Human Trafficking: Evaluating the Response of the Government of Bangladesh Compared with International Law

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ABSTRACT

Although the crime of human trafficking is very common in Bangladesh, the scholarship on this issue is limited. Scholarly research into the issue mainly focuses on different causes and forms of human trafficking. Trafficking of men, trafficking of Rohingya refugees and organ trafficking remain unaddressed. Only a handful of researchers have pointed out the responsibilities of government, and existing research has not scrutinised whether official activities are effective, or whether they comply with international law.

This thesis focuses on sex and labour trafficking of people from Bangladesh. It demonstrates how poorly-educated women and children living in poverty in a highly patriarchal system are deceived by unscrupulous traffickers and their agents. If they survive their ordeals, which typically involve forced labour and sex work, victims are then exposed to a legal and policy environment that is not designed to achieve their successful reintegration into society.

Through interview research, the experiences of trafficked victims and NGO workers are explained. Then, applying a human rights-based approach, and informed by strands of critical race theory and feminist theory, this thesis analyses both the international and domestic laws applying to Bangladesh relating to trafficking, and demonstrates that there has very largely been a failure of law and institutions to protect the people of Bangladesh from traffickers.

To combat human trafficking successfully will require future research and resources to strengthen an effective criminal justice response as well as human rights-based responses, alongside effective transnational efforts. The policy recommendations and remedies for reform will help Bangladesh build better outcomes for the victims of this horrid practice.

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LIST OF ABBREVIATIONS

ACT	Actions for Combating Trafficking-in-Persons
AIDS	Acquired Immune Deficiency Syndrome
AMA	American Medical Association
ASA	Association for Social Advancement
ASEAN	Association of Southeast Asian Nations
BBC	British Broadcasting Corporation
BCTIP	Bangladesh Counter Trafficking in Persons
BGB	Border Guard Bangladesh
BGMEA	Bangladesh Garment Manufacturers and Exporters Association
BLC	Bangladesh Law Chronicles
BMJ	British Medical Journal
BMET	Bureau of Manpower, Employment and Training
BNWLA	Bangladesh National Women Lawyers' Association
BRAC	Bangladesh Rural Advancement Committee
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CATW	Coalition Against Trafficking in Women
CEACR	Committee of Experts on the Application of Convection and Recommendation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CID	Criminal Investigation Department
CMW	Committee on the Protection of the Rights of All Migrant Workers and Member of their Families
COP	Conference of the Parties
CRC	Committee on the Rights of the Child
CRC	Convention on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
CTC	Counter Trafficking Committee
CTR	Critical Race Theory

CWCS	Centre for Women and Children Studies
DAM	Dhaka Ahsania Mission
DIP	Department of Immigration and Passports
DP	Diplomatic Protection
ECOSOC	United Nations Economic and Social Council
ETI	Ethical Trading Initiatives
FLA	Fair Labour Association
GLOACT	Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants
HIES	Household Income and Expenditure Survey
HIV	Human Immunodeficiency Virus
HTTC	Human Trafficking and Transportation Control Act
ICAT	Inter-Agency Coordination Group against Trafficking in Persons
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICTY	International Criminal Tribunal for the former Yugoslavia
IDSN	International Dalit Solidarity Network
ILO	International Labour Organization
INGO	International Non-Governmental Organization
IOM	International Organization for Migration
ITGLWF	International Textiles, Garments and Leather Workers' Federation
ITPA	Immoral Trafficking Prevention Act
MOHA	Ministry of Home Affairs
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
NHS	National Health Service
NHSBT	National Human Services Blood and Transplant
NLASO	National Legal Aid Services Organization
NPA	National Plan of Action
OHCHR	Office of the High Commissioner for Human Rights
PACHTO	Prevention and Control of Human Trafficking Ordinance
PS	Police Station

PSHTA	Prevention and Suppression of Human Trafficking Act
PTSD	Post-Traumatic Stress Disorder
RMG	Ready-Made Garment
RRRI	Rescue, Recovery, Repatriation and Reintegration of Victims of Trafficking
RTF	Regional Task Force
SAARC	South Asian Association for Regional Cooperation
SDF	SAARC Development Fund
SDG	Sustainable Development Goals
SOMTC	Senior Officials Meeting on Transnational Crime
SOP	Standard Operating Procedure
THB	Trafficking in Human Being
TI	Transparency International
TIP	Trafficking in Persons
STD	Sexually Transmitted Diseases
TVPA	Trafficking Victims Protection Act
TVPA	Victims of Trafficking and Violence Protection Act
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UNTP	United Nations Trafficking Protocol
USA	United States of America
USAID	United States Agency for International Development
VAW	Violence against Women
WB	World Bank
WCL	World Confederation of Labour
WGCFS	Working Groups of Contemporary Forms of Slavery
WHA	World Health Assembly
WHO	World Health Organization
YPSA	Young Power in Social Action

STATEMENT OF AUTHORSHIP

Except where reference is made in the text of the thesis, this thesis contains no material published elsewhere or extracted in whole or in part from a thesis accepted for the award of any other degree or diploma. No other person's work has been used without due acknowledgment in the main text of the thesis. This thesis has not been submitted for the award of any degree or diploma in any other tertiary institution.

