

“Most of you will never know what its’ like to be sexually exploited. Not until you have been lying in an alleyway with the rain and the blood dripping from your face because you have just been raped and beaten, and you’re too scared to move, because there’s no where to go and no one to help you.”

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

“We were leaving school at the end of the day and the... soldiers surrounded the school... We were all 15, 16, 17 years old, and we were all afraid of the soldiers... Our teachers all ran away in fear. Everything was chaos... We were all terrified, but we couldn’t even call out to them to let us or tell them and that we were under 18, because we were so scared...”

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

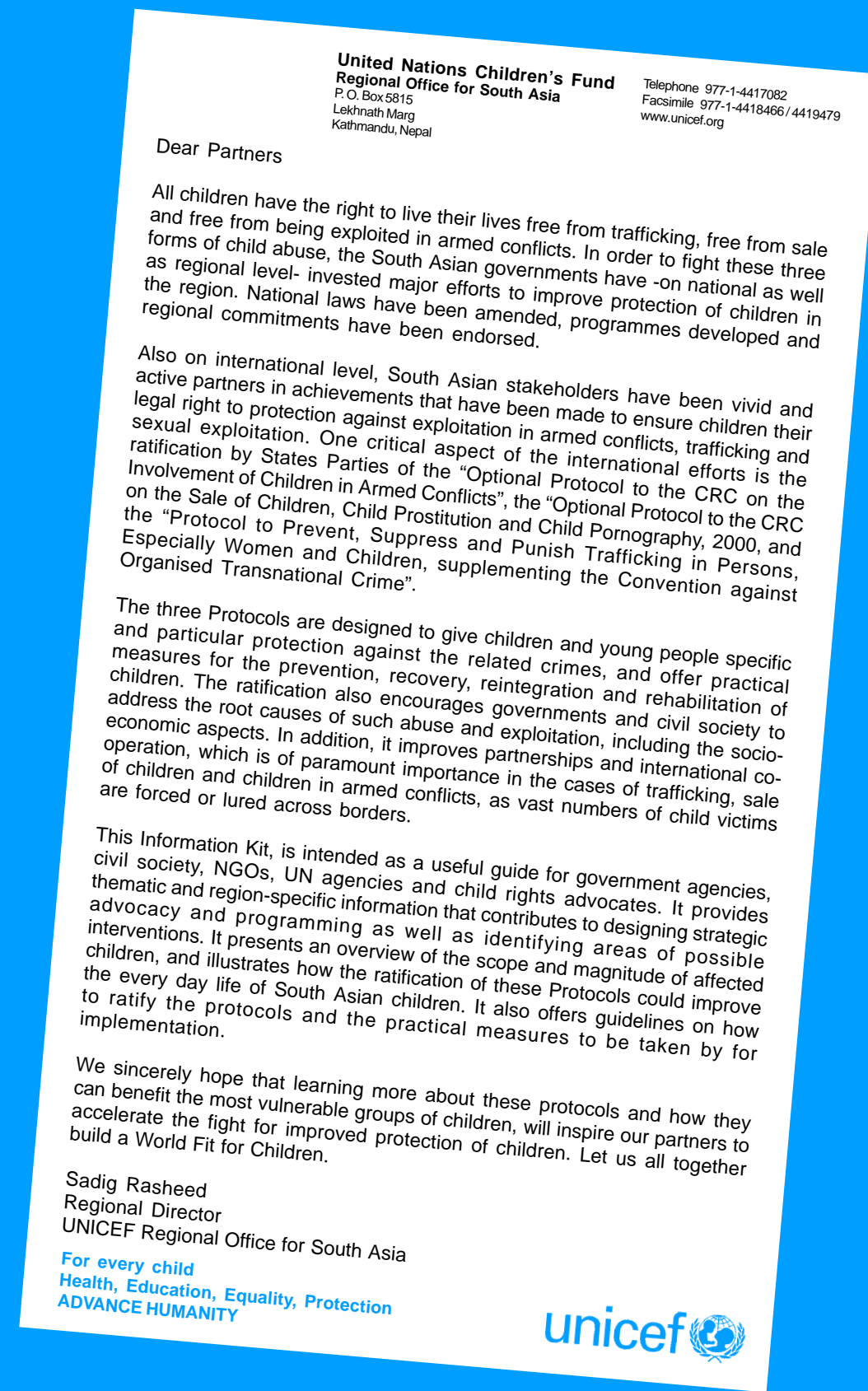
“I want to challenge this world and ask people how they can continue to let things like this happen? How can they allow children to live unprotected while those who commit violent crimes against them go free? How will the world take responsibility for children and protect them from violence, sexual abuse and exploitation?”

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime, 2000

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United Nations Children's Fund  
Regional Office for South Asia



“They captured our hearts, they captured our minds.  
They inspired us with their energy and their enthusiasm.  
They reminded us of our past promises and they asked  
for action now.”

Carol Bellamy  
Executive Director  
United Nations Children's Fund

Optional Protocol to the Convention on the Rights of the Child on  
the Sale of Children, Child Prostitution and Child Pornography, 2000

Optional Protocol to the Convention on the Rights of the Child  
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Protocol to Prevent, Suppress and Punish Trafficking in Persons,  
Especially Women and Children, Supplementing the United Nations Convention  
Against Transnational Organised Crime, 2000

# Information Kit



For further information write to:  
rosa@unicef.org

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



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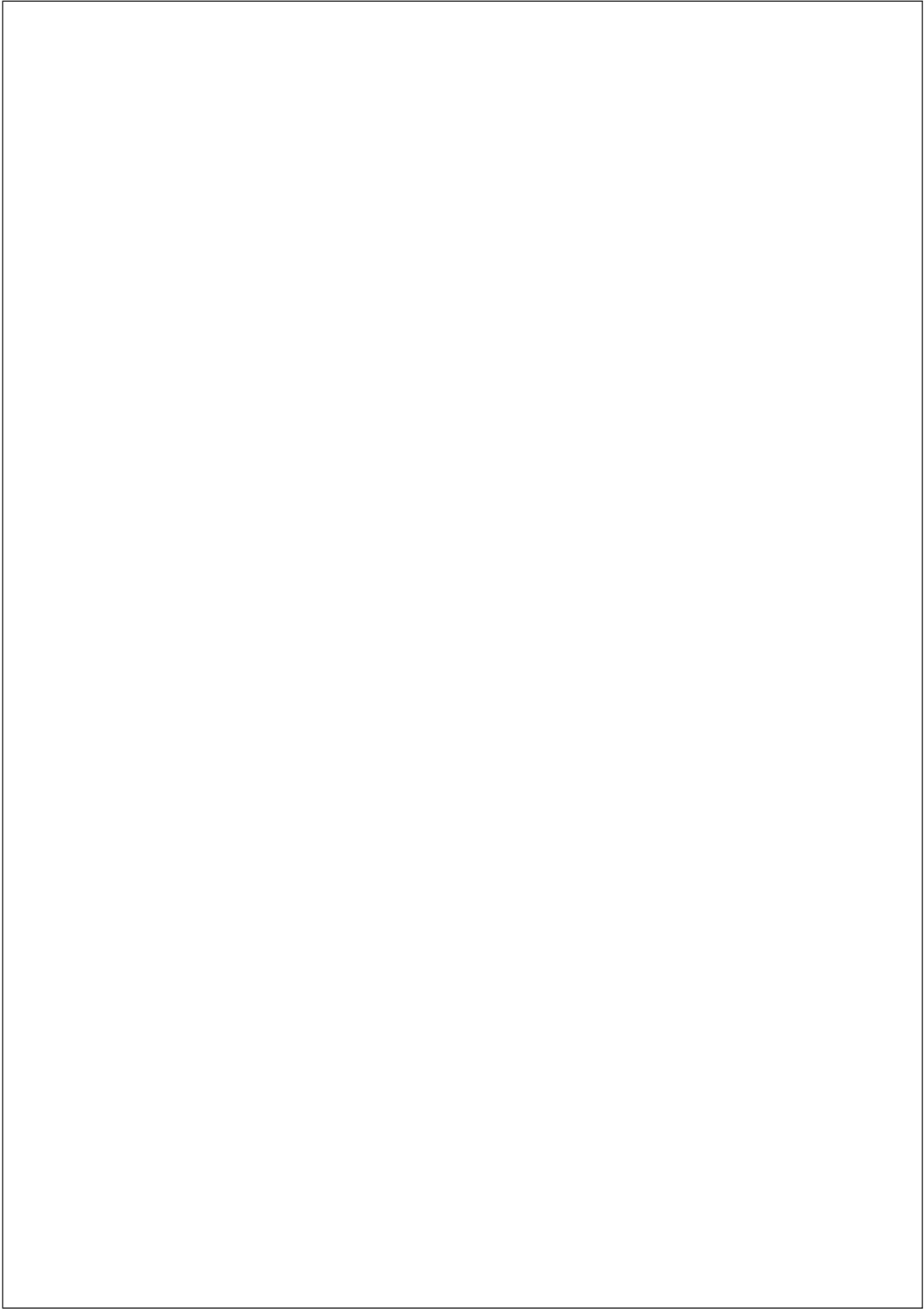


United Nations Children's Fund  
Regional Office for South Asia

# Common Procedures

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

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## A World Fit For Us

...We are the world's children.

We are the victims of exploitation and abuse.

We are street children.

We are the children of war.

We are the victims and orphans of HIV/AIDS.

We see an end to exploitation, abuse and violence:

- ❖ laws that protect children from exploitation and abuse being implemented and respected by all,
- ❖ centres and programmes that help to rebuild the lives of victimized children...

From A World Fit for Us  
The Children's Statement  
at the UN Special Session  
May, 2002

# Accession

Accession is the acceptance by one or several countries of a treaty already concluded between other governments.

# Signature

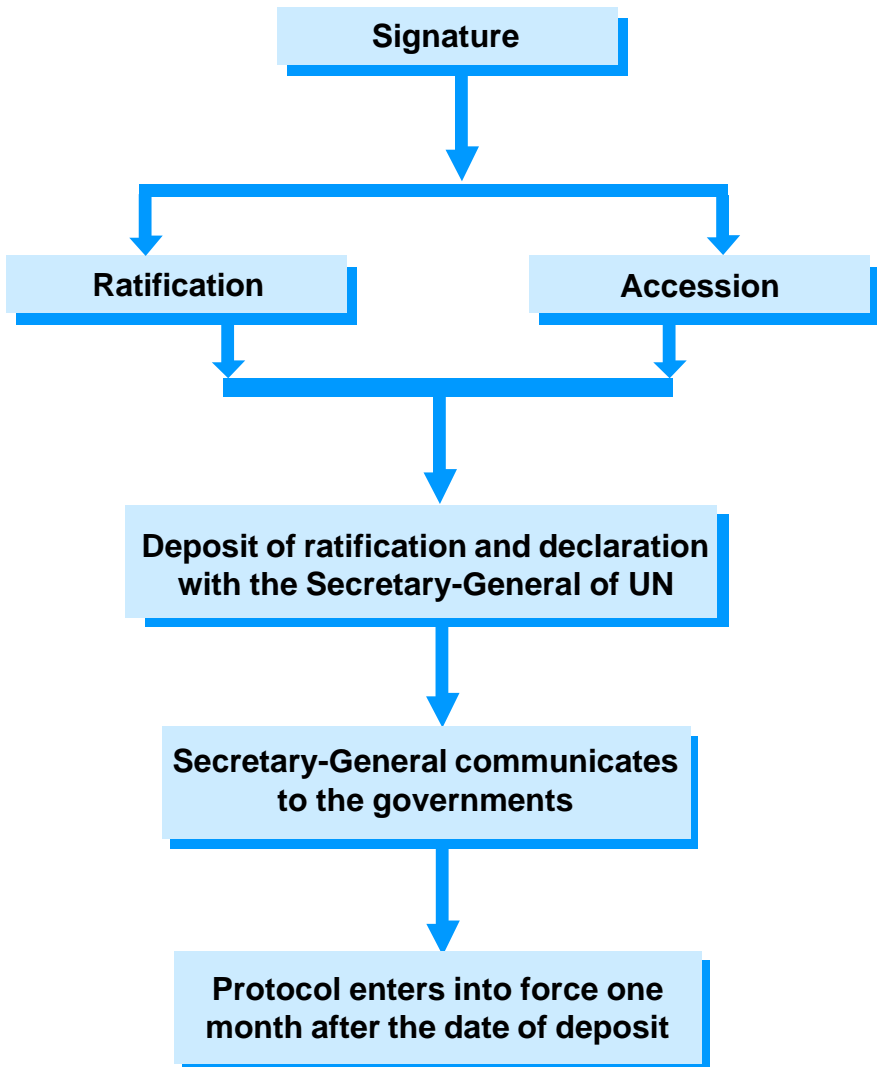
In simple terms, signing any treaty or Protocol shows the intention of the signing country to be bound by it, however, signing any treaty or Protocol does not make it legally binding.

# Ratification

Ratification is the international act whereby a State establishes its consent to be bound by a treaty.

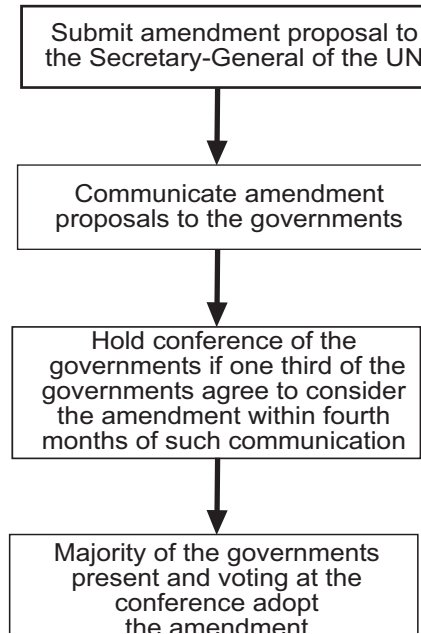
## Procedure for ratification

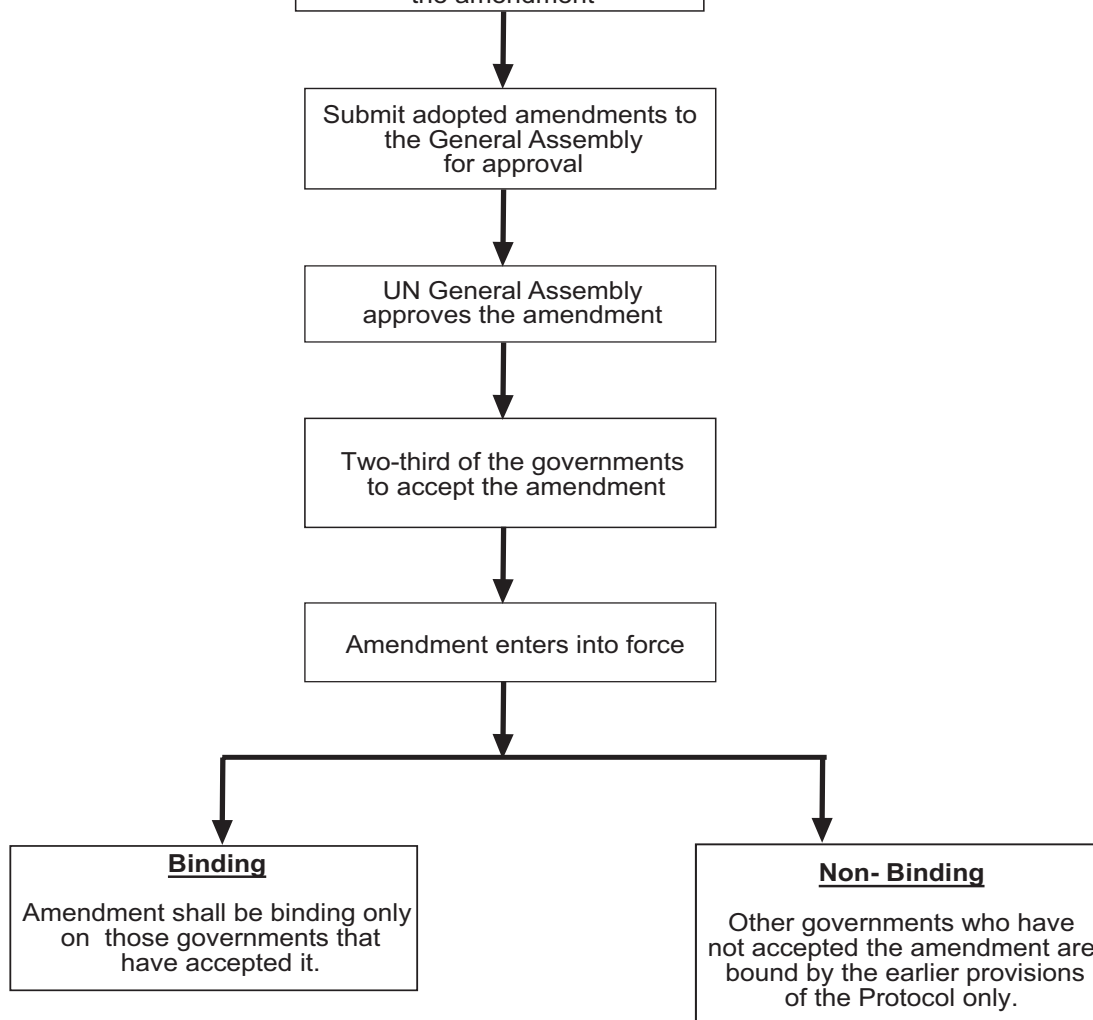
Any government that is a party to the Convention or has signed it can deposit the instruments of ratification or accession of the Protocol with the Secretary-General of the UN.



