

**Human Trafficking and
National Human Rights Institutions :
Co-operating to End Impunity for Traffickers
and to Secure Justice for Trafficked People**

**Country Report Prepared by the
Human Rights Commission of Sri Lanka
For
Workshop Organised by the Asian Pacific Forum
of National Human Rights Institutions**

**20-23 November 2005
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Title : HUMAN TRAFFICKING AND NATIONAL
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CO- OPERATING TO END IMPUNITY FOR
TRAFFICKERS AND TO SECURE JUSTICE
FOR TRAFFICKED PEOPLE

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1. Introduction

The focus of this Report is on human trafficking and the interventions that are in place to address its multifarious dimensions. Trafficking in persons is a modern form of slavery and it is the largest manifestation of slavery in present times¹. It is characterized by the coercive, non-consensual and exploitative or servile nature and it involves serious human rights violations which include sexual and labour exploitation, forced labour and violence and abuse of the victims.²

Definitions of trafficking international instruments present to national policy makers clearly articulated dimensions of the problem of trafficking. Section 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), supplementing the United Nations Convention Against Transnational Organized Crime, defines trafficking as :

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 deception, of the abuse of power 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. According to Article 3 subparagraph (a) 'exploitation' signifies, the exploitation of the prostitution of others and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

¹ U.S. Department of Justice, Trafficking Victims Protection Act of 2000, Section 102 Purposes and Findings, paragraph (1) cited in An Information Guide Booklet 6: Trafficking of Women and Girls (ILO, Geneva) p11

² Ibid

2. The Present Situation

Sri Lanka has to grapple with the problem of trafficking in women and children which manifests itself in diverse forms in different situations and at times under conditions which shield offenders from detection by the responsible agencies.

2.1 Trafficking in Women

Women are mainly trafficked for prostitution and labour exploitation. Several categories of women have been identified as being particularly vulnerable to trafficking. These include migrant workers, plantation sector workers, free trade zone workers and internally displaced persons. Further, some recent publications reveal that Sri Lanka has become a hub for organised human smuggling and is often used as a transit point³.

Migrant Workers⁴

Sri Lanka is presently the only Asian country where the female migrant workers outnumber the males leaving the country in search of foreign employment⁵. The majority of women seek employment as housemaids or domestic workers. In the year 2004, the number of men and women who migrated for employment was 213,453 and nearly 52 per cent of this migrant population consisted of women who sought employment as housemaids⁶. Unskilled potential domestic

³ Review of Sri Lankan Laws on the Trafficking of Women (Centre for Policy Alternatives, 2004) (Unpublished) p 8, 16. It should be noted that only a fine distinction lies between human trafficking, human smuggling and illegal migration.

⁴ See Report of Committee on Women Migrant Workers (Human Rights Commission, 2005) p1-2

⁵ Reforming the Sri Lankan Foreign Employment Act: Increasing Protection for Migrant Workers and Learning Lessons from the Philippines (LST Review, Volume 14 Issue 201, July 2004) p14-15

⁶ 110, 034 women sought employment as housemaids cited in Daily News 9th March, 2005 .

migrant workers face exploitation by unscrupulous agents and their sub- agents in the home country who entice them with false promises and inaccurate information. Very often these agents charge exorbitant fees for the services provided thus creating a debt bondage. Once in the destination country, some housemaids find their employers violating the provisions of the employment contract and thereby leave the female domestic worker in an unforeseen situation. A minority of domestic workers are victims of physical violence which in extreme cases result in death; some fall prey to sexual abuse. Undocumented migrant workers who constitute a minority are more vulnerable to trafficking and are, therefore, at greater risk of their human rights being violated. Further, the "undocumented" migrant workers (workers not registered with the SLBFE) particularly women and girls are at a greater risk of being subject to HIV transmission and sexual health problems due to the nature of their confined and controlled situation, lack of financial resources and fear of discovery⁷.

Tea Plantation Workers

Tea plantation workers have for long remained as one of the poorest segments of the population and the plantation sector has recently become a steady source of domestic servants. Women from the plantation sector are brought to cities like Colombo and are handed over to households to work as domestic servants. Some of these women are duped into believing that they would be given respectable jobs⁸.

Free Trade Zone Workers⁹

With the liberalization of the Sri Lankan economy at the end of the 1970s, Free Trade Zones (FTZs) were created in

⁷ An Information Guide, Booklet 6 :Trafficking of Women and Girls (ILO, Geneva) p13- 14

⁸ Review of Sri Lankan Laws on the Trafficking of Women (Centre for Policy Alternatives, 2004) p 11

⁹ Ibid at p 12

several parts of the country. This led to an influx of thousands of women from rural areas in search of employment opportunities, creating a predominantly female workforce in the FTZs. The very nature of the social fabric in and around the FTZs contribute to making women who work or seek work in the FTZs susceptible to trafficking. It has been reported that informal "recruiting centres" have been set up in close proximity to the FTZs where organised groups frequent these centres under the guise of providing respectable jobs while in fact scouring for women to be trafficked as prostitutes.

Internally Displaced Persons (IDPs)

Displacement due to the conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE) is a phenomenon that Sri Lanka has been dealing with for the past two decades. The number of persons who remain displaced due the conflict is approximately 350,000 ¹⁰ . Displacement has made women and children more vulnerable to abuse. Nearly fifty per cent of the IDP population are women and most of them have been made widows by the War¹¹. In welfare centres, IDP women are subject to sexual harassment and it has been reported that prostitution is also prevalent in camps ¹². However, it should be noted that precise data is not available to indicate the real magnitude of the problem¹³. It may be assumed that due to the social stigma attached to

¹⁰ IDP Newsletter: A Collaborative Effort by CHA, CPA and IIRC NPDS for IDPs Project: Issue 1, July 2005 , p 2

¹¹ Annual Report 2004 : National Protection and Durable Solutions for Internally Displaced Persons Project (Human Rights Commission of Sri Lanka) p 13-14

¹² Sri Lanka : State of Human Rights 2002 (Law and Society Trust, 2002) p21

¹³ For the year 2004 , the Human Rights Commission's Project for National Protection and Durable Solution for Internally Displaced Persons received 2731 complaints. However the HRC did not received a single complaint against trafficking. See Annual Report 2004 : National Protection and Durable Solutions for Internally Displaced Persons Project (Human Rights Commission of Sri Lanka)p 25

prostitution, it is still a hidden issue. Those who are dissatisfied with the living conditions in refugee camps are always willing to leave these camps in search of greener pastures and the majority of them often get entrapped in exploitative forms of employment.

The tsunami that struck the country in December 2004 has exacerbated the problem of IDPs. Many who were previously displaced due to the conflict in the Northern and Eastern Provinces of the country were further displaced by the tsunami while a new group of IDPs was created in Southern Sri Lanka. It is estimated that 835,000 persons have been displaced due to the tsunami¹⁴. Although accurate data is not available, it may be observed that this new group of IDPs are at risk of being subjected to trafficking due to their vulnerable position.