Signature: Mst Kanij Fatima

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INTRODUCTION

A *The Story of Rubina*

On 30 April 2017, early in the morning, I started my seven-hour journey southwest from Dhaka, the capital of Bangladesh, by road and across the Padma River to the city of Jessore.

My objective was to visit Rights Jessore – as its website describes it, as 'a leading human rights organization in Bangladesh dedicated to promotion and protection of human rights, prevention of human trafficking, and providing services to the victims of human trafficking'.[1]

After I arrived, the Manager of Rights Jessore introduced me to victims of sex and labour trafficking, whom I hoped to interview.

When preparing my interview questions, I had underestimated how tough it would be to face the victims of trafficking and listen to their horrifying experiences.

One of the victims, Rubina,[2] was dressed in a veil and sat in front of me shyly. After I took steps to ensure her informed consent, I spoke with her informally before asking her whether she was willing to allow me to record her experiences. Then Rubina told me her story.

Rubina was from a poor family from a small village in Jessore. She was forced to marry a man who had already two wives. But after a few months of marriage, her husband started torturing her, both physically and mentally. Rubina blamed fate and tried to compromise with her husband, as she became the mother of two small children and was dependent on her husband for income. One day, her husband decided to leave her and her children in the care of her father's family, and after that he stopped providing any money to support her and the children.[3]

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[1] Rights Jessore,'Home', *Rights Jessore* (2020) <https://rightsjessore.org/>.
[2] As an ethical requirement of this research I use pseudonyms to preserve participant anonymity and to protect participant confidentiality.
[3] Bangladesh is a patriarchal society. A majority of women are unskilled and unemployed and depend on their

Rubina looked for work. Her uncle offered her a job in Oman. Rubina was lured into believing that she would get a good job and could earn huge amounts of money within a year. She immediately agreed because she was desperate to ensure that her children were properly nourished and sheltered. Rubina's father supported the plan and helped Rubina to arrange money for her travel to Oman by selling his property. Rubina handed the money to her uncle and her journey to her new beginning started. She had no idea that something bad was waiting for her and that her life would soon be shattered.

With thousands of dreams, Rubina arrived in Oman's airport and was received by two people who took her passport and other documents. At this time, she didn't have any idea that she had been sold. Rubina was told that she would be employed to do household work; however, she was instead confined in a hotel and tortured and raped by several people every day. When she refused to engage in sex her tormentors beat her brutally and gave her cigarette burns over her whole body.

One day, Rubina had a customer from Bangladesh. Rubina begged him to save her from this hell, and she used his mobile phone to call her father and asked him to rescue her as soon as possible.

Rubina's father immediately contacted her uncle (the middleman) and asked him to bring her back. However, the middleman demanded 2 lakh taka (AUD 3,350) to bring her back. Finally, Rubina came home through the help of a non-government organization (Rights Jessore).

When she returned, Rubina was physically and mentally ill. She has had recurrent nightmares. Her husband (who abandoned her earlier) divorced her after she returned, and neighbours ostracised her. Nobody allowed their children to play with her children. She felt too ashamed to go outside or to seek work. Rubina received counselling from Rights Jessore, but only for a short period.

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husbands for everything. According to cultural and social traditions, they confine themselves within the home. When a woman is divorced and abandoned by her husband, she suffers economic hardship and insecurity and she and her children will experience significant disadvantages in society. See Neaz Ahmed and Faisal Ahmmed, 'Problems and challenges of deserted women in Bangladesh: An observational study' (2015) 3(1) *Journal of International Social Issues* 1. Without any support from government these women and their children become vulnerable to human trafficking.

Rights Jessore helped Rubina to file a complaint with the police. However, Rubina was not kept up to date on the progress of her criminal case. She was vulnerable because criminals bribe the police.[4] She was continuously threatened by the criminals involved in her trafficking and exploitation. Ultimately, while her criminal case was pending before the court, community pressure from local leaders forced Rubina to settle her criminal case and compromise with the criminals.

Rubina's case is not unusual or rare. Annually, a huge number of women and girls from Bangladesh are trafficked internally within Bangladesh, and internationally within Asia, to Pakistan, Bahrain, Kuwait and the United Arab Emirates. Human rights groups estimated in the early 2000s that the number of people trafficked could be between 10,000 to 20,000 people.[5]

This thesis focuses on sex and labour trafficking of people from Bangladesh. Through interview research, the experiences of trafficked victims and NGO workers are explained. Then, applying a human rights-based approach, and informed by strands of critical race theory and feminist theory, this thesis analyses both the international and domestic laws applying to Bangladesh relating to trafficking, and demonstrates that there has very largely been a failure of law and institutions to protect the people of Bangladesh from trafficking. In the concluding chapter I propose solutions to this problem.

B *Existing Literature and its Assessment*

Before setting out the methodology deployed in this thesis, a short survey of the literature is provided to identify the gaps in scholarship that this thesis will address.