## Amendment Procedure under the Protocol

The Protocol introduces a novel provision for amending the Convention adopted by the General Assembly. Article 16 of the Protocol provides detailed procedures for the amendment of the Protocol. This provision is important in that it recognizes the need to bridge the gaps and weaknesses in the present Protocol and to address new developments related to these offences mentioned in the Protocol.







# Introduction to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

1

## **Prevalence of the Problem**

Forms of commercial sexual exploitation, such as sale of children, child prostitution, child sex tourism and child pornography are prevalent all over the world. While child pornography is still unexposed in regional and national research, the sale of children is increasingly prevalent in the region.

According to the Optional Protocol, “sale of children” means “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.

The ever-growing demand for children in hard labour and sex industries, combined with relatively “cheap prices”, and weak legal protection measures, has led to an increase in the sale of children in South Asia.

Exact figures on the sale of children are difficult to determine as no monitoring mechanisms exist in the region. The nature of sale of children –being an illegal trade, characterised by criminal activities and involving complex networks- hampers the attempt to collect reliable data. The sexual abuse of children for producing pornographic material has not received, as yet, the required attention from governments or civil society in South Asia. The offence of child pornography has become complex due to the use of the internet in relaying such materials, as well as the development of new technologies such as

digitalised formatting and morphing (pseudo pornography made by manipulating images) in child pornography.<sup>1</sup>

However, some research has been conducted and estimates show that there are about one million child prostitutes in Asia and the numbers are particularly high in South Asia.<sup>2</sup> Thousands of Nepalese, Bangladeshi and Pakistani girls are trafficked out of their countries each year and sold into the sex trade or forced into child marriages.<sup>3</sup> It is important to note that not only girls are involved in child prostitution, boys are involved in this trade, as well. In Sri Lanka, boys involvement in prostitution is a growing problem due to child sex tourism.

Sexual exploitation of children for commercial purposes is caused by economic disparities, inequitable socio-economic structures, dysfunctional families, lack of education, growing consumerism, gender discrimination, irresponsible adult sexual behaviour, child sex tourism, and trafficking of children. Loose legal structures, and poor implementation of laws are other reasons behind the increase of sale of children. Most importantly, children lack alternative opportunities for education or for earning to support their families.

The sexual exploitation of children affects their physical, mental, psychological, moral and social development, which can permanently impair their life. For girls, the physical exploitation and hazardous conditions, especially in prostitution makes them more vulnerable to the threats of early pregnancy, developmental and physical disabilities and sexually transmitted diseases, including HIV/AIDS.<sup>4</sup>

Various initiatives have been taken at the local, national and international level to combat the problem of the sale of children and child prostitution, e.g. the South Asian countries have adopted the South Asia Strategy against Commercial Sexual Exploitation of Children and Sexual Abuse of Children. Although there are good examples of positive outcomes, the efforts need to be more comprehensive. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography offers such a comprehensive framework, as it covers all aspects of sexual exploitation of children.

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<sup>1</sup> John Carr, *Child Pornography*, [www.focalpointngo.org/yokohama/themepapers/theme1.htm](http://www.focalpointngo.org/yokohama/themepapers/theme1.htm), November 1, 2002.

<sup>2</sup> Ibid.

<sup>3</sup> [www.ecpat.net](http://www.ecpat.net), November 1, 2002.

<sup>4</sup> Article 9, *Declaration and Agenda for Action*, 1st World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, August 27-31, 1996.



**The Protocol has been signed by 104 countries and ratified by 37 countries and it came into force on January 18, 2002.**

### **Legal Validity of the Optional Protocol in South Asia**

There are 2 processes for giving legal validity to an international instrument ratified by an individual country:

- It directly becomes the law of the land and prevails over any domestic legal provision inconsistent with the international instrument.
- The Parliament has to pass legislation to give effect to the ratified international instrument.

### **Examples**

**Nepal** - According to Section 9 of the Treaty Act, 1990, once a Convention or Treaty is ratified by Nepal, it becomes national law and prevails over inconsistent legal provisions.

**India** - According to Article 253 of the Constitution of India, 1950, the Parliament has to pass a legislation for giving effect to any international agreement.



- **It prohibits and defines the offences of the sale of children, child prostitution and child pornography**

The Protocol prohibits the sale of children, child prostitution and child pornography and specifies the nature of activities punishable in relation to these offences. It punishes not only the **offering** or delivering of children for the purpose of sexual exploitation, transfer of organs of children for profit, or engagement of children in forced labour; but also **accepting** the child for any of the aforesaid activities. By doing so it has widened the range of activities punishable in relation to the sale of children and most importantly the accepting of children.

The Protocol prohibits child prostitution and describes the activities related to child prostitution that are punishable, including offering, procuring or providing a child for prostitution.

The Protocol prohibits and makes punishable all activities related to producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography thereby enlarging the scope of the offence and prohibiting all forms of child pornography from producing to possessing it. This has been done taking into consideration the role of the latest technology including Internet in the circulation of child pornography.

In some cases of adoption, children are used for forced labour and/or sexual activities. Therefore the Protocol has also made punishable the act of taking improper consent for the purpose of adoption.

- **It protects the rights and interests of child victims**

This Protocol clearly states the measures that the government shall adopt to protect the rights and interests of child victims at all stages of the criminal justice system. It focuses on the responsibility of the government in making the criminal proceedings child-friendly.

- **It provides for appropriate assistance to the victims**

Taking into account the trauma and suffering that the child victims face, special measures are required to rehabilitate them. The Protocol obliges governments to take measures to give appropriate assistance to the victims including their social reintegration and full physical and psychological recovery.

- **It provides opportunity to seek compensation**

The Protocol states that governments should ensure access of child victims to adequate court procedures and to seek compensation for damages from those legally responsible of violating their rights.

- **It provides for extraterritorial jurisdiction**

Taking into consideration the transnational nature of the offences of the sale of children, child prostitution and child pornography, the Protocol provides for extraterritorial jurisdiction in relation to these offences. Usually a government has jurisdiction over the offences committed within its boundaries, however extra-territorial jurisdiction limits the opportunity for offenders to escape prosecution.

- **It makes offences extraditable**

The Protocol states that the governments shall take steps to make the offences of the sale of children, child prostitution and child pornography extraditable. This provision benefits children as the person who exploits or trafficks a child in one country can be prosecuted either in the country where the violation occurs or in the home country of such person. Furthermore, the Protocol provides that in absence of an extradition treaty between the countries, the Protocol may be used as a legal basis for extradition.

- **It encourages governments to address the root causes**

The Protocol encourages governments to take steps to strengthen international as well as multilateral and regional cooperation to address the root causes such as poverty and underdevelopment responsible for the sale of children, child prostitution and child pornography.

The fundamental principle of the Optional Protocol is to protect children from the crimes of the sale of children, child prostitution and child pornography. The various rights guaranteed to the children by the Optional Protocol are as follows:

### **Right Against Exploitation**

The Protocol provides children the right against exploitation especially, against the sale of children, child prostitution and child pornography.

### **Rights to Information**

The Protocol provides that child victims shall be informed about their rights, their role and scope, and about the timing, progress and disposition of legal proceedings involving them and their exploitation.

### **Right to be Represented and Heard**

The Protocol provides the children the right to present their views, needs and concerns in legal proceedings involving them and their exploitation, with the assistance of an attorney.

### **Right to Assistance**

The Protocol states that children shall be provided support services throughout the legal process, so that they can understand the nature and importance of the proceedings and fulfill their role in a better manner.

### **Right to Privacy and Confidentiality**

Under the Protocol, children shall be protected from inappropriate dissemination of information that could lead to their identification.

### **Right to Protection**

The Protocol provides that child victims and their families be protected from intimidation and retaliation.

### **Right to Speedy Trial**

The Protocol provides that children receive expedited justice by avoiding unnecessary delay in the disposition of the case and the execution of orders granting compensation to them as victims.

### **Right to Rehabilitation**

The Protocol provides that children who are victims shall be socially reintegrated and given special assistance for their physical and psychological recovery.

### **Right to Compensation**

The Protocol ensures access of child victims to adequate court procedures to seek compensation for damages from those legally responsible of violating their rights.

### **Implementation and Enforcement**

Governments shall take all legal, administrative and judicial measures to ensure effective implementation and enforcement of obligations provided under the Protocol. Each government can effectuate domestic implementation of the Protocol by undertaking one of the following processes:

- declaring the Protocol to be a part of national law, or
- enacting new legislation or other legal measures in accordance to the Protocol, or
- amending existing domestic law in accordance with the provisions of the Protocol.

### **Criminalise and Penalise**

Governments shall take measures to criminalise and penalise the following activities:

- offering or delivering a child for the purpose of sexual exploitation; transfer of organs of the child for profit; or engagement of the child in forced labour, and accepting the child for any of the aforesaid activities;
- offering, obtaining, procuring or providing a child for child prostitution;
- improperly inducing consent for adoption of a child;
- producing, distributing, disseminating, importing, exporting, offering, selling or possessing materials of child pornography;
- attempting to, or participating in, committing any of the prescribed offences.

### **Establish Jurisdiction Over the Offences**

Governments shall take measures to establish their jurisdiction over the offences referred in the Protocol when:

- these offences are committed in its territory or on board a ship or aircraft registered in the country;

- the alleged offender is a national of the country or a person who has his/her habitual residence in its territory;
- the victim is a national of the country;
- the alleged offender is present in its territory and it does not extradite her/him to another government on the ground that the offender is one of its nationals.

### **Confiscate the Goods**

Governments shall take measures to seize and confiscate goods that are used to commit the offences, proceeds derived from such offences and, on a temporary or definitive basis shut down the premises used to commit such offences. They should also execute requests made by another government in this regard.

### **Extradition**

At the request of another government, governments shall extradite persons involved in the practices criminalised by the Protocol. If the governments refuse to extradite any offender on the basis of nationality, they shall take effective measures to submit the case to their competent authority for the purpose of prosecution.

### **Dissemination of Laws**

Governments shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences of the sale of children, child prostitution and child pornography.

**The offences stated in the Protocol shall be deemed to be included as extraditable offences in any existing extradition treaty entered by the governments.**

**Governments shall take measures to include the offences referred to in the Protocol as extraditable offences in any existing extradition treaty and in any treaty subsequently concluded.**

**If the governments have not entered any extradition treaty, the Protocol shall be considered a legal basis for extradition in respect of the offences under the Protocol.**

### **Promote Awareness Amongst Public**

Governments shall take measures to promote awareness within the public at large, including children, through information, education and training regarding the harmful effects of the offences prohibited under this Protocol and of preventive measures the governments have taken to address these problems.

### **Provide Special Attention to Child Victims**

Governments shall take measures to give special attention to the protection of children who are vulnerable to such offences.

### **Prohibit the Advertisement of the Offence**

Governments shall take measures to prohibit effectively the production and dissemination of materials advertising the offences covered by the Protocol.

### **Launch Social Policies and Programmes**

Governments shall implement social policies and programmes to prevent the offences and, in doing so, it should give special attention to the protection of children who are especially vulnerable to such offences.

### **Provide Legal and Psychological Training**

Governments shall provide special legal and psychological training to persons who work with child victims.

### **Adopt Procedures to Protect the Rights of the Child Victim**

- **As a witness** - Governments shall adopt special procedures to recognise the special needs of the child victims, including their needs as witnesses.
- **Speedy trial of the case** - Governments shall avoid unnecessary delay in the disposition of the child victims' cases and the execution of orders and decrees granting compensation to child victims.
- **Recognise the best interest of child victims** - Using the principle of the best

interests of the child as a guide, governments shall take all legal actions authorised by the relevant domestic legislation, regulations and criminal justice system.

- **Initiation of criminal procedures** - Governments shall take measures to ensure the initiation of criminal investigations, even in cases where the actual age of the victim cannot be ascertained and take reasonable measures to establish the victim's age.

### **Ensure Cooperation Between Governments**

Governments shall take measures to enter into multilateral, regional and bilateral agreements for the prevention, detection, investigation, prosecution and punishment of those involved in the offences referred to in this Protocol.

### **Address the Root Causes**

Governments shall take measures to promote international, regional and bilateral cooperation in order to address the root causes, particularly poverty and under-development, which contribute to the vulnerability of children, to the sale of children, child prostitution, child pornography, and child sex tourism.

### **Assist the Child Victims**

Governments shall take measures to promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

### **Provide Assistance in Investigation**

Governments shall take measures to assist other governments in investigations or criminal and extradition proceedings, including assistance in obtaining evidence, of offences referred to in the Protocol. This should be done in conformity with any existing treaties or other arrangements between them, and in the absence of such treaties or legal arrangements, they shall afford assistance in accordance with their domestic law.

The governments of South Asia have already recognised the rights of children by signing and ratifying the CRC. However, the Protocol more specifically defines the offences of the sale of children, child prostitution and child pornography, which were not adequately addressed by the CRC. It states in more detail the steps that governments need to take to protect and promote the rights of children. Furthermore, it defines the governments responsibility in terms of jurisdiction and extradition of offenders between countries.

- Ratification encourages international cooperation in addressing the root causes of these problems, including their socio-economic aspects, such as poverty and underdevelopment.
- By ratifying the Protocol, governments can further express their commitment at the international level, combating the abhorrent practices of the sale of children, child prostitution, and child pornography.
- Ratification improves the image of the state party in the international arena.
- Ratification helps sustain democratic values and improves the mechanisms for protecting the human rights of children.

### What difference would ratification make?

- Ratification of the Optional Protocol is an *international proclamation of the country's commitment to fight the Sale of Children, Child Prostitution and Child Pornography*.
- Ratification improves the protection of children, as the Optional Protocol's various articles are *particularly developed* to offer *strong and comprehensive* protection against Sale of Children, Child Prostitution and Child Pornography, thus addressing potential gaps in national laws.
- Sale of Children, Child Prostitution and Child Pornography, are three crimes that urgently require *internationally* agreed upon standards and procedures:
  - A. The child is often forced to cross borders and is exploited in foreign countries.
  - B. The supplier-chain is consisted of complex networks involving various nationalities.
  - C. The demander can be from a different nationality, with different legal practices.
- Ratification of the Optional Protocol will facilitate regional and international co-operation, as it manifests:
  - A. A common and clear definition of "Sale of Children", "Child Prostitution" and "Child Pornography".
  - B. Common and clear instructions on measures and procedures for cross border collaboration.
  - C. Common and clear priorities, such as addressing root causes.
- Ratification of the Optional Protocol will improve the child's status, as it was developed through a *child rights approach*, putting the child's safety as the main priority; it stipulates common and clear instructions on prevention, assistance, and child friendly procedures.

