

Comments on SAARC Convention

Background

Trafficking in human beings is a heinous crime, which violates the basic human rights of affected persons. Despite national and international laws, which prohibit trafficking, the practice has been flourishing throughout Asia. Due to the nature of the trade which involves trans-border issues such as coordination between law enforcement agencies; lack of extra-territorial and extradition laws; and highly organized trafficking networks, crimes are committed with impunity. The non-existence of concerted regional effort in combating trafficking has further exacerbated the problem. Adoption of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution on January 5, 2002 at the Eleventh SAARC Summit held in Kathmandu is a timely initiative and significant milestone in combating and preventing trafficking.

It is an important step forward in the fight to preventing and combating trafficking, especially since it recognizes the need for extraterritorial application of jurisdiction; and extradition laws including a provision that the Convention shall be effective and the States Parties to the Convention will be bound to prosecute or extradite offenders in the absence of extradition treaties between the concerned states.

Nevertheless, there are some pertinent issues, which have been overlooked, in the proposed Convention. The definition provided in the Convention is very narrow and focuses only on prostitution. Convention does not address trafficking from broader perspective and has limited its application to prostitution. Further, the Convention lacks a strong treaty body and perspective on the rights of victims. Also the Convention does not clarify the recipient country's accountability in rescue, rehabilitation, repatriation and reintegration of affected persons. The recipient country needs to be made accountable towards the well being of the affected persons by providing mental and physical health care, legal advice and financial compensation. Immigration policy is also required that allows affected person to initiate proceedings against the offender in the country of residence.

In this context, the Convention is reviewed with the objectives of bringing necessary reforms for its effective implementation, to develop a comprehensive tool against the atrocious crime against humankind and establish regional mechanism to fight the crime. Many organizations and individuals helped us while working on the Convention for which we are indebted. Technical inputs from Professor Jane H. Aiken, Ms. Shanti Dairiam, Dr. Rajit Bhakta Pradhanang, Ms. Sapana Pradhan-Malla, Mr. Phanindra Gautam, Mr. Sabin Shrestha, Mr. Som Luitel and Ms. Salina Joshi, significantly contributed to finalise the comments.

Comments on SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

Articles	Comments	Recommendations	Justifications
Title			
SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution	In addition to prostitution, women and children are trafficked as forced labour, domestic servants, camel jockeys, and for organ transplantation. Men are also trafficked for various purposes.	SAARC Convention on Preventing and Combating Trafficking in Persons, Especially Women and Children.	The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (UN Protocol Against Trafficking), describes these additional forms of trafficking and states that anyone who is subject to trafficking is a victim, regardless of age or gender.
Preamble			
Para. 1 , Emphasizing that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honor of human beings and is a violation of basic human rights.	"	Emphasizing that the crime of trafficking in persons for the purpose of exploitation is incompatible with the dignity and honor of human beings and is a violation of basic human rights.	"Crime" is a more suitable word than "evil" because it connotes the illegality, as well as the immorality, of trafficking, punishable under criminal law.
		Recognizing that all countries in the SAARC region are parties to the Convention on the Elimination of all Forms of Discrimination Against Women 1979 (CEDAW) and the Convention on the Rights of the Child 1989 (CRC), and that accordingly the governments of these countries have the obligation to work toward the elimination of trafficking.	To create linkages with other international conventions on related issues.
Para. 2 , Recalling the decision of the Ninth SAARC Summit (May 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored.	This paragraph ignores the 10 th SAARC Meeting (July 1998, Colombo), which expressed concern with trafficking and suggested creating a technical committee to study trafficking.	Recalling the decision of the Ninth SAARC Summit (May 1997) and Tenth SAARC Summit (July 1998) that the feasibility of a regional Convention to combat the grave crime of trafficking in persons for exploitation should be explored.	To recognize the contributions made by the 10th SAARC Summit and to reflect the concerns raised by various human rights instruments dealing with the exploitation of women and children.