2.2 Trafficking in Children

In Sri Lanka, there is neither institutionalization of child labour in large-scale industry nor exploitation of child labour within the formal or organized sector as seen in some of the South Asian countries. However, child labour exploitation is widespread in the informal sector and various manifestations of exploitation are prevalent throughout the country. The exact magnitude of the problem of child labour exploitation is not known and much of child labour exploitation remains a hidden issue. Children from low socio-economic and marginalized backgrounds are more vulnerable to trafficking. Trafficked children languish in situations into three broad categories: some are engaged in such activities as *domestic service and other forms of manual labour*; some fall prey to *sexual exploitation*; some others are forcibly recruited as *child soldiers* by the LTTE. Further, the existence of the armed conflict which is

¹⁴ Supra n 11 at p 15

simmering under the Cease-fire Agreement and the aftermath of the Tsunami have made their own contribution to the aggravation of susceptibility of *displaced children* to trafficking.

Domestic Service and Other Forms of Labour Exploitation in the Informal Sector

Assessments undertaken by UNICEF and the Ministry of Planning and Plan Implementation in the 1990s suggest that the employment of children in the informal sector and in domestic service appear to be the most widespread form of child exploitation in the country¹⁵.

Due to the comparatively high wages offered to expatriate domestic aides, many Sri Lankan women seek overseas employment especially in the Middle East. This has resulted in a dearth of adult domestic workers in the country. In the circumstances, children who are more amenable than adults are being employed as domestics. In a sample study undertaken in Southern Sri Lanka, it was found that one third of the domestic labour force consisted of children¹⁶. Children are mostly recruited from tea estate areas. Child domestic workers are extremely vulnerable to physical, mental and sexual abuse. Instances of brutal punishment inflicted on child servants for trivial mistakes have been highlighted by the media.

Children are employed as casual labourers in chenas, on farms and in vegetable cultivation in the North Central and North Western Provinces and in parts of the Southern Province. Children are also employed in the fisheries sector. In the Central and North Central Provinces women and children are engaged to make chips in quarries.

¹⁵ (Final Draft) Sri Lanka: Formulation of Public Policy and a National Plan of Action to Combat the Trafficking in Children for Exploitative Employment (National Child Protection Authority & ILO/IPEC, 2001) at para 1.2.

¹⁶ D.G. Harendra de Silva, " Child Labour in Sri Lanka" in COMBAT Newsletter, Vol 2 February, 2002, p 4. It should be noted that the sample study consisted of 700 households.

Most employers of quarry-workers do not formally engage children but it is said that most children come and help their mothers who work in quarries. It is also reported that children who have migrated to cities from remote villages and street children are employed on construction sites or work as hawkers and vendors. Another phenomenon seen in cities and suburbs is the child beggar. There are instances where poor parents lend children to men and women for a monetary consideration. These persons beg with the recruited children to get a bigger collection. Disabled, mentally retarded and deformed children are more in demand ¹⁷.

Sexual Exploitation

One of the most disturbing dimensions of trafficking in children is sexual exploitation. The Declaration of the First World Congress against Commercial Sexual Exploitation of Children defines commercial sexual exploitation as "Sexual abuse by an adult and remuneration in cash or kind to the child or a third person or persons". Sri Lanka has to combat sexual exploitation of children by both local and foreign paedophiles. The appearance of foreign paedophiles on the local scene is a spin off from the tourist industry. In the late 1970s, tourism grew rapidly and emerged as a major service industry because of its potential to earn foreign exchange and provide avenues of employment. However, one unanticipated ill consequence was that it gave the opportunity for unscrupulous elements to exploit children. The report on 'Child Prostitution' authored by Tim Bond of Terre des Hommes, Switzerland revealed that Sri Lanka was becoming well known among certain circles in Europe as an early and cheap source of young boys for sex and that paedophiles from all parts of the world were coming each year to Sri Lanka to satisfy their sexual desires with children¹⁸.

¹⁷ See Rapid Assessment on Child Trafficking for Exploitative Employment in Sri Lanka Vol 1 (II.O/IPEC, 2002)p 52-56

¹⁸ Cited in Sexually Exploited and Abused Children: A Qualitative Assessment of Their Health Needs and Services Available to them in Sri Lanka (United Nations Economic and Social Commission for Asia and the Pacific, 1998) at p 23 (Draft Report)

Negombo in the Western Province and Hikkaduwa in the Southern Province are two tourist areas known for the relatively high prevalence of commercial sexual exploitation of children¹⁹. Since of late, the internet has been used for the dissemination of pornographic images and for advertising opportunities available in Sri Lanka for indulgence in child prostitution.

Sexual exploitation of girls of school-going age by locals is particularly pronounced in the North Central Province of the country. The clients are identified as service personnel on leave from military duty²⁰. Further, street children and beggar children belong to the category of children who are often exposed to sexual exploitation.

The absence of reliable data on the incidence of commercial sexual exploitation is indicated by the fact that the estimates of child victims made by different investigators vary from 1459 to 30,000²¹. According to the studies undertaken, the majority of the child victims are boys in the coastal areas of the country²². It was reported by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, that 70 per cent of the children in prostitution in Sri Lanka are boys²³. Ex-boy victims of sexual exploitation, tourist guides and ex-tourist guides have been identified as acting as agents for procuring children for

¹⁹ Rapid Assessment on Child Trafficking for Exploitative Employment in Sri Lanka Vol I (ETC Lanka- 2002) p11

²⁰ Sri Lanka: Formulation of Public Policy and a National Plan of Action to Combat Trafficking in Children for Exploitative Employment (NCPA, ILO/IPEC, 2001) at para 1.2 (Final Draft)

²¹ Sarath W. Amarasinghe, *The Commercial Sexual Exploitation of Children : A Rapid Assessment*, (ILO, Geneva, 2002) p 22

²² *Ibid* at p xvii, 23

²³ UN Doc E/CN.4/2004/9 at para115; it may be noted that a large majority of sexually exploited children in South Asia are girls. Hence, what is witnessed in Sri Lanka is a departure from the South Asian phenomenon; See *Commercial Sexual Exploitation and Abuse of Children in South Asia* (Unicef, ROSA, 2001) p 34

paedophiles. It may be noted that paedophiles are also involved in social service projects/activities and thereby maintain a façade of beneficence which makes the detection of the true nature of the activities behind the façade difficult .

Child Soldiers

Conscription of child soldiers is one of the worst forms of exploitative child labour and it takes place in the areas occupied by the LTTE. Children are considered "suitable trainees" as they are obedient and are easily indoctrinated. They could be satisfied with meagre gratifications which are considerable from their point of view. Children who undergo military training are often subjected to degrading treatment in order to subordinate them to authority. The inhuman and violent methods used for "developing" child soldiers desensitise them to suffering and incline them to commit violent acts themselves. Though the LTTE has given guarantees to international agencies that children would not be recruited for its armed struggle and despite the cease-fire agreement with the Government there has been no visible change in its policy. As at September 2005, UNICEF has documented 5,198 new cases of underage recruitment since the signing of the cease fire agreement ²⁴. It may be noted that all parents do not report the forcible recruitment of their children to either UNICEF or the Human Rights Commission and hence it is not possible to know the full extent of the problem of underage recruitment .