Monitoring the CRC and the Protocol is necessary for their effective implementation. The monitoring mechanism provided under the present Protocol is **reporting**. This mechanism provides an opportunity for the Committee on the Rights of the Child (the Committee), which is the monitoring body under the Protocol, to ensure that the governments are taking steps to fulfill their obligations under the Protocol.

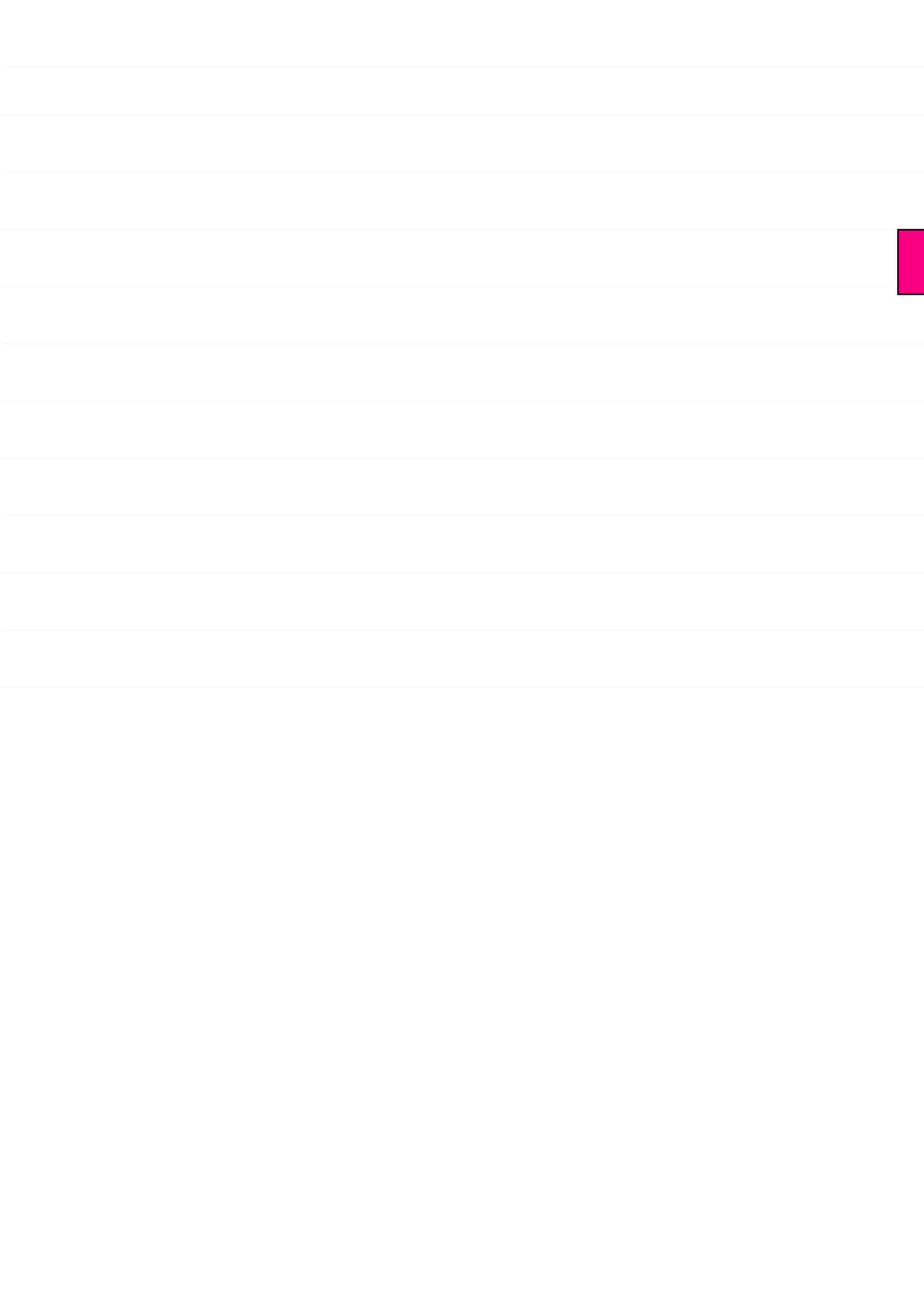
**Initial report:** The governments that are party to the present Protocol are required to submit an initial report to the Committee within two years of ratifying the Protocol, providing comprehensive information on the measures they have taken to implement the Protocol.

**Periodic report:** Upon submission of the initial report, the governments shall include any further information with respect to the implementation of the Protocol in the report to be submitted to the Committee in accordance with Article 44 of the CRC.

Governments that are a party to the Protocol alone are required to submit a report every five years to the Committee. The report should document the progress in implementing the Protocol. The Committee may request further information relevant to the implementation of the Protocol. Periodic reports should also examine the extent to which the Committee's "concluding comments" have been implemented.

### **Concluding Comments**

**The Committee issues concluding comments after examining the report of the government and alternative reports prepared by NGOs. The concluding comments evaluate whether or not the government has effectively implemented the Optional Protocol. It also contains recommendation for future implementation.**



Reporting is the primary means to monitor the implementation of the Protocol. The Committee on the Rights of the Child prescribes guidelines for preparing the initial reports. The reports should provide the following information:

### I. Introduction

The introduction shall briefly include the following information:

- The **legal status** of the Protocol in domestic law and its applicability in domestic jurisdictions;
- The **competent governmental departments** or bodies responsible for implementing the Protocol and details of their coordination with regional and local authorities, civil society, the business sector, media, etc.;
- The details of dissemination to the public through all available means of information regarding the provisions of the Protocol;
- The **dissemination of the Protocol and the relevant training** offered to all professional groups working with or for children, and all other relevant groups (immigration and law enforcement officers, social workers, etc.);
- The **mechanisms and procedures used for a periodic evaluation** of the implementation of the Protocol and the main challenges, which have been encountered so far;
- How the **implementation of the Protocol** conforms with the general principles of the CRC;
- How **and to what extent the implementation of the Protocol contributes to the implementation of the provisions of the CRC.**

### II. Prohibition of the sale of children, child prostitution and child pornography

The government shall provide following specific information:

- The **age limit defining a child** in each of these offences;
- The **penalties for each of these offences** and the circumstances considered as aggravating factors;
- The **time prescription or statute of limitations** for each of these offences;
- The **nature and scope of liability** of legal persons for each of these offences;
- **Complicity of the State Party in commission** of these offences, if any.

### III. Penal and Criminal Procedure

- **Jurisdiction:** The government shall provide specific information on the legislative, administrative and judicial measures taken to establish jurisdiction over the offences and offenders.
- **Extradition:** The government shall provide specific information on its extradition policy related to the offences, including procedures and disaggregated data on the number of cases requested for extradition.
- **Seizure and confiscation of goods:** The government shall provide specific information on the legislative, administrative and judicial measures taken to seize and confiscate goods and proceeds used for the offences, and steps taken for the closure of premises used to commit the offences.
- **Protection of the rights of the child victims:** The government shall provide specific information on the legislative, administrative and judicial measures taken for protection of the rights of the children.

### IV. Prevention of the sale of children, child prostitution and child pornography

The government shall provide specific information on the legislative, administrative and judicial measures taken to prevent these offences.

### V. International assistance and cooperation

- **Prevention:** The government shall provide information on its activities to promote international cooperation and in addressing the root causes of offences against children.
- **Law enforcement:** The government shall provide information on international cooperation it has undertaken to assist the penal or criminal procedures in regard to the offences including detection, investigation, prosecution, punishment and extradition proceedings. The government shall also provide information on bilateral, multilateral, and regional agreements, treaties or other arrangements for international cooperation to prevent these offences.

### VI. Financial and other assistance

The government shall provide information on international cooperation on the financial, technical or other assistance provided through existing agreements or treaties.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) was developed after taking into consideration the special vulnerability of children towards these crimes. The purpose of the Protocol is to prohibit and penalize the sale of children for the purpose of sexual exploitation, transfer of organs of children for profit and engagement of children in forced labour; child prostitution and child pornography, as well as the activities, which facilitate the exploitation of children. It also aims to protect the rights and interests of child victims of the prohibited practices and give appropriate assistance to the victims of prohibited practices including their social reintegration and full physical and psychological recovery.

As the Protocol provides for comprehensive measures to address the crime of sale of children, child prostitution and child pornography, this chapter aims to identify the national laws in the SAARC Countries and examine their consistency with the Protocol.

### **A. Prohibition and Penalisation of the Sale of Children, Child Prostitution and Child Pornography**

*Article 3 (1) (a) of the Protocol specifies the nature of activities punishable in relation to the sale of children and Article 3(1) (b) describes the activities related to child prostitution that are punishable, including offering, procuring or providing a child for prostitution and penalizes the offences, whether such offences are committed in the country or transnationally or on an individual or organized basis.<sup>1</sup>*

### **Sale of Children and Child Prostitution**

The sale of children for sexual exploitation or engagement in forced labour is penalised in most South Asian countries.

The *Suppression of Immoral Traffic Act (1933)* of **Bangladesh** punishes the bringing, attempt to bring or causing a girl or woman to take up prostitution with up to three years imprisonment or fine up to one thousand *Taka* or both.<sup>2</sup> In addition, if the perpetrator is male he is liable to receive an additional punishment of whipping. The *Suppression of Violence Against Women and Children Act (2000)* of **Bangladesh** punishes trafficking in children, specifically bringing or sending children abroad, buying or selling children for any unlawful or immoral purpose or taking possession of, or keeping custody for, the said purpose with death or rigorous imprisonment for life and fine.<sup>3</sup>

The *Indian Penal Code (1860)* punishes the buying and selling of children for the purpose of prostitution or illicit intercourse<sup>4</sup> with imprisonment that may extend to ten years and fine.<sup>5</sup> In addition to the *Indian Penal Code*, the *Immoral Traffic (Prevention) Act (1956)* of **India**, punishes the procuring or attempt to procure a child for the purpose of prostitution, inducing a person to go from any place with an intent to engage the person into prostitution, or, taking or attempting to take a person from one place to another to engage that person into prostitution, or causing or inducing a person to carry on prostitution.<sup>6</sup> The punishment extends from seven years up to life

imprisonment.<sup>7</sup> In cases in which the victim is a minor,<sup>8</sup> the punishment provided for is rigorous imprisonment of not less than seven years and not exceeding fourteen years.<sup>9</sup>

The *Traffic in Human Beings (Control) Act (1986)* of **Nepal**, defines the actions that are to be considered as selling of human beings.<sup>10</sup> The *Chapter on Sale of Human Beings of the Country Code (1963)* of **Nepal** clearly states “no person shall take anyone out of the country with an intention to sell”.<sup>11</sup> It prescribes punishment up to 10 years where the convict is caught before the actual sale and 20 years imprisonment for the principal convict upon sale.<sup>12</sup> The Chapter specifically deals with children below the age of 16 and states that “no person shall separate or entice any minor below the age of 16 from the guardian (or ...) without the consent of the legal guardian”.<sup>13</sup> Any such person who separates or entices is liable of to a punishment up to 3 years of imprisonment or a fine of Rs. 500 or both.<sup>14</sup>

The *Country Code (1963)* of **Nepal** -in the Chapter on Rape- deals with the offence of pedophilia.<sup>15</sup> It states that any person who commits or causes to commit any kind of unnatural sexual intercourse with any minor, shall be deemed to have committed rape and shall be punished with an additional imprisonment of up to one year in addition to the punishment prescribed for rape.<sup>16</sup> Furthermore, in such cases the court shall take into account the age of the victim as well as the damage caused, and direct the offender to pay compensation to the victim.<sup>17</sup> In addition to the aforementioned laws, the *Children’s Act (1992)* of **Nepal** states that no person shall involve or use a child in an “immoral profession”<sup>18</sup>, the act punishes the said offence with imprisonment of up to one year and a fine of ten thousand rupees.<sup>19</sup>

The *Pakistan Suppression of Prostitution Ordinance (1961)* states that any person having custody, charge or care of a girl under the age of sixteen, who causes, encourages or abets the seduction or prostitution of such girl, is punishable with imprisonment of up to 3 years and a fine which may be extend up to one thousand rupees.<sup>20</sup> It also punishes the procuring, enticing or leading away of any girl for the purpose of prostitution, with imprisonment of up to three years.<sup>21</sup> In addition the Ordinance also deals with the importing of a girl for prostitution,<sup>22</sup> as well as for keeping a girl for prostitution,<sup>23</sup> and provides for an imprisonment of up to three years and a fine of up to one thousand rupees to the perpetrator in both these cases.<sup>24</sup> Furthermore, for all the aforementioned offences the Ordinance provides for an additional punishment of whipping if the convict is a male. An *Ordinance to Prevent and Control Human Trafficking (2002)* was promulgated in **Pakistan** to provide effective measures to prevent the offences related to human trafficking and to protect and assist victims of such trafficking. The Act states that any person who knowingly purchases, sells, harbours, transports, provides or obtains a child through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking into or out of Pakistan shall be punishable with imprisonment of up to 10 years and a fine.<sup>25</sup> Furthermore, if the commission of the offence involves abduction or kidnapping the punishment may be extended up to fourteen years of imprisonment with a fine.<sup>26</sup> In addition, there is a novel provision, which states that even if the offenders are the biological parents of the victim, this fact shall not prejudice the hearing or verdict of the case.<sup>27</sup>

The *Penal Code (Amendment) Act No. 22 of 1995* of **Sri Lanka** punishes the sexual exploitation of children. It states that procuring or attempting to procure any person to become prostitute, within or outside Sri Lanka, or detaining any child under the age of sixteen with a view to illicit

sexual intercourse with any person outside Sri Lanka, or bringing or attempting to bring any child under the age of sixteen with a view to illicit sexual intercourse with any person in or outside Sri Lanka, or detaining any person with a view to illicit sexual intercourse or sexual abuse, is punishable by imprisonment ranging between two and ten years and/or with a fine.<sup>28</sup>

#### • **Child Pornography**

Pornography is penalised in most of the South Asian countries; but usually it falls under a general ban on pornography, not particularly addressing child pornography. Sri Lanka and Nepal have legal provisions specifically addressing the problem of child pornography.

The *Penal Code of Bangladesh (1860)* prohibits the production, possession or participation in other activities related to pornography. According to the *Indian Penal Code (1860)* child pornography falls under a general ban on obscene material and is not differentiated from adult pornography.<sup>29</sup> The penalty is imprisonment for up to two years with a fine of up to two thousand rupees on the first conviction; in the event of a second or subsequent conviction, imprisonment may extend up to five years with a fine up to five thousand rupees.<sup>30</sup>

Following the ratification of the 1st Amendment to Law no: 9/91 (*Law on the Protection of the Rights of Children*), which raised the age of majority from 16 years to 18 years, the Government of **Maldives** has announced guidelines for compliance in employing youths under the age of 18 in public service. According to a directive issued by the President's Office, a youth who had not reached 18 years of age should be employed only after obtaining the written consent of his guardian. Further, the employer is prohibited from assigning to the minor any work that could adversely affect his or her physical and moral well-being and education. The guidelines also rule out the employment of such youths, whether on temporary or permanent basis, in certain types of jobs. The prohibited employment include jobs that provide access to images and documents that are inappropriate for viewing by minors.