A number of studies have been developed by the United Nations that address the issue of human trafficking on a global basis.[6] This reflects the fact that the international community is paying more

[4] This case study is made up from experiences of different trafficked victims.
[5] Sigma Huda, 'Sex trafficking in South Asia' (2006) 94(3) *International Journal of Gynecology & Obstetrics* 374.
[6] The United Nations has adopted a range of international treaties over the 19th and 20th centuries to combat human trafficking, following much research on the issue. This includes a range of international criminal laws and international human rights laws as well as regional Conventions, as discussed in Chapter Three and Chapter Four. Almost every year since 2010 the United Nations has published an official report on human trafficking. See United Nations Office on Drugs and Crime (UNODC), *Addressing Trafficking in Persons since 1949* (2 December 2010);

attention to this crime. In addition, there are a number of local and international non-government organizations (NGOs) that assist victims of human trafficking. These researchers and NGOs have conducted important research in the field of human trafficking. However, although human trafficking is a worldwide human rights issue, only a limited amount of research focuses on Bangladesh, and only relatively few scholarly articles and reports addressing the topic. This is surprising, given that Bangladesh is one of the principal source countries for this activity.[7]

This section outlines the existing literature on human trafficking in Bangladesh and identifies multiple gaps which will be addressed by this research paper. In summary, the gaps are as follows:

1. The literature tends to focus on causes and forms of trafficking, rather than analysing the effectiveness of policy responses and relevant institutions.
2. The literature largely fails to detail the connection between Bangladeshi law and human trafficking.
3. Organ trafficking, and the legal treatment of it in Bangladesh, has been largely overlooked.
4. Existing literature focuses more on the response of local NGOs, rather than evaluating the responsibilities of the government of Bangladesh.
5. Existing literature does not recognise the importance of child trafficking specifically.

United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Agenda Item Item 14 (g) of the provisional agenda E/2002/100, UN Doc E/2002/68/Add.1 (20 May 2002); United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons* 2016, 2018; United Nations Office on Drugs and Crime (UNODC), *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organised Crime and The Protocol Thereto* UN Doc ST/ODC(09)/L514; United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights and Human Trafficking' (Fact Sheet No 36, United Nations, 2014) <https://www.ohchr.org/Documents/Publications/FS36_en.pdf>; United Nations Office on Drugs and Crime (UNODC), *Global Initiative to Fight Human Trafficking*, (26 March 2007); United Nations High Commissioner for Refugees, *Guidelines on International Protection: The application of Article 1A (2) of the 1951 Convention and/ or 1967 Protocol relating to the status of Refugees to victims of Trafficking and persons at risk of being trafficked*, UN Doc HCR/GIP/06/07 (7 April 2006).

[7] Amrita Biswas, 'Human Trafficking Scenario in Bangladesh: Some Concerns' (2015) I(IV) *International Journal of Humanities & Social Science Studies* 85. Ruh Afza Ruhi, 'Human Trafficking In Bangladesh: Overview' (2003) 25(4) *Asian Affairs* 49. Md Ruhul Amin and Md Rashidul Islam Sheikh, 'Trafficking Women and Children in Bangladesh: A Silent Tsunami of Bangladesh' (2011) 2(4) *Journal of Economics and Sustainable Development* 202. M Bashir Uddin, 'Human trafficking in South Asia: Issues of corruption and human security' (2014) 2(1) *International Journal of Social Work and Human Services Practice* 18; Mohammad Barad Hossain Chowdhury,'Trafficking in Persons in Bangladesh', *United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders* (Online Resource Material Series No.89) <https://www.unafei.or.jp/publications/pdf/RS.../No89_PA_Chowdhury.pdf>; Sabiha Yeasmin Rosy, 'Trafficking in Women in Bangladesh: Experiences of Survivors and Challenges to Their Reintegration' (Masters Thesis, University of Bergen, 2013); Md Rahaman, 'Human Trafficking in South Asia (Special Preferences on Bangladesh, India and Nepal): A Human Rights Perspective' (2015) 20(3) *IOSR Journal of Humanitites and Social Science* 1.

6. The existing literature tends not to have a theoretical framework or adequate research methodology.
7. Finally, there are no scholarly publications addressing the relevant policies undertaken and implemented by the government of Bangladesh.

Firstly, most of the literature pays attention to the causes and different forms of trafficking but not to the effectiveness of responses. One of the exceptions to this trend is the work of Amrita Biswas, who has commented that '[h]uman trafficking is the sinister face of human mobility.'[8] In her article, Biswas focused on sex trafficking in Bangladesh, and concluded that the *Bangladesh Human Trafficking and Deterrence and Suppression Act 2012* has not been effective due to corruption[9] (which I also discuss in Chapter Six).

Ruh Afza Ruhi has also considered the efforts of a number of international donors and NGOs.[10] Ruhi has reported that young women and children become victims of trafficking through marriage, false promises of jobs in other countries (as in the case of Rubina) and the sale of women to traffickers by parents.[11] However Ruh does not clarify how effective NGOs have been in combating human trafficking.