²⁴ Cited in *Sunday Leader*, October 30, 2005 at p4

Internally Displaced Children

Children are the most vulnerable group of internally displaced persons. They are deprived of the most basic human rights and are vulnerable to various forms of abuse. The aftermath of the tsunami has aggravated this situation. There have been reports of attempted child abduction from shelters and camps in the Northern Province by the LTTE for recruitment as child soldiers²⁵. Further, the tsunami paved the way for unscrupulous elements to enter the country in the guise of potential benefactors of tsunami victims. In a recently reported case, a foreign national who worked in an orphanage in the South was found to have a history of sexual offences against children and young women²⁶.

3. International Instruments and Domestic Legislative Enactments

International commitment to the battle against trafficking is evidenced by the adoption of several important conventions/protocols²⁷, UN resolutions²⁸ and declarations²⁹ and the appointment of a Special Rapporteur on trafficking of women and children in 2004.

²⁵ After the Tsunami: Human Rights of Vulnerable Populations (Human Rights Centre, University of California, Berkeley, October 2005) p 66

²⁶ Ibid

²⁷ notably the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the UN Convention against Transnational Organized Crime, the CEDAW Convention (Article 6), the Convention on the Rights of the Child, its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, ILO Conventions No 29 and 182

²⁸ See Resolutions on trafficking adopted by the General Assembly and the Commission on Human Rights

²⁹ The Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women focussed, inter alia, on the issue of trafficking; the Millennium Declaration calls on states to intensify efforts to fight transnational organized crime in all its dimensions, including trafficking in human beings

Further, the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, which was adopted in January 2002³⁰, seeks to promote co-operation amongst Member States so that they may effectively deal with, inter alia, the various aspects of prevention, interdiction and suppression of trafficking in women and children³¹. International commitment as well as regional collaboration contributes to consolidation of national efforts directed at combating trafficking. Sri Lanka is a signatory to several international conventions on human rights dealing directly or indirectly with the issue of trafficking (See Annex 2).

3.1 Policy Interventions for the Protection of Children's Rights

The Children's Charter

Subsequent to the ratification of the Convention on the Rights of the Child (CRC), Sri Lanka adopted the Children's Charter in 1992 which is based on the provisions of the CRC. Articles 32 – 37 imposes obligations on the State to protect children from : economic exploitation, drug abuse, trafficking, sexual exploitation, sale, abduction, torture, and deprivation

³⁰ The South Asian Association for Regional Cooperation (SAARC) comprises Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.

³¹ Significant provisions of the Convention include the provision for mutual legal assistance (Article VI) and extradition or prosecution (Article VII). The Convention contains several innovative provisions under 'measures to prevent and interdict trafficking in women and children'. These measures include : the establishment of a Regional Task Force consisting of officials of the Member States to facilitate the implementation of the provisions of the Convention; the exchange of information in respect of agencies, institutions and individuals who are involved in combating trafficking in the region ; taking of necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment. (Article VIII) For the purpose of the Convention a child is deemed to be a person under the age of eighteen years.

of liberty. Under Article 38, the State is required to take appropriate measures to promote the physical and psychological recovery and social reintegration of the child victim. A National Monitoring Committee has been established under Article 40 for monitoring the implementation of the Charter.

National Plan of Action for Children

In September, 2004 the State launched a National Plan of Action (NPA) for children spanning a period of five years. Areas covered under the NPA include child protection, health, nutrition, education, child labour, juvenile justice, and water sanitation. The NPA is expected to widen the scope of existing programmes and enhance the quality of services for benefiting Sri Lankan children.

3.2 Policy Interventions for the Protection of Women's Rights

Women's Charter

The Women's Charter has several provisions that reduce the possibility of women being trafficked for exploitative employment. Under Article 12 (ii), the State is required to ensure that the interests of all migrant women are protected both within the country and in the host country through bilateral agreements. Article 16 deals with the right to protection from gender-based violence which includes such manifestations as sexual harassment, physical and mental abuse, torture and cruel, inhuman or degrading treatment. State measures to be adopted include the promotion of structural reforms within the law enforcement machinery and sensitisation of enforcement authorities and provision of support to non-governmental organisations and community based organisations which provide assistance to women victims of violence. Article 17 provides for the establishment of a

National Committee for examining and monitoring the progress of implementation of the provisions of the Charter.

National Plan of Action for Women

In 2002, the National Committee on Women formulated a National Plan of Action for Women which highlighted all priority areas that demanded appropriate interventions. The National Committee on Women is presently in the process of formulating a new plan of action for women to indicate the interventions needed for addressing the issues in the area of trafficking ³².

3.3 Principal Legal Provisions in the Penal Code for Addressing Trafficking and Traffic Related Offences

The Penal Code (Amendment) Act of 1995 created a series of new offences including trafficking, child sexual exploitation, procurement and obscene publications relating to children. The aforementioned offences are punishable by specified mandatory minimum jail sentences. The Penal Code (Amendment) Act of 1998 further expanded the scope of provisions of the Amended Penal Code. A proposed Amendment to the Penal Code provides a wider definition of trafficking and traffic-related offences. The principal provisions in the present Penal Code relating to trafficking are restated below.

³² Information obtained from Chairperson, National Committee on Women in November 2005

Section 360 C of the Penal Code, which deals with the offence of trafficking, contains provisions which deal not only with trafficking in women and children but also with illegal adoptions³³. Accordingly, any one who :

- a) engages in the act of buying or selling or bartering of any person for money or any other consideration;
- b) for the purpose of promoting, facilitating or inducing the buying or selling or bartering or the placement in adoption, of any person for money or for any other consideration-
 - (i) arranges for or assists a child to travel to a foreign country without the consent of his parent or lawful guardian or
 - (ii) obtains an affidavit of consent from a pregnant woman for money or for any other consideration for the adoption of the unborn child of such woman or
 - (iii) recruits women or couples to bear children or
 - (iv) being a person concerned with the registration of births knowingly permits the falsification of any birth record or register or
 - (v) engages in procuring children from hospitals, shelters for women, clinics, nurseries, day care centres or other child care institutions or welfare centres for money or other consideration or procures a child from any such place by intimidation of the mother or any other person or
 - (vi) impersonates the mother or any other person is guilty of the offence of trafficking.

³³ Country Report on Trafficking in Children and their Exploitation in Prostitution and Other Intolerable Forms of Child Labour in Sri Lanka (NPC/IPEC, Colombo, 1998) p 39. It should be noted that the number of incidents of trafficking in children in the guise of foreign adoptions during the 80s was very large.

A person who is guilty of the offence of trafficking will be punished with imprisonment of either description for a term not less than two years and not exceeding twenty years. If the offence is committed in respect of a child, the offender will be punished with imprisonment of either description for a term not less than five years and not exceeding twenty years.

The circumstances under which a person is guilty of sexual exploitation, procuration and obscene publications and exhibitions offences under the Penal Code are restated below.

A person is guilty of the offence of *sexual exploitation* if he/she:

- i) knowingly permits a child to remain in any premises for the purpose of sexual abuse;
- ii) procures a child for any form of sexual abuse;
- iii) promotes child sexual exploitation by means of print or electronic media or other means;
- iv) uses his relationship with a child or uses violence or threats for procuring a child for any form of sexual abuse;
- v) offers money or other benefits to a child or his parents for procuring the child for any form of sexual abuse

The offence of sexual exploitation is punishable with imprisonment for a term not less than 5 years and not exceeding 20 years³⁴. (For the purpose of this section a child is a person under 18 years of age).

