

Ensure National Security through Protecting Children in Insecurity; A Sri Lankan Perspective

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INTRODUCTION

Children are wonderful, and childhood is the most blessed time of every human being. Under the International instruments, particularly Article 1 of the Child Rights Convention Article 3(d) of the Palermo Protocol¹, and national instruments, section 286B (4) of the Penal Code Amendment 2006 define children as persons below the age of eighteen. The Bible says “*Whosoever shall not receive the kingdom of God as a little child, he shall not enter therein*” (Bible). This shows how innocent children are. Children are the most vulnerable group in society and as such they require special protection. Recognition of protecting children from harm and promoting their development materialized in international law with the adoption of the United Nations Convention on the Rights of the child by states in 1989. In 2009 it was accepted and ratified by 193 states. The extraordinary wide ratification of the CRC reinforces the belief that children occupy a special place in international law (www.unesco.org).

Human trafficking is the third largest criminal enterprise in the world after drugs and arms dealing. Thirty million women and children were trafficked for sexual exploitation in Asia over the last 30 years. 600,000 to 800,000 (estimated) men, women, and children have been trafficked across international borders each year. Approximately 80 per cent are women and girls and up to 50 per cent are minors (Sunday Observer 2012).

There is a preliminary estimate of approximately 5,000 children, who have been trafficked internally and currently find themselves in some of the worst forms of child labour, including being conscripted to fight in conflict situations and forced or coerced to be involved in commercial sex tourism (Cited by Lanka Standard-UNICEF). According to the report in 2011, Sri Lanka’s victims have been identified in Egypt, Poland and the United States (U.S. Department of State 2011). The recent report on Trafficking in Persons Report published by the US State Department (2012), places Sri Lanka at “Tier 2 watch list” which is just one level above the worst category. “Tier 3” has been identified as a source for men, women, and children subjected to forced labor and sex trafficking. Sri Lankan children are living in an insecure environment due to the trafficking of children. Children are trafficked internally and across the borders for the purposes of forced labour, sexual exploitation, armed forces, drug trade and forced child begging (U.S. Department of State 2012) .

DEFINITION OF TRAFFICKING

Internal trafficking in the country goes on unabated, and it is a serious matter that needs to be taken seriously. Within the country children are subjected to sex trafficking in brothels. Boys are more likely than girls to be forced into prostitution in coastal areas for domestic child sex tourism. In addition, children are being subjected to bonded labour and forced labour in the dry zone farming

areas in plantation, and in the fireworks and fish-drying industries. Some child domestic workers in Colombo are generally from the Tamil tea-estate sector of the country (U.S. Department of State 2012). TIP Report 2012 shows that in Sri Lanka children are living in insecurity this is a threat to the present and the future national security of a country. So the State has a duty to safe guard the future of the country. However, the number of trafficking convictions in Sri Lanka has been low (U.S. Department of State 2012).

Article 3(a) of The Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children defines trafficking (Palermo Protocol of 2000) as follows:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of person, by means of the threat or use of force or other force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to it 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 from or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3(c) of The Palermo Protocol includes a specific definition to the trafficking of children

Trafficking in children shall mean recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others from or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs(UNICEF Report 2005 p2-3).

The provision stresses that the trafficking of a child for exploitation purposes, by whatever means used, should be considered as a crime. However, this definition for child trafficking given here applies only to the case of trafficking that are transnational and /or involves organized criminal group.

The Penal Code of Sri Lanka enacted in 1883, includes criminalized acts such as abduction, kidnaping and slavery in previous enactments, but trafficking as a concept was introduced for the first time in No. 22 of 1995 penal code amendment by section 360 (c) of the penal Code which underwent changes with the 2006 Amendment to the penal Code. These changes brought the provisions in the penal Code more in line with the Palermo Protocol. This definition includes elements which are not included in the protocol such as buying and selling of any person, and by including reference to 'any other act' which permits to include other exploitative offences which are not referred to in the statute. In addition, the definition does not include means such as abduction which is referred to in the protocol and definition of means used is narrower. The Sri Lankan Penal Code provision does not state that in the case of an adult consent is not relevant.

INTERNATIONAL AND REGIONAL INSTRUMENTS WHICH PROHIBIT TRAFFICKING

Number of International and regional standards have been developed to prevent and combat trafficking in human beings and protect children's human right. United Nations Convention on the Rights of the Child (1989), requires that all ratifying nations to protect children from all forms of sexual exploitation and sexual abuse, to prevent the abduction, sale, or traffic in children for any purpose or in any form, and require provision of recovery and reintegration for all child victims of these crimes. The Child Right Convention was incorporated into domestic law in 1991. Article 7 of the International Convention on Civil and Political Rights prohibits torture and cruel, inhuman and degrading treatment or punishment of children. The 1949 Convention on the suppression of the Traffic in persons and of the Exploitation of the Prostitution of others convention looks at prostitution from a trafficking perspective, but unfortunately it did not include children as victims in its definition. In the year 2000, the United Nation adopted the Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children and defines trafficking which is also known as Palermo Protocol which supplements the United Nations Convention against Transnational Organized crimes. Sri Lanka had ratified this protocol in 2010.

