

SAARC CONVENTION ON PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN FOR PROSTITUTION

Enacted on 5th January, 2002.

Entered into force on 15th November, 2005.

**THE MEMBER STATES OF THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC), PARTIES TO
THE PRESENT CONVENTION**

EMPHASISING that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights;

RECALLING the decision of the Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored;

RECALLING ALSO the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of All Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989;

GIVING due regard to the implementation of the recommendations of the various pertinent International Bodies and Conferences including the Fourth World Conference on Women at Beijing (1995);

NOTING with concern the increasing exploitation by traffickers of women and children from SAARC countries and their increasing use of these countries as sending, receiving and transit points;

RECOGNISING in this regard the importance of establishing effective regional cooperation for preventing trafficking for prostitution and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking;

EMPHASISING the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking for prostitution;

HAVE AGREED as follows:

Article I
DEFINITIONS

For the purpose of this Convention:

- 1) "Child" means a person who has not attained the age of 18 years;
- 2) "Prostitution" means the sexual exploitation or abuse of persons for commercial purposes;
- 3) "Trafficking" means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;
- 4) "Traffickers" means persons, agencies or institutions engaged in any form of trafficking;
- 5) "Persons subjected to trafficking" means women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means;
- 6) "Protective home" means a home established or recognised by a Government of a Member State for the reception, care, treatment and rehabilitation of rescued or arrested persons subjected to trafficking.
- 7) "Repatriation" means return to the country of origin of the person subjected to trafficking across international frontiers.

Article II
SCOPE OF THE CONVENTION

The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.

Article III
OFFENCES

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.
2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing

of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.

3. Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.

Article IV

AGGRAVATING CIRCUMSTANCES

1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.
 - a) the involvement in the offences of an organised criminal group to which the offender belongs;
 - b) the involvement of the offender in other international organised criminal activities;
 - c) the use of violence or arms by the offender;
 - d) the fact that the offender holds a public office and that the offence is committed in misuse of that office;
 - e) the victimization or trafficking of children;
 - f) the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social and cultural activities;
 - g) previous conviction, particularly for similar offences, whether in a Member State or any other country.

Article V

JUDICIAL PROCEEDINGS

In trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counselling and legal assistance.

Article VI

MUTUAL LEGAL ASSISTANCE

1. The State Parties to the Convention shall grant to each other the widest measure of mutual legal assistance in respect of investigations, inquiries, trials or other proceedings in the requesting State in respect of offences under this Convention. Such assistance shall include:
 - a) taking of evidence and obtaining of statements of persons;

- b) provision of information, documents and other records including criminal and judicial records;
 - c) location of persons and objects including their identification;
 - d) search and seizures;
 - e) delivery of property including lending of exhibits;
 - f) making detained persons and others available to give evidence or assist investigations;
 - g) service of documents including documents seeking attendance of persons; and
 - h) any other assistance consistent with the objectives of this Convention.
2. Requests for assistance shall be executed promptly in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting State and shall give reasons for the same.

Article VII

EXTRADITION OR PROSECUTION

1. The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereinafter be concluded, between any of the Parties to the Convention.
2. If a State Party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, the Requested State shall, if so permitted by its laws, consider this Convention as the basis for extradition in respect of the offences set forth in Article III.
3. Extradition shall be granted in accordance with the laws of the State to which the request is made.
4. The State Party in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of that State.
5. In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention shall be prosecuted and punished by their courts.

Article VIII

MEASURES TO PREVENT AND INTERDICT TRAFFICKING IN WOMEN AND CHILDREN

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.

2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.
3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.
4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.
5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.
6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.
7. The State Parties to the Convention shall endeavour to focus preventive and development efforts on areas which are known to be source areas for trafficking.
8. The State Parties to the Convention shall promote awareness, *inter-alia*, through the use of the media, of the problem of trafficking in women and children and its underlying causes including the projection of negative images of women.

Article IX

CARE, TREATMENT, REHABILITATION AND REPATRIATION OF THE VICTIMS

1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.
2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.
3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counselling, job training and health care facilities for the victims.

4. The State Parties to the Convention may also authorise the recognised non-governmental organisations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
5. The State Parties to the Convention shall encourage recognised non-governmental organisations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

Article X

IMPLEMENTATION

The State Parties to the Convention shall adopt, in accordance with their respective Constitutions, the legislative and other measures necessary to ensure the implementation of the Convention.

Article XI

HIGHER MEASURES

The measures provided for in the Convention are without prejudice to higher measures of enforcement and protection accorded by relevant national laws and international agreements.

Article XII

SIGNATURE AND RATIFICATION

The Convention shall be open for signature by the Member States of SAARC at the Eleventh SAARC Summit at Kathmandu and thereafter, at the SAARC Secretariat at Kathmandu. It shall be subject to ratification. The Instruments of Ratification shall be deposited with the Secretary-General.

Article XIII

ENTRY INTO FORCE

This Convention shall enter into force on the fifteenth day following the day of the deposit of the seventh Instrument of Ratification with the Secretary-General.

Article XIV

DEPOSITORY

The Secretary-General shall be the depository of this Convention and shall notify the Member States of signatures to this Convention and all deposits of Instruments of Ratification. The Secretary-General shall transmit certified copies of such instruments to each Member State. The Secretary-General shall also

inform Member States of the date on which this Convention will have entered into force in accordance with Article XIII.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Kathmandu on this Fifth Day of January Two Thousand and Two, in nine originals, in the English Language, all texts being equally authentic.

Nepal Law Commission