution may result in all trafficked women being stigmatised as prostitutes. Ironically, this focus on prostitution can obscure the fact that trafficked women and girls frequently are subject to sexual abuse by traffickers, regardless of whether they are trafficked into prostitution. Because they are viewed as immoral, they may run the risk of being sexually abused by law enforcement officers even after they have been 'rescued' and placed in 'safe custody'. Moreover, commitments to protect the human rights of women and girls trafficked into prostitution are more difficult

to fulfill when they are treated as criminals under national anti-prostitution laws.

(d) Trafficking and migration, associated challenges

Trafficking is closely linked to broader migration trends. For example, vulnerable groups – such as young adults, women from ethnic minority and lower caste groups – move to cities and across borders to search for better economic opportunities. They are vulnerable to traffickers who promise them good jobs in another location. However, laws and policies that restrict legal migration – particularly those that restrict women's emigration – can actually increase the vulnerability of women and other groups to trafficking, by compelling them to migrate in a clandestine manner and through illegal routes. As clandestine or illegal migrants, they will increasingly rely on agents who may take advantage of them and force them into trafficked situations.

The former United Nations (UN) Special Rapporteur on Violence against Women has addressed this concern and stressed that "traffickers fish in the stream of migration."¹⁷ Highlighting the importance of considering trafficking in the broad context of migration, she recognized that trafficking may occur after a person has decided to move, or uses the same routes as voluntary migrants, in which case it may be difficult to distinguish trafficked persons from migrants. There is therefore a danger that legal strategies designed to protect women and children from traffickers – such as regulations restricting women's emigration or requiring the consent of family or community leaders – may inadvertently restrict women's voluntary migration for work or to escape abusive home situations. Trafficked persons are often taken across national borders without proper documentation, or their documentation is seized by the traffickers. In such cases, if apprehended by police or border officials in a destination country, they may be treated as "illegal migrants"; their trafficked status may be ignored and their protection undermined. At the same time, a person may also be trafficked across national borders with apparently proper documentation – for example, in the case of forced marriage – and therefore the person's trafficked status may be difficult to detect. National laws and agreements among countries need to take into account these distinctions and variations.

e) The lack of a distinct attention to the child's reality

While international law and national legal frameworks recognize the different legal status of women and children, their rights and capacities, there is a tendency in many South Asian countries, amongst official authorities in some cases, in others NGOs and women's rights groups, to group women and children together and in turn dilute the specific attention they may call for. If distinctions are not carefully drawn between the two groups, these laws may have a disempowering effect on women, for example, by not recognizing their right to make decisions concerning their safety, health, work and location. More importantly, they may undermine respect for legal safeguards for both women and

children in terms of counseling, witness protection, legal assistance, as well as of participation in criminal investigations and trials, which may end up being ignored if they are not treated separately within anti-trafficking laws.

(f) The challenges of multiple ages of attainment of majority

The protection of children under anti-trafficking laws is also complicated by the existence of multiple laws relating to the age of attainment of majority in many countries in the region. Both the new Palermo Protocol and the SAARC Trafficking Convention endorse the approach set forth by the Convention on the Rights of the Child to define “children” as any person under 18 years. Yet, the age of majority for various purposes under the laws of Bangladesh, India and Nepal vary quite widely, from seven years (the lowest age of criminal responsibility in Bangladesh) to 21 years (the upper age for guardianship in Bangladesh).¹⁸ In India, although the age of majority for the purpose of marriage is 18 for women and 21 for men, the minimum compulsory age of education as well as employment is 14 years.

(g) The status and rights of women and girls

Neglect of human rights are often associated with trafficking cases – including discriminatory laws and practices that restrict women’s and girl’s access to education, property, inheritance and economic security, as well as their access to adequate mechanisms in place for registering births and marriages, and preventing forced or coerced marriages.

(h) Economic factors

South Asian economies are expanding and opening up to international competition. New employment opportunities are being created, especially in the export manufacturing sectors. These new jobs are providing additional income and sources of independence for many young men and women. However, the working conditions in which they function are often quite poor. The reduction in demand in some sectors, is resulting in the closure of many factories or retrenchment of workers. The vagaries of the market and liberalization have a dark side, where the lack of job security and adequate safety nets drive many young women who are laid off into seeking jobs in other cities or countries. They are vulnerable to traffickers who may offer quick solutions and lucrative job offers.

The abusive conditions in which trafficked persons typically are forced to work implicitly violate both human rights law and a range of labour standards. The situation in South Asia is complex, as many women and children work in the informal sector, which is not covered by most labour laws or regulations. Migrant workers are particularly vulnerable to trafficking, especially if they are undocumented, which in turn compromises their ability to complain for fear of being arrested and deported.

GAPS IN THE CONCEPTUAL FRAMEWORK

An analysis of the laws in South Asia reveal that child trafficking is discussed almost exclusively within the framework of sexual exploitation and law enforcement, mostly reflected in the focus on criminal provisions. There are several problems with dealing with the issue of child trafficking within this limited framework:

It tends to reinforce the image of children who move within an “abuser-victim” paradigm. Such a paradigm tends to be disempowering and denies children any agency. Naturally, there is considerable difference between the decision-making ability of an 11-year-old child and a 17 year old. In both situations, the agency of the child must be respected, but in the case of younger children the vulnerability of the child to harm or abuse in the course of movement increases exponentially. Nevertheless, as a result of this negative paradigm, children’s contribution or participation in decisions that affect them is not sought, which in turn may only further reinforce the sense of helplessness in children.

There are some benefits to describing children as “victims”. It is an important term from a psychological perspective for children to understand that they are not the cause of the abuse or harm. It also has strategic benefits – if trafficked children are viewed as “victims” then the public perception of the need to protect them is stronger and the risk for stigmatization weaker. Authorities are also less likely to treat children as “criminals”. There is therefore a need to recognize the strategic benefits of the victim paradigm. At the same time, however, it is important to be aware of pitfalls of “victim” rhetoric.

Primarily, the problem with the existing legal frameworks is that they presuppose an adult victim and do not accommodate the specific issues that arise in relation to children and view their movement almost exclusively through the lens of sexual exploitation and prostitution.

The existing framework at the national and regional levels do not effectively address push factors that lead to migration as well as trafficking. As a result, there is minimal focus on prevention mechanisms, and child trafficking fails to be seriously considered within the broader framework of socio-economic rights, women’s rights and children’s rights.