A person is guilty of the offence of *procuration* if he/she procures a male or female of whatever age (whether with or without the consent of such person) to become a prostitute within or outside Sri Lanka;

The offence of procuration is punishable with imprisonment for a term not less than two years and not exceeding ten years and may also be punished with a fine³⁴.

A person is guilty of the offence of obscene publications and exhibitions if he/she³⁵:

- i) induces or coerces a child under 18 years to appear or perform in any obscene or indecent exhibition, photograph or film;
- ii) being a parent, guardian or person having the custody of the child causes or allows the child to participate in the production of any indecent exhibition, photograph or film ;
- iii) publishes , distributes, sells or is in possession of any obscene photograph or film;
- iv) develops obscene/indecent photographs or films depicting children and fails to inform the Police³⁷.

A person falling into categories(i-iii) commits an offence punishable by imprisonment for a term not less than 2 years and not exceeding 10 years and further, a fine may be imposed³⁸. A person falling into category(iv) commits an offence punishable by imprisonment for a term not exceeding 2 years or with a fine or with both fine and imprisonment³⁹.

Proposed Amendment to Penal Code

A Bill to amend the existing law⁴⁰ has been tabled in Parliament and it will be passed into an Act in due course. What is noteworthy about the Amendment is that proposes to repeal the existing definition of trafficking and introduce a

³⁴ Section 360(B) of Penal Code (Amendment) Act No 22 of 1995. It should be noted that the provisions have not been quoted verbatim

³⁵ Section 360 A of the Penal Code (Amendment) Act No 22 of 1995

³⁶ 286 A of the Penal Code (Amendment) Act No 22 of 1995

³⁷ Penal Code (Amendment) Act No 29 of 1998, Section 286 A

new definition of trafficking which is in conformity with the UN Protocol on trafficking. The Amendment criminalizes trafficking and other forms of exploitation such as debt bondage, forced labour, slavery and recruitment of children for use in armed conflict. The specific provisions of the above Bill dealing with trafficking and related offences are as follows.

Trafficking

In terms of section 360 C of the proposed Amendment, a person is guilty of the offence of trafficking under the following three conditions:

- a) buys, sells, or barter or instigates another person to buy, sell or barter any person or does anything to promote, facilitate or induce the buying, selling or bartering of such person for money or other consideration;
- b) recruits, transports, transfers, harbours or receives any person or does any other act by the use of threat, force, fraud, deception or inducement whether with or without the consent of such person for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation;
- c) recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation.

³⁸ 286 A of the Penal Code (Amendment) Act No 22 of 1995

³⁹ Penal Code (Amendment) Act No 29 of 1998, Section 286 A

⁴⁰ The Gazette of the Democratic Socialist Republic of Sri Lanka : Part II of August 05, 2005 (issued on 8.8.2005)

A person who is guilty of the offence of trafficking is liable to imprisonment of either description for a term not less than two years and not exceeding twenty years and may also be punished with a fine. If a person under the age of eighteen has been trafficked, the offender is liable to imprisonment for a period of not less than three years and not more than twenty years and may also be punished with a fine.

Debt Bondage, Forced Labour, Slavery, Recruitment of Children for Use in Armed Conflict

The Amendment criminalizes : (a) debt bondage, serfdom, (b) forced or compulsory labour, (c) slavery and (d) compulsory recruitment of children for use in armed conflict (Vide Section 358 A)

Any person who is guilty of an offence referred to in (a), (b) or (c) is liable to imprisonment of either description for a term not exceeding twenty years and to a fine. If the offences mentioned in (a), (b), (c) are committed against a child or where the offence is committed under (d), the offender is liable to imprisonment of either description for a term not exceeding thirty years and to a fine.

4. National Institutional Framework For Bringing Traffickers to Justice and Providing Assistance to Victims

Sri Lanka has one premier institution for addressing issues relating to violation or threat of violation of fundamental rights enshrined in the Constitution. Further, the State has established institutions which are specifically focused on issues relating to the rights of women and children.

4.1 Human Rights Commission(HRC)

The Human Rights Commission of Sri Lanka was established by Act No 21 of 1996 and it commenced implementation of its mandate in 1997⁴¹. In addition to the head quarters located in Colombo, the HRC has ten regional offices in different parts of the country⁴². The mandate and functions of the Commission which are spell out in Sections 10 & 11 of the Act include, inter alia, the following:

- Investigate any infringement or imminent infringement of a fundamental right declared and recognized by the Constitution and provide for resolution by means of conciliation and mediation
- Take such steps as it may be directed to take by the Supreme Court in respect of any matter referred to it by the Supreme Court
- Make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards
- Make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights
- Promote awareness of and provide education in relation to human rights
- Undertake research into, and promote awareness of human rights by conducting programmes and workshops and disseminate the results of such research

⁴¹ Human Rights Commission of Sri Lanka : Annual Report (1.1.2000-31.3.2001) p1

⁴² Regional offices are situated in Kandy, Matara, Batticaloa, Anuradhapura, Trincomalee, Vuvuniya, Badulla, Ampara, Kalmunai and Jaffna

The HRC's mandate authorizes it to receive complaints of infringements of fundamental rights which are enshrined in the Constitution⁴³. The Human Rights Commission Act, restricts the Commission's powers to infringement of rights by executive or administrative action. However, its educative functions have a broader context as they encompass human rights relevant to many other situations. The HRC has undertaken several projects that have directly/indirectly touched upon trafficking in persons for exploitative employment. These include conduct of programmes on human rights education for target groups, review of existing legislation to ascertain whether it accords with international human rights obligations and conduct of specific projects on vulnerable groups which are described below.

The Project for National Protection and Durable Solution for Internally Displaced Persons commenced in 2002. Officers of the IIRC visit welfare centers in the North East Province. These officers conduct awareness raising programmes for both women and children in welfare camps; the participants are made aware of their rights and discussions are held on the problems affecting women and children. The programmes, which are held regularly, are generally conducted on a monthly basis. Training programmes are also held for law enforcement officers in the above Province by the HRC staff⁴⁴. The HRC also entertains complaints from aggrieved parties among the IDPs.

After the tsunami disaster, the HRC established a Disaster Relief Monitoring Unit to oversee the interests of tsunami victims.

⁴³ The fundamental rights as given in the Constitution are: freedom of thought, conscience and religion (Article 10) , freedom from torture (A 11), Right to equality (A 12), freedom from arbitrary arrest, detention and punishment and prohibition of retroactive penal legislation (A 13), freedom of speech, assembly, association, occupation, movement etc (A 14)

⁴⁴ Information was obtained from an officer of the Project for the National Protection and Durable Solution for Internally Displaced Persons in October, 2005

The HRC set up a Committee in February, 2005 to review procedures for the protection of women migrant workers in view of the fact that female migrant workers (the majority of whom are housemaids), suffer many violations of their human rights in the countries of destination. The main task of the Committee was to make recommendations to the Human Rights Commission, Foreign Employment Bureau and the Ministry of Foreign Affairs on how to better protect the rights of women migrant workers and prevent trafficking. The Committee also formulated a set of recommendations for initiating appropriate legislative reforms.