<p>Para. 3, Recalling also the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989.</p>	<p>This paragraph recalls several important international instruments, but leaves out other key instruments that should be included as well.</p>	<p>Recalling also the relevant international legal instruments relating to prevention of trafficking in persons, including: the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination Against Women 1979; International Covenant on Civil and Political Rights, 1966 (ICCPR); Optional Protocol to ICCPR; International Convention on Economic, Social and Cultural Rights, 1966 (ICESCR); ILO Convention on Worst Form of Child Labor, No. 182; Refugee Convention, 1950; Convention on the Rights of the Child, 1989 (CRC); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children and Child Prostitution and Child Pornography, 2000; 2nd Optional Protocol to the CRC; the Slavery Convention, 1926; Supplementary Convention on the Abolition of the Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, 1956; Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime, 2000.</p>	<p>ICCPR ensures civil and political rights whereas ICESCR ensures economic and cultural rights, thus linking the two Conventions. The 2nd Optional Protocol to the CRC and Worst Form of Child Labour Conventions are relevant to trafficking due to the fact that many victims are children. The UN Protocol Against Trafficking sets international standards against trafficking that should be incorporated into the regional standards.</p>
<p>Para. 5, Noting with concern the increasing exploitation by traffickers of women and children from SAARC countries and their increasing use of these countries as sending, receiving and transit points.</p>	<p>In addition to women and children, men are also trafficked for various purposes.</p>	<p>Noting with concern the increasing exploitation by traffickers of persons of SAARC countries and their increasing use of these countries as sending, receiving and transit points.</p>	<p>The UN Protocol Against Trafficking includes all persons as victims and not just women and children.</p>
<p>Para 6 Recognizing in this regard the importance of establishing effective regional cooperation for preventing trafficking for prostitution and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking.</p>	<p>Persons are trafficked for various purposes such as forced labour, slavery, organ transplant, and camel jockeying and not just for prostitution.</p>	<p>Recognizing in this regard the importance of establishing effective regional cooperation for preventing and combating trafficking in persons, and paying particular attention to women and children, for investigation, detection, prosecution and punishment of those responsible for trafficking.</p>	<p>To make consistent with the UN Protocol Against Trafficking.</p>

<p>Para 7, Emphasizing the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking for prostitution.</p>	<p>"</p>	<p>Emphasizing the need to strengthen cooperation among SAARC governments, as well as among civil societies and NGOs, in providing assistance, rehabilitation and repatriation to victims of trafficking.</p>	<p>Cooperative and coordinated efforts by the governments of SAARC countries and their civil societies and NGOs would broaden the scope of their efforts' effectiveness and efficiency.</p>
<p>Article I: Definitions</p>			
<p>Art. I.2 "Prostitution" means the sexual exploitation or abuse of persons for commercial purposes.</p>		<p>For the purpose of this Convention, "Exploitation" shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.</p>	<p>Given that individuals are trafficked for other purposes in addition to prostitution, the term "Exploitation" more accurately encompasses the scope of trafficking purposes. Also, to make consistent with the UN Protocol Against Trafficking, Sub Clause of Article 3(a). Further, ICESCR, Article 6, mentions right to work, and UN Guidelines¹ recognize voluntary prostitution as work.</p>
<p>Art. I.3 "Trafficking" means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.</p>	<p>Inadequate coverage of all forms of Trafficking.</p>	<p>(a) "Trafficking" means the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.² (b) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in subparagraph (a).</p>	<p>To make consistent with the UN Protocol Against Trafficking, Article 3(a).</p>

¹ GUIDELINES FOR STATE ACTION, Guideline no-4, Second International Consultation on HIV/AIDS and Human Rights (Geneva, 23-25 September 1996) Report of the Secretary-General add.