Indeed, there are considerable problems with the law enforcement system. These include:

- A failure to provide for adequate victim protection, especially for children;
- Inadequate attention being given to prevention mechanisms;
- A focus on border control measures that further prejudice the rights of children, prosecuting trafficked children for illicit activities, such as illegal cross-border movements, prostitution or petty crime;
- Increasing corruption among law enforcement officials which creates a distrust in the community, especially in children and leads to an ineffective framework in combating trafficking.

An Alternative Framework: Prevention, Protection and Empowerment

The countries in South Asia deserve acknowledgement for the political will they have demonstrated as well as the initiatives they have undertaken to address the problem of trafficking of women and girls, especially at the regional level. However, the framework and the approach which informs the formulation of nearly all the laws addressed in this paper are not consistent with the prevention, protection, and empowerment paradigm that privileges the human rights of women and children who are affected by trafficking.

Guided by the strong international human rights normative framework and the tangible political commitments undertaken by Governments, there is an opportunity to encourage future action fully informed by a children's rights approach.

The primary concern must be to combat child exploitation, slavery or servitude-like conditions, strengthen the rights of the child, as well as and to empower the child - both to strengthen the awareness and prevention of trafficking practices, and to face her or his future after being trafficked, while choosing against risky and questionable propositions that often lead to exploitation.

SAARC Convention

The SAARC Convention is the most important document at the sub-regional level and an indicator of the way in which the issue of trafficking is being perceived and pursued in South Asia.

- The Convention criminalizes the activities of persons engaged in "moving, selling, or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the persons subjected to trafficking" (Article 1(3)). This definition would include a woman who has moved outside her country, with her consent, on payment of some kind of consideration.¹⁹
- The SAARC Convention directs states to use criminal law to deal with the problem of trafficking and places trafficking as a crime against the state and a law and order problem. Parties to the Convention are required to provide for the punishment of any person who "keeps, maintains, manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place for the purpose of trafficking" (Article III (2)). If a person is kept against his or her will in any place, this can constitute abduction and/or kidnapping. Laws against such forceful confinement already exist in the criminal codes of all SAARC countries. If a place is used as a transient point while a person is being moved, then the issue of consent becomes extremely relevant. If a person remains in a hotel room or another rented place with her consent, then no crime is ostensibly committed. If they are abused or harmed during the period of their stay, or they have been bought or sold, then it is unclear why the person

letting the place or renting the room should be punished, unless he/she knows that such abuse/sales are occurring. By way of comparison, if a landlord lets a place to a family and sexual abuse or domestic violence is committed in that family, the landlord cannot be held to have committed a crime by letting his/her place to such a family. If he/she knows that such abuse is taking place and fails to report it, then there may be grounds for prosecution under the existing domestic penal codes.

- Currently the SAARC Convention does not address the issue of consent. Excluding the relevance of consent in the definition of the offence of trafficking could result in a serious violation of the rights of persons who are willing to be transported across borders and pay for such assistance. It is important to draw a distinction between legitimate or consensual mobility and coerced movement.²⁰
- The SAARC Convention collapses the harms related to the trafficking of adult women with those of children. It is possible that this association may not delineate the very different and specific issues that affect these two separate groups (Article 1(5)). For instance, the vulnerability of children is specific to their age and dependency status, and therefore, demands society's protection. The nature of the vulnerability of adult women is distinct from that of children and must be understood as such. If it is possible to address children's issues separately when it comes to the question of labour, it is also possible, and indeed critically important to address their issues separately from those of adult women when it comes to matters of trafficking.

Some women may have been forced to move when they were minors. An adult woman should be entitled to legal remedies for any harm she has endured as a child, whether it is in the form of child sexual abuse, slave labour, or coerced work. Making a remedy available for harms experienced, as a child or minor, may run the risk of treating all adult women like children.

- Consent, especially in relation to the worst forms of labour, including prostitution, in the case of minors is irrelevant and considered as such in all the SAARC countries. However, once a child reaches the age of consent then an entirely different set of rules and legal provisions apply, and the special protection to which children are entitled is superseded. This is something that may need to be revisited.
- The SAARC Convention recommends that the signatories set up "protective homes and shelters for rehabilitation of victims of trafficking" (Article IX (3)). NGOs will be authorized for this task of "providing suitable care and maintenance for the victims of trafficking (IX (4)). This provision recognizes the lack of suitable arrangements for those who have been placed into what have been referred to as "protective homes". However, the voluntary nature of 'stay' in a protective home is important, especially in the case of adults.

It is unclear as to how the SAARC Convention addresses some of the fundamental problems that

have characterized rescue and rehabilitation programs in the region. The rescue and 'detention' in homes has by and large, proven not to be an empowering option for the trafficked person. Once a woman or minor has been detained, the right to privacy or bodily integrity may be at risk, including with invasive medical examinations and inquiries about the individual's personal life. These institutions provide few options for self-employment and alternative, viable and sustainable livelihoods. Incarceration, loss of liberty, and less than adequate living conditions, often drive women and girls placed in these institutions back into sex work or to the site they had been rescued from. Frequently, they incur huge debts to cover the cost of legal fees, bail and sureties, which reinforces their debt bondage status. The SAARC Convention states that adequate legal advice and health care facilities are to be provided to persons who have been released from trafficking and are awaiting the voluntary return to their home countries (Article IX (2)). There is no indication that anyone other than the person who has been released will bear the cost of such facilities. At the same time it is important to highlight that in the light of this Convention, State parties do recognize that trafficked persons require legal protection even after they have been released from trafficking.

- The SAARC Convention sets out two important provisions recognizing the need to support the human rights of those vulnerable to trafficking. Article VIII (7) calls on "preventive and development efforts on areas which are known to be source areas for trafficking". States are thus called upon to take more initiative in preventing vulnerability to trafficking. As the implementation of the Convention unfolds, it must become clearer 'how' this is to be achieved. Moreover, as noted above, distinctions will need to be drawn between the special vulnerabilities of adult women, and of children.

- In its aim to prevent and combat trafficking the SAARC Convention leads to the criminalisation of prostitution. Prostitution per se is deemed an offence. Article I (2) defines prostitution as the "sexual exploitation or abuse of persons for commercial purposes".

Commenting on this aspect, the UN Special Rapporteur on Violence against Women stated in her interim report on trafficking in South Asia, "... experience has shown that criminalization of prostitution results in double victimization of the woman concerned as she, and not the traffickers, becomes the main target of police action. This provision is a major step backwards... and will create hardship for the women concerned"²¹

- Presently, the SAARC Convention does specifically address the issues of violence, coercion, fraud and stigma that arise in the context of trafficking. Those who have been involved in prostitution face severe stigmatisation and social marginalisation. Affirmative action measures to assist in removing this stigma are essential. Care will need to be taken to insure that the SAARC Convention does not reinforce stigmatization and discrimination.