Md Ruhul Amin and Md Rashidul Islam Sheikh have undertaken more ambitious work, dividing the causes of trafficking into push factors[12] and pull factors,[13] and have considered processes and patterns of trafficking. They also focus on the human rights of the survivors, providing details of the physical, social and legal conditions of victims.[14] Another author, M Basir Uddin, has addressed corruption as a root cause of trafficking in Bangladesh, and recommended ratification of the *Trafficking Protocol* to eradicate this crime (which has since been done).[15] However neither

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[8] Biswas (n 7) 85.
[9] Ibid.
[10] Ruhi (n 7).
[11] Ibid.
[12] Push factors include lack of economic solvency, lack of awareness, poverty, gender discrimination, migration, illiteracy, dowry, natural disaster and disempowerment.
[13] Pull factors include the (positive) effect of a free market economy, urbanization, better job opportunities, the influence of media information and communication technology, and economic solvency.
[14] Amin and Sheikh (n 7).
[15] Naimul Karim, 'Bangladesh signs up to U.N. treaty to combat human trafficking', *Reuters* (Online, 5 September 2019) <https://www.reuters.com/article/us-bangladesh-trafficking-un/bangladesh-signs-up-to-un-treaty-to-combat-

of these articles provide details about the effectiveness of law and policy responses to the issue.

NGOs have also addressed the causes and forms of trafficking and have gone further than merely analysing the response of the law and institutions to combat human trafficking. The International Organization for Migration (IOM) published an analysis of human trafficking in 2004 where they criticised the definition of trafficking in the *Trafficking Protocol* (Bangladesh agreed to join the Palermo Protocol in early September 2019).[16] They also addressed demand (pull) factors as a root cause of trafficking.[17] The Centre for Health and Population Research investigated the topic of human trafficking in 2001, highlighting various causes and forms of trafficking, and major routes used by traffickers. Their research focused on initiatives taken by NGOs to combat trafficking.[18] It identifies the absence of policies to protect citizens as one factor of human trafficking,[19] but did not review existing policies. Generally and unsurprisingly, the work of NGOs tends not to focus on the response of institutions and laws. The activities of NGOs are mostly victim-oriented. This thesis first addresses the research gap identified above, by analysing relevant law and policies in Chapters Five and Six, and then evaluating the performance of the Bangladesh government in fighting against human trafficking.

Secondly, there is very limited research showing the connection between the law and human trafficking. Mohammad Barad Hossain has analysed the different measures taken by the government of Bangladesh including prosecutions, protection of victims and attempts to prevent trafficking, but he has not scrutinised whether these strategies conform with international standards.[20] Md Razidur Rahman has also discussed the relationship between human rights law and human trafficking. Rahman argues that human trafficking is a violation of human rights when assessed against a number of relevant international human rights instruments.[21] Rahman also helpfully identifies a number of South Asian and international laws that have been developed to

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human-trafficking-idUSKCN1VP28G>; Uddin (n 7).

[16] International Organisation for Migration (IOM), 'Revisiting the Human Trafficking Paradigm: The Bangladesh Experience Part I: Trafficking of Adults ' (2004).

[17] Ibid.

[18] Rukhsana Gazi et al, '*Trafficking of Women and Children in Bangladesh: An Overview*' (Special Publication No. 111, ICDDR,B: Centre for Health and Population Research, <http://dspace.icddrb.org/jspui/bitstream/123456789/4046/1/ICDDRBSpecialPub-111-GaziR.pdf>.

[19] (IOM) (n 16).

[20] Chowdhury (n 7).

[21] Rahaman (n 7).

fight human trafficking. However, this work gives only a brief outline of the relevant laws and does not provide a detailed explanation of their application and effectiveness.

Musfiqa Ashraf's article, *'A study on women as human trafficking victims and the related laws in Bangladesh'*, provides a very brief description of applicable laws.[22] The article identifies the consequential effects of trafficking on victims (psychological effects, health effects and social effects), and addresses the importance of regional cooperation to fight against human trafficking. Ashraf mentions only the name of laws related to human trafficking, but there is no discussion of the contents of this legislation, nor its implementation. She also describes how government is working with NGOs and that it adopts different laws and policies to establish the rights of women and children. However, none of the policies are analysed in detail. Through my research, I focus on both previous and existing laws and policies, and highlight the importance of their implementation.

As mentioned above, several international and local NGOs have conducted research on various issues related to trafficking and they have documented trafficking cases. One of these local organisations, known as the Association for Community Development, has collected field data after working in Rajshahi, and published a book on trafficking in women and children.[23] Another well-known local NGO, the Bangladesh National Women Lawyers Association (BNWLA), also works on the issue of trafficking and has conducted research supported by various donor agencies. In BNWLA's research paper, 'Human Trafficking in Bangladesh: Analysis, Challenges & Recommendations', they argued that the *Human Trafficking and Deterrence and Suppression Act 2012* is consistent with international standards and consistent with the *Trafficking Protocol*. However, while valuable, the authors did not engage in a complete review and analysis of relevant international law. There is no discussion pointing out the obligations and responsibility of the state under international human rights law and international criminal law. Rather, they identified various challenges to the implementation of Bangladeshi laws relating to trafficking.[24]

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[22] Musfiqa Ashraf, 'A Study on Women as Human Trafficking Victim and the Related Laws in Bangladesh' (2018) 23(9) *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 64.
[23] Ruhi (n 7).
[24] Salma Ali, 'Human Trafficking in Bangladesh: Analysis, Challenges & Recommendations' (2013) *Bangladesh National Woman Lawyers' Association.*

Another international NGO, Winrock International, has briefly outlined the different domestic laws of Bangladesh relating to human trafficking.[25] In 2008, UNICEF studied the issue of child trafficking in South Asia and analysed different regional legal frameworks, including the strategies adopted by governments and civil society to address the issue.[26] None of the research published on behalf of international or local NGOs has addressed the responsibility of the government of Bangladesh under international criminal law and under international human rights law relevant to trafficking.