The *Children's Act (1992)* of **Nepal** prohibits taking photographs of children, giving permission to take photographs of children, distribution or exhibition of photographs of children with an intention to involve a child in an immoral profession.<sup>31</sup> Furthermore, the Act also prohibits the printing and publication/exhibition of personal incidents, descriptions, or photographs that could impair the character of a child.<sup>32</sup> Any of the aforementioned activities are punishable with imprisonment of up to one year and a fine of ten thousand rupees.<sup>33</sup>

The *Penal Code (Amendment) Act No. 22 of 1995* of **Sri Lanka** prohibits the use of children in producing child pornography and the dissemination of such material. Hiring, employing, assisting, persuading, using, inducing or coercing any child to pose, model for indecent photographs or films, or appear or perform in indecent exhibitions is punishable.<sup>34</sup> The law also clearly states that parents or guardians who cause or allow a child to be used in such a way are also liable to punishment.<sup>35</sup> Furthermore, selling, publishing, distributing or possessing such material is also punishable. The punishment provided for the above mentioned offence of child pornography is imprisonment ranging between two and ten years and may also be punishable with a fine.<sup>36</sup>

#### • **Adoption**

*Article 3 (1) (ii) of the Protocol has also made punishable taking improper induced consent for the purpose of adoption.*

The *Penal Code (Amendment) Act No. 22 of 1995* of **Sri Lanka** punishes the promoting, facilitating, procuring or placement in adoption of any person for money or any other consideration with imprisonment of not less than five years and up to twenty years with a fine.<sup>37</sup>

## **B. Protection of the Rights and Interests of Child Victims**

*Article 8 of the Protocol states that the State adopt measures to protect the rights and interests of child victims of the offences stated in the Protocol at all stages of the criminal justice system. The Protocol provides that the States should take all possible measures to help the child victims overcome the trauma they have faced and also help in their full physical and psychological recovery as well as social reintegration.*<sup>38</sup>

The countries in the South Asian region have few laws that provide support to the child victims. They are categorised as follows:

### **• Right to assistance**

The *Ordinance to Provide for the Protection of the Rights of the Children Involved in Criminal Litigation* of **Pakistan** provides that any child who is a victim of an offence shall have the right to legal assistance at the expense of the state.<sup>39</sup> In addition, it states that the legal practitioner appointed by the state to provide such assistance shall have at least five years standing at the Bar.<sup>40</sup> Furthermore, the *Ordinance to Prevent and Control Human Trafficking (2002)* of **Pakistan** provides that the Court may direct the government to make arrangements for the shelter, food and medical treatment of an unaccompanied child victim.<sup>41</sup>

### **• Right to protection**

The *Code of Criminal Procedure (Amendment) Act, No. 28 of 1998* of **Sri Lanka** has provisions for safe custody, care and the protection of child victims during legal proceedings. It states that in cases of child abuse, where the court feels necessary, it may provide care and protection to the victim.<sup>42</sup>

### **• Right to privacy and confidentiality**

The *Suppression of Violence against Women and Children Act (2000)* of **Bangladesh** provides restrictions for disclosing the identity of oppressed children in the news media.<sup>43</sup> In cases where there is a violation of this provision the person or persons responsible shall be punished with imprisonment for up to two years, a fine not exceeding one *Taka Lac* or both.<sup>44</sup>

The *Law on the Protection of the Rights of Children, Law No: 9/91* of the **Maldives** imposes a duty on the parents to protect the identity of child victims of sexual abuse.<sup>45</sup>

The *Children's Act (1992)* of **Nepal** provides that in cases involving a child, only the child's parents and guardians and the persons, who are either handling the case or who are working directly with the child may be present at the hearing.<sup>46</sup> Moreover, the Act prohibits the publication of the proceedings of cases involving children unless there is permission from the court.<sup>47</sup> Violations of this provision are punishable by imprisonment of up to three months or a fine of three thousand rupees or both.<sup>48</sup>

The *Penal Code (Amendment) Act No. 22 of 1995* of **Sri Lanka** addresses privacy of children who are victims of trafficking, child prostitution, and child pornography. It prohibits the printing or publication of any name or any matter that may disclose the identity of victims, as well as any legal proceedings regarding the aforementioned offences.<sup>49</sup> Contravention of the Act is punishable with up to two years of imprisonment or fine or both.<sup>50</sup> The *Evidence (Special Provision) Act No. 32 of 1990* of **Sri Lanka** provides for the preliminary interviews with child victims and witnesses, in cases of sexual abuse, to be video taped and considered as evidence in cases of child abuse.<sup>51</sup>

#### • **Right to speedy trial**

The *Children's Act 1992* of **Nepal** provides that priority shall be given for hearing and rendering verdicts for cases where the child is either a plaintiff or a defendant.<sup>52</sup>

The *Code of Criminal Procedure (Amendment) Act, No. 28 of 1998* of **Sri Lanka** provides that cases concerning the abuse of children, including sexual abuse, shall receive priority for being tried and appealed.<sup>53</sup>

#### • **Right to compensation**

The *Suppression of Violence Against Women and Children Act (2000)* of **Bangladesh** provides compensation to victims. It states that the tribunal (established under the Act) may impose a fine for offences under the Act (including trafficking) as compensation to the victim of the offences.<sup>54</sup> It also gives victims priority to receive such compensation over any other claims on the property of the convict.<sup>55</sup> Furthermore, in cases where such immediate compensation is not possible from the existing property, the compensation shall be fulfilled from future property owned by the convict.<sup>56</sup>

An *Ordinance to Prevent and Control Human Trafficking (2002)* of **Pakistan** provides compensation and expenses to victims of trafficking.<sup>57</sup>

#### • **Parents Obligation to Report**

The *Law on the Protection of the Rights of Children, Law No: 9/91* of the **Maldives** imposes a responsibility on the parents to report cases of maltreatment, sexual abuse, and anything else that affects a child's dignity to a concerned government authority.<sup>58</sup>

### **C. Strengthen International Cooperation**

*Article 10 of the Protocol requires the State Parties to take all necessary steps to strengthen international cooperation by multilateral, bilateral and regional agreements for the prevention, detection, investigation, prosecution and punishment of those responsible for the acts involving sale of children, child prostitution, and child pornography and sex tourism.<sup>59</sup> Such international cooperation shall be to assist child victims in their physical and psychological recovery, social reintegration and repatriation.<sup>60</sup>*

The SAARC<sup>61</sup> *Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia (2002)* and the SAARC *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)* are new initiatives taken at the regional level to promote the welfare of children and combat the trafficking in the region respectively.

1 Article 3(1).  
2 Section 10.  
3 Section 6.  
4 Sections 372 and 373.  
5 *Ibid.*  
6 Section 5.  
7 Section 5(i).  
8 Section 2 defines a minor as a person who has completed sixteen years of age but has not completed 18 years of age.  
9 Section 5(ii).  
10 Section 4  
(a) Selling human beings with any motive;  
(b) Taking any person abroad with the intent of sale;  
(c) Compelling any woman to take to prostitution through allurement or enticement, deceit, threats, intimidation, pressures or otherwise;  
(d) Conspire to commit any s mentioned in the foregoing clauses, or assist in or abet such acts or attempt to engage therein.  
Punishments for these aforesaid actions are dealt under Section 8 of the Act.  
11 No. 1  
12 *Ibid.*  
13 No. 2.  
14 *Ibid.*  
15 No. 9 A.  
16 No. 3 of the Chapter on Rape provides punishment as follows:  
(1) Where the girl is below 10 years of age imprisonment ranging between 10 years to 15 years  
(2) Where the girl is 10 years to below 16 years of age, imprisonment ranging between 7 years to 10 years  
(3) Where the woman is 16 years or above, imprisonment ranging between 5 years to 7 years.  
17 No. 9 A.  
18 Section 16.  
19 Section 53.  
20 Section 7.  
21 Section 8.  
22 Section 9.  
23 Section 10.  
24 Section 9 and 10.  
25 Section 30(iii).  
26 *Ibid.*  
27 *Ibid.*  
28 Section 360 A.  
29 Sections 292, 292 A, 293.  
30 Section 292.  
31 Section 16.  
32 *Ibid.*  
33 Section 53.  
34 Section 286 A.  
35 *Ibid.*  
36 *Ibid.*  
37 Section 360 C.  
38 Article 9(3).  
39 Section 3.  
40 Section 3(2).  
41 Section 6(iii).  
42 Section 451A.  
43 Section 14.  
44 *Ibid.*  
45 Section 12.  
46 Section 49.  
47 *Ibid.*  
48 Section 53 (9).  
49 Section 365C.  
50 *Ibid.*  
51 Section 163 A.  
52 Section 57.  
53 Section 453a.  
54 Sections 15. Section 16 provides the procedure for realization of fine or compensation.  
55 *Ibid.*  
56 *Ibid.*  
57 Section 6(ii).  
58 Section 16.  
59 Article 10(1).  
60 Article 10(2).  
61 The South Asian Association for Regional Cooperation (SAARC) was officially established in 1985 as an association of States whose aims were to "promote the well-being of the populations of South Asia and improve their standard of living; to speed economic growth, social progress and cultural development; to reinforce links between the countries of this area; and, finally, to promote mutual collaboration and assistance in the economic, social, cultural technical and scientific fields." SAARC includes seven countries: Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.

### **National Plan of Action against Sexual Abuse and Exploitation of Children, including Trafficking**

#### **Bangladesh**

A Core Group was formed in 2001 under the aegis of the Ministry of Women and Children Affairs to assist the government of Bangladesh in meeting its obligations before the Second World Conference Congress against Commercial Sexual Exploitation of Children. NGOs, INGOs and UN agencies were invited to join the group.

This Core Group formulated a *National Plan of Action against Sexual Abuse and Exploitation of Children, including Trafficking*. This Plan of Action is laudable because of the participatory process that led to its formulation. In addition to being a product of a diverse group consisting of national and international organisations and governmental representatives, it includes the input of divisional and district level officials. Furthermore, children's views were solicited and incorporated in this national plan of action.

### **Theatre Festival: An innovative way of communicating the issue of child sexual abuse**

#### **Pakistan**

Lawyers for Human Rights and Legal Aid (LHRLA) is a non-governmental organisation working to protect the rights of women and children in Pakistan. It has been providing free legal services in cases related to trafficking of women and children, child abuse and rape. In 1999, LHRLA organised a theatre festival in different parts of the country to highlight the issue of sexual abuse and sexual exploitation of children and youth. Through the theatre performances, LHRLA tried to disseminate information on child sexual abuse and sexual exploitation, and gave the children and the adults in their communities ideas of how to protect the children. To talk directly about sexual abuse with children in Pakistani society is sensitive; thus, it adopted an innovative way of communicating this sensitive issue.

### **Rehabilitation of Youth in Conflict with the Law**

#### **Bhutan**

In Bhutan the Youth Development and Rehabilitation Centre (YDRC), is conducting a programme for the development and rehabilitation of youth in conflict with law through counselling, recreational facilities and vocational training.

### **Child Helpline**

#### **India**

The central government has launched a 24-hour free phone service, called "Child Helpline" in a number of cities to ensure that every child in the major cities can obtain emergency assistance. In particular, the service seeks to meet the needs of children living alone on the street, child labourers working in the unorganised sector, domestic workers and sexually abused children. According to the situation, the child is referred to an appropriate organisation for long-term follow up and care. As of March 2002, this facility was available in 38 cities.

## **National Child Protection Authority**

### **Sri Lanka**

The creation of a national agency charged with the elimination of all forms of child abuse including sexual abuse and sexual exploitation is a highly recommended practice. The National Child Protection Authority (NCPA) was established in Sri Lanka in 1999 (NCPA Act No. 50 of 1998 which was unanimously passed by the Sri Lankan Parliament) to deal with the problem of child abuse, including sexual exploitation of children for commercial purposes.

It functions directly under the President of the country and conducts monitoring and surveillance of suspected child sex tourists in Sri Lanka. This "Surveillance Programme" uses hidden cameras to conduct surveillance of suspicious cases, in collaboration with the Police. Some violators have been successfully identified. Through its "Cyber-watch Programme", the NCPA also monitors the Internet to prevent the production of child pornography and the sale and trafficking of Sri Lanka's children. The programme has had some success in identifying and arresting offenders.

## **A Change in the Lives of the Women and Children through Rescue, Rehabilitation and Reintegration**

### **Nepal**

Maiti Nepal is a NGO working solely to combat trafficking and has been addressing the problem through rescue, rehabilitation and reintegration of the victims of trafficking. It has rescued large number of women and girls and rehabilitated them by providing education, health care, legal counselling, vocational training, and support throughout criminal proceedings. A unique practice is that Maiti Nepal has encouraged the victims to play an active role to combat trafficking. Rescued women are employed for border monitoring and they use their experience at the border to intercept girls and women who are being taken across the border for trafficking. These women have been successful in finding out the potential victims and returning them to their parents thereby preventing their exploitation.

In 2001, 37 cases were filed against people involved in the trafficking of children and women. As a result of these actions, 23 criminals were apprehended and sentenced.

## **Child Friendly Police Force**

### **Maldives**

In the Maldives, the Unit of the right of Children has been operating in the Police Headquarters since May 1999 and investigations with children are conducted by trained police officers in plain clothes.



## Pre-Ratification

### What Governments can do

- ▶ Support consultations with civil society for discussion on Protocol articles and implications of national policies and programmes.
- ▶ Consult with other governments on processes put in place for early ratification of the Protocol, through visits and regional consultation.
- ▶ Initiate the ratification process.
- ▶ Follow the relevant national laws and regulations to carry out the ratification processes.

# Pre-Ratification



## What Civil Society can do

- ▶ Sensitise the Parliamentarians about the Protocol, highlighting its importance in combating the crimes of sale of children, child prostitution and child pornography.
- ▶ Develop and disseminate advocacy materials on the Protocol in country-specific languages, targeting key stakeholders.
- ▶ Develop a coalition of NGOs specifically working on the rights of children.
- ▶ Conduct seminars/conferences creating awareness on the issue to promote ratification of the Protocol.
- ▶ Use mass media to provide extensive coverage on the Protocol and its significance in protecting the rights of children who are the victims of the sale of children, child prostitution and child pornography.

# Post-Ratification



## What Governments can do

- ▶ Disseminate the Protocol widely to all concerned government agencies.
- ▶ Revise national laws to ensure their compatibility with the Protocol.
- ▶ Enact new laws complementing the Protocol, if necessary.
- ▶ Revise and introduce national policies for the protection of the rights of children to comply with the letter and the spirit of the Protocol, including a specific policy to deal with the problem of pornography circulated via the Internet.
- ▶ Develop necessary programmes to implement the Protocol.
- ▶ Develop a Plan of Action to deal with the problem of commercial sexual exploitation of children.
- ▶ Establish agreements between governments for extradition of offenders and developing monitoring systems.
- ▶ Implement programmes for sustainable development and poverty alleviation, among potential risk groups.
- ▶ Develop guidelines for effective reintegration programmes (e.g., counselling, education, health, training, employment, and social integration).
- ▶ Create infrastructure and strengthen institutional mechanisms for the implementation of the Protocol.
- ▶ Initiate necessary cooperation among the governments of South Asia to enter bilateral or multilateral agreements that facilitate the implementation of the Protocol.
- ▶ Develop partnerships with NGOs/INGOs that promote the effective implementation of the Protocol.
- ▶ Ensure timely reporting on the status of the implementation of the Protocol.
- ▶ Implement the concluding comments.

# Post-Ratification



## What Civil Society can do

- ▶ Create awareness at all levels, from grassroots to national level, educate people on the issues of the sale of children, child prostitution and child pornography, and how the Protocol can address these problems.
- ▶ Cooperate with the government to implement the commitment under the Protocol for the rehabilitation and reintegration of the victims of the sale of the children, child prostitution and child pornography.
- ▶ Conduct research and collect data as a basis for formulating policies to combat the problems of the sale of children, child prostitution and child pornography.
- ▶ Conduct intensive awareness campaigns against the sale of children, child prostitution and child pornography at local and national levels to mobilise diverse groups, from the grassroots level (children, schools, local organisations) to the police and policy makers.
- ▶ Link the Protocol with other international and domestic human rights instruments combating the problems of the sale of children, child prostitution and child pornography.
- ▶ Publicly advocate for the rights stipulated in the Protocol.
- ▶ Actively and effectively monitor the implementation of the Protocol.
- ▶ Initiate amendment proposals to bridge the gaps of the Protocol.
- ▶ Prepare and submit alternative reports to the CRC Committee.
- ▶ Monitor the implementation of the concluding comments of the CRC.