3. Preliminary Conclusions and Future Research

Even at a very early stage the research reveals an interesting and complex reality in South Asia. There is clearly a positive proliferation of law and policy. In the international arena, certainly, a globally acceptable normative framework to combat trafficking has been set in place. Within South Asia, however, there is a low level of ratification of these standards. Moreover, at national level in most of these countries there is room to both strengthen and broaden trafficking legislation. It needs, for instance, to include but also move beyond the commercial sexual exploitation of children and the issue of prostitution. The range of sites of exploitation is enormous, and children suffering in these contexts all have a right to protection and to assistance as victims.

That the trafficking situation in South Asia is complex is irrefutable. The glimpse of the flows and patterns of trafficking indicated in the map on page 13 provides ample evidence of this. Trafficking in South Asia is not a simple matter of a child being moved from one country to another. Rather, there is cross border trafficking, but in addition there is also in-country trafficking, trafficking out of the region to other parts of the world, and trafficking into South Asia from other regions. This complexity is a huge challenge to law, policy and practice.

From the two case studies presented in this initial study, there are efforts to applaud and many lessons to learn. From the case in Southern India, the resounding message is that the prevention of trafficking is possible – and sustainable – when communities invest themselves in preventative efforts. At the same time, the case study made clear the importance of the supportive role that NGOs and other partners can play in addressing the root causes of trafficking. Most notable was the attention of the NGO STHREE to livelihood options and income generation for families and communities. These and other findings held true as well in the Dominican Republic case. Again, the involvement of community and a range of other national and international actors were important. In the Dominican Republic, however, given the nature of the sexual exploitation of young people in the face of 'sex tourism' a wider alliance of partners was necessary. The strong governmental leadership, together with the Dominican tourism industry, and the cooperation with governments and tourism industries in other countries were instrumental in the efforts promoted to protect children from exploitation.

Buoyed along by these findings, the IRC Research Centre and UNICEF colleagues in the field will continue to cumulate findings. Work in the South Asian region will be pursued and research will also be developed in the Southeast Asian region. Also in this region political attention is being increasingly provided to this phenomenon, as well as the opportunities to address it vigorously. The recent statement by the Chinese delegation before the

Commission for Human Rights is a meaningful illustration of this promising trend:

To protect the rights of the child is to ensure sustained and healthy development of the [sic] mankind. This is the common responsibility of the whole world and the whole humanity. Always with this responsibility in mind, the Chinese Government has actively participated in the relevant international cooperation aimed at eliminating the root causes of the violation of the rights of the child. In 2004 China and Vietnam conducted a series of activities of law-enforcement cooperation and training on combating trans-boundary child trafficking. In October 2004, together with the [sic] Laos, Myanmar, Thailand and Vietnam, signed a Memorandum of Understanding to Combat Human Trafficking in Mekong Sub-region in order to enhance regional cooperation on combating child trafficking. The public security organs of China have also joined Asia Network to Combat Computer Crimes and conducted timely exchanges of information and experience with the police of other Asian countries and cooperated with them in combating the cyber crime of child pornography. In July 2004, in cooperation with UNICEF Beijing Office, China organized a symposium on issues related to the violence against children and provided, on that basis, serious and detailed replies to the questionnaire of the UN independent expert on violence against children.

Geneva, 13 April 2005

Commitments to prevent and combat child trafficking are all to be lauded. They are also, importantly, to be supplemented by applied and empirical research that by its nature questions strongly held assumptions, and yields findings that support good efforts. As mentioned at the outset, the Innocenti research will be pursued in South Asia and elsewhere. A number of 'good practice' case studies will be compiled, and the mapping of flows and patterns will continue.

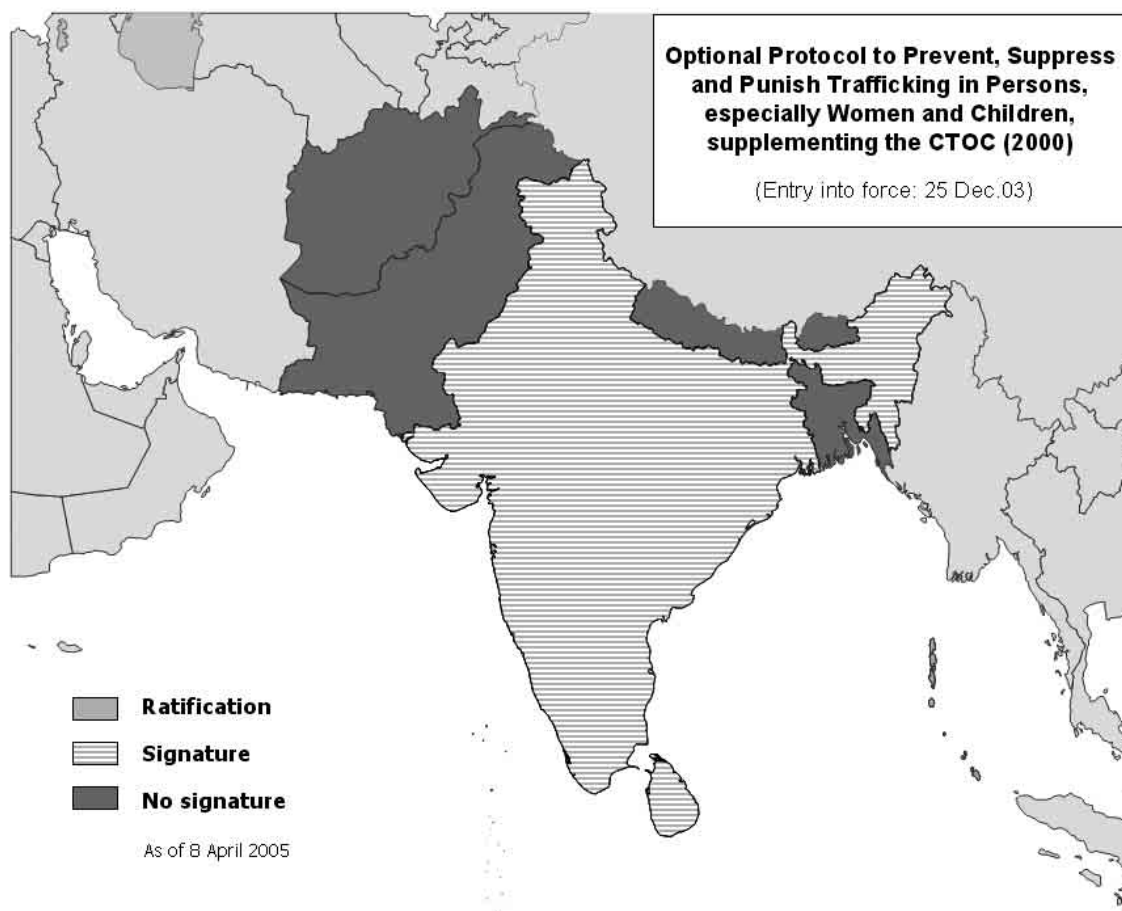
It is critical that in the name of helping children no harm is done. For this, a research agenda, partnership, and sustained support are fundamental.