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1997.37.En?Opendocument#guidelines](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1997.37.En?Opendocument#guidelines)

² Article 3. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.*

<p>Art. I.5 "Persons subjected to trafficking" means women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage or any other unlawful means.</p>	<p>The use of the past tense for "victimized or forced" implies that women and children who are rescued during or escape from a trafficking or attempted trafficking situation would not be traumatized by it.</p>	<p>"Persons subjected to trafficking" means persons who are trafficked or in the process of being trafficked by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means.</p>	<p>To ensure all victims and potential victims are covered by the Convention.</p>
<p>Art. I.6 "Protective home" means a home established or recognized by a Government of a Member State for the reception, care, treatment and rehabilitation of rescued or arrested persons subjected to trafficking.</p>	<p>Victims of trafficking should not be placed in a protective home against their will because involuntary placement, i.e. without their consent, violates their right to freedom from arbitrary arrest and detention.</p>	<p>"Safe home" means a safe environment recognized by a Government of a Member State for the reception, care, treatment, rehabilitation and other necessary services for victims, to be provided only with the victims' informed consent.</p>	<p>ICCPR, Article 9, protects against arbitrary arrest and detention.</p>
<p>Article II: Scope of the Convention</p>			
<p>Art. II The purpose of this Convention is to promote co-operation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.</p>	<p>Involuntary repatriation would violate victims' rights, since some may not want to return due to fear of being socially stigmatized or for other reasons.</p>	<p>The purpose of this Convention is to promote co-operation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in persons; the voluntary repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.</p>	<p>International instruments that prohibit or restrict trafficking have recognized the importance of voluntary repatriation, for example: the Human Rights Standards For The Treatment of Trafficked Persons No. 28 (HRS) and the Human Rights and Trafficking in Persons: A Handbook, GAATW, 2001.</p>

Article III: Offences			
Art: III.2 The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.	Does not include all forms and stages of trafficking.	The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who transfers, transports, recruits, receives, buys, sells, pledges, detains, keeps any person, and/or who maintains, manages, controls, knowingly finances or takes part in the financing of a place or vehicle used for the purpose of trafficking and/or knowingly lets or rents a building or other place or any part thereof or vehicle for the purpose of trafficking.	To make consistent with the UN Protocol Against Trafficking, Article 5.
Art. III.3 Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.	Conspiracy is not included.	Any attempt or conspiracy to direct or to abet any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.	UN Protocol Against Trafficking, Article 5 (2)c, criminalizes the directing of trafficking.
Art. III.4	Pornography is one of the purposes of trafficking but this is not included as offence.	Use of persons for pornographic exploitation shall be serious offence.	ILO Convention, No. 182, and the 2 nd Optional Protocol to the CRC, Article 3, punishes the use of children for pornographic purposes.
Art. III.5	Advances in communication technology and the rise of globalization could be used for exploitative purposes and must be included.	Use of information and communication technology for the purpose of trafficking shall be punishable.	The Convention on Cyber Crime has acknowledged these kinds of crimes.
Art. III.6		State parties shall provide additional punishment for crimes such as rape, assault, slavery, debt bondage, forced pregnancy, fraud, bribery, unsafe transport of victims, sexual exploitation and forced labour.	To make consistent with Human Rights Standards For The Treatment of Trafficked Persons, No.11.

Article IV: Aggravating Circumstances			
Art. IV.1 The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.	No provision for additional punishment in cases with aggravating circumstances.	The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz and shall provide additional punishment for such circumstances.	To provide additional punishment in cases with aggravated circumstances.
Art. IV.1a The involvement in the offences of an organized criminal group to which the offender belongs.	Persons associated with such group are not mentioned.	The involvement in the offences of an organized criminal group or a person associated with such a group.	To broaden the scope of the provision to include persons associated with organized criminal groups in addition to persons who belong to such groups.
Art. IV.1c The use of violence or arms by the offender.	Mental and physical violence is not specified.	The use of physical or mental violence, such as torture, drugs or other life-threatening practices by the offender.	Convention Against Torture and Other Cruel and Inhuman and Degrading Treatment or Punishment, 1984, Article 1 (CAT), recognizes both kinds mental and physical torture as acts of violence.
		The trafficking of children for employment in reprehensible forms of child labor and illegal activities. ³	The 2 nd Optional Protocol to the CRC, Article 3, prohibits the use of children in forced labor and other illegal activities.
		Offences against people with physical or mental disabilities, calamity-affected or uprooted people, or people whose access to justice systems is limited, denied or controlled.	The UN Declaration on the Rights of Disabled Persons, 1975, Articles 2 and 10, protect against the exploitation of disabled persons.