In 2018, the IOM, with the help of USAID, published a strategic document called the Human Trafficking Snapshot to provide information to practitioners who are fighting against human trafficking.[27] This paper identifies different forms, routes of trafficking and different recruitment strategies of human trafficking.[28] (These same patterns were confirmed by my own fieldwork, as discussed in Chapter One). One positive feature of this paper is that it identifies Rohingya refugees as victims. However, there is only a very brief discussion about their vulnerability. The report also addresses sexual exploitation, confirming that victims are trafficked to different brothels in places such as Dauladia, Kandapara and other major cities. Although victims of sexual exploitation can be women, men and children, victims are predominantly women and children. The report outlines different law and policies relating to human trafficking, but there is no explanation about how effective these laws and policies are to combat human trafficking. The Snapshot also does not identify any international obligation to combat this crime. It does, however, identify challenges to effective prevention of this crime, including inadequate victim identification and protection, weak law enforcement and weak prosecutions, and corruption, which indirectly demonstrates the failure of laws and institutions to fight against this crime.

Thirdly, organ trafficking is largely an unaddressed issue in the literature on human trafficking.

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[25] Winrock International, 'Review of Laws against Human Trafficking in Bangladesh prepared for Winrock International's Actions for Combating Trafficking-in-Persons (ACT) Program' (Project, Winrock International, 2011) <http://www.academia.edu/9498745/Review_of_Laws_against_Human_Trafficking_in_Bangladesh_prepared_for_Winrock_Internationals_Actions_for_Combating_Trafficking-in-Persons_ACT_Program>.
[26] United Nations Children's Fund, 'South Asia in Action: Preventing and responding to child trafficking' (2008).
[27] International Organization of Migration (IOM), 'Human Trafficking Snapshot, Bangladesh' (2018).
[28] Ibid.

Monir is the only researcher to have investigated the issue of organ trafficking in Bangladesh; however, his analysis did not include an explanation of the international law, and its applicability to the illegal organ trade. In his publications, he addresses the cause of organ trafficking and the suffering of victims who are exploited in the illegal organ market.[29] He evaluates the current law relating to organ transplantation, arguing that

> the new Act 2017 is a carbon copy of the previous Act 1999, except the new Act expands the donor list, reduces the imprisonment terms, and increases the monetary penalty for its violation. Bangladesh enacted a lax law instead of tightening its terms.[30]

However, Monir does not identify the gaps in current legislation in the light of international law. Some scholars focus on awareness building relating to organ donation and the enforcement of law against illegal organ trafficking, subsidising transplant costs for the needy, and establishing a central organ registration system to prevent the illegal organ trade.[31] The IOM has also briefly focused on organ trafficking and identified different causes and recruitment strategies.[32]

Organ trafficking is not easily separated from human trafficking, given that organ removal can take place in a destination or third country. However, due to space constraints it will not be analysed in detail in this thesis. Instead, the thesis will focus on sex trafficking and labour trafficking.

Fourthly, existing literature focuses more on the response of the local NGOs, rather than evaluating the responsibilities of the government of Bangladesh. The current literature considers the topic of reintegration and the lives of trafficked victims in shelter homes. Sabina Yeasmin Rosy and Golam

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[29] Monir Moniruzzaman, 'Against a regulated market in human organs: Ethical arguments and ethnographic insights from the organ trade in Bangladesh' (2018) 77(4) *Society of Applied Anthropology* 323.
Ibid.; Monir Monirzzuman, 'Human Organ Trafficking in Bangladesh', *The Daily Star* (Online, 17 September 2011) <https://www.thedailystar.net/news-detail-202760>.
Monir Moniruzzaman, '"Living cadavers" in Bangladesh: Bioviolence in the human organ bazaar' (2012) 26(1) *Medical Anthropology Quarterly* 69; Monir Moniruzzaman, 'The trade in human liver lobes: Bioviolence against organ sellers in Bangladesh' (2019) 25(3) *Journal of the Royal Anthropological Institute* 566.
[30] Moniruzzaman, 'Against a regulated market in human organs: Ethical arguments and ethnographic insights from the organ trade in Bangladesh' (n 29) 325.
[31] Mir Rahman and Shehrin Mahmood, 'Status of Organ Donation and Transplantation in Bangladesh' (2017) 101(1) *Transplantation* S30.
[32] (IOM) (n 16).

Sarwar have worked separately on the issue of reintegration of women victims of trafficking.[33] Diya Bose has also worked on reintegration and has identified that disciplining desire[34] is the process for the trafficked women to survive as well as to thrive.[35] The articles also identify different rights and services that trafficked victims can enjoy in shelter homes. In Chapter One I analyse these materials and demonstrate how rescued victims are receiving training and skills to survive in the future, as part of an evaluation of the responses of both NGOs and the Bangladesh Government.