The HRC is presently implementing a project for empowering and protecting children in Children's Homes and Detention Centres. Officers attached to the Project make surprise visits to nine institutions at least once in three months. Based on the surprise visits, recommendations are made for implementing safeguards to ensure children's rights. The project is primarily concerned with identifying human rights violations of children and adopting measures to address such violations.

The HRC and its ten regional offices have been successful at reaching grassroots level in the periphery. The HRC in this instance acts both as a co-coordinating agency and a fact finding authority. For example, if the HRC receives a complaint of violation of a right, it would refer it to the appropriate government authority and if the complaint is against a government official's lack of response, it would hold its own inquiry where appropriate. In this instance, the HRC plays a monitoring role.

An innovative approach taken by the HRC is the deployment of *fact-finding missions on the status of human rights* in vulnerable areas of the country. Such missions are set up in response to an exigency of a particular situation or in response to complaints received either from aggrieved individuals or regional offices. The HRC has, over the years, commissioned a number of research studies and submitted recommendations

to the Government for appropriate action. A recent study undertaken by the HRC focused , inter alia, on the issue of recruitment of child soldiers by the LTTE in the Eastern Province⁴⁵.

4.2 Institutions Responsible for the Protection of Children's Rights

4.2.1 National Child Protection Authority (NCPA)

In November 1998, the NCPA Act No. 50 of 1998 was passed by Parliament and the NCPA was established in June 1999. The NCPA provides a co-ordinating mechanism for Governmental and Non-governmental organisations concerned with issues relating to the prevention of child abuse and protection and rehabilitation of victims of such abuse. For the purposes specified in the National Child Protection Authority Act, child abuse is defined to mean all acts of sexual violence against children, trafficking in children, cruelty to children and the use of children in obscene publications and exploitative labour. Its activities have a bearing on compulsory education and the involvement of children in armed conflict.(the NCPA Act defines a child as a person under the age of 18 years). (See Annex 1 for a list of mandated functions of the NCPA).

The NCPA has taken the following specific measures to address the issue of trafficking and to provide assistance to victims:

a) Establishment of Special Investigations Police Unit and Anti- Trafficking Unit

In October, 2002 a Special Investigations Police Unit was established within the NCPA premises to handle complaints of child abuse. This Unit operates under the Deputy Inspector General of Police, Crimes and Operation ⁴⁶.

⁴⁵ See The Human Rights Commission of Sri Lanka : Situation in the Eastern Province (April 2005) p 9

⁴⁶ National Child Protection Authority Report 2002/03 p 17

With financial assistance from the ILO/IPEC, the NCPA established an Anti-trafficking Unit. This Unit works in close collaboration with relevant law enforcement agencies. Its activities relate to general surveillance and investigation either on the initiative of the NCPA or in response to complaints received. Further, a Cyberwatch programme has been established to monitor websites which enable paedophiles to bargain with local touts for Sri Lankan children in order to bring perpetrators to justice.

b) Setting Up of District Committees

The country is divided into 25 districts. The NCPA has established 12 district committees to perform functions relating to child abuse complaints, referral of victims of child abuse to relevant institutions, conduct of awareness programmes and other related matters. Each Committee liaises with organisations and agencies operating within the district. The membership of a district committee includes representatives of the Health Department, Department of Labour, Attorney-General's Department, Police Department and relevant non-governmental agencies.

c) Setting Up of a Video Recording Unit

The Evidence (Special Provisions Act) No 32 of 1999 was introduced to permit the reception of videotaped evidence of a child's preliminary interview with an adult in instances of abuse. The NCPA has set up a Unit to video the evidence of child victims. Many video interviews have been conducted at the NCPA by qualified personnel. The advantage of conducting video interviews is that it avoids the court room environment which is generally regarded as intimidating to a child victim and it allows the child to give evidence without directly confronting the accused. The NCPA has also published a booklet to make children aware of the process of interrogation, how they should give evidence in a court of law and the importance of speaking the truth at all times.

d) Introduction of an Innovative model for the rehabilitation of trafficked children

The NCPA in collaboration with the Department of Probation and Child Care has introduced an innovative model for the rehabilitation of children at the National Training, Counselling and Rehabilitation Centre in Panadura. The rehabilitation programme focuses, inter alia, on developing an individual action plan for each child, training in vocational skills, establishing a support network and facilitating reunion with the family ⁴⁷.

e) Establishment of Drop-in Centres

The NCPA has established seven Drop-in Centres in different parts of the country that have been identified as high risk areas for trafficking in children for exploitative employment. The direct beneficiaries of these Centres are vulnerable children and youth. Among the objectives of establishing the Drop-in-Centres are the following : educating vulnerable children and youth in high risk areas on various aspects of abuse and exploitation; providing facilities to youth and children so that they have access to educational material and entertainment; addressing specific issues concerning individual children who have been abused or who are vulnerable to abuse.

4.2.2 Special Unit of the Attorney General's (AG's) Department

In order to reduce delays involved in instituting legal proceedings, the AG's Department set up a Special Unit in August 2004 to deal exclusively with child abuse cases. However, as yet the AG's Department has not indicted any offender for the offence of trafficking. ⁴⁸

⁴⁷ National Child Protection Authority Report 2002/03, p16

⁴⁸ Information obtained from senior officer of the Attorney-General's Department in November, 2005

4.2.3 Department of Probation and Child Care Services

The Department of Probation and Child Care Services is the lead agency for the protection, care and rehabilitation of children in need of such services. With the enactment of the Provincial Council's Act No 42 of 1987, Provincial Departments of Probation and Child Care Services were established. Each Provincial Department functions under a Provincial Commissioner.

A victim of child labour or trafficking is generally sent to one of the four rehabilitation Centres in the country⁴⁹. At times, a few victims are sent, under a court order, to voluntary children's homes registered with the Department. It is worthy of note that victims of other categories of child abuse are also rehabilitated at the above centres. In 2003, 217 child victims were admitted to the Centres. A marked increase is shown for the year 2004; in that year 294 children were admitted to the Centres⁵⁰.

In the aftermath of the tsunami measures were adopted by the Department for the protection of vulnerable children. The numbers and whereabouts of child survivors were documented by the Department. Several measures were taken to prevent illegal adoptions. Particular emphasis was placed on keeping children within their home communities and the selection of guardians was efficiently organised and monitored. Facilities were made available to provide children with birth certificates, re-enrol them in schools and provide them with uniforms and school supplies⁵¹.

⁴⁹ Paratha National Training and Counselling Centre (Moratuwa), Halpota Detention home (Galle), Senchasa Children's Home (Galle), National Training and Counselling Centre (Anuradhapura); Information was obtained from the Commissioner, Department of Probation and Child Care Services in October, 2005

⁵⁰ Information was obtained from the Department of Probation and Child Care Services in October 2005

⁵¹ After the Tsunami: Human Rights of Vulnerable Populations (Human Rights Centre, University of California, Berkeley, October, 2005) p 66

4.2.4 Institutions /Programmes Run by NGOs in Collaboration with Government Institutions

Don Bosco Technical Training Centres

The Don Bosco Technical Training Centres use both preventive and reintegration techniques in addressing the needs of children who are vulnerable to abuse and exploitation as well as the needs of those who have already been subjected to abuse. These children are identified by Don Bosco's team of field officers in collaboration with other national agencies such as the NCPA, the Police Department and the Attorney-General's Department. The first Centre was set up in Negombo and subsequently a number of Centres were established in different parts of the country. At a Technical Training Centre, the children undergo vocational training. Further, facilities are provided for formal education. Several international organisations and NGOs have provided financial support to the Centres ⁵².