At the regional level in South Asia, the most relevant instruments for preventing child trafficking are the two conventions adopted in 2002 within the frame work of South Asian Association for regional cooperation (SAARC), and of particular importance is The Convention on Preventing and Combating Trafficking in Women and Children for prostitution. The other is the Convention on Regional Arrangement for the Promotion of Child welfare in South Asia.

CHILD RIGHTS AND PROHIBITING OF CHILD TRAFFICKING UNDER THE NATIONAL LAWS

The 1978 Constitution of Sri Lanka contains a chapter on fundamental rights, while not expressly dealing with concept of trafficking or slavery. Article 11 impliedly recognizes that "*No person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.*" This fundamental right cannot be restricted in any way and therefore can be interpreted as recognizing the right to freedom from subject to any type of exploitative practice such as trafficking. Article 12(4) allows for "*special provisions to be made by law, subordinate legislation or executive action, for the advancement of children*". Recognizing children as a special group in the society, Article 27 (13) Directive Principles of State Policy and Fundamental Duties, of the State pledges to 'promote with special care the interest of children and youth so as to ensure their full development, physical, mental moral religious and social and to protect them from exploitation and discrimination (Constitution of Sri Lanka 1978). In addition, the draft constitution (August 2000) Article 22, entitled Special Right for Children) gives constitutional guarantees to the right of a child to be protected from abuse; to have access to free education between the ages of 5 and 15 and not to be employed in any hazardous activity. It also conclusively defines a child as a person under the age of 18 years.

There are other statutes which relate to the criminalization of trafficking and the prohibition of exploitation, especially sexual exploitation. The Convention on Preventing and Combating Traf-

ficking in Women and Children Prostitution Act No.30 of 2005 was enacted to give effect to the SAARC Convention on Preventing and Combating Trafficking in Women and children for Prostitution (www.protectionproject.org).

The minimum age for employment of children was raised to 14 years in December 1999 by an Amendment to the Employment of Women, Young Person and Children Act No 47 of 1956 and the minimum age for employment in hazardous work at 18. In 2011 the Government adopted a list of 51 hazardous occupations and or working conditions prohibited for children, with the exemption of domestic service employment in hazardous work. The Penal Code, Amendment Act No.22 of 1995 and No.29 of 1998,criminalizes and prescribes penalties for individual who engage children younger than age 18 in pornography or *prostitution*. In addition, the Penal Code Amendment Act No 16.of 2006 also criminalizes and prescribes penalties for individuals who engage children younger than age 18 in debt bondage, forced labor, slavery, armed conflict or trafficking. The Penal Code was amended in 2006 to recognize the recruitment of children in armed conflict as a crime, even where such recruitment is not forced or compulsory in nature. Section 360 (c) of the Penal code Amendment 2006 stipulates the need to establish the same three conditions as the Palermo Protocol-act, means and purpose to build a case against trafficking. However the other treaty obligations under the trafficking Protocol, such as those which exempt the victim from criminal liability, require the state to provide victims with assistance and protection, and to protect such victims from being re-trafficked, have not given effect in any specific legislation. There are also no special provisions which recognize the protocol focus on the need to train and make aware border official and law enforcement officials on recognizing victims of trafficking.

The Government's main national development plans, *Mahinda Chinthana*-A vision for New Sri Lanka 2006-2016,includes policies on combating child labour. Among a number of strategies, the *Mahinda Chintana* addresses poverty through social safety nets, encourages parents to send their children to school instead of work and enforces legislation on the minimum age for work. (www.treasury.gov.lk)

The above mentioned legal instruments show that sufficient laws have been adopted to protect children who are in insecurity, but following data's conform that still there are children who live in insecurity. Figures quoted range from 30,000 to several thousands more. 15% of child labour also engaged in employment informally in the manufacturing sector, 3% in the service sector (hotels, small shops and garages) and 60% in agriculture as unpaid family workers or paid employees. Many children are forced into child labour by their families. This occurs in the tea plantations, remote rural areas, urban slums and conflict affected areas. Child recruitment by the LTTE is regarded as one of the worst forms of child labour, and occurred in the conflict affected areas of the North and East. Boys are more likely than girls to be forced into prostitution in coastal areas for domestic child sex tourism. In addition, there are reports of children being subjected to bonded labor and forced labor in dry-zone farming areas on plantations, and in the fireworks and fish-drying industries. Some child domestic workers in Colombo, are generally from the Tamil tea-estate sector of the country (SAA-RC Social Charter Sri Lanka Action plan 2008-2015). Children in Sri Lanka are engaged in the Worst forms of Child labour including agriculture. Children working in agriculture commonly involve exploitation, such as using dangerous machinery and tools, carrying heavy loads. In addition, children employed in domestic service are working in largely unregulated and undocumented sectors.