Ashraful addresses recruitment processes that impact migrant workers who go to Gulf States and face exploitation.[36] Ashraful draws attention to the plentiful supply of labour offered by migrant workers from Bangladeshi, and the dependence of many Bangladeshi families on their remittances. This dependence means that migrant workers from Bangladesh are reluctant to question Gulf States about their treatment of migrant workers. Ashraful analyses the legal responsibility of recruitment agencies according to existing domestic legal instruments and argues that Bangladesh should challenge destination countries to improve their treatment of migrant workers. However, Ashraful does not consider the international obligations of destination countries to ensure the rights of migrant workers. Joarder, Miller and Ashraful also do not evaluate the international legal responsibility of Bangladesh in this area. Through this research I highlight the responsibility of government of Bangladesh to protect its citizens as a part of international community.

Fifthly, there are only a handful of works addressing the topic of child trafficking. In their paper, *'Sexual Exploitation of Trafficked Children: Evidence from Bangladesh'*,[37] Masahiro Shoji and Kenmei Tsubota identify different causes of child sexual exploitation and highlight the experiences

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[33] Rosy (n 7).
[34] Disciplining desire means to regulate a survivor's desires through directing them to engage in particular modes of self-improvement and rehabilitating their desires to seek gender-conforming occupations. The writer identifies this as the process of reintegration for women of poor Third World Countries. Diya Bose, ''There are no Victims Here': Ethnography of a reintegration shelter for survivors of trafficking in Bangladesh' [2018] (10) *Anti-trafficking Review* 139.
[35] Ibid.
[36] Ashraful Azad, 'Recruitment of migrant workers in Bangladesh: Elements of human trafficking for labor exploitation' (2019) 5(2) *Journal of Human Trafficking* 130.
[37] Masahiro Shoji and Kenmei Tsubota, 'Sexual Exploitation of Trafficked Children: Evidence from Bangladesh' (Working Paper No.175, JICA Ogata Sadako Research Institute for Peace and Development, June, 2018) <https://www.jica.go.jp/jica-ri/publication/workingpaper/wp_175.html>.

victims have in brothels. The article distinguishes between trafficked victims and non-trafficked (voluntary) participants in sex work (a distinction I return to later). However, they do not address the question whether prostitution fuels human trafficking.

Sixthly, an absence of theoretical frameworks and inadequate methodology are further characteristics of the existing literature in this area. There is only limited work that incorporates qualitative interviews with victims, analyses the applicability and gaps within domestic and international legal regimes relating to human trafficking in Bangladesh, and which analyses the failure of these legal regimes to address the needs of victims through the lenses of critical race theory and feminist theory. Musfiqa Ashraf utilises feminist theory in her research, but does not consider the other theoretical positions adopted in this thesis.[38] Md. Abdul Halim and Farhana Mehtab adopt a criminal justice approach, referring to the low conviction rates in Bangladesh, and identifying limitations of the current legislation on human trafficking.[39] They identify corruption, the lengthy system of criminal procedure and the absence of special tribunal to address trafficking crimes as the major reasons for their low number of successful prosecutions. The research findings of this thesis are similar. Like other literature, Halim and Mehtab's book describes different causes and forms of trafficking, which has been also confirmed in my research.[40] However, the authors do not focus on the responsibility of Bangladesh under international law, and there is no discussion of theoretical perspectives. While a number of studies on human trafficking are qualitative in nature, only a small body of research is based on qualitative interviews with victims of trafficking, and still fewer studies have involved Bangladeshi victims.

This thesis represents the first work that considers and applies feminist theory, critical race theory, the Marxist theory on forced labour, a human rights approach and a criminal justice approach.[41] I also address the topic of voluntary sex work, and consider the feminist abolitionist approach to that topic, from a Bangladeshi perspective. The theoretical perspectives inform my analysis of

[38] Ashraf (n 36).
[39] Md Abdul Halim and Farhana Helal Mehtab, *Human Trafficking: International and Bangladesh Perspective* (CCB Foundation, 2014).
[40] Ibid.
[41] Feminist theory, critical race theory, the Marxist theory on forced or unfree labour, human rights approach and criminal justice approach have been defined in Chapter Two and these theories have been applied in Chapter Three, Four, Chapter Five and Chapter Six to analyse both international and domestic responses.

international human rights law and criminal laws, and my evaluation of their effectiveness. In addition, I critically analyse Bangladeshi laws and policies within these theoretical frameworks and identify and evaluate the responses of these laws and institutions to the scourge of human trafficking. I adopt both a human rights approach and criminal justice approach to articulate the responsibilities of both Bangladesh and destination countries in addressing trafficking.

Finally, there are no scholarly publications addressing the policies developed and implemented by the government of Bangladesh. The Ministry of Home Affairs of the Government of Bangladesh prepared a Country Report on Combating Human Trafficking in 2016, in which it addressed different initiatives which had been undertaken by the government of Bangladesh and international and local NGOs.[42] However, the report is silent on the compatibility of those policies with international standards.