4.2.5 The Department of Labour

The Labour Department is vested with the responsibility for the inspection, collection of information and prosecution of violators of the provisions of the Employment of Women and Young Persons and Children's Act. The above responsibilities are carried out by the Department's Women and Children Affairs Division which is headed by a Commissioner of Labour. The Act prohibits the employment of children under 14 years of age.

⁵² Reference Document: Child Protection in South Asia - Based on the Regional Child Protection Capacity Building Course- 27- 30 August 2002, Colombo Sri Lanka; (UNICEF) p28

4.2.6 International Assistance to Combat Trafficking in Children : ILO/IPEC South Asian Programme

The Ministry of Labour signed a Memorandum of Understanding (MOU) with the International Labour Organisation (ILO) in 1996 with the objective of eliminating child labour. The MOU was renewed in 2002 to cover a further five years of collaboration ending December 2006. In terms of the above MOU, Sri Lanka became a beneficiary of ILO/IPEC's South Asian Sub-regional Programme to Combat Trafficking in Children for Exploitive Employment. The Programme activities can be subsumed under four major components : (i) national capacity building, (ii) prevention, rescue, withdrawal, rehabilitation and advocacy, (iii) research and (iv) sub-regional activities. The programme aims at benefiting 6000 children and their families through preventive measures and provide direct rehabilitation support to rescued children in Sri Lanka⁵³.

4.3 Institutions Responsible for the Protection of Women's Rights Including the Right to Protection from Trafficking

4.3.1 The Ministry of Women's Empowerment and Social Welfare

One of the principle objectives of the Ministry is to promote gender equality and justice by focussing on the prime issues of discrimination against women and taking remedial action by means of policies and strategies and the implementation of development programmes ⁵⁴.

⁵³ <http://www-ilo-mirror.cornell.edu/public/english/region/asro/colombo/ipec.htm>; Accessed on 20.9.2005

⁵⁴ See http://www.priu.gov.lk/Ministries_Min_womens_empower_social_welfare.html; Accessed on 1.11.2005

4.3.2 The National Committee on Women (NCW)

The NCW was established in 1993. The Committee is responsible for the review of legislation and identification of policy issues relating to women. In 1999, the NCW established a Gender Complaints Centre for receiving complaints regarding gender based discrimination and violence. The NCW takes action to redress grievances and where appropriate forwards a complaint to the relevant body that can grant redress.

4.3.3 The Women's Bureau

The Women's Bureau is a body that has been established under the Ministry of Women's Affairs. One objective of the Bureau is to improve the socio-economic status of women. Its functions include the conduct of awareness raising programmes on a regular basis for women and children in areas that have been identified as "high risk" areas for trafficking⁵⁵.

4.3.4 The Sri Lanka Bureau of Foreign Employment and the Ministry of Foreign Affairs

Two government institutions, namely the Sri Lanka Bureau of Foreign Employment (SLBFE) and the Ministry of Foreign Affairs play predominant roles in facilitating migration and in protecting migrants' rights and thereby reduce the incidence of trafficking.

The Sri Lanka Bureau of Foreign Employment Act No 21 of 1985 provided for the establishment of the Sri Lanka Bureau of Foreign Employment (SLBFE). Accordingly, the SLBFE was set up to regulate the recruitment of Sri Lankans for employment outside Sri Lanka. (See Annex 3 for a list of the important functions performed by the Bureau).

⁵⁵ Information was obtained from the Women's Bureau in November 2005

The SLBFE has taken several measures to reduce the incidence of trafficking. These include supervision of licensed agencies, compulsory registration of migrant workers, implementation of a model employment contract, appointment of counselors/ welfare officers in countries of destination, establishment of safe houses for runaway or stranded housemaids and conduct of awareness raising programmes to reduce the incidence of trafficking.

In terms of Section 24 of the SLBFE Act, only a holder of a licence issued under the Act is permitted to carry on the business of a foreign employment agency. Sections 26 –28 lay down criteria for the granting of a license. The license, which is valid for a period of twelve months from the date of issue unless it is cancelled before the specified date, is subject to renewal each year.⁵⁶ Prior to the renewal of a license, the Investigation Division of the SLBFE carries out an investigation.

Undocumented workers (workers who are not registered with the SLBFE) are the most vulnerable to exploitative employment. The SLBFE Act requires all persons proceeding for foreign employment to register with the SLBFE. A desk has been set up by the SLBFE at the airport to monitor departing migrants. As a consequence of monitoring, female departures through registered sources as a percentage of departures through all sources has increased over the years⁵⁷. Compulsory registration enables the SLBFE to maintain information relevant to each employer and to take remedial action if an employer breaches an employment contract.

Housemaids leaving the country for foreign employment constitute over 75% of all female departures⁵⁸. A praiseworthy measure taken by the SLBFE to curb the exploitation of the migrant worker is the introduction of a model employment contract that has to be signed between a domestic worker and the employer. Through a series of memorandums of understanding signed between the SLBFE and the recruitment agents in the Middle East, it has become compulsory for

employers wishing to hire Sri Lankan housemaids to sign a contract which has to be endorsed by the Sri Lankan Embassy prior to obtaining the seal of approval for a housemaid to leave the country. The contract is operative in the Middle East countries of Kuwait, Saudi Arabia, Oman, Qatar, the UAE, Lebanon, Baharain and Jordan⁵⁹.

Section 21 of the SLBFE Act provides for the appointment of selected persons as representatives of the Bureau in any foreign country in which jobs are available for expatriates. These officers oversee the welfare of migrant workers. Officers appointed in terms of section 21 are designated as labour welfare officers/ counsellors. Labour welfare officers are attached to the Sri Lankan Missions in the following countries : Qatar, Jeddah, Kuwait, Abu Dhabi, Riyadh, Maldives and Korea. Officers of a higher rank called Counsellors (Employment and Welfare) are attached to the Sri Lankan Missions in Oman, Jordan, Lebanon, Dubai, Cyprus, Italy, Singapore and Malaysia. Labour counsellors/ welfare officers who are appointed to serve at the Sri Lankan Missions in the aforementioned countries come under the supervision of the relevant Heads of Missions⁶⁰.

Housemaids who lodge complaints amount to less than 5.4% of the housemaid departures⁶¹. However, their complaints amount to more than 80% of the complaints made by female migrant workers (in all levels of manpower) and to more than 68% of the complaints made by both male and female migrant workers (in all manpower levels)⁶². Nearly 71% of the

⁵⁹ Sections 29 and 30

⁵⁷ The departures through registered sources accounted for nearly 74% of all departures in 1999. This percentage increased over the years to reach a level of nearly 84 in 2003- *Analysis is based on data presented in Statistical Handbook On Migration 2003, SLBFE page 9*.

⁵⁸ Analysis is based on data presented in Statistical Handbook On Migration 2003, SLBFE page 10

⁵⁹ Migrant Workers and Human Rights: Out Migration in South Asia, (ILO, 2004) , p 165

⁶⁰ Labour welfare officers are also required to send periodical reports to the SLBFE.