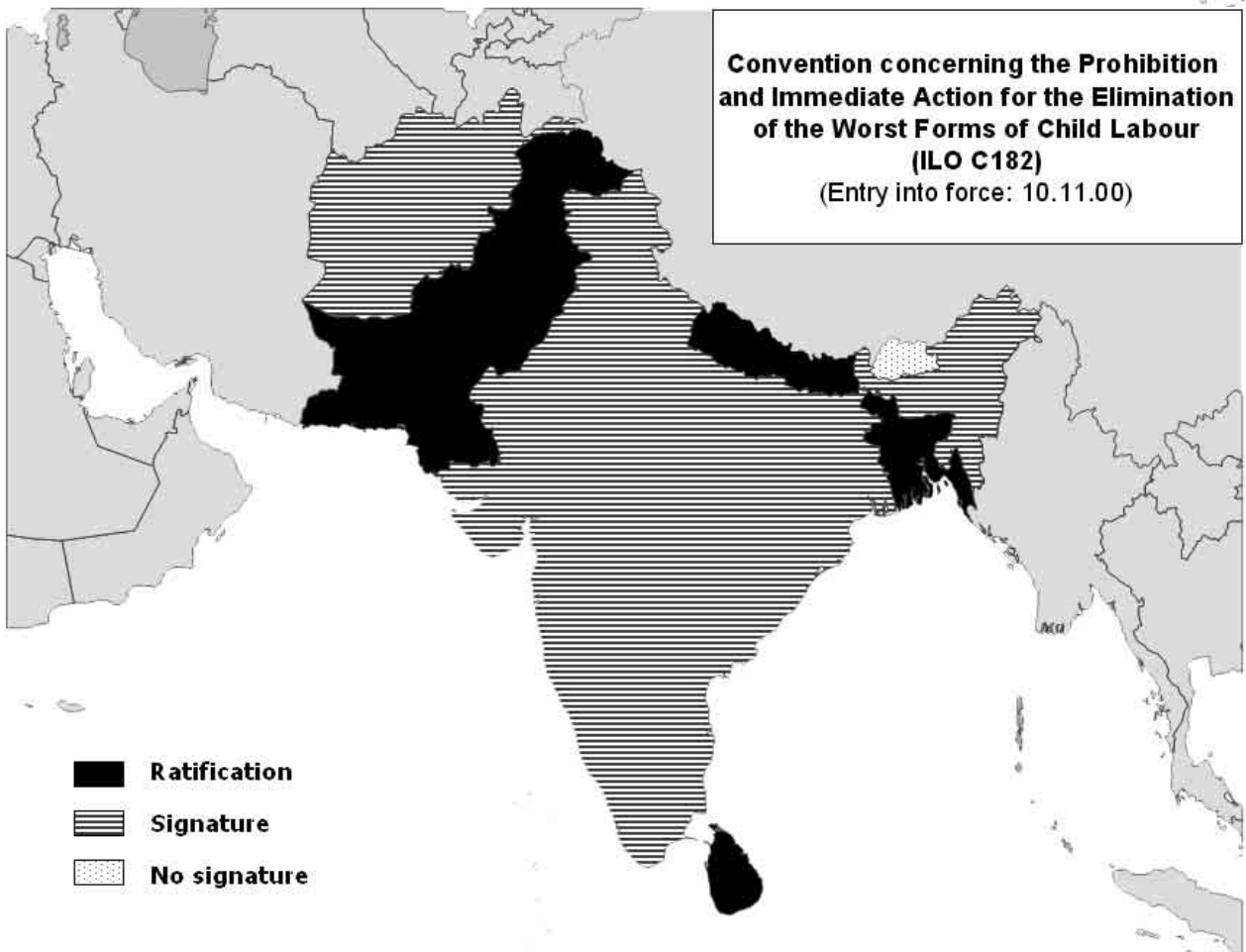
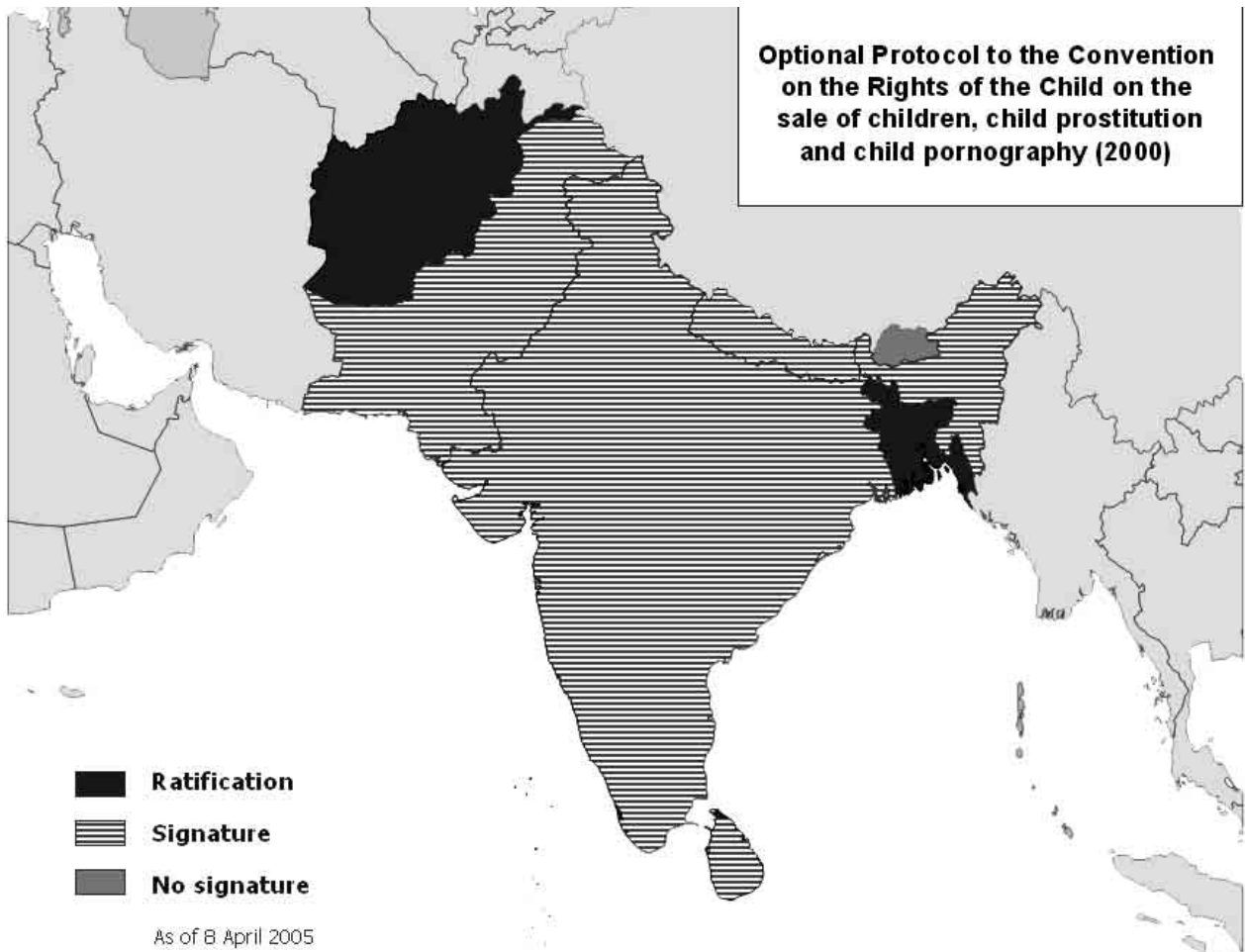
4. Round 1 of mapping in South Asia