³ Ibid.

Art V.4		<p>The victim shall have the authority to petition the court to order criminal prosecution for the trafficking offense, if the government choose not to prosecute the case.</p> <p>Any decision not to prosecute a trafficking offense must be for good cause. A government attorney who declines to prosecute must submit such cause in writing to the court and the victim.</p>	<p>The Convention fails to establish accountability among government attorneys for decisions not to prosecute trafficking offences.</p>
Article VI: Mutual Legal Assistance			
<p>Art. VI.1 The State Parties to the Convention shall grant to each other the widest measure of mutual legal assistance in respect of investigations, inquiries, trials or other proceedings in the requesting State in respect of offences under this Convention. Such assistance shall include:</p>	<p>The language is not sufficiently binding.</p>	<p>The State Parties to the Convention shall undertake to develop strategies and mechanisms to grant to each other the widest measures of mutual legal assistance with in respect to investigations, inquiries, trials or other proceedings in the requesting state with respect to offences under this Convention. Such assistance shall include:</p>	<p>The identification of specific roles make the language more binding on State Parties' obligations.</p>
<p>Art. VI.2 Requests for assistance shall be executed promptly in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting State and shall give reasons for the same.</p>	<p>The language is not sufficiently binding.</p>	<p>The State Parties to the Convention agree to promptly execute requests for assistance in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting Sate and shall give reason for the same.</p>	<p>The identification of specific procedures make the language more binding on State Parties' obligations.</p>
Article VII: Extradition or Prosecution			
<p>Art. VII.1 The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty that has been or may hereinafter be concluded, between any of the Parties to the Convention.</p>	<p>This provision lacks a time frame in which to conduct or complete negotiations.</p>	<p>The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty that has been or may hereinafter be concluded, between any of the Parties to the Convention.</p> <p>In the absence of an extradition treaty, extradition treaties shall be concluded within a reasonable time period from the date on which this Convention enters into force.</p>	<p>This specifies a time frame which the State Parties must abide.</p>

Article VIII: Measures to Prevent and Interdict Trafficking in Women and Children

<p>Art. VIII.1 The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.</p>	<p>This ignores the need for adequate personnel with specialized knowledge and providers of specialized services. It also fails to provide training to enable service providers to distinguish between the different types of trafficking and the corresponding different types of services victims will need.</p>	<p>The State Parties to the Convention agree to develop and provide sufficient human resources and means, and provide training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecutions of offences under this Convention so as to prevent, control, combat and curb trafficking in persons and the crimes related to it.</p>	<p>This allows for the inclusion of special service providers and the development of greater expertise in this area. The UN Protocol Against Trafficking, Article 10, and the Human Rights Standards For The Treatment of Trafficked Persons, No 21, provide for training for officers in law enforcement, immigration and other related fields.</p>
<p>Art. VIII.2 The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.</p>	<p>Immigration officers and lawyers are not included.</p>	<p>The State Parties to the Convention shall sensitize their law enforcement agencies, immigration officers, border police, legal professionals and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in persons.</p>	<p>UN Protocol Against Trafficking, Article 10, provides for the training for immigration officers.</p>
<p>Art. VIII.3 The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.</p>	<p>The Task Force includes only officials of the State Parties and excludes other individuals or groups active in these fields, thus it seems more like a fact-finding body that would lack the capacity to make recommendations to Member States.</p>	<p>For the purpose of considering progress made in the implementation of the present Convention, there shall be established a committee of seven members from each state of competence in the field covered by the Convention. The representatives shall be nominated by the State Parties from among their nationals and shall serve in their personal capacity.</p>	<p>UN Charter, Article 2, recognizes the principle of sovereign equality.</p>