⁶¹ Analysis is based on data presented in Statistical Handbook on Migration, SLBFE page 29

⁶² Indicated by data on p 29 of the Statistical Handbook on Migration, 2003 (SLBFE)

complaints made during 2001 -2004 relate to non-payment of salary, harassment and lack of or denial of access to communication facilities. Over 25% of the housemaids complain that they do not have access to communication facilities. It may be assumed, that the lack of communication facilities is a major factor that precludes timely interventions for redressing grievances.

The SLBFE has also established safe houses for runaway or stranded Sri Lankan migrant workers in Dubai, Abu Dhabi, Kuwait, Lebanon, Jordan, Jeddah, Riyadh, Oman, Quarter and Cyprus. The safe houses are maintained by the Sri Lankan Embassies/ Missions in the relevant countries. Embassies provide to migrant workers a range of services which include repatriation of workers and issuance of passports to those who have lost their passports or whose passports are retained by errant employers/agents.

The following steps have been taken by the SLBFE as preventive strategies to help migrant workers to seek safe avenues of employment opportunities.

(i) *Dissemination of Information*

The SLBFE conducts decentralised programmes for information dissemination. Under this programme, 120 graduates attached to the Divisional Secretariats play an important part in providing information to prospective migrant workers. They also maintain a register of prospective migrants with a view to facilitating their departures through registered agencies. Further, the SLBFE has produced posters on the question of safe migration for display at health clinics, training centres and at offices of private recruitment agencies.

(ii) *Awareness Raising Programmes*

The SLBFE together with the International Organisation for Migration (IOM) and external specialists have conducted a series of safe migration workshops in the

districts which provide a preponderance of out-migrants. In each district, the workshops have targeted relevant government officers, police personnel and community leaders who in turn were expected to organise similar programme to reach the grassroots in the district. The workshops provided information on human smuggling, trafficking, migrants' rights and legal migration options⁶³.

4.3.5 The Department of Immigration and Emigration

The Department, which was established under the Immigrants and Emigrants Acts, comes under the jurisdiction of the Ministry of Interior⁶⁴. Its functions include the regulation of immigration and emigration, monitoring of borders, issuance of travel documents to Sri Lankan citizens and investigation and prosecution of offenders in terms of the relevant acts. The Department plays an important role in the detection of forged travel documents and prevention of human smuggling. Under the Immigrants and Emigrants Act, traveling with forged travel documents and involvement in any form of human smuggling are non-bailable offences⁶⁵.

4.4 Women and Children's Desks for Facilitating Investigations into Complaints of Abuse and Related Matters

Children and Women's Desks (CWDs) were set up in 1994. Presently there are 34 such Desks in the main Police Stations of the country. The CWDs facilitate the receipt and recording of complaints of violence against children and women. In order to make a complaint, a person can go to a

⁶³ Information for the above section was obtained from the IOM

⁶⁴ No 20 of 1948, No 16 of 1993 and No 42 of 1998; cited in Review of Sri Lankan Laws on the Trafficking of Women (Centre for Policy Alternatives, May 2004) p 28

⁶⁵ Immigrants and Emigrants Act No 20 of 1948, as amended by No 42 of 1998; cited in Review of Sri Lankan Laws on the Trafficking of Women (Centre for Policy Alternatives, May 2004) p 29

CWD or make use of a telephone hotline set apart for this purpose. Complaints lodged with all police stations are reported monthly to the headquarters, namely the Women and Children's Desk located in Colombo. The CWDs for the first time included trafficking together with kidnapping in the list of offences reported for 2002-2003. However, as the statistics for trafficking were combined with those of kidnapping, identification of only the number of trafficking incidents separately is not possible⁶⁶.

4.5 Rehabilitation and Social Integration of Trafficked Women

The existing legislative enactments do not specifically provide for the welfare of trafficked women. Some facilities which are available for the rehabilitation of trafficked women or women who are in need of rehabilitation are indicated below.

(i) *Methsevana – State House of Detention, Gandodawila*

"Methsevana" which is situated in a suburb of Colombo, is a state house of detention. It is the only one of its kind to provide shelter for women who have been detained by the police for vagrancy⁶⁷. The Detention House is maintained by the Social Services Department of the Western Provincial Council. The House serves as a prison, rehabilitation center and a vocational training

⁶⁶ Review of Sri Lankan Laws on the Trafficking of Women (Centre for Policy Alternatives, May 2004) p 4

⁶⁷ Under the Vagrants Ordinance, any person who solicits another " for the purpose of the commission of any act of illicit sexual intercourse or indecency" may be subject to detention for a period not exceeding six months, a fine not exceeding 100 rupees or both (vide Section 7(1) (a); cited in Methsevana, State House of Detention, Gandodawila (March- July 2004): The Report of a Fact-finding Mission by the Monitoring and Review Division, Human Rights Commission of Sri Lanka,p12

school⁶⁹. Approximately 40 per cent of the inmates are estimated to be victims of trafficking⁷⁰.

(ii) *Migrant Assistance Centre*

The government has established a Migrant Assistance Centre (MAC) at Seeduwa in close proximity to the Airport to help returnee migrants in crisis situations arising from forcible repatriation, sickness, injury etc⁷¹

(iii) *Counselling Centres*

The Women's Bureau has established 10 counselling centres. These Centres do not specifically target trafficked women. They provide counselling services to all those who are in need of counselling.

iv) *Education of Returnee Migrant Workers on Health Issues*

Under the National HIV/AIDS Prevention Project, the SLBFE has launched a programme in Anuradhapura to educate returnee migrant workers on relevant health issues. Under the programme, the SLBFE has enlisted the assistance of public health volunteers to visit the homes of returnee migrant workers and enlighten them on health issues which include discussions on HIV/AIDS and facilities available for voluntary testing of HIV/AIDS⁷¹.

(iii) *Skills Development Programmes*

The Women's Bureau provides assistance to economically disadvantaged women by conducting programmes with components on income generation activities, health, nutrition and child care. These programmes are organized

⁶⁹ Methsevana, State House of Detention, Gandodawila (March- July 2004) - The Report of a Fact-finding Mission by the Monitoring and Review Division, Human Rights Commission of Sri Lanka, p 4-5

⁶⁹ Review of Sri Lankan Laws on the Trafficking of Women (Centre for Policy Alternatives, May 2004) at p 36

⁷⁰ Sri Lanka Case Study on Good Practices to prevent women migrant workers from going into exploitative forms of labour (ILO, Geneva, 2001) p 59

⁷¹ Information was provided by the Sociologist attached to the SLBFE

by the Kantha Karya Samithis⁷². It should be noted that the programmes do not specifically target trafficked women.

5. Problems Encountered in the Battle Against Trafficking

Formulation of a set of interventions for solving any specific problem has to be based on consideration of the nature and magnitude of the problem as well as its ramifications. To put it differently, relevant qualitative and quantitative data are necessary inputs to the planning phase of interventions. A notable shortcoming in the fight against trafficking is the dearth of statistics. Estimates prepared by researchers indicate a much larger number of traffic-related offences than the actual number recorded. One reason for such a situation is that trafficking and related offences still remain, to a large extent, a hidden phenomenon. This is especially so with regard to prostitution and other forms of sexual exploitation where victims are hesitant to lodge complaints with the Police for fear of social stigmatisation⁷³. Another reason is that victims perhaps may have unwittingly consented to being trafficked. Some women who are induced by false promises to migrate to host countries are forced to engage in exploitative forms of employment upon arrival. Many victims, especially those among undocumented workers, are hesitant to lodge complaints against the traffickers for fear that they themselves may be prosecuted for involvement in an illegal activity.

