



## MISSING CHILD ALERT NARRATIVE REPORT - SYNOPSIS

The MCA programme aims to enhance and strengthen the collective regional response to the issue of missing children, examine potential linkages with cross border trafficking, and develop a regional cross-border trafficking alert system in Bangladesh, India and Nepal.

According to Save the Children, "The only reliable statistics [on missing children] are those that refer to the number of children 'rescued' each year, and the number of cases opened against traffickers or traffickers convicted each year.

Despite broad ranging efforts by countries in the region, child sexual abuse (CSA) and the commercial sexual exploitation of children (CSEC) continue to be the most pervasive and under-reported forms of human rights violations for children in South Asia and are estimated to affect significant numbers of children across the region.

The Children's Act of Nepal prohibits the involvement of children in immoral professions. While Nepal doesn't have the most child labourers in South Asia in terms of actual numbers, the International Labour Organisation estimates that "in relative terms children in Nepal face the highest risk of being in child labour than elsewhere in South Asia, with over one quarter (26 per cent) of all 5-17 year olds engaged in child labour."

In Bangladesh, the Human Trafficking Deterrence and Suppression Act (HTDSA), 2012, which repeals the previous 'Prevention of Repression against Women and Children Act' has been described as a "spectacular achievement" by the Bangladeshi Government and implementing partners, and is touted as a rights-based piece of legislation placing "concerns for trafficking victims at the core of its functional fold."

The Act also contains a strong protective regime to safeguard and rehabilitate victims of trafficking stipulating that all processes related to the identification, rescue, rehabilitation and repatriation of victims of trafficking will be conducted in a 'victim friendly' way and with special regard to the needs of women and children.

But this ambiguity in the law has led to spurious distinctions being made wherein children rescued from brothels are recognised as victims of trafficking, whereas those found soliciting on the streets are treated as child offenders. Since ITPA was implemented, there have been cases of children being arrested and presented before the Juvenile Justice Board rather than the Child Welfare committee despite provisions in the Juvenile Justice (Care and Protection of Children) Act, 2000, stating that a rescued child must be treated as a child in need of care and protection and placed in safe custody. This Act is important in the context of protecting and promoting the rights of children in India and covers children in conflict with the law as well as children in need of care and protection.

Although the Act does not define terms such as trafficking, abuse, or sexual abuse, it does make punishable certain crimes related to trafficking, stating that "whoever ostensibly procures

a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine." Therefore, several acts such as the Child Labour Act, Juvenile Justice Act, Interstate Migration Act and Protection of Children from Sexual Offences Act come into play.

In Nepal, The Trafficking in Persons and Transportation Control Act (2007) prohibits human trafficking and transportation and seeks to protect and rehabilitate victims of trafficking through its various provisions.

The Children's Act 1992, providing for the protection of the rights and interests of children in Nepal, specifies in section 14 that children shall not be offered to a god for any financial compensation and in section 16 that children shall not be involved in any immoral profession.

Case law has helped countries to define parameters related to missing children and trafficking and to affirm victim's rights to protection, rehabilitation, and compensation.

A few child-friendly measures are also prescribed, such as: establishing special courts that conduct the trial in-camera and without revealing the identity of the child; ensuring that the child is not called upon repeatedly to testify in court; involvement of interpreters, counsellors, or other professionals to assist the child; ensuring that the child has a parent or other trusted person accompanying them; the right of a child victim to free legal assistance and allowing regular recesses.

The Goa Children's Act, 2003 contains a number of provisions with regard to the protection of rights of child victims including providing for the establishment of a Children's Court, which is to try all offences against children.

Section 32 contains a number of provisions for the protection of child victims including provisions with regard to confidentiality; care during cross-examination of child witnesses; care of special needs of child victims and witnesses; presence of counsellors/ social workers while recording testimony; provisions of in-camera trials etc.

The Committee on the Rights of the Child has observed that while the HTTCA is a welcome move forward in terms of fighting trafficking of children, it is chiefly concerned with "the lack of privacy, legal representation and protection that victims of trafficking face during the criminal justice process, and a lack of rehabilitation and reintegration shelters thereafter." Though some existing laws refer to witness protection, provisions appear to be insufficient to adequately protect women and children who have been trafficked for sexual exploitation. The Human Trafficking Deterrence and Suppression Act (HTDSA), 2012, in Bangladesh, contains strong provisions to protect victims and witnesses to trafficking crimes by making specific actions related to the victim's security punishable offences.

Now, some of our principal legal recommendations, at a general level, are:

Victim and Witness Protection Law, which involves drafting and enacting a comprehensive victim and witness protection law as soon as possible.

Ratification of International Instruments: All SAARC members need to ratify the Palermo Protocol and come to a standard definition of trafficking, which help in quicker identification of cases and more efficient collection of data.

SAARC Convention on Trafficking: Should be amended to stay in line with international standards in order to improve regional cross-border initiatives.

Child-friendly judicial processes: Formal witness protection procedures, ensuring privacy through in-camera proceedings, fast-track courts to streamline legal proceedings, health counselling and psychosocial support.

We now provide some country-specific recommendations.

## **Bangladesh**

Ensure implementation and proper functioning of the Human Trafficking Deterrence and Suppression Act, 2012, with specific focus on the areas of mutual legal assistance, legal education mechanisms for law enforcers, judicial officers, and public prosecutors, and sustainable procedures of repatriation and return

Full implementation of provisions guaranteed by the act — security, interpreters, confidentiality, in-camera hearings, etc.

## **Nepal**

Ratify the Palermo Protocol

Expand the definition of trafficking in the Human Trafficking and Transportation Control Act, 2007, to account for the complex dynamics of human trafficking, emerging trends, new modus operandi of traffickers and varied purposes of trafficking.

Make the Juvenile Justice procedural rules applicable to all children, not only those who are in conflict with the law

The government should make use of the Mutual Legal Assistance Act (MLA) to initiate bilateral talks with primary destination countries for Nepali trafficking victims

Adequate budgetary allocation for integrating technology in legal procedures

## **India**

Draft and enact comprehensive anti-trafficking legislation in line with international obligations

Amend the Penal Code with a view to negating the element of force or other forms of coercion, abduction, fraud, and deception when recruiting, harbouring, transferring, or receiving a child for the purpose of exploitation

Expressly stipulate in the Criminal Law (Amendment) Act that child victims of offences under the Optional Protocol are not to be deemed offenders but always victims.