		<p>The member of the Committee shall be nominated for a term of four years. However, the terms of three members nominated at first election, chosen by the chairperson of the committee, shall expire at the end two years.</p> <p>States parties undertake to submit to the Secretary General of the SAARC, for consideration by the committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:</p> <p>[a] Within one year after the entry in to force for the state consideration;</p> <p>[b] Thereafter at least every three years and further at the request of the Committee.</p> <p>The committee shall meet for period of at least one week, twice in a year, to consider reports of State Parties submitted in accordance with article V111 of the Convention and to conduct investigations where necessary.</p>	<p>Monitoring would increase the effectiveness of the Convention's implementation by holding Member States accountable for their actions or lack thereof.</p> <p>There are provisions for monitoring bodies in various conventions such as: ICCPR, Article 28; CEDAW, Article 17; ICESCR, Article 16; CERD, Article 8; and CRC, Article 43.</p>
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<p>Art. VIII.5 The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.</p>	<p>The language is not sufficiently binding.</p>	<p>The Committee shall also discuss and develop methods and concepts that allow it to work cooperatively with State Parties and their respective governmental agencies for the prevention, control and prosecution of crimes related to trafficking.</p> <p>Without prejudice to international commitments to upholding the right to freedom of movement, the states shall strengthen such broader controls as may be necessary to prevent and detect trafficking in persons.</p> <p>The State Parties to the Convention agree to exchange, on regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water and air. The information so furnished shall include information of the offenders, their fingerprints, photographs, DNA, methods of operations, police records and records of conviction.</p>	<p>To enable SAARC countries to coordinate their efforts and maintain vigilance against trafficking as well as to allow international organizations to coordinate their efforts with government agencies via the SAARC Committee.</p> <p>To make consistent with the UN Protocol Against Trafficking, Article 11 (1). This is also especially true in light of the fact that many countries in the region share a long, open border with India.</p> <p>More binding language has the effect of increasing State Parties' commitment to working together.</p>

<p>Art. VIII.6 The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.</p>	<p>The language is not sufficiently binding.</p>	<p>The State Parties to the Convention agree to take necessary measures for the supervision of employment and recruitment agencies so as to prevent, control and combat trafficking in persons under the guise of recruitment or provisions of employment.</p>	<p>More binding language holds State Parties more accountable.</p>
<p>Art. VIII.8 The State Parties to the Convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in Women and Children and its underlying causes including the projection of negative images of women.</p>	<p>The language is not sufficiently binding.</p>	<p>The State Parties to the Convention agree to promote awareness, inter-alia, through the use of the media, of the problem of trafficking and its underlying causes including the projection or negative images of women.</p> <p>The State Parties to the Convention agree to promote social, cultural and legal reform to eradicate gender-based discrimination.</p> <p>State Parties to the Convention agree to give high priority to education (such as incorporating the issue of trafficking in school text books), as a preventive measure to combat trafficking and also to ensure economic rights of vulnerable groups.</p> <p>State Parties should acknowledge trafficking in persons as "crimes against humanity" and should lobby the international community to include the offence of trafficking in persons under the statute of International Criminal Court (ICC).</p> <p>State Parties to the Convention agree to ensure the protection of victims of trafficking in persons, especially women and children, from re- victimization.</p>	<p>More binding language holds State Parties more accountable.</p> <p>CEDAW, Article 2, and the UN Protocol Against Trafficking, Article 9 (5), also provides for social, legal and cultural measures to eradicate gender discrimination.</p> <p>UN Protocol Against Trafficking, Article 6 (4), has recognized that education is important element in combating trafficking.</p> <p>ICESCR, Article 13, has ensured the right to education.</p> <p>ICC Statute, Article 5, and ICTR Statute, Article 3, recognize other crimes, such as rape and torture, as crimes against humanity if they are systematically directed against any civilian population.</p> <p>To make consistent with the UN Protocol Against Trafficking, Article 9.</p>

		<p>State Parties agree to conduct joint research and collect comprehensive data on trafficking in at-risk countries (i.e. sending and receiving nations) and to disseminate the information to relevant parties, including law enforcement officials, INGOs and NGOs working in relevant fields and other government agencies.</p> <p>State parties shall use student organizations, teachers, social workers and youth clubs to advocate against trafficking in persons.</p> <p>State parties shall ensure establishment of hotlines, online services, help centers for the potential victims and victims of trafficking.</p> <p>State parties to the Convention shall agree to prevent victims from being prosecuted for illegal entry or residence or for the activities they perform as a consequence of their status as trafficked persons.</p> <p>State parties agree to ensure protection of the victim and their family from retribution by the traffickers.</p> <p>State parties to the Convention agree to establish specialized law enforcement unit dealing with trafficking in persons.</p>	<p>UN Protocol Against Trafficking, Article 9 (2), states that research and mass media campaigns are important measures in combating trafficking.</p> <p>Student organizations, teachers, social workers and youth clubs would provide an effective medium for advocacy in the region.</p> <p>Communicating directly equips victims and potential victims with an important resource and source of information against trafficking.</p> <p>To make consistent with the Human Rights Standards For The Treatment of Trafficked Persons, No 6.</p> <p>To make consistent with Human Rights Standards For The Treatment of Trafficked Persons, No 4, and the ICC Statute, Article 68, which also seeks to ensure the safety of victims.</p> <p>The 2nd Optional Protocol to the CRC, Article 8 (1)f, provides for the protection of child victims and their families.</p> <p>To make consistent with Human Rights Standards For The Treatment of Trafficked Persons, No 8.</p>
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Article IX: Care, Treatment, Rehabilitation and Repatriation of the Victims			
<p>Article IX: Care, Treatment, Rehabilitation and Repatriation of the Victims</p> <p>Art. IX.1 The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.</p>	<p>The title of Article IX should emphasize the recognition and protection of victims rights.</p> <p>No role for NGOs or inter-sect oral agencies as envisaged in this action. Further, the nature of repatriation is not mentioned.</p>	<p>Article IX: Recognition of Human Rights of Victims</p> <p>The State Parties undertake to:⁵</p> <ul style="list-style-type: none"> i) work out modalities to ensure the voluntary return to country of origin and restoration of rights and participatory processes for victims. ii) provide legal assistance, counseling, and all other support services victims need. iii) provide a safe environment for victims. iv) work with NGOs to repatriate victims of trafficking who wish to be repatriated. 	<p>Further additions to this Article specify victims rights.</p> <p>The Human Rights Standards For The Treatment of Trafficked Persons and the UN Protocol Against Trafficking, Article 8 seek to ensure voluntary repatriation for victims. Also, the UN rapporteur on Violence against Women discusses voluntary repatriation.</p>
<p>Art. IX.2 Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.</p>	<p>Care and maintenance services are not specified.</p>	<p>Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The care and maintenance options include provisions for shelter, food, foster care, legal services, health care (both mental and physical), and citizenship papers (available upon request) for children born in recipient country, and other services, including safe return home.</p>	<p>UN Protocol Against Trafficking, Article 6, provides for care and maintenance services for victims and their children.</p> <p>CRC, Articles 3, 8 and 19, guarantee these provisions regarding child victims.</p>

⁵ Neergaurav, 50.