CAUSES OF CHILD TRAFFICKING

Before developing measures and policies to curb child trafficking, it is important to research on the root causes of child trafficking in Sri Lanka. Article 9(4) of the Palermo Protocol recognizes factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, under development and lack of equal opportunity. Trafficking is made possible by a breakdown in the protective environment.

The factors can be divided into “Push factors” and “Pull factors”. Poverty, power and violence can be defined as Push factors and trafficking is driven by demand such as sexual exploitation, other form of economic exploitation, traditional practices, adoption and post conflict are pull factors (UNICEF p.5&7). Accordingly, House hold poverty and debt is a major cause of child trafficking. Migration of mothers can create conditions suitable for the trafficking. If migration causes marriage to break and/ or the father start another affair, children will be more neglected and they will become vulnerable for trafficking. NCP has noted that the social environment of the country is also a influence factor for trafficking. Especially, accessibility of pornographic material including movies promotes this trend. This environment can be easily used by child sex traffickers. The trafficking of children is sometimes possible due to the absence of good governance. In addition, the punishment of traffickers is difficult, because some governments neither control nor prevent the problem and traffickers may use this inaction and insecurity situation to make trafficking possible. (Victim of Human Trafficking in Sri Lanka).

In Sri Lankan policy on foreign adoption procedure has also created possibilities of trafficking in children. Section 3 (5) (A) introduced by amendment of 1992 of Adoption Ordinance 1941 declares that foreign adoption by joint application of spouses will be permitted only if no other person who is a Sri Lankan citizen has applied to adopt the child. This policy is an effort to restrict inter-country adoption in line with the standard of the Convention on foreign adoption. However, Sri Lankan law does not require that foreign adoptive parents spend any period of time within the country prior to adoption and the commissioner’s investigation takes place during a brief period of time of four weeks. So a foreign couple can complete adoption procedure and leave the country in a very short period. This procedure reflects that trafficking can take place within, as well as across national boundaries.

Culture is another reason which makes trafficking of Children possible, specially initiation of girls into prostitution is done under the guise of religion. Devadasis young girls dedicated to goddesses and forced into prostitution for life under a priest or landlord (Paper on Cultural Violation) .

RECOMMENDATION

Legislation or policy alone cannot eliminate child trafficking. The U.N. Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children, requests States to “adopt or strengthen legislative or other measures, such as education, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand the foster all forms of exploitation of persons, especially women and children, that leads to trafficking

Many International and regional standard on trafficking in human being focus on adults. The child trafficking is often addressed as a sub-issue of trafficking in human being rather than as distinct concern requiring special attention to ensure the protection of the human right of children. The same approach can be seen in national level legislations as well. However, it should be considered as a special issue and responses need to reflect that reality. The Convention on the Right of the child contains four general principles and rights that cut across all actions decisions and other matters affecting a child. These are the right to non-discrimination (Article 2);the best interest of the child (Article-3);the right to life, survival and development (Article 6);the right of the child to express and have his or her views heard and taken into account (Article 12).These principles need to be considered in all actions to address and prevent child trafficking and to assist children who have been trafficked (Report UNICEF).

Other supported methods, such as those out line by the Buffalo Human Rights Law Review include relying on three protection, prosecution and prevention. Protection starts with enforcing strict measures on the matter of trafficking Children need to be protected by law from secondary victimization and from prosecution or sanction for offences they committed in relation to their situation as victims of trafficking. Prosecution should be instituted in the form of greater legal ramification for traffickers with punishment focused on the exploiter rather than exploited. Prevention begins with discouraging donation and improving services so that children and families as a whole (LexisNexis Academic: Law Reviews.2011)

Especially before a child victim is accompanied with the family or guardian of the child, the court or the authorized authority should consider whether the return of the child would effect the best interest of the child or dignity or right of trafficked child. During accompanying process with parents or guardians if the child has the capacity to express her or his view the rights of the child should be guaranteed.

Judicial proceedings should be strengthened refined to include formal witness protection procedures to ensure the psychological well-being and privacy of the child through in camera proceedings, in order to provide adequate protection and compensation to victims and legal process through fast-track child friendly courts.Nepal and Bangladesh have transformed their judicial processes to be child-friendly; for example, in Nepal children are allowed to testify irrespective of their age the use of video testimony (UNICEF- South Asia in Action p.29) .

CONCLUSION

The report issued by the US State Department states that Sri Lanka does not fully comply with the minimum standards for the elimination of trafficking, but notes that the country has made significant efforts to do so. Trafficking of children is a crime as it exploits the vulnerability of children and a violation of the child rights as it denies the children of their basic rights of living. Child Trafficking is an infringement of a child's mental and physical integrity. This is also an infringement of the child's dignity and a threat to his life. Children make the world a beautiful place, but with the escalating numbers of child abuse cases reported, it is felt that as a nation our attention towards children has been neglected.

Children are the nation's future and if a country fails to protect the rights of its children, it is putting its own future and security at stake. The early childhood development is a trigger factor that decides his or her future life.

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