⁷² Sri Lanka Case Study on Good Practices to prevent women migrant workers from going into exploitative forms of labour (ILO, Geneva, 2001) p 56

⁷³ It should be noted that it is an offence under Section 365 C (1) of the Penal Code to print or publish the name or any matter which may make known the identity of any person who has been procured or attempted to be procured for prostitution or illicit sexual activity. Under section 365 (2), the identity of victims may be printed or published by or under order of the officer in charge of a police station or a police officer investigating in to the offence, acting in good faith for the purposes of such investigation, or by or with the authorisation in writing by the victim or next of kin of victim where the victim is dead or where the victim is a minor.

Effective rehabilitation of victims is crucial for empowering them to reintegrate into society. In this context, it is important to assess the adequacy of state-run rehabilitation centers. A study undertaken in the late nineties found that institutions for the rehabilitation of children suffered from such handicaps as the inadequacy of financial resources, lack of staffing and congestion⁷⁴. A fact-finding mission commissioned by the Human Rights Commission in 2004 found that the conditions at the Methsevana Detention Center, in terms of health, sanitation and resources, were far from satisfactory⁷⁵. In addition to the accommodation provided for women and children, this Center also has a separate ward for women with mental health problems⁷⁶. A common malaise that affects all rehabilitation centers in the country is the lack of an adequate number of qualified personnel to cater to the needs of the victims.

6. Concluding Observations

The present report, which is based on secondary research, is intended to give an overview of the efforts that have been made by the State to combat trafficking in women and children and to bring perpetrators to justice. The State has introduced many changes to the country's legal and institutional frameworks in order to address more effectively trafficking and related offences. However, additional measures are needed to deal with shortcomings that have surfaced subsequent to the introduction of the changes referred to. Weaknesses in the law

⁷⁴ See V. Samaraweera, Report on the Abused Child and the Legal Process of Sri Lanka (Submitted to the National Monitoring Committee on the Children's Charter, July 1997) p104-106

⁷⁵ See Human Rights Report, Methsevana - State House of Detention Gandodawila (Human Rights Commission of Sri Lanka, 2004) p 16-24

⁷⁶ Ibid

surface when the law is applied to deal with situations which were not foreseen by the law-makers. In such circumstances, the case for the engagement of a team of legal experts to study shortcomings in the Penal Code and other relevant legislative enactments and make recommendations for the repeal of enactments that have become obsolete as well as recommendations for the introduction of amendments to existing enactments is strong indeed⁷⁷.

Monitoring of activities of agencies involved in combating trafficking for the purpose of evaluating the efficiency of such agencies as well as the nature and degree of co-ordination that exists among them is crucial to effective implementation management. As a critical strategy, a team of organizational management experts needs to be appointed to undertake in-depth studies of the operational modes of the above agencies. The contributions made by NGOs too should be evaluated in collaboration with the NGOs themselves. The responsible state agencies should seek financial support and technical assistance from relevant international/ donor agencies for the development of infrastructure and training of law enforcement officers. Further, studies should be undertaken to bring into focus the best practices of other South Asian countries in the fight against trafficking and adapt them to reinforce national efforts. What is generally needed is not the creation of more institutions but the reinforcement of existing frameworks.

⁷⁷ It has been observed by legal experts that in view of the Amendments to the Penal Code some of the provisions in the Vagrants Ordinance and the Brothels Ordinance have become redundant. Cited in *Child Abuse and the Law: A Review of the Law and the Legal Process* (Children's Desk, Lawyers for Human Rights and Development, 2000) p 29

Annex 1

The functions of NCPA may be summarised as follows⁷⁸:

- ♦ Advising government on national policy and measures regarding prevention of child abuse and protection and treatment of children who are victims of such abuse;
- ♦ Creating an awareness of the right of the child to be protected from child abuse and the methods of preventing such abuse;
- ♦ Consulting and co-ordinating with relevant ministries, local authorities, public and private sector organisations and recommending measures for prevention of child abuse and protection of victims;
- ♦ Recommending legal, administrative and other reforms for the effective implementation of national policy;
- ♦ Monitoring implementation of the law, the progress of all investigations, and criminal proceedings in cases of child abuse;
- ♦ Taking appropriate steps where necessary for securing the safety and protection of children involved in criminal investigations and criminal proceedings;
- ♦ Recommending measures in relation to protection, rehabilitation and reintegration into society of children affected by armed conflict;
- ♦ Receiving complaints from the public relating to child abuse;
- ♦ Advising and assisting local bodies and NGOs to co-ordinate campaigns against child abuse;
- ♦ Co-ordinating, promoting and conducting research on

⁷⁸ National Child Protection Authority Act No 50 of 1998 ; section 14

- ♦ Organising and facilitating workshops and seminars;
- ♦ Liaising with the tourist industry to prevent child abuse;
- ♦ Preparing and maintaining a national database on child abuse;
- ♦ Monitoring organisations providing care for children;
- ♦ Liaising and exchanging information with foreign governments and international organisations in regard to detection and prevention of child abuse.

Annex 2

The Conventions which have relevance to trafficking and which have been signed, ratified/ acceded to by Sri Lanka are listed below.

ILO Convention (No 29) Forced Labour Convention
Acceded 5th April, 1950

Slavery Convention as amended by Protocol
Acceded 21st March 1958

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery
Ratified 21st March 1958

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
Acceded 15th April 1958

International Covenant on Economic, Social and Cultural Rights
Acceded 11th June, 1980

International Covenant on Civil and Political Rights
Acceded 11th June 1980

Convention on the Elimination of All forms of Discrimination against Women
Ratified 5th October, 1981

Convention on the Rights of the Child
Ratified 12th July 1991

Convention against Torture and other Cruel, Inhuman or degrading treatment or punishment
Acceded 3rd January, 1994

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
Acceded on 11th March, 1996

ILO Convention (No 138) Minimum Age for Admission to Employment

Acceded 11th February, 2000

United Nations Convention Transnational Organised Crime

Signed 15th December, 2000

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

Signed 15th December, 2000

ILO (Convention No182) Prohibition and Immediate Action for Elimination of Worst Forms of Child Labour

Ratified 1st March, 2001

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

Signed 8th May, 2002

Regional Instruments to which Sri Lanka is a signatory

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

Annex 3

The important functions performed by the Bureau in fulfilment of objectives laid down in the SLBFE Act are :

- a) Dissemination of information and conduct of awareness raising programmes
- b) Supervision and regulation of registered agencies
- c) Training programmes conducted for prospective domestic workers
- d) Implementation of a model employment contract
- e) Design and initiation of pre-departure loan schemes and insurance schemes for the benefit of migrant workers
- f) Appointment of welfare officers
- g) Negotiation of bilateral agreements
- h) Provision of assistance to families of migrant workers
- i) Provision of facilities for re-integration
- j) Maintenance of a database

HUMAN RIGHTS COMMISSION OF SRI LANKA

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