# Introduction to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

1

## Prevalence of the Problem

Trafficking in persons, especially women and children is a form of transnational organised crime and has for long been evident all around the world. According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the term “trafficking in persons” means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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”.

Throughout South Asia, women and children are trafficked within their own countries and across borders. They have little or no say with regards to the *destination*, and in many cases they are *sold* and *bought* and are working *without receiving adequate payment*.

Trafficking of women and children takes place for various purposes such as commercial sexual exploitation, domestic labour, camel jockeying and organ transplant. Children are often forced into begging, soliciting, domestic service, prostitution, or working on plantations, construction sites, and in small factories. Often, they work for long hours in harsh and inhuman conditions. They are deprived of education, recreation, basic health, food and sanitation. Both boys and girls are frequently subjected to sexual and physical abuse, and often they are forced into prostitution to earn money for their employers.

The number of trafficked persons is difficult to determine as no monitoring mechanisms exist in the region. The nature of trafficking -being an illegal trade, characterised by criminal activities and involving complex networks - hampers the attempt to collect reliable data.

Limited research that has been conducted estimates that between 1 and 2 million people are trafficked each year world wide, with the majority originating from Asia; over 150,000 from South Asia and 225,000 from South East Asia.<sup>1</sup> Nepal, Bangladesh and Sri Lanka serve mainly as countries of origin, while India and Pakistan serve mainly as countries of destination.<sup>2</sup> India also serves as a country of transit.<sup>3</sup> However, children are also smuggled out of the South Asia region, mainly to destinations in the Middle East. The three most common destinations are Saudi Arabia, United Arab Emirates and Lebanon.

Poverty, gender discrimination, ignorance, and lack of educational opportunities are major causes of trafficking. Once women and children become victims, they are affected by stigma and discrimination and then are often considered unworthy of protection by families and communities.

Trafficking is a multi-dimensional issue. It is an **economic** issue because the vast majority of women and girls, seeking to escape poverty, are lured into trafficking by false promises of economic gain. It is a **gender** issue because unequal power relations reinforce women's secondary status in society. Trafficking is a **health** issue because women and children who are trafficked are at risk of sexually transmitted diseases. In many cases, the victims of trafficking return home with HIV/AIDS and other diseases. Even if they are not infected with a sexually transmitted disease, others presume they are infected. As a result, their families and the rest of the society neglect and stigmatize them. Trafficking

is a **legal** issue because public policy is deficient and law enforcement is generally ineffective in addressing these issues.<sup>4</sup> **Trafficking violates victims' fundamental human rights.**

Though trafficking has for long been prevalent in South Asia, only recently has it gained the deserved attention. The issue of trafficking, particularly as it affects women and children, is now high on the international political agenda. Both the UN Secretary General and the High Commissioner for Human Rights have targeted trafficking as one of the major human rights challenges of the twenty-first century. In South Asia, the SAARC countries, gathered in Nepal in 2002 and adopted the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

Victims of trafficking are exposed to the extent that they are usually unable to, by themselves exit the circle of trafficking. For this reason, there is a critical need for national and international frameworks, in which countries will be able to develop and maintain mechanisms and structures to fight trafficking and support the victims. The Protocol to Prevent Suppress and Punish Trafficking in Persons, is an essential pillar for such a framework.

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<sup>1</sup> Huntington, Dale, *Anti-Trafficking Programs in South Asia, Appropriate Activities, Indicators and Evaluation Methodologies*, Summary Report of a Technical Consultative Meeting, Population Council, New Delhi, (March) 2002.

<sup>2</sup> Radhika, Coomaraswamy, *Report of the Special Rapporteur on violence against women, its causes and consequences*, in accordance with Commission on Human Rights Resolution 2000/45, Addendum, Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls (28 October - 15 November, 2000).

<sup>3</sup> Ibid.

<sup>4</sup> FWLD and UNIFEM, *Draft report on Effectiveness of the Existing laws and the Institutional Mechanism to Combat Trafficking in Women and Children in Nepal*, , 2002.



**At present 105 States have signed the Protocol and 12 States have ratified it. After ratification by an individual country, the Protocol takes effect at the national level in that country.**

### **Legal Validity of the Protocol in South Asia**

There are 2 processes for giving legal validity to an international instrument ratified by an individual country:

- It directly becomes the law of the land and prevails over any domestic legal provision inconsistent with the international instrument.
- The Parliament has to pass legislation to give effect to the ratified international instruments.

### **Examples**

**Nepal** - According to Section 9 of the Treaty Act, 1990, once a Convention or Treaty is ratified by Nepal, it becomes national law and prevails over inconsistent legal provisions.

**India** - According to Article 253 of the Constitution of India, 1950, the Parliament has to pass a legislation for giving effect to any international agreement.



- **It prevents trafficking in women and children and their exploitation**

In general, the Protocol is designed to prevent trafficking in persons in gender-neutral terminology. However, it pays particular attention to women and children, as they are the most trafficked population. The name of the Protocol, “**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**”, clearly expresses this emphasis. The central focus of the Protocol is to prevent trafficking in women and children and to protect and assist them through defending their human rights.

- **It provides a clear and comprehensive definition of ‘trafficking in persons’**

The first comprehensive definition of trafficking in persons, which is provided by the Protocol, covers all forms of trafficking. The broadest possible international definition of trafficking helps women and children by compelling governments to take concrete and coordinated efforts to prevent their trafficking, to punish traffickers and to protect victims’ human rights. The definition recognises that trafficking can occur not only through force but also through the abuse of power or of a position of vulnerability, and that trafficking can occur irrespective of the consent of the victim. The definition is not focused solely on the outcome of trafficking like many other earlier documents on the problem. It has taken into account the abuse and human rights violations committed during the process of trafficking including recruitment, transport and confinement.

- **It aims to protect the dignity and self-respect of women and children**

The Protocol obliges governments to protect victim’s privacy and identity by maintaining confidentiality, to the extent possible under its domestic law. Protection of privacy and identity helps victims to preserve their honour and self-respect and saves them from stigma and severe discrimination, especially in cases of trafficking in women and children into prostitution, which is prevalent in most South Asian societies.

- **It enables victims to participate in criminal proceedings against traffickers**

It also allows victims to freely and safely participate in criminal prosecutions of perpetrators who have committed the crime of trafficking against them. Considering the needs and vulnerabilities of women and children, the Protocol requires governments to ensure them adequate representation in criminal proceedings against offenders. The Protocol provides for victims to be informed about relevant court and administrative

proceedings to enable them to understand the status of their cases in complicated criminal proceedings. The Protocol enables them to have their views and concerns heard at appropriate stages of such proceedings.

- **It provides opportunities for victims of trafficking, to obtain various essential services**

To help the victims of trafficking, the Protocol obliges governments to consider taking measures to provide for victims physical, psychological, and social recovery. To achieve these objectives, it obliges governments to take measures to provide appropriate housing; counselling and information regarding legal rights in a language the victims can understand; medical, psychological and material assistance; and employment, educational and training opportunities to enable victims to restart their lives.

- **It provides right to compensation**

The Protocol obliges the government to ensure that its domestic legal system provides a right to compensation, for the damage that victims have suffered.

- **It provides measures to address the root causes of trafficking**

The Protocol addresses the underlying causes that allow trafficking in women and children to flourish, primarily the poverty which leaves children desperate and willing to accept any kind of work, regardless of the risks. Lack of education and marketable skills, systematic discrimination, rampant poverty and limited employment opportunities, make women and children easy prey for trafficking. The Protocol, therefore, provides measures to address socio-cultural factors such as gender, caste discrimination and socio-legal factors such as lack of equal opportunity that have made women and children particularly vulnerable to trafficking.

- **It provides measures to address the demand**

The Protocol obliges the governments to adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

- **It allows the victims to remain in the receiving country**

The Protocol calls for countries to consider the victim to remain in the territory of the receiving country temporarily or permanently. This will provide the victims of trafficking a choice to return to their country or remain in the country to which they have been trafficked.

One of the main objectives of the Protocol is to protect and promote the rights of trafficked persons. The rights provided by the Protocol are as follows:

### **Right against Exploitation**

The Protocol guarantees rights against exploitation to the victims of trafficking in persons.

### **Right to Non-discrimination**

The Protocol guarantees the internationally recognised right to non-discrimination. Therefore, the measures set forth in the Protocol shall be applied and interpreted in a way that is not discriminatory to any victims of trafficking in persons.

### **Right to Privacy and Confidentiality**

Under the Protocol, the governments shall protect the privacy and identity of victims of trafficking in persons under their domestic law, and make legal proceedings relating to such trafficking confidential.

### **Right to Information**

The Protocol provides that the victims of trafficking shall be informed about relevant court and administrative proceedings relating to their cases.

### **Right to be Represented and Heard**

The Protocol provides that the victims of trafficking shall be provided opportunities to present their views and concerns at appropriate stages of criminal proceedings.

### **Right to Assistance**

Under the Protocol, the governments shall take measures for the physical, psychological and social recovery of victims of trafficking by providing them with appropriate housing, counselling, and information (particularly about their legal rights), in a language that the victims of trafficking can understand.

### **Right to Safety**

The Protocol provides that governments shall provide for the physical safety of victims of trafficking while they are within their territory.

### **Right to Compensation**

The Protocol provides that governments shall ensure that their domestic legal systems contain measures for the compensation of victims of trafficking for damage suffered.

### **Right to Voluntary Repatriation**

The Protocol provides that victims of trafficking shall be repatriated respectfully and voluntarily, and that receiving governments shall accept such repatriation without any unreasonable delay.

### **Right against Forceful Deportation**

The Protocol provides that governments shall consider providing legislative or other relevant measures for permitting victims of trafficking to remain in its territory, temporarily or permanently.

### **Implementation and enforcement**

The governments shall take all legal, administrative and other measures to ensure effective implementation and enforcement of the obligations provided under the Protocol. Domestic implementation of the Protocol can be effectuated by each government party by undertaking one of the following processes:

- declaring the Protocol to be a part of national law, or
- enacting new legislation or other legal measures in accordance with the Protocol, or
- amending existing domestic law in accordance with the provisions of the Protocol.

### **Criminalise the offences of trafficking in persons**

The government is to adopt legislative and other measures criminalising the offences stated in the Protocol, incorporating required measures to punish traffickers, including persons attempting to commit the offences, persons participating as accomplices, and persons organising or directing other persons to commit the offences.

### **Protect the rights of the victims**

The governments shall adopt legal or administrative policies to protect the privacy and identity of victims by making legal proceedings confidential. The governments shall provide the victims with information on relevant court and administrative proceedings, and allow them to put forward their views and concerns during criminal proceedings.

The governments shall consider implementing measures to provide for the physical, psychological, and social recovery of the victims, including appropriate housing, counselling, information regarding their legal rights (in a language they can understand) medical assistance, employment, educational, and training opportunities.

The governments shall ensure that its domestic legal system contains adequate measures for victims to obtain compensation for the damage they have suffered.

The government shall consider adopting legislative and other appropriate measures to protect victims in its territory and allow them to remain there temporarily or permanently. The governments shall take into account the gender and age of victims and related special needs.

### **Address Underlying causes of trafficking in persons**

The governments shall implement or strengthen legislative and other measures, to prevent or discourage all situations that foster exploitation and, ultimately, lead to trafficking in persons.

The governments shall also take measures, through bilateral and multilateral cooperation, to address the underlying causes of trafficking in persons, such as poverty, underdevelopment, and lack of equal opportunities.

### **Establish cooperation among the governments**

The governments shall exchange information, in accordance with their domestic law, regarding people crossing international borders; the means and methods used by organised criminal groups for the purpose of trafficking in persons (including the recruitment and transportation of victims, routes and links between and among individuals and groups); and possible measures to detect such organised criminal groups.

The governments are to establish transnational cooperation through comprehensive polices, programmes and other measures, such as research, information, mass media campaigns, and socio-economic initiatives, to prevent and fight trafficking in persons, and to protect victims.

### **Provide appropriate training**

The governments shall provide or strengthen comprehensive training measures to sensitise law enforcement, immigration and other related officials to gender issues and to issues surrounding the violation of the rights of children, in order to prevent trafficking in persons and to protect the human rights of the victims.

### **Ensure effective information exchange and border control**

Law enforcement, immigration and other relevant authorities shall, as appropriate, cooperate with one another by exchanging information in accordance with domestic law. The governments shall exchange information regarding cross-border trafficking in persons, the types of travel documents that individuals have used, movements of organised criminal group for the purpose of trafficking in persons, including the recruitment

and transportation of victims, and undertake to implement stringent border control mechanism to prevent and detect trafficking in persons.

### **Establish cooperation with NGOs and Civil Society**

The governments shall cooperate with non-governmental organisations and civil societies to prevent trafficking in persons and to protect the rights of victims.

### **Ensure voluntary repatriation of the victims**

The government has an obligation to ensure the voluntary repatriation of the victims of trafficking to their country of origin.

### **Research and mass media campaign**

Governments shall endeavour to undertake measure such as research, public education, mass media campaigns, and socio-economic initiatives to prevent and combat trafficking in persons with the cooperation of NGOs and other relevant organisations.

### **Ensure security and control of documents**

The governments shall take such measures as may be necessary to ensure that travel or identity documents issued by the governments can not be misused, to ensure the integrity and security of travel or identity documents and to prevent their unlawful creation, issuance and use.

### **Prevent re-victimisation of the victims**

The governments shall establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons, and to protect victims of trafficking in persons, especially women and children, from revictimisation.

### **Measures provided under the Convention applicable to the Protocol**

According to Article 1 of the Protocol, there are measures contained in the United Nation's Convention against Transnational Organized Crime, which are also applicable to the Protocol provisions. These are:

1. Article 16 of the Convention states that governments have an obligation to extradite offenders of trafficking in persons to requesting countries.
2. Article 17 of the Convention says that governments may consider entering into bilateral or multilateral agreements regarding the transfer to their territory of persons sentenced to imprisonment for offences covered by the Convention in order that they may complete sentences there.
3. Article 18 of the Convention states that governments shall afford one another the widest possible measures of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention.
4. Article 19 of the Convention states that governments shall consider making bilateral or multilateral agreements regarding matters that are subject of investigation, prosecution or judicial proceeding in one or more States, so that relevant authorities may establish joint investigation bodies.
5. Article 22 of the Convention states that criminal records of previous convictions of an offender residing in another State may be used in criminal proceedings of a prosecuting State in relation to offences covered by the Convention.
6. Article 23 of the Convention provides that governments shall criminalise acts intended to obstruct justice.
7. Article 24 of the Convention says that each government shall take appropriate measures to ensure the protection of witnesses in criminal proceedings from potential retaliation and intimidation.

Trafficking in persons is a transnational crime, affecting large numbers of individuals throughout the world. South Asian countries are especially plagued by the crime of trafficking in persons, particularly women and girls. Trafficking in persons into any form of exploitative work violates a number of the victim's human rights, which are guaranteed by various international laws and agreements. This Protocol is the first international document to define trafficking in persons in detail and to state the steps that the governments must take to protect and promote the human rights of trafficked victims.

- It encourages international cooperation to prevent trafficking in persons, and to address the underlying causes of the problem, including poverty, unemployment, and underdevelopment.
- By ratifying the Protocol, governments can express their commitment at international level to prevent trafficking in persons by protecting and promoting the rights of victims.
- The objectives can be effectively achieved trans-nationally through the ratification and acceptance of this Protocol, which facilitates governmental cooperation in preventing trafficking, punishing traffickers, and protecting the human rights of victims.

### **Who can Ratify the Protocol?**

Governments and Regional Economic Integration Organisations party to the Convention can ratify the Protocol, provided that at least one government of such an organisation has also signed the Protocol. For the Protocol to be effective, 40 governments must ratify, accept, approve or accede to the Protocol. However, it cannot come into force before the United Nations Convention Against Transnational Organized Crime 2000 comes into force, as the Protocol supplements the Convention.

### **Procedure for Ratification**

A Government or Regional Economic Integration Organisation, which is already a party to the Convention, can become a party to the Protocol by following the procedure detailed herein.

### What difference would ratification make?

- Ratification of the Protocol is an *international proclamation of the country's commitment to fight Trafficking of Women and Children*.
- Ratification improves the protection of children, as the Protocol's various articles are *particularly developed to offer strong and comprehensive protection against Trafficking of women and children, thus addressing potential gaps in national laws*.
- Trafficking of Women and Children, is a crime that urgently requires *internationally agreed upon standards and procedures*:
  - A. The woman/child is often forced to cross borders and is exploited in foreign countries.
  - B. The supplier-chain is consisted of complex networks involving various nationalities.
  - C. The demander is usually from a different nationality, with different legal practices.
- Ratification of the Protocol will facilitate regional and international co-operation, as it manifests:
  - A. A common and clear definition of "trafficking in persons".
  - B. Common and clear instructions on measures and procedures for cross border collaborations.
  - C. Common and clear priorities, such as addressing root causes.
- Ratification of the Protocol will improve the victim's status, as it is developed through a *woman's and child's rights approach*, putting the victims safety as the main priority; it stipulates common and clear instructions on prevention, assistance, and victim's friendly procedures.

The South Asian Association for Regional Cooperation (SAARC) was officially established in 1985 as an association of States whose aims were to promote the well-being of the populations of South Asia and improve their standard of living; to speed economic growth, social progress and cultural development; to reinforce links between the countries of this area; and, finally, to promote mutual collaboration and assistance in the economic, social, cultural technical and scientific fields. SAARC includes seven countries: Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.<sup>1</sup>

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002, was adopted on January 6, 2002, at the eleventh SAARC Summit held in Kathmandu, Nepal. The SAARC Convention is a political step forward and is the first regional document to address trafficking. The Convention demonstrates the commitment of member states to fight against this growing problem on regional level. The Convention promotes preventative measures to combat trafficking that will be made more effective, by the UN trafficking protocol's provisions.

Some of the provisions provided in the SAARC Convention are as follows:

- The Convention provides for measures to catalyse changes in domestic laws, creating effective extra-territorial measures to ensure that trafficking in any form is a crime. (This is one of the strongest aspects of the Convention.)
- The Convention provides for capacity building of law enforcement mechanisms that is imperative to effectively fight against trafficking.
- The Convention provides a platform for regional cooperation that is imperative to combat trafficking.

The SAARC Convention, limits the definition of trafficking to acts involving prostitution; ignoring other forms of trafficking such as forced labour, organ transplant, camel jockeying, etc. However, the Protocol provides and protects various human rights of victims of trafficking such as the right against non-discrimination, right to be represented, right to voluntary repatriation, and the right against forceful deportation.

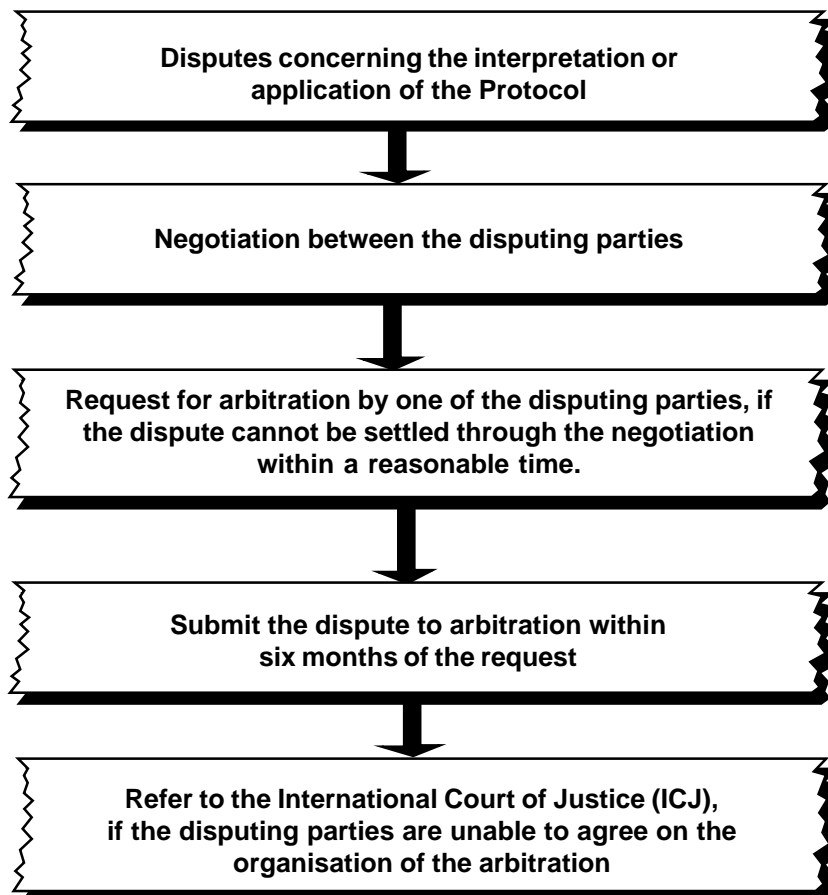
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<sup>1</sup> [www.saarc.org](http://www.saarc.org), October 12, 2002.



The Protocol does not provide monitoring mechanisms or reporting obligations. However, the Protocol does provide mechanisms to settle disputes concerning the interpretation or application of the Protocol. Nevertheless, any government can declare that it does not consider itself bound by the Protocol's dispute resolution process at the time of signature, ratification or accession.

The Dispute settlement mechanism provided under the Protocol is as follows:





The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Trans-national Organized Crime is an international agreement that addresses the crime of trafficking in persons. The UN Trafficking Protocol provides comprehensive definitions for “trafficking” and “child.” It also has provisions on confidentiality during legal proceedings, assistance to or rehabilitation of victims, compensation to victims for damage suffered, permanent or temporary residence in receiving countries, repatriation measures, preventive measures, information exchange and training, border measures, and documentation security and control. This Section aims to identify the national laws in SAARC countries that deal with trafficking and compare their consistency with the UN Trafficking Protocol.

#### A. Definition of Trafficking

*Article 3 of the UN Trafficking Protocol provides the first comprehensive definition of trafficking. According to the Protocol, “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.”*

In **Bangladesh**, the *Suppression of Immoral Traffic Act (1933)* deals with suppression and trafficking of girls and women. It punishes bringing, attempting to bring, and causing a girl or a woman to take up prostitution with up to three years imprisonment or a fine of up to one thousand Taka or both.<sup>1</sup> Also in **Bangladesh**, the *Suppression of Violence against Women and Children Act (2000)* was enacted to stringently suppress offences relating to violence against women and children. The Act punishes trafficking in children, specifically bringing or sending children abroad, buying, selling, taking possession of, or keeping custody of children for any unlawful or immoral purpose. Under the Act, convicted traffickers can receive punishments of death, rigorous imprisonment for life and/or a fine.<sup>2</sup> Although both acts punish some forms of trafficking, the definition of trafficking is not provided in the laws.

In **Bhutan**, the *Penal Code, 2003* is being drafted which addresses the trafficking of women and children.<sup>3</sup> The *Immoral Traffic (Prevention) Act (1956)*, in **India**, does not specifically define trafficking, however, the Act does punish procuring, inducing, and taking a person for prostitution.<sup>4</sup> In the **Maldives**, the government has stated that trafficking is not a problem in the country.<sup>5</sup> In **Nepal**, the *Traffic in Human Being (Control) Act (1986)*

does not define trafficking, but does identify some acts as crimes of trafficking that include the selling of human beings for prostitution.<sup>6</sup> In 2002, **Pakistan** promulgated the *Ordinance to Prevent and Control Human Trafficking*, in which “human trafficking” is explicitly punishable. “Human trafficking” is defined as “obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person notwithstanding his implicit or explicit consent...”. In Pakistan, the *Pakistan Suppression of Prostitution Ordinance (1961)* punishes the procurement and importation of women and girls for prostitution;<sup>7</sup> and the *Offence of Zina (Enforcement of Hudood) Ordinance (1979)* prohibits child sexual abuse.<sup>8</sup> In **Sri Lanka**, the *Penal Code (Amendment) Act, No. 22 (1995)*,<sup>9</sup> and the *Penal Code (Amendment) Act, No. 29 (1998)*<sup>10</sup> defines trafficking as an act of buying, selling, or bartering any person for money or for any other consideration.

## **B. Confidentiality During Legal Proceedings**

*Article 6.1 of the UN Trafficking Protocol provides that “[i]n appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including inter alia, by making legal proceedings relating to such trafficking confidential.”*

The *Suppression of Violence against Women and Children Act (2000)* of **Bangladesh** provides restrictions for disclosing the identity of oppressed children in the news media.<sup>11</sup> In **Nepal**, the *Children’s Act (1992)* and the *Human Trafficking (Control) Bill (2002)* provides for in-camera court proceedings.<sup>12</sup> The *Children’s Act (1992)* also provides that in cases involving a child, only the child’s parents and guardians and the persons, who are either handling the case or who are working directly with the child victim may be present at the hearing.<sup>13</sup> Moreover, the Act prohibits the publication of the proceedings of cases involving children unless there is permission from the court.<sup>14</sup> Furthermore, the Act prohibits all printing and publication/exhibition of personal incidents, descriptions, or photographs that can impair the character of a child.<sup>15</sup> Any of the aforementioned activities are punishable by imprisonment of up to one year and a fine of ten thousand rupees.<sup>16</sup>

In **Sri Lanka**, the *Evidence (Special Provisions) Act, No. 32 (1999)* provides for video recorded interviews with children, which may be considered as evidence. The *Code of Criminal Procedure (Amendment) Act, No. 28 (1998)* in Sri Lanka mandates protection for the privacy of children who are victims of child abuse.<sup>17</sup> The *Law on the Protection of the Rights of Children, Law No: 9/91* of the **Maldives** imposes a duty on the parents to protect identity of the child victims of sexual abuse.<sup>18</sup>

### **C. Assistance or Rehabilitation to Victims of Trafficking in Persons**

*Article 6.3 of the UN Trafficking Protocol provides that “[e]ach State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation, with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provisions of: (a) [a]ppropriate housing; (b) [c]ouncilling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) [m]edical, psychological and material assistance; and (d) [e]mployment, educational and training opportunity.”*

The *Children’s Act (1992)* in **Nepal** states that no criminal case involving a child can be heard or decided by the court without the assistance from a lawyer.<sup>19</sup> In **Nepal**, the *Human Trafficking (Control) Bill*, provides for the establishment of a rehabilitation center and a fund to run the center.<sup>20</sup> In **Pakistan**, the *Ordinance to Prevent and Control Human Trafficking (2002)* provides for the arrangement of food, shelter, and medical treatment for unaccompanied children and destitute women, who have been trafficked. Also in Pakistan the *Ordinance to provide for protection of the rights of children involved in criminal litigation, 2000* provides for the right of legal assistance to every child who is accused of the commission of an offence or is a victim of an offence.<sup>21</sup> The *Code of Criminal Procedure (Amendment) Act, No. 28 (1998)* of **Sri Lanka** has provisions that assure safe custody, care and protection of child victims during legal proceedings. It states that in cases of child abuse, the court may use its discretion in providing care and protection to the victim.<sup>22</sup>

### **D. Compensation to the Victims or Witnesses**

*Article 6.6 of the Protocol provides that “[e]ach State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”*

In **Bangladesh**, the *Suppression of Violence Against Women and Children Act (2000)* affords victims the opportunity to gain monetary compensation from their offenders. A victim’s claim for compensation has priority over any other claims presented against an offender’s assets and as such will be satisfied first. When an offender’s existing assets are insufficient to satisfy a victim’s claim, the remainder due may be realised from future assets.<sup>23</sup> In **Nepal**, the *Human Trafficking (Control) Bill (2002)* establishes the amount of compensation available to the victim as half of the fine levied as a punishment.<sup>24</sup> In **Pakistan**, the *Ordinance to Prevent and Control Human Trafficking (2002)* also grants compensation to the victims of trafficking.<sup>25</sup>

The laws in SAARC countries have improved over the years, as demonstrated by the continuous reformations made in the law. For example, *Traffic in Human Beings (Control) Act (1986)* in Nepal provides for extraterritorial jurisdiction in cases of trafficking and places the burden of proof on the accused. While the attempt at combating trafficking is commendable, initiatives also need to be taken that specifically address the human rights of the victims in the laws. The UN Protocol on Trafficking is a comprehensive document that presents measures to effectively fight trafficking and protect the rights of its victims. As trafficking is a major problem in many of the South Asian countries, reforming laws on trafficking has become exceedingly important. Consistent laws are essential to provide equal rights and remedies to the victims, and to facilitate states to collectively and effectively curb the crime of trafficking.

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<sup>1</sup> Section 10.

<sup>2</sup> Section 6.

<sup>3</sup> Bhutan Country Paper By: The Royal Government of Bhutan For “Commemorating Beijing” Fourth South Asia Regional Meeting Paro, Bhutan, 19-21 May 2003.

<sup>4</sup> Section 5.

<sup>5</sup> Maldives Country Paper By: Ministry of Women’s Affairs and Social Security Maldives, For “Commemorating Beijing” Fourth South Asia Regional Meeting, Paro, Bhutan, 19-21 May 2003.

<sup>6</sup> Section 4.

<sup>7</sup> Sections 8 and 9.

<sup>8</sup> Sections 4 and 6.

<sup>9</sup> Section 360b (1) and 360c (1).

<sup>10</sup> Section 360 (A).

<sup>11</sup> Section 14.

<sup>12</sup> Section 26.

<sup>13</sup> Section 49.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Section 53.

<sup>17</sup> Sections 451A and 453 A.

<sup>18</sup> Section 12.

<sup>19</sup> Section 19.

<sup>20</sup> Section 21 and 22.

<sup>21</sup> Section 3.

<sup>22</sup> Section 451A.

<sup>23</sup> Sections 15 and 16.

<sup>24</sup> Section 16.

<sup>25</sup> Section 6 (iii).

### **Education for the Children of Sex Workers**

#### **Bangladesh**

UTSHO Bangladesh provides a day and residential school for children (both boys and girls) of working mothers, including those engaged in prostitution. Established in 1993 in Dhaka, UTSHO aims to provide an alternative for girls who would otherwise be compelled to take up their mother's exploitative work. From playgroups to Class 5, children attend a school in the facility, and after Class 5, the children re-enter the mainstream schools, attending class with other children. The goal is for all children who have the capacity to continue through to university, and for those who may be less academic, to attend a good technical school. UTSHO's special emphasis is on ensuring that the children receive a high-quality of education.

### **Judicial Activism in Releasing Innocent Victims**

#### **Pakistan**

In trying to combat illegal migration and trafficking, victims usually end up more criminalised than the traffickers. However, an organisation called Lawyers for Human Rights and Legal Aid (LHRLA) through Public Interest Litigation (PIL) has helped to release victims that have been confined wrongly. Recently, thirty Bangladeshi and Burmese origin Muslim women and children detained four years ago on allegations of illegal entry were released from Karachi jail. A division bench of the Sindh High Court issued the release order for the 13 women and their 17 children who were sent to Edhi Centre (Apen Ghar) from Karachi Juvenile Jail. The court made the order in response to petitions on behalf of the women by Zia Ahmed, President of LHRLA in Pakistan.

### **Rehabilitation Plan Necessary Before Releasing Victims**

#### **India**

On 7th October 2002, the Mumbai High Court gave a ruling on the writ petition of Prerana (a well-known NGO working for the rescue and rehabilitation of victims) criticising the Juvenile Justice Board (JJB) for illegally releasing 10 minor girls rescued by Mumbai police from a brothel without any rehabilitation assistance. As a result of this action by the JJB, the court said that these girls had been exposed to the danger of being re-trafficked into prostitution. The High Court bench laid down strict criteria to be followed by the JJB and Child Welfare Committee in carrying out its functions. This ruling on Prerana's writ petition is a significant victory over established malpractices, lapses, and negligence in the post-rescue operations' dealings with victims.

## **Empowering Children to Stop Violence and the set up of Police Bureau on Child Abuse and Violence Against Women**

### **Sri Lanka**

In Sri Lanka, the National Child Protection Authority has established the Child Protection Committee (CPC) consisting of principals, teachers and children, to promote participation of children on issues related to child rights. This pilot project gives children an opportunity to participate in school activities and to be heard in matters that affect them. At the same time, the CPC is attempting to raise awareness of child abuse by providing parents and teachers with information on the forms of abuse, its harmful effects, and guidelines for the detection, assessment, and referral of victims of child abuse. CPC gives the children, themselves, a role in acting against abuse and violence.

A Police Bureau on Child Abuse and Violence against Women was set up recently in Sri Lanka. The 34 Police desks at district level, dealing with Child Abuse and Violence against Women, are linked to the Bureau, all functioning under the Criminal Investigation Division of the Police and a Deputy Superintendent of the Police.

## **Public Interest Litigation: A Strategy to Eliminate Discriminatory Laws**

### **Nepal**

The Forum for Women, Law and Development (FWLD) is an NGO in Nepal. FWLD filed a PIL complaint against the rape law that discriminates against prostitutes in Nepal. The law imposes a punishment of five hundred Nepali rupees fine or one year imprisonment (or both) for raping a prostitute, which is much less severe than the penalty for raping any other women. The court declared the law *ultra vires*, the law unconstitutional and discriminatory against women. "The provision, which provides less punishment for rape to a prostitute, has discriminated against them without any reasonable grounds, construing them as lower class. The existence of such laws, which are discriminatory and unequal among citizens, does not comply with the spirit of the Constitution. It is not reasonable to think that the punishment for the crime should be different only on the basis of any profession or any individual's character. It is, therefore, not reasonable to keep in force such legal provisions that encourage grave crimes, the Supreme Court declared.



## Pre-Ratification



### What Governments can do

- ▶ Support consultations with civil society for discussion on Protocol articles and implications of national policies and programmes.
- ▶ Consult with other governments on processes put in place for early ratification of the Protocol, through visits and regional consultation.
- ▶ Initiate the ratification process.
- ▶ Follow relevant, existing national laws and regulations to carry out the ratification processes.

# Pre-Ratification



## **What Civil Society can do**

- ▶ Educate key stakeholders on the Protocol, highlighting its importance in combating trafficking.
- ▶ Develop and disseminate advocacy materials on the Protocol in country-specific languages directed to key stakeholders.
- ▶ Develop a network of NGOs specifically working against trafficking.
- ▶ Conduct seminars/conferences promoting ratification of the Protocol.
- ▶ Use mass media to provide extensive coverage of the UN Trafficking Protocol and its significance in protecting rights of women and children who are the victims of trafficking.

# Post-Ratification



## What Governments can do

- ▶ Translate the Protocol into national languages.
- ▶ Disseminate the Protocol widely to all concerned government agencies.
- ▶ Amend the inconsistent domestic anti-trafficking laws to comport with the Protocol.
- ▶ Enact new laws complementing the Protocol, if necessary.
- ▶ Develop a national plan of action against trafficking, and, if one already exists, incorporate the measures provided in the Protocol into the national plan.
- ▶ Develop necessary programs to implement the Protocol and the National Plan of Action.
- ▶ Establish agreements between the governments to prevent trafficking across borders and implement a monitoring system.
- ▶ Implement programmes for (sustainable livelihoods) and poverty alleviation, among the potential risk groups.
- ▶ Develop guidelines for effective reintegration programmes (e.g., counselling, education, health, training, employment, and social integration).
- ▶ Create infrastructures and strengthen institutional mechanisms for the implementation of the Protocol.
- ▶ Promote cooperation among the governments of South Asia to initiate bilateral or multilateral agreements that facilitate the implementation of the Protocol.
- ▶ Develop partnerships with NGOs/INGOs working against trafficking for the effective implementation of the Protocol.
- ▶ Monitor the implementation of the Protocol.
- ▶ Timely Reporting.

# Post-Ratification



## What Civil Society can do

- ▶ Create awareness at all levels, from grassroots to the national level, on the issue of trafficking, educate the public about the causes and consequences of these crimes and explain how the Protocol can be an effective tool to address this issue.
- ▶ Cooperate with governments to rehabilitate and reintegrate the victims of trafficking.
- ▶ Collect data and conduct research as a basis for policy and programme formulation.
- ▶ Conduct intensive awareness campaigns against trafficking at the local and national level to mobilize diverse groups - from women and children at the grassroots level to policy makers, schools and police officers at all levels.
- ▶ Launch income generation programs in trafficking prone areas.
- ▶ Link the Protocol with other human rights instruments in combating trafficking.
- ▶ Advocate on the rights created by the Protocol to the public.
- ▶ Initiate amendment proposal to address gaps in the Protocol.
- ▶ Raise the violation of rights under the Protocol during the reporting to CEDAW and CRC and relevant human rights instruments.

# Introduction to the Optional Protocol on the Involvement of Children in Armed Conflict, 2000

1

## Prevalence of the problem

In more than 85 countries, hundreds of thousands of children have been recruited into paramilitaries, civil militia and a wide variety of non-state and state armed groups. Millions of children worldwide receive military training and indoctrination in youth movements and in schools. While most child soldiers are aged between 15 and 18, the youngest age recorded is seven.<sup>1</sup> In many countries, both girls and boys are used as soldiers. In Asia and the Pacific as well, tens of thousands of children are recruited, sometimes forcibly, into governmental armed forces, paramilitary groups or militia and non-governmental armed groups.<sup>2</sup>

The Optional Protocol on the Involvement of Children in Armed Conflicts states that “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.” The Optional Protocol also sets up regulations on voluntarily recruitment, and recruitment by non-state armed groups.

Internal armed conflicts in the SAARC region are rising in numbers. The Global Report on Child Soldiers 2001, suggests that large numbers of children are involved in armed conflict-not only violating the rights of children to protection from exploitation and abuse, but also depriving them of their right to health and education.

Young conscripts tend to perform ancillary tasks, as being porters (carrying arms, ammunition and loot), messengers, intelligence gathers, cooks and weapon-cleaners to support the military enterprise and to provide sexual services. Some occupy combat functions, as soldiers, guards or political agitators and are responsible for patrolling and manning checkpoints, the laying, detection and clearing of land mines and bearing arms in battle. Children are drawn into combat through many routes. Since the young tend to be particularly obedient and loyal and have a special talent for escaping surveillance, their recruitment is an overt strategy of many armed groups.

Most South Asian countries have through laws and policies, tried to restrict the use of children as child soldiers or combatants. Nevertheless, children are in fact actively involved in various armed conflicts, due to low minimum age of recruitment or low age for volunteers. It is difficult to oversee child recruitment in all different fractions of armed groups; whether military, para-military, guerilla groups or armed opposition, because in many cases the age can not be determined as birth registration is deficient.

Involvement of children in armed conflicts take place for various reasons. Usually, children lack alternative opportunities, such as education or financial means for survival. Some children are abducted and forced to fight, and others join up through a range of processes and due to poverty or lack of awareness and oppressive social hierarchies.<sup>3</sup>

Involvement of children in armed conflict is a serious violation of the human rights of children as well as being a serious threat to peace and security in the region. When children grow up used to weapons and violence they are deprived of their childhood, education and training. Participation in armed groups becomes the only way of living.

Conflict has its greatest impact on the poorest communities in the poorest countries, and children and adolescents under 18 are among the most severely affected in these communities.

The impact on children may be direct and apparent, as in the case of death, wounding, family separation, or dislocation, but they are frequently far less obvious, as with psychological effects impoverishment, hazardous labour, early marriage or the loss of opportunities for education and health.<sup>4</sup>

Girls are doubly victimized: first as child soldiers and second as victims of rape and other forms of sexual violence. Girl soldiers face problems of forced pregnancy, forced marriage and sexual exploitation. Sexual violence is associated with a general level of lawlessness and a climate of impunity that prevails in the armed community.

As child soldiers, children are denied basic rights: the right to life, the right against exploitation, the right to education, and the right to family life and the enjoyment of childhood. Most importantly, children in armed conflicts are denied *protection*. Therefore, it is of extreme importance to develop a legal framework, which offers children effective protection against being used and abused in armed conflicts. The Optional Protocol Against the Use of Children in Armed Conflicts is an essential pillar for such a legal framework.

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<sup>1</sup> CSUCS, *Global Report on Child Soldiers - 2001*, [www.globalmarch.org/worstformsreport/global.html](http://www.globalmarch.org/worstformsreport/global.html), 30 October, 2002.

<sup>2</sup> Ibid

<sup>3</sup> UNICEF/Refugee Study Centre, *Children Affected by Armed Conflict in South Asia*, Draft Report, 2002.

<sup>4</sup> Ibid

**On February 12, 2002, the Protocol entered into force as a recognised international instrument after being ratified by ten countries. As of October 14, 2002, a total of 110 countries have signed the Protocol and 42 have ratified it. After ratification by an individual country, the Protocol takes effect at the national level in that country.**

### **Legal Validity of the Protocol in South Asia**

There are 2 processes for giving legal validity to an international instrument ratified by an individual country:

- It directly becomes the law of the land and prevails over any domestic legal provision inconsistent with the international instrument.
- The Parliament has to pass legislation to give effect to the ratified international instruments.

### **Examples**

**Nepal** - According to Section 9 of the Treaty Act, 1990, once a Convention or Treaty is ratified by Nepal, it becomes national law and prevails over inconsistent legal provisions.

**India** - According to Article 253 of the Constitution of India, 1950, the Parliament has to pass a legislation for giving effect to any international agreement.



### **Banning Direct Participation in Hostilities**

The Protocol prohibits the direct participation of children under the age of 18 in hostilities. This is a major improvement in international law and is based on recently developed principles, particularly the ILO Convention on the Worst Forms of Child Labour (No. 182) and the recommendations of the 26th International Conference of the Red Cross and Red Crescent in December 1995. The Protocol, therefore, reinforces the current trend of shielding all children from the horrors of armed conflict, particularly these of direct participation.

### **Raising the Minimum Age for Compulsory Recruitment**

The Protocol raises the minimum age for compulsory recruitment in the armed forces from 15 to 18 years. This represents a significant improvement over the current protection provided by the CRC which merely suggests that States Parties “shall endeavour” to give priority to the oldest recruits.

#### **Compulsory Recruitment**

Compulsory Recruitment is mandatory recruitment into a nation’s armed forces of its citizens by law or by order.

### **Raising the Minimum Age for Voluntary Recruitment and Providing Safeguards**

The Protocol raises the minimum age for voluntary recruitment, taking note that the minimum age of compulsory recruitment is 18.

#### **Voluntary Recruitment**

Voluntary recruitment into the national armed forces is not mandatory and recruitment takes place subject to the willingness of the recruitee.

### **Prohibiting the Use of Children in Non-State Armed Groups**

The Protocol applies to non-state armed groups and requires the governments to criminalise the recruitment and use of children under the age of 18 in hostilities by non-state armed groups.

### **Encouraging the Release of Children from Armed Forces**

The governments shall take all feasible measures to release all children recruited or used in hostilities in violation of the Protocol.

### **Encouraging Services for Child Victims**

Child victims are entitled to rehabilitation (including legal aid, counselling and health services), social reintegration and financial assistance through regional and international cooperation.

### **Providing Information about Children's Rights**

The governments shall disseminate information about the Protocol to increase public awareness of the Protocol and children's rights.

### **Providing Special Attention to Vulnerable Children**

The governments must pay special attention (such as enforcing birth registration campaigns) to children who are vulnerable to recruitment. These at-risk children include refugees, street children, orphans and girls.

## Measures to be Taken to Implement the Protocol

# 4

The Protocol obligates the governments to protect and promote the rights of the child by limiting direct participation in hostilities, prohibiting compulsory recruitment of children under 18 and raising the minimum age for voluntary recruitment into the armed forces. To this end, the Protocol prescribes the following measures:

### **Disseminate Information:**

- Widely disseminate the relevant provisions of the Protocol to those responsible for military recruitment and to professional groups working with children.
- Use electronic and print media to educate the public about the rights established by the Protocol.
- Include key provisions of the Protocol and related human rights and humanitarian principles in school text books.
- Develop and launch awareness campaigns against the recruitment and use of children in armed conflict.
- Provide information to child volunteers and their parents or legal guardians about the duties involved in military service.
- Develop and launch programmes to educate armed groups and communities about the need to prevent the recruitment of children below the age of 18.

### **Enact Laws to Incorporate the Protocol into a Domestic Context:**

- Review, amend or enact national laws to establish 18 as the minimum age for compulsory recruitment, to raise the voluntary recruitment age above 15 years and to define “direct participation”.
- Adopt laws criminalising the recruitment and use of children by non-state armed groups.

### **Develop Necessary Procedural Mechanisms:**

- Require submission of reliable documents to verify age as part of the recruitment process.
- Issue orders to recruit only persons 18 years or older into the armed forces.
- Create a competent government body to implement the Protocol.
- Develop the mechanisms for monitoring and periodically evaluating the implementation of the Protocol.
- Use medical examinations to help determine age before recruiting.

- Obtain data on child soldiers including the total number, age, sex, regional involvement, ethnic origin, military rank, number of detained child soldiers, number of volunteers, number of schools operated by the armed forces and number of students below the age of 18 in army schools.

#### **Demobilize Children from the Armed Forces:**

- Make decisions at the ministerial and departmental levels to immediately release child soldiers from the armed forces.
- Grant children immunity from criminal liability and reduce punishment for crimes they have committed during their service in the armed forces or in non-state armed groups.
- Allocate funds for rehabilitation programmes including training.
- Provide legal assistance, counselling and health services to victims.
- Provide economic alternatives for released or rescued children, including schooling.

#### **Employ Preventive Measures:**

- Develop programmes to prevent recruitment or use of high risk children by armed groups. High risk children include refugees and internally displaced children, street children and orphans.
- Seek cooperation from other governments through bilateral and multilateral programmes or through a voluntary fund established by United Nations.
- Provide training and updates for recruiting officials on the provisions of the Protocol.
- Implement other measures such as birth registration, family tracing and reunification, support for households headed by a single person, peace education and economic incentives.

#### **Provide Rehabilitation Facilities:**

- Establish rehabilitation, counselling, training centres and schools to rehabilitate child victims.
- Reintegrate victims into their families and into societies.
- Ensure confidentiality and protection for child victims from media exposure and exploitation.

#### **Ensure Inter-governmental Cooperation:**

The governments shall cooperate and share technical and financial assistance to prevent violations of the Protocol and to rehabilitate and reintegrate victims.

#### **Provide International Assistance:**

The government who is able may provide assistance to other countries through bilateral and multilateral programmes or a voluntary fund.

The Protocol regulates the involvement of children in the armed forces and the Protocol does raise the existing standard and creates a higher level of accountability of child protection. By ratifying the Protocol, the government can express its commitment to promoting the best interests of children, particularly protection from involvement in the armed forces. All the countries of the SAARC region have ratified the CRC and have committed themselves to protecting children from any form of exploitation. Ratification of the Protocol will help to reinforce commitments made under the CRC and protect children from possible participation in and recruitment into the armed forces.

### **The Protocol provides**

- An internationally accepted minimum age restriction for voluntary and mandatory service in the armed forces and direct participation in armed conflict.
- An international legal standard for involvement of children in armed conflict.
- A ban on using or recruiting children under the age of 18 by non-state armed groups.
- Criminal sanctions for non-state armed groups that employ or compel participation of children.

### **Binding Declaration on Minimum Age for Voluntary Recruitment**

The government shall deposit a binding declaration, upon ratification of the Protocol, that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is genuinely voluntary.

A country that ratifies the Protocol will improve its image nationally and internationally because the Protocol is a legal instrument that protects children from the harmful and widespread impact of armed conflict. Moreover, in doing so, it promotes the ideals of peace, security, development and democracy and it demonstrates the commitment to children's rights.

### Who can ratify the Protocol?

Any government that has signed or ratified the CRC can sign the Protocol, as well as any government that has not ratified the CRC. The Protocol shall enter into force one month after the date that the instrument of ratification or accession is submitted to the Secretary-General of the United Nations.

### What difference would ratification make?

- Ratification of the Optional Protocol is an *international proclamation of the country's commitment to fight the use of children in armed conflicts*.
- Ratification improves the protection of children, as the Optional Protocol's various articles are *particularly developed* to offer *strong and comprehensive* protection against the use of children in armed conflicts, thus addressing potential gaps in national laws.
- The use of children in armed conflicts is a crime that urgently requires *internationally agreed upon standards and procedures*:
  - A. The child is used for direct and indirect participation in armed conflicts, the armed conflict might be of internal or international nature, thus forcing the child to cross borders.
  - B. The supplier-chain is in some cases consisted of complex networks, at various levels.
- Ratification of the Optional Protocol will facilitate regional and international co-operation, as it manifests:
  - A. A common and clear minimum age restriction for voluntary and mandatory service in the armed forces.
  - B. A common and clear minimum age restriction for voluntary and mandatory service in non-state armed groups.
- Ratification of the Optional Protocol will improve the child's status, putting the *victims safety as the main priority*; it stipulates the urgent need of demobilization, assistance, physical and psychological recovery and social reintegration.

Monitoring is critical to ensure the effective implementation of the rights provided by human rights instruments. There is no separate treaty monitoring body for the Protocol on the Involvement of Children in Armed Conflict. The same Committee on the Rights of the Child under the CRC monitors a Government's progress on the implementation of the Protocol through a reporting system. The Committee makes recommendations to the government as to its implementation of the Protocol and the government is obligated to follow the recommendations.

### Reporting Obligation

The Protocol requires the government to submit the following reports:

**Initial Report:** The government must submit an initial report within two years of ratifying the Protocol. The initial report should include comprehensive information on the Government's implementation of the Protocol including specific measures carried out to implement the provisions restricting participation and recruitment of children in armed conflict. The CRC Committee has issued guidelines to prepare an initial report, which is mentioned in detail in the next chapter.

**Periodic Report:** Upon submission of the initial report, the government shall include any further information with respect to implementation of the Protocol in the report submitted to the CRC Committee in accordance with Article 44 of the CRC.

A State that is party only to the Protocol is required to submit a report to the Committee every five years. The report should document progress in implementing the Protocol. The CRC Committee may request further information relevant to the implementation of the Protocol. Periodic reports also examine the extent to which the Committee's "concluding comments" have been implemented.

### Concluding Comments

**The Committee issues concluding comments after examining the report of the government and alternative reports prepared by NGOs. The concluding comments evaluate whether the government has effectively implemented the Protocol and also contain recommendations for future implementation.**



The government is required to submit reports assessing the effectiveness of its implementation of the Protocol. The reporting requirement is important to hold the government accountable for implementing the Protocol in a domestic context. According to a directive issued by the CRC Committee, the government should include the following information in the initial report:<sup>1</sup>

- **Measures taken** to prohibit children from taking a direct part in hostilities, including the legal meaning of “direct participation”;
- The **process of compulsory recruitment** indicating the minimum age linked to each step and at what time in the process recruits become members of the armed forces;
- **Measures of special protection** adopted for voluntary recruitment under the age of 18 including reliable documents to verify age (birth certificate, school certificate etc.);
- **The minimum age** established for voluntary recruitment in the armed forces and procedures for a medical examination to determine age of the recruit;
- **Any legal provision to lower the age of** conscription in exceptional circumstances;
- **Information made available to volunteers and to their parents** or legal guardians making them aware of the duties involved in military service so that they can formulate their own opinion about joining the armed forces;
- **Information made available to volunteers on recruitment procedure** including the minimum service requirements and conditions for early discharge as well as the incentives used by the national armed forces to encourage volunteers to join the ranks;
- **The minimum age of entry into schools operated by or under the control of the armed forces;** the inclusion in the school curriculum of human rights and humanitarian principles;
- **The non-state armed groups** operating within/from the territory of the concerned state and updates on the status of the negotiations of the government with armed groups;
- **Any written or oral commitment** made by non-state armed groups to refrain from recruiting and using children below the age of 18 in hostilities;
- **Measures adopted by the government** aimed at raising awareness amongst armed groups and within communities of the need to prevent recruitment of children below the age of 18 years;
- **Provisions of applicable national and other international laws**, which establish more conducive standards of the rights of the child than the Protocol;
- **Any review of national law and amendments** concerning the rights of the child;
- **The legal status of the Protocol** in national law;

- **The competent government departments** or bodies responsible for the implementation of the Protocol and their coordination with regional and local authorities and civil society;
- **The mechanism and means used for monitoring** and periodically evaluating the implementation of the Protocol;
- **The dissemination** in all relevant languages of the Protocol to all children and adults;
- **Measures adopted to ensure relevant training** of peacekeeping personnel on the rights of children, including the provisions of the Protocol;
- **Measures adopted with regard to disarmament and release of children** from the armed forces. Measures adopted to ensure the social reintegration of children including protection from media exposure and exploitation;
- **The legal provisions adopted to criminalise the recruitment** of children and the inclusion of that crime within the jurisdiction of any specific justice-seeking mechanism established in the context of conflict;
- **The criminal liability of children** for crimes they have committed during service in the armed forces or in armed groups;
- When relevant, the **provisions of peace agreements** dealing with the disarmament, demobilization and /or the physical and psychological recovery and social reintegration of child combatants;
- **Comprehensive data** through research on child soldiers including age, sex, regional status, ethnic origin, military rank, numbers of detained child soldiers, numbers of volunteers, number of schools operated by armed forces, number of students below the age of 18, retaliation against child victims; and
- **Assistance in the implementation of the Protocol**, including technical cooperation and financial assistance from the governments through multilateral, bilateral or other programmes.

## **Matters to be taken into account while preparing the report**

**Copies of principal legislative texts, judicial decisions, administrative or other relevant instructions to the armed forces promoting the general principles of the Protocol should be attached to the report. Statistical information with relevant indicators illustrating the status of children and relevant research on the topic area should be included. The report should also include a clear indication of how the implementation of the Protocol is in line with the general principles of the CRC.**

<sup>1</sup> CRC/OP/AC/1 12 Oct. 2001, web:[http://www.child-soldiers.org/news\\_updates/GidelinesforStatereportsontheOP-CRC.html](http://www.child-soldiers.org/news_updates/GidelinesforStatereportsontheOP-CRC.html)

The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict strengthens the rights recognized in the CRC and is a major step forward in strengthening special protection of children in armed conflict. The Protocol has increased the minimum age for recruitment and participation in hostilities, and creates mechanisms for effective implementation of the rights and protections provided to children by the CRC. The Protocol sets forth administrative, legal, and policy guidelines to assist State parties in executing their commitment to the CRC. This chapter aims to identify the national laws in the SAARC countries in order to examine their consistency with the Protocol.

### **Prohibition to Compulsory Recruitment of Children under the age of eighteen**

*Article 2 of the Protocol states that State Parties shall ensure that persons, who are under 18 years of age, are not compulsorily recruited into their armed forces.*

The **Bangladesh Army Act, (1952)** states that in times of emergency, the government may declare that any individual or category of individuals is eligible for mandatory active service.<sup>1</sup> The **Constitution of India (1950)** states that it is the fundamental duty of every citizen to defend the country and render national service when called upon to do so.<sup>2</sup> The **Constitution of the Kingdom of Nepal (1990)** prohibits forced labour in any form.<sup>3</sup> The **Constitution of Pakistan 1(1973)** states that: the State shall enable people from all parts of Pakistan to participate in the armed forces of Pakistan.<sup>4</sup>

### **Minimum Age for Voluntary Recruitment**

*Article 3 (12) (210) of the Protocol requires that States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces, as per CRC article 38, paragraph 3. Each State Party shall submit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment. Each State party shall also submit a description of the safeguards it has adopted to ensure that such military recruitment is neither forced nor coerced.*

In **India** the **Navy Act (1957)** states that no person shall be enrolled as a seaman in the Indian Navy for a period exceeding twenty years, provided that the seaman begins service as a minor and that the said period of twenty years shall be reckoned from the date on which he attains the age of seventeen.<sup>5</sup> In **Nepal** the minimum age for recruitment is

18 years.<sup>6</sup> *The Police [Boy Recruitment and Conditions of Service] Regulation, (1985)*, (PBRCSR) allows persons between 13-17 years of age to be recruited as police boys.<sup>7</sup> However, according to *the regulation PBRCSR*, boys are not required to perform regular police functions.<sup>8</sup> *Police [Boy Recruitment and Conditions of Service] Regulation PBRCSR, 1985* states that when police boys have completed their recruitment training and have reached the age of 18, then they are eligible to be recruited as police.<sup>9</sup> *The Boy Recruitment and Conditions of Service Regulation (1971)* also allows persons between 15 - 18 years of age to be recruited as army boys.<sup>10</sup> When a boy completes army training and has reached the age of 18, then he is eligible to join the army.<sup>11</sup> In **Sri Lanka**, According to *the Mobilization and Supplementary Forces Act, (1985)*, only a citizen of Sri Lanka who has attained the age of 18 years may be enlisted in the army.<sup>12</sup>

### **Safeguards for the Recruitment of Children under the age of eighteen**

*Article 3 (3) of the Protocol states that States Parties that permit the voluntary recruitment of persons under the age of 18 years into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:*

- *Such recruitment is genuinely voluntary;*
- *Such recruitment is carried out with the informed consent of the person's parents or legal guardians;*
- *Such persons are fully informed of the duties that he will perform during military service; and*
- *Such persons are provided reliable proof of age prior to be accepted into military service.*

In **Nepal**, *Police [Boy Recruitment and Conditions of Service] Regulation, 1985* PBRCSR states that parental consent is necessary for the recruitment of persons under 16 years.<sup>13</sup> *The Royal Army [New Recruitment] Rules, (1962)* states that any new recruit is required to submit either an identity card, that includes the recruit's given name, surname, address, and descendent, issued by the Village Development Committee (VDC) and the Municipality, or a reference letter from a gazetted officer.<sup>14</sup> In **India** the *Army Act, (1950)* and the *Air Force Act, (1950)* state that whenever a person desires to enroll in the army, the enrolling officer shall read and explain to him, the conditions of the service for which he will enrolled. Moreover, the enrollment officer shall ask the recruit a set of prescribed questions, after having cautioned the recruit that if he makes a false answer to any such question, the recruit will be liable to punishment under these Acts.<sup>15</sup> *The Indian Air Force Rules, (1969)* state that in order to prove the date of birth the person being enrolled will be required to produce both an original, with and an attested copy of, one of the certificates specified in government orders.<sup>16</sup>

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<sup>1</sup> Section 7.

<sup>2</sup> Article 51(A).

<sup>3</sup> Article 20.

<sup>4</sup> Article 39.

<sup>5</sup> Section 11(2) .

<sup>6</sup> Royal Army [New Recruitment] Rules, 1962 Rule No 4, Police Rules, 1992 Rule No 20, Armed Police Rules 2000, Rule No 9.

<sup>7</sup> Article 4 .

<sup>8</sup> Article 9.

<sup>9</sup> Article 12.

<sup>10</sup> Article 4.

<sup>11</sup> Article 10.

<sup>12</sup> Section 4.

<sup>13</sup> Article 5, see also Article 5 of the *Boy Recruitment and Conditions of Service Regulation 1971*.

<sup>14</sup> Article 6.

<sup>15</sup> Article 13.

<sup>16</sup> First schedule.



### Conducive National Laws

#### Nepal

The Nepal Royal Army (New Recruitment) Rules, 1962, Rule No. 4 and Police Rules, 1992, Rule No. 20 set 18 as the minimum age for recruitment into the armed forces.

### Government Initiatives

#### Sri Lanka

In 1992, after ratifying the Convention on the Rights of Child, Sri Lanka also adopted a Children's Charter that prohibits recruitment of children under the age of 18. Sri Lanka has also enacted Children and Young Persons Ordinance 1956 and National Child Protection Authority 1998 to ensure children's rights in the country.

#### UNICEF Initiative

UNICEF is the lead agency in Sri Lanka on under-age recruitment and has an extensive field presence in the North and East and a history of advocacy and dialogue building. Between November 2001 and 10 October 2002, the LTTE released 200 children to their families. UNICEF's reporting mechanism and master database on under-age recruitment cases provide the basis for systematic monthly monitoring and advocacy for release of underage recruits. UNICEF follows up on released children to assess and address their immediate reintegration needs. UNICEF collaborates with partners including UNHCR, Save the Children and ILO to develop minimum standards as a framework for reintegration of former child combatants into the family and community. This framework will be shared with the LTTE and Government of Sri Lanka (GOSL). UNICEF's community awareness raising activities have also resulted in an increase in the number of cases being reported.

In 2002, UNICEF was coordinating these efforts on underage recruitment and reintegration through a working group of international organisations. This collaboration has helped UNICEF and partners to strengthen monitoring and advocacy on the issue. A special working group has also been established with UNICEF, UNHCR and the Sri Lanka Human Rights Commission to address violations of the rights of children and women in conflict affected areas.





## Pre-Ratification

### What Governments can do

- ▶ Support consultations with civil society for discussion on Protocol articles and implications of national policies and programmes.
- ▶ Consult with other governments on processes put in place for early ratification of the Protocol, through visits and regional consultation.
- ▶ Initiate ratification process.
- ▶ Follow the relevant national laws and regulations to carry out the ratification processes.

# Pre-Ratification



## What Civil Society can do

- ▶ Educate key stakeholders as well as other stakeholders on the Protocol to the CRC on the Involvement of Children in Armed Conflict, highlighting its importance in combating involvement of children in armed conflict.
- ▶ Develop and disseminate advocacy materials on the Protocol in country specific languages targeting the key stakeholders.
- ▶ Develop a network of NGOs specifically working on child soldiers.
- ▶ Support the governments to ratify the Protocol.
- ▶ Conduct seminars and conferences influencing ratification of the Protocol.
- ▶ Use mass media to provide extensive coverage of the Protocol on the Involvement of Children in Armed Conflict and its significance in protecting the rights of the children who are the victims of the involvement of children in armed conflict.

# Post-Ratification



## What Governments can do

- ▶ Translate the Protocol in national languages.
- ▶ Disseminate the Protocol widely to all concerned government agencies.
- ▶ Amend inconsistent domestic laws in line with the Protocol.
- ▶ Enact new laws complementing the Protocol, if necessary.
- ▶ Develop a National Plan of Action for the protection of children from involvement in armed conflict. If one already exists, incorporate the measures provided in the Protocol into the national plan.
- ▶ Develop necessary programmes to implement the Protocol and the Plan of Action.
- ▶ Implement programmes for sustainable livelihood and poverty alleviation among potential risk groups.
- ▶ Develop guidelines for effective reintegration programmes (eg; counselling, education, health, training, employment, and social integration).
- ▶ Create infrastructure and strengthen institutional mechanisms for the implementation of the Protocol.
- ▶ Develop partnerships with NGOs/INGOs working in the area for the effective implementation of the Protocol.
- ▶ Monitor the implementation of the Protocol.
- ▶ Timely Reporting.

# Post-Ratification



## What Civil Society can do

- ▶ Create awareness at all levels from the grassroots to the national level to educate people against the involvement of children in armed conflict and how the Protocol can be a tool to address this problem.
- ▶ Cooperate with governments to implement the commitment under the Protocol to rehabilitate and reintegrate the victims of contrary with the Protocol.
- ▶ Collect data and conduct research as a basis for policy and programme formulation.
- ▶ Conduct intensive awareness campaigns against involvement of children in armed conflicts at the local and national level to mobilize diverse groups - from children at the grassroots level to policy makers, schools and police officers at all levels.
- ▶ Link the Protocol with other human rights instruments in combating involvement of children in armed conflict.
- ▶ Advocate on the rights created by the Protocol to the public.
- ▶ Initiate amendment proposals to address gaps in the Protocol.
- ▶ Monitor the implementation of the Protocol and concluding observations if any.
- ▶ Prepare and submit alternate reports.
- ▶ Play a role to link the governments' efforts with NGO's working on the issue to expand network for advocacy and implementation of the Protocol.