Thus, the material covered in the existing literature is mainly concerned with labour and sex trafficking of women and children. There is no discussion about the trafficking of men, or organ trafficking. Ethnic Rohingya refugees are vulnerable to labour trafficking and sexual exploitation both in and outside of Bangladesh; however, their plight has largely been overlooked in the literature. Besides these limitations, publications tend to be descriptive and given their methodologies, they are difficult to rely on. Most of the studies focus on the problem of human trafficking in Bangladesh and address the responsibility of Bangladesh as a source country. None of the researchers address the demand driven by destination countries, which generates the supply of victims of human trafficking, nor do they address the obligation of destination countries to reduce demand and ensure protection of the trafficked victims.

In this thesis I address these gaps. Adopting a qualitative approach, the life experiences of victims have helped me identify the gaps in existing laws and institutions, and the steps required to ensure that victims can realise their rights. This thesis also fills gaps in the literature by applying the theoretical perspectives of feminist theory, critical race theory and a human rights approach to human trafficking in Bangladesh. In addition, I address the issues of child trafficking, which have largely been overlooked by scholars.

[42] *Bangladesh Country Report: Combating Human Trafficking* (Country Report, 2011).

C *Research Questions*

In this thesis I address the following research questions. The questions focused on the international laws and international human rights, are presented with a particular focus on their relevance to Bangladesh.

1. What are the international laws targeting human trafficking?
    a. Were the early international instruments successful to address human trafficking?
    b. Is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children sufficient to combat human trafficking?
    c. Are the relevant regional conventions compatible with other international instruments?
2. What is the response of international human rights law to human trafficking?
    a. How effective is the human rights-based response as adopted by International human rights instruments?
    b. Are International Labour Organisation instruments adequate to combat trafficking into forced labour?
3. What are the domestic laws and policies in Bangladesh to combat trafficking?
    a. Do Bangladeshi laws and institutions respond effectively to human trafficking?
    b. How appropriate are existing policies that concern human trafficking?
    c. What is the role of NGOs in fighting human trafficking?

D *Road Map of the Thesis*

1 *Chapter One*

Chapter One of the thesis sets out the research methodology and case studies of human trafficking. Chapter uses a narrative format to present and define specific patterns in my research findings. It describes the fieldwork, including the data collection techniques, and sets out the data analysis.

The data analysis identifies the themes that led me to select the theoretical perspectives identified and addressed in Chapter Two.

2 *Chapter Two*

Chapter Two outlines the theoretical framework for the thesis, which has been developed taking into account the experiences of interviewees. This Chapter uses feminist theory, critical race theory, the Marxist theory of forced or unfree labour, a human rights approach and a criminal justice approach to identify and define the research problems and to suggest solutions to those problems. I then use those theories in subsequent Chapters when addressing the research questions relevant to each Chapter.

3 *Chapter Three*

Chapter Three evaluates the response of international law to combating human trafficking. It applies critical race theory and analyses the early conventions (between 1904-1933) as racialised, discriminatory and gender-biased. The Trafficking Convention of 1949[43] adopts a feminist abolitionist approach as it prohibits prostitution. Chapter Three examines how this early instrument has been criticised for its limited human rights approach. This Chapter also analyses the Slavery Convention 1926[44] utilising critical race theory and a criminal justice approach.

Chapter Three confirms that early international responses to human trafficking were ineffective in the absence of any enforcement mechanism. I demonstrate that regional conventions have been poorly implemented, have failed to follow a human rights approach, and have been ineffective in combating human trafficking.

Finally, Chapter Three evaluates the recently signed *Trafficking Protocol*[45], which adopted both

[43] *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* opened for signature 2 December 1949, 96 (entered into force 25 July 1951).
[44] *The Slavery Convention*, opened for signature 25 September 1926, 60 LNTS 253 (entered into force 9 March 1927).
[45] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, opened for signature 12 Dec 2000, 319 UNTS 2237 (entered into force 25 December 2003).

the human rights approach and criminal justice approach, provides an internationally agreed definition of trafficking, and can be used as a yardstick to evaluate the response of a member state's response to human trafficking.

4 *Chapter Four*

Chapter Four considers research question two and evaluates the response of international human rights law to human trafficking. Most human rights instruments adopt a human rights-based response and outline the positive obligations of states to ensure the human rights of individuals and to address vulnerability to human trafficking. Some instruments are consistent with feminist theory, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on Rights of the Children (CEDAW)[46], while some others are consistent with critical race theory, like the International Convention on the Elimination of All Forms of Racial Discrimination 1965.[47] The ILO instruments – mainly the Convention no 29[48] which is known as the Forced Labour Convention (1930) and Worst Forms of Child Labour Convention, 1999 (No. 182)[49]– are consistent with both a human rights approach and Marxist theory on labour, as they identify the demand and supply issue of human trafficking and forced labour. While the criminalisation and prosecution are the main focus of international criminal law, international human rights emphasise victims' protection and support. Chapter Four identifies both positive and negative features of different human rights instruments. This Chapter also advances the argument that there should be a specific supervisory body available to ensure the positive features of the relevant human rights instruments are applied and implemented.