<p>Art. IX.3 The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counseling, job training and health care facilities for the victims.</p>	<p>Protective home provision seems to be control-oriented.</p>	<p>The State Parties to the Convention shall establish safe homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counseling, job training and health care facilities for the victims.</p>	<p>To ensure homes are created to provide for the victims' needs and not for protectionist reasons.</p>
<p>Art. IX.4 The State Parties to the Convention may also authorize the recognized non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.</p>	<p>Ignores expertise of NGOs.</p>	<p>The State Parties to the Convention may also work together and harness the knowledge and expertise of recognized non-governmental organizations to establish, implement and support such safe homes or shelters for providing suitable care i.e. legal advice, counseling, job training and health care facilities and maintenance for the victims of trafficking.</p>	<p>Expertise from NGOs would increase effectiveness.</p>
<p>Art. IX.5 The State Parties to the Convention shall encourage recognized non-governmental organizations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.</p>	<p>This provision has also mentioned about protective home.</p>	<p>Art. IX.5 The State Parties to the Convention shall encourage recognized non-governmental organizations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such safe homes or shelters for providing suitable care and maintenance for the victims of trafficking.</p>	<p>To delete the protective homes.</p>
		<p>State Parties to the Convention agree to provide appropriate compensation to victims of Trafficking.</p> <p>State Parties to the Convention agree to establish welfare fund for well being of victims of Trafficking and to facilitate the testimony of witnesses in the prosecution of traffickers.</p>	<p>To make consistent with the UN Protocol Against Trafficking, Article 6 (6), and the Human Rights Standards For The Treatment of Trafficked Persons, No. 14</p> <p>The 2nd Optional Protocol to the CRC, Article 9 (4), includes a provision for compensation of child victims.</p> <p>The ICC Statute, Article 79, provides for a Trust Fund to cover expenses associated with facilitating the testimony of witnesses.</p>

		<p>State parties agree to ensure and facilitate reintegration of victims and create shelters for the victims for whom reintegration is not possible.</p> <p>State parties agree to establish confidential medical, mental health, and legal services for the victims of trafficking.</p>	<p>The Human Rights Standards For The Treatment of Trafficked Persons, No. 26, seeks to ensure victim reintegration.</p> <p>The 2nd Optional Protocol to the CRC, Articles 9 (3) and 10 (2), and CRC, Article 39, ensure the reintegration of child victims and seek to provide assistance to child victims.</p> <p>The Human Rights Standards For The Treatment of Trafficked Persons, No. 22 and No. 23, seek to ensure confidential and affordable medical and psychological care for victims.</p>
		<p>General principle of non-discrimination —</p> <p>Member States shall not discriminate against victims of Trafficking in substantive and procedural law, policy or practice on grounds of ethnicity, gender, age, caste, class, language, religion, health status (including HIV/AIDS) political and civil status or the lack thereof, cultural beliefs and practices, birth or other status, including their status as victims.</p>	<p>To make consistent with the Human Rights Standards For The Treatment of Trafficked Persons No. 1; ICCPR, Article 2; ICESCR Article 3; CEDAW, Article 2; and to ensure that victims are not subject to discrimination.</p>
		<p>Member States shall not discriminate against the children of victims of Trafficking due to their status as victims' children in any area of children's' social life.</p>	<p>To make consistent with CRC, Article 2.</p>

		<p>Principle of non-discrimination against victims of Trafficking — Persons who are affected by trafficking, including those who have worked in the sex industry and other degraded forms of employment, shall not be stigmatized. It should be recognized that trafficking disproportionately affects women and children.</p>	<p>This principle has been added so as to guide the Member States' laws and policies in recognizing that women and children suffer disproportionately from trafficking.</p>
		<p>Principle of safety and fair treatment — The Member States shall recognize that trafficking has deprived victims of their rights and that Member States' governments must ensure that these victims do not suffer additional abuses once liberated from a trafficking situation, notwithstanding any question that might arise about their status. The Member States should ensure that the victims are protected from reprisals and further harm.</p> <p>The Member States shall identify competent authorities and develop policies, agencies and systems to provide for the victims' access to services, including legal counsel, holistic health care (including psychological care), temporary resident status and a safe environment.</p>	<p>UN Protocol Against Trafficking, Article 9, mandates the prevention of re-victimization.</p> <p>ICESCR, Articles 11 and 12, have ensured the right to the enjoyment of the highest attainable standards of physical and mental health and the right to adequate housing.</p>

		<p>The Principle of special status, rights and needs of children— It shall be recognized that victims who are adults have legal positions and require legal remedies that are not always consistent with the legal position and needs of victims who are children.</p> <p>The special needs of affected children shall be protected according to various international instruments, including the Convention on the Rights of the Child.</p>	<p>UN Protocol Against Trafficking, Article 6, and the 2nd Optional Protocol to the CRC, Article 8, both seek to ensure that the special needs of child victims are met, which includes appropriate housing, education and health care.</p> <p>UN Protocol Against Trafficking, Article 6, guarantees that the special needs of child victims are met.</p>
		<p>The Member States shall agree to provide foster care services, adoption services and citizenship to unaccompanied or abandoned child victims of trafficking whose families are not identified and located within a reasonable period of time.</p> <p>The Member States shall develop laws and policies that assist the appropriate authorities to distinguish normal, voluntary travel from forced travel due to trafficking, and to make the process free of biases against specific categories of people, such as women and immigrants.</p>	<p>CRC, Article 7, provides children with the right to acquire a nationality.</p> <p>Human Rights Standards For The Treatment of Trafficked Persons, No: 2 (HRS), provides for the repeal of all measures aimed at preventing or obstructing voluntary movement of trafficked persons.</p> <p>The right to freedom of movement has been recognized in many human rights instruments, such as the Universal Declaration of Human Rights, Article 13 (UDHR), and ICCPR, Article 12.</p>

		The right to freedom of movement must not be infringed by Member States in their efforts to combat trafficking. ⁶ Therefore, trafficking should be treated as a human rights issue and not an immigration problem requiring exclusionary laws and practices.	To protect the right to freedom of movement so that women may travel freely and to distinguish between migration and trafficking. UDHR, Article 13, and ICCPR Article 12, provide for the right to freedom of movement.
		Principle of State responsibility — Member States should recognize the need to incorporate the highest standards into their laws and policies and should review and analyze their laws to ensure their conformity with international human rights standards and their effectiveness in eliminating trafficking and in protecting all rights of trafficked persons. ⁷	To vest responsibility in Member States to set high legal standards that safeguard the enjoyment fundamental human rights and maintain rule of law.
Article X: Implementation			
Art. X. The State Parties to the Convention shall adopt, in accordance with their respective Constitutions, the legislative and other measures necessary to ensure the implementation of the Convention.	This provision limits the reach of the agreement to Member States' constitutions.	The State Parties to the Convention shall adopt the legislative and other measures necessary to ensure the implementation of the Convention.	Part of the implementation process may include constitutional amendments, and thus a country should not be required to implement the Convention only to the extent of its constitution.

⁶ Coomaraswamy, Radhika, "Integration of the Human Rights of Women and the Gender Perspective, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences;" in accordance with the Commission on Human Rights Resolution 2000/45.

⁷ Ibid, 26.

Article XIII: Entry Into Force

<p>Art. XIII This Convention shall enter into force on the fifteenth day following the day of the deposit of the seventh Instrument of Ratification with the Secretary General.</p>	<p>This provision requires the participation of all seven countries.</p>	<p>This Convention shall enter into force on the fifteenth day following the day of deposit of the fourth Instrument of Ratification with the Secretary General.</p> <p>For each State ratifying the present Convention or acceding to it after the deposit of the fourth instrument of ratification or accession, the Convention shall enter into force on the fifteenth day after the deposit of its own instrument of ratification or accession.</p>	<p>While ratification by every country remains an important objective, the implementation of the Convention in countries that have already ratified it should not be made to wait on the ratification of other countries.</p>
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Note: There is no clause for Amendment of the Convention, denunciation of Convention and settlement of dispute on any matter of Convention.