Though still in its nascent stages, the collaboration with the ROSA UNICEF office – and with its support, country offices of UNICEF – has yielded some interesting results. The following four graphics illustrate these early findings.

While there is an acknowledged commitment to national laws and policies on child trafficking in countries of the region, the three illustrations below suggest that, as a region there has not been a concomitant ratification of international protocols and conventions.

Though difficult to precisely predict numbers of trafficked children, as mentioned earlier in this document, it is easier to detect flows – to get a sense of where







Map of South Asia and Trafficking Flows

children are being trafficked from, and where they are trafficked to. Contrasted against the African and European contexts, trafficking in South Asia is unique for the four distinct patterns of trafficking identified:

- Trafficking within the national borders of a country
- Trafficking across borders of South Asian countries, but within the region

- Trafficking out of the region
- Trafficking into the region

These patterns or flows of trafficking obviously present some particular challenges to law, policy, and attempts to assist those who have been victims of trafficking.

III. TWO CASE STUDIES

1. Government, Community and Local NGOs Preventing Trafficking in India²²

The discussion of law and policy in South Asia recommends an approach to trafficking that includes prevention, protection and empowerment. With this recommendation in mind, the case study from Southern India is of considerable interest for its emphasis on all three dimensions. It focuses primarily on prevention, but also puts an emphasis on the importance of protecting and empowering young women who have been victims of trafficking.

Context

The Government of Andhra Pradesh acknowledges that there is trafficking of girls and women within and from the state. Seventeen districts are identified, by the State, as centres of trafficking. Kadiri Mandal, in Anantapur district, is one such location. Lack of basic services and infrastructure, a dearth of information about options - livelihood and education options especially - opportunities and rights, lack of access to basic services, heavy migration, dependency and the disempowerment of women all give rise to inequity. One expression of this inequity is exploitation, and the trafficking of women and girls for exploitative labour purposes, including sexual exploitation. Among the most affected are those who belong to the marginalized groups.

Taking Action

Prevention is an essential component of any approach to address trafficking and sexual exploitation, as confirmed by a number of efforts made in countries in South Asia, South East Asia, Europe and

Africa.²³ In India, UNICEF in support of central and various state governments has made significant efforts to prevent trafficking. A number of non-governmental organizations (NGOs), in collaboration with government, local community and other civil society actors have also designed and implemented innovative programmes that effectively address this problem.

■ *STHREE – The Society to Help Rural Empowerment and Education*

With the philosophy that, “trafficking and forcing minors into prostitution are heinous crimes, and developmental alternatives for livelihood of victims are important to improve their conditions, and it is important to book and jail traffickers,” STHREE began its work in 1998. Together with communities in Anantapur STHREE began to address the issue of trafficking, together with other vulnerabilities of minor girls and women trafficked from Kadiri mandal. The key objective of STHREE’s intervention is to combat trafficking in women and children from the rural areas of the state by way of rescue, rehabilitation, and empowerment. Education - formal as well as non-formal – is critical to this mission, as is the provision to the community of viable livelihood options.

Strategically, STHREE places a premium on the role of community, which is considered critical to trafficking prevention. In addition to work on prevention, community capacity is strengthened in order that appropriate legal and rehabilitative action can be taken after trafficking crimes are committed. Accordingly, the formation of Self Help Groups (SHGs), Anti Trafficking Committees (ATCs), and the Highway Mobile Committee (HMC) are all encouraged and supported. While the ATCs and the HMC work directly to prevent trafficking of girls and women from the region, the SHGs play the crucial

role of addressing the underlying causes of trafficking. The SHGs are involved in educational and awareness generation activities, as well as in providing viable livelihood options to the community members. Though all these committees are independent units of the programme, they are closely interlinked and work cooperatively. In addition to the SHGs, ATCs, and the HMC, a number of other cultural programmes are carried out in the villages for awareness generation on issues of trafficking, HIV/AIDS and other concerns of the community. The ATCs are community vigilance groups that include youth. The adolescent girls and the youth are also involved in the awareness creation on trafficking and HIV/AIDS issues.

Important Findings

Findings of the assessment managed by the UNICEF state office in Andhra Pradesh reveal some interesting successes. They also underscore the enormous challenge that trafficking presents.

- First, it is clear that the number of girls/women trafficked from the project area has decreased over the last four years (2000-2004). A significant number of women operating as sex workers along the highways are no longer engaged in sex work. According to STHREE, the overall numbers of women and girls being trafficked has definitely come down in villages. The highways have also been affected because of the increase in mobilization and vigilance by community members. SHTREE reports that the majority of girls and women leaving the highways subsequently get involved in small business, domestic labour, and agriculture.

At the same time, SHTREE has also managed to rescue girls and women from places as far as Delhi, Pune and Mumbai. The rescue efforts engage communities and families, in collaboration with the NGO. STHREE does help in tracing victims, facilitates the families or the ATCs to file a complaint with the police. The complainants along with the NGO, and an ATC member then follow up with counterparts in other states. SHTREE also contacts and works with other NGO networks.

- A second finding relates to the networks of trafficking. Though there have been no significant changes in the patterns and modus operandi of trafficking/ traffickers, there do appear to be some minor modifications. This suggests that traffickers are adaptable to new situations, and that what appears to be a very structured process is in fact very flexible. Clearly, anti trafficking efforts also need to be adaptable and flexible if they are to be successful over time.
- Third, there have been no significant changes in the ways in which the community took action to prevent trafficking independently. Without the interaction between STHREE and the ATCs, SHGs, and HMC communities were largely inactive. At the same time, it is important to note here that the community, along with the staff of the organization and members of committees together

achieved results. In the high intervention areas, the various committees formulated with STHREE support did win the confidence of the general community. An initial sense of community acceptance, inertia or denial was successfully transformed into community action and 'success' because NGO support was offered; STHREE acted as a catalyst but the responsibility for sustained activity rests with communities.

- Fourth, the intervention addresses the direct and underlying causes of trafficking. The strategies such as the ATCs, HMCs, and other cultural programmes address the direct causes of trafficking by way of awareness generation, prevention of girls and women from trafficking or stopping them en-route. While this may pose some challenges, for instance distinguishing trafficking from voluntary migration may be difficult, it is true that communities in these locations have a reasonably good idea of who is being sent where or choosing to go somewhere, and for what purpose. The local ATCs move in to ask for verification of employers' names, address and contact number. In case men, women and girls are being sent to Kuwait or the Gulf the local ATCs try to verify visa status, help educate communities on the verification of expected payment details and share cases of villagers being duped. In short, through a strategy of joint problem solving devised by the ATCs, the community has been involved in the prevention of trafficking right through the process.²⁴
- Fifth, the intervention also addresses a number of underlying causes of trafficking, and the SHGs play a key role in doing so. The SHGs address issues of employment, education and gender discrimination. In addition they try to provide the community with tangible means of livelihood through loan provision for the purposes of income generation. Some loans are also provided to redress housing difficulties. Essentially, women come together in the SHGs, talk among themselves, share challenges, and try to find solutions. The savings and loan schemes of the SHGs are a way of mobilizing resources from within families and communities, and these are occasionally supplemented by other support and aid. Monthly meetings have helped the SHGs to inculcate and further a sense of unity through group work. Over time SHG members have individually and collectively gone beyond individual problems to reach out to and support each other. While the ways and means of functioning of the SHGs have been fairly static, most visible have been their attention to trafficking concerns, and their concomitant dedication to meeting the basic needs of their families. The SHGs are ambitious, wanting not only to secure the basics but genuinely wanting to improve overall living standards. All self-help groups in the project are integrated groups consisting of victims and other women from the village. SHGs are both a preventive and a rehabilitative intervention. They are able to prevent further exploitation since more information and opportunities are available to women and girls. Rescued and returned victims are helped in

many ways, not least through their immediate introduction to ongoing livelihood support programmes from the state.

It is noteworthy that all the SHGs access credit from government credit and income generation programmes. The amounts generated by the groups alone would not be enough to create lucrative livelihood opportunities. However it is the self-organization of the women coupled with the governmental commitment to micro-credit provision, and the role of STHREE that has made this effort so effective. Moreover, the ATCs also have access to key policy and decision makers, and are able to advocate for much-needed support.

There are a number of actors - other governmental and non-governmental programs - involved in work related to the prevention of trafficking. However an analysis of the cases in which STHREE is involved shows an increase in the numbers of women who have been protected from trafficking. At the same time, SHGs have been successful in providing livelihood options and other benefits to the community. Awareness among the general population on the issues of trafficking and sexual exploitation is seen to be fairly high in villages from high as well as low intervention areas. There are other organizations that are also working on the same issue in the region. It is likely that the combined efforts of several NGOs have created sufficient levels of awareness.

The shelter home run by the organization plays an important role in the prevention and rehabilitation by offering temporary housing and livelihood options to some of the girls who have returned from the brothels and a few others who ran the risk of being trafficked. Most of the women in the home are former sex workers but there are occasions where women facing violence or having no other place to go to also come to the short-stay homes. All the women are free to come and go of their own volition. In terms of partnerships and networking, police support is a significant achievement for this intervention, for which the organization has worked over the years.

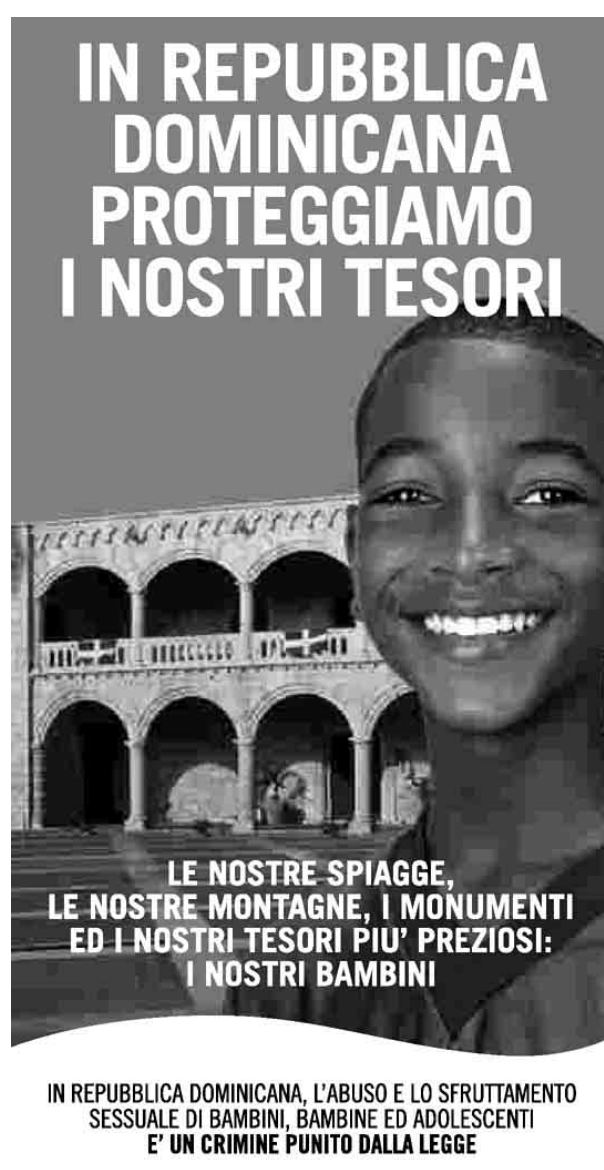
A database of victims, brothel owners/keepers and traffickers that STHREE has built over the years has been extremely helpful. It is based on the information the NGO receives from its field staff, other NGOs, and field-level government officials. The data base has been shared with state and district level police and district administration to ensure that it is 'current', and that it is a tool of use to all concerned.

Conclusions – what do we know so far?

The case study of STHREE and its work in Southern India suggests several important considerations. First among them, that it is possible to prevent trafficking. It is also clear that community involvement – and ultimately leadership – in all trafficking efforts is essential. The various groups and committees set up with STHREE support provided fora for coordination community action, and for the redress and resolution of some of the underlying causality of trafficking.

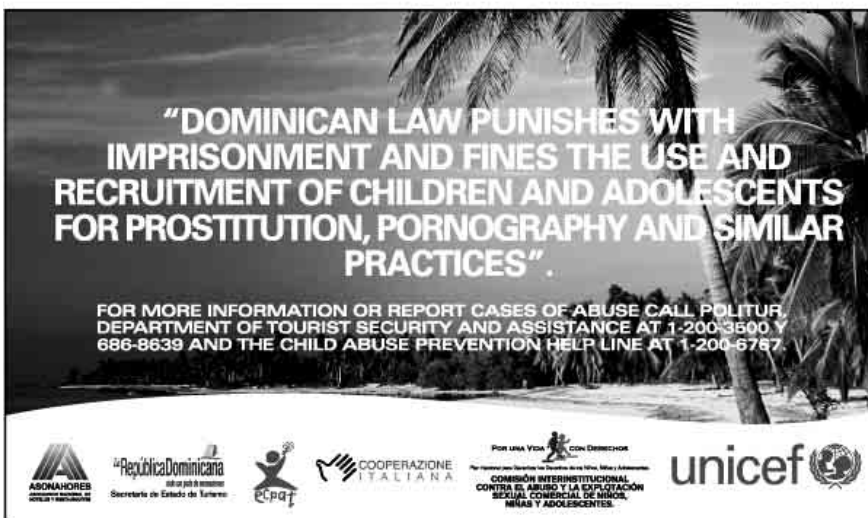
2. A Strong Partnership to Prevent Child Sexual Exploitation in the Dominican Republic

In the Dominican Republic, efforts to prevent child sexual exploitation – much of it in the context of tourism - represent good practices for study and reflection. Though geographically very different from the Southern India example above, the Dominican Republic case and the Indian case do share some common features: the situation and responses are complex, the role of community is critical, local governance institutions have a role to play, as does rule of law. Efforts to prevent child sexual exploitation in the Dominican Republic are special for their deployment at three levels: local or municipal, national, and international.



Local Efforts

The Child Friendly Cities (CFC) approach²⁶, adopted in several cities of the Dominican Republic, has proved strategic in organising local action and



aged to mobilize resources for the implementation of national strategies for poverty reduction and translation of Millennium Declaration targets into action. The Child Friendly Municipal Initiative also reinforces human rights, gender and life-cycle approach perspectives.

National Efforts

An awareness of the complexity of the problem of exploitation of children leads to the involvement of a variety of national partners active both in the government and non-government sectors. Among them: the Ministry of Health, the Ministry of Education, the National Judiciary School and National Police, and the private sector (i.e., the National Hotel and Restaurant Association) and tourism sector. Each actor has progressively incorporated activities aimed at preventing abuse and sexual exploitation of children in their own agendas. Judicial authorities, law enforcement agencies and specialized police, health personnel and

tourism operators are increasingly trained in and aware of issues pertaining to child protection from sexual exploitation.

A National Plan of Action against Child Abuse and Sexual Commercial Exploitation was drafted to provide a common reference to local-level Child Friendly Municipalities Plans of Action on Child Rights and the Prevention of Sexual Commercial Exploitation. The National Plan of Action against Child Abuse and Sexual Commercial Exploitation has been formulated as one of the three priorities of the National Plan to Ensure the Rights of Children and Adolescents.

International Efforts - Tourism Takes Responsibility

As a result of growing awareness, a Code of Conduct for Prevention of Child Abuse and Sexual Commercial Exploitation was adopted by the National Hotel and Restaurant Association (2003-2004). A training campaign was organized on the prevention of child commercial sexual exploitation for personnel engaged in the tourism sector and service delivery agencies. The campaign has been carried out with the support of the World Tourism Organization.

ECPAT Italy has been critical in helping establish an

mobilising municipal level resources to strengthen protection mechanisms for children and women. A number of Dominican municipal leaders and their constituencies have been committed to children's issues since the mid-90s. The primary objective – the translation of children's rights into reality. Closely related to this has been the goal of strengthening the protection of children within families, schools, hospitals, police stations and communities. 'Child Friendly Municipalities' – a localized version of CFC is putting protection systems into place when the need to create a barrier against a range of new threats – sexual abuse and sexual exploitation emerges. The existing Child Friendly Municipal network could provide the platform for the protection of children from sexual exploitation, in the context of law. A decentralized process is being launched, to empower local authorities and civil society. In particular engaging young people in demanding their rights and access justice is critical.

More broadly the Child Friendly Municipal Initiative is now aiming to be a movement in support of the local realization of the Millennium Declaration and goals. Emphasis is laid on strengthening the technical capacity of local authorities, community leaders, NGOs, university institutions, families and children and adolescents. Municipalities are being encour-

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alliance with the national and international tourism sector and obtaining the commitment of strategic agencies, such as the Hotels and Restaurants National Association, the Viaggi del Ventaglio, World Tourism Organization, tourism associations, European tour operators, Punta Cana Hotels association. The overall support of ECPAT international and ECPAT Germany have further strengthened alliances within the tourism sector. Efforts have also been made to ensure that the problems affecting the Dominican Republic be tabled at international tourism meetings.

Earlier, an important information, education and communication campaign was mounted to sensitize against sexual exploitation. The campaign targeted both a national and international audience, with messages translated into Spanish, English, French, Italian and German. Posters, brochures, flyers, folders, even children's notebooks were developed to carry messages against commercial sexual exploitation of young people. Dominican tourist locations have been

particularly targeted for carrying out awareness raising activities. The campaign hinges on the slogan "In the Dominican Republic we protect our treasures. Our beaches, mountains, monuments, and our most precious treasure: our children. Child abuse and commercial sexual exploitation of boys, girls and adolescents is a crime punished by the law of the Dominican Republic." In addition, in association with the General Migration Office, the National Revenue Office and the Airlines Association, warning notes regarding prosecution of child abuse and commercial sexual exploitation have been included in tourist cards and warning signs posted in airport areas.

It is noteworthy that Dominican Republic consular offices in European countries, tour operators and international organizations²⁷ invested in the establishment of a network of Europe-based Dominican Republic consulates. Their primary objective was the prevention of sex tourism. A commitment and action plan of activities for the consulates was formulated and those involved signed the Rome Declaration during a high level meeting organized in November 2002, to which the Innocenti Research Centre contributed.

There are several unique and important features of this particular effort. First, the Dominican consulates in Europe committed themselves to engaging with travel agencies in Europe that were organizing tours to the Dominican Republic. Dominican consular officials agreed to convey information about their country, and about the illegality of the exploitation of children. More precisely, the information would indicate Dominican intent to prosecute those alleged to be exploiting children. In short, in this unique initiative, the consulates of the Dominican Republic in Europe squarely expressed their support for responsible tourism, and for the protection of children. They were supported in this effort by a number of national and international bodies who, to this day, sustain their partnership.

SOURCES

- 1 *Components of the Study*
By the end of the project period the Japanese-funded study will include the following:
Review of law and policy in South Asia and in Southeast Asia
Trafficking mapping – South Asia and Southeast Asia
Some case studies, including :
Preventing Child Trafficking and Sex Tourism in the Dominican Republic
Bilateral Arrangements for the Prevention of Child Trafficking and Rehabilitation of Victims – some emerging issues
Preventing Child Trafficking in Southern India
Cross Border Surveillance for Prevention of Child Trafficking – some emerging issues
- 2 The information in this section is based on the work of Professor Ratna Kapur, Senior Consultant participating in the research of the Innocenti Research Centre (IRC) on child trafficking law and policy in Europe and in South Asia.
- 3 G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force 2 September 1990
- 4 Bangladesh ratified the CRC on 6 September 2000; The Maldives ratified the CRC on 10 May 2002.
- 5 Entered into force on 19 November 2000.
- 6 Article 3: "For the purposes of this Convention, the term 'the worst forms of child labour' comprises":
(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
(d) 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."
- 7 Pakistan ratified the convention on 11 October 2001; Nepal ratified the convention on 3 January 2002; Bangladesh ratified the convention on 12 March 2001; and Sri Lanka ratified the convention on 1 March 2001.
- 8 Entered into force on 3 September 1981, A/34/46, 1249 UNTS 13. All countries in South Asia have ratified CEDAW with reservations. Trafficking issues have been raised by the CEDAW Committee in its review of country reports (Dairiam 2002), including those submitted by Bangladesh, India and Nepal. Under the Optional Protocol to CEDAW, which has been ratified by Bangladesh and Sri Lanka, women or girls who have been trafficked can submit a complaint to the CEDAW Committee, after exhausting domestic remedies, if they believe their rights under CEDAW had been violated.
- 9 Entered into force on 23 March 1976, 999 UNTS 171.
- 10 Entered into force on 3 January 1976, 993 U.N.T.S. 3.
- 11 Entered into force on 26 June 1987, 1465 UNTS 85
- 12 G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001), Entered into force 1 July 2003
- 13 ILO-IPEC *Combating Trafficking in Children for Labour Exploitation in South Asia: Reports on South-Asian consultation* (1998)
- 14 See ILO/IPEC "Every child counts – new global estimates on child labour", ILO Geneva, April 2002; Save the Children, *Responding to Child Trafficking: An Introductory Handbook to Child Rights-Based Interventions Drawn from Save the Children's Experiences in Southeast Europe* (2004) at 3, available at <http://www.childcentre.info/projects/traffickin/dbaFile11301.pdf> ("Save the Children Report")
- 15 *National Commission on Human Rights, Report on Trafficking*, (UNIFEM supported, 2004)
- 16 See e.g., European Commission STOP-Project, *Building up a network for monitoring, analysing and combating trafficking in women and children* (1998), available at <http://www.stakes.fi/sexviolence/stop/>.
- 17 See Report of the U.N. Special Rapporteur on Violence against Women, its causes and consequences, E/CN.4/2001/73/Add.2 report of UN Special Rapporteur at 8
- 18 Under Bangladesh's criminal laws, the minimum age of full criminal responsibility is 12 years, but there is a presumption of capacity to infringe certain criminal laws at seven to 11 years (depending on the offence).
- 19 Although it is not presumably the intention of the Convention, this definition could also implicate a woman who purchases an air ticket to travel outside of her country. In contrast however, Article 1 (5) defines 'persons subjected to trafficking' as "women and children victimized or forced into prostitution by traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means." A comparative analysis of these two provisions (Article 1 (3 and 5)) indicates some ambiguity as to whether consent is a relevant consideration. Clarification of the positions of State Parties on this is important in order to evaluate the full implications of this Convention.
- 20 Significantly, this is contrary to the Palermo Protocol. The Palermo Protocol addresses the issue of free and forced mobility by making a clear conceptual and operational distinction between trafficking and smuggling. And hence, the UN Convention against Transnational Organized Crime is supplemented by two separate Protocols – the one on Trafficking and the other on Smuggling. As such, trafficking or movement by means of coercion or deception is dealt with separately from agent facilitated consensual movement under this new UN Convention. The focus of anti-trafficking legislation should be on the specific illegalities or offences that may be committed during the course of trafficking or migration. If a person is forced to move against her/his will, it should be an offence. But if the transport is with the consent of the person being transported or migrating, it is not an illegal act *per se*.
- 21 See report of U.N. Special Rapporteur on Violence against Women, *op. cit.* n. 11, para 29.
- 22 Information in this section is based on a study commissioned and overseen by the UNICEF state office in Andhra Pradesh.
- 23 This is particularly evident in the growing UNICEF IRC data base on trafficking which spans Africa, Europe and increasingly South Asia.
- 24 The ATC members use 'street theatre' to effectively spread awareness about trafficking (especially in high trafficking areas) particularly in the villages and highway-side *dhabas*.
- 25 This case study is based largely on inputs from the UNICEF office in the Dominican Republic and from other partners to efforts to combat trafficking and the prevention of sexual exploitation in the country.
- 26 CFC is the 'generic' name for the initiative and has been adapted and given a 'localized' name in many locations.
- 27 Among them ECPAT Italy, UNICEF IRC, the Istituto degli Innocenti, and Italian National Committee for UNICEF.

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