5 *Chapter Five*

Chapter Five focuses on the response of Bangladeshi laws to address human trafficking. Most of

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[46] *The Convention on the Elimination of All Forms of Discrimination against Women* opened for signature 18 December 1979, 1249 UNTS 253 (entered into force 3 September 1981).
[47] *International Convention on the Elimination of All Forms of Racial Discrimination* opened for signature 21 December 1965, 195 UNTS 660 (entered into force 4 January 1969).
[48] *The Forced Labour Convention*, opened for signature 28 June 1930 (entered into force 1 May 1932).
[49] *Worst Forms of Child Labour Convention, (No. 182) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, opened for signature 17 June 1999 (entered into force 19 November 2000).

the criminal laws follow a criminal justice approach and prohibit and penalise human trafficking. The Chapter analyses both the substantive and procedural laws and identifies gaps which need to be addressed. The Chapter focuses on the Prevention and Suppression of Human Trafficking Act 2012 ('Human Trafficking Act 2012'), which is the specific legislation relating to human trafficking. Finally, this Chapter demonstrates that weak enforcement and implementation are responsible for the failure of these laws to effectively address this crime.

6 *Chapter Six*

Chapter Six analyses how the institutions and organisations of Bangladesh utilise legal, administrative, economic, social, educational and related means to implement the international obligations to combat human trafficking. The policies adopted by these institutions and organisations are analysed in the light of the theoretical framework. This Chapter also identifies the failure of both laws and institutions to protect the rights of trafficked victims. The final issue addressed by this chapter is the response of NGOs, who are more active than the Government in working against trafficking.

7 *Chapter Seven*

Under international and domestic law, Bangladesh has a responsibility to protect the human rights of its citizens. It has a responsibility to help trafficked survivors to start their new lives by providing services to which they are entitled. Chapter Seven sets out policy recommendations for government officials, NGOs and practitioners who are working in the field of human trafficking, based on the analysis in the preceding chapters. These recommendations are offered to help protect people in my country from this crime.

CHAPTER 1: CASE STUDIES OF TRAFFICKING

A *Methodology*

To identify the shortcomings of existing measures to fight against human trafficking, I have undertaken qualitative research. The data demonstrates the shortcomings of existing measures to fight human trafficking, and the discrepancies between the domestic laws of Bangladesh and international laws relating to human trafficking. The experiences of the participants mentioned in this Chapter reveal the gaps in the laws of Bangladesh and have helped me to develop appropriate policy recommendations.

This Chapter is divided into two parts: the first sets out the research methodology and includes a description of the data collection techniques. The second part illustrates the themes that I have identified, having regard to the experiences of the interviewees.

Qualitative research is social science that is concerned with the experiences, attitudes, motivations, and behaviour of human beings.[1] To achieve my research objectives, my target group was primarily people who had a direct and lived experience of trafficking (victims), but I was also keen to speak to other people who worked directly with victims, such as employees of NGOs, police and other officials working to combat trafficking. These people are the closest to the victims and can yield important insights into the world of trafficking.

In Bangladesh, different local and international NGOs are working to prevent trafficking and to protect and rehabilitate the victims of trafficking. Some of them have already been mentioned. Locally, the Bangladesh National Women Lawyers Association (BNWLA),[2] the Centre for

[1] Carol Chunfeng Wang and Sara Kathleen Geale, 'The power of story: Narrative inquiry as a methodology in nursing research' (2015) 2(2) *International Journal of Nursing Sciences* 195.

[2] The *Bangladesh National Woman Lawyers' Association (BNWLA)* is a private human rights organization that is working actively to ensure equal rights for women and children. To prevent human trafficking and to ensure the protection, rehabilitation and reintegration of trafficked victims, it runs different programs, seminars and workshops with the help of different international NGOs and organizations. It provides services to victims including legal services, shelter, psychological counselling services. This NGO also pressures government and international bodies

Women and Children Studies (CWCS),[3] the Dhaka AHSANIA Mission (DAM),[4] Rights Jessore (RJ)[5], and United Development Initiatives for Programmed Actions (UDDIPAN)[6] are working to help the victims of trafficking and raise awareness about trafficking.

International NGOs that are working with victims of trafficking include UNICEF, Winrock International[7] and the International Organisation of Migration.

In addition, the Bangladesh Police play a vital role in the prevention, detection, investigation and rehabilitation of the victims through its Monitoring Cell. Since 2004 the Bangladesh Police Headquarters has had a Monitoring Cell to monitor and maintain a database of trafficking cases. It collects information and intelligence about the number of victims, rescue/recovery of trafficked persons, arrest of criminals, the progress of prosecutions, the outcome of prosecutions, the number of victims who have been rehabilitated, and follows up on their status. I interviewed a police officer who worked in that Monitoring Cell. This Cell used to provide reports to the Ministry of Home Affairs.[8]

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to reform laws and policies where necessary to establish and ensure the rights of women and children. Bangladesh National Woman Lawyers' Association (BNWLA) <https://bdplatform4sdgs.net/profile/bangladesh-national-womans-lawyers-association-bnwla/>.

[3] To ensure the socio-economic development of women and children the Centre for Women and Children Studies (CWCS) was established in 1994. It also works as a pressure group to lobby policy-makers and decision-makers. Centre for Women and Children Studies (CWCS),'Women & Girls Should Not Be Victims Of Violance', *CWCS Website* (2020) <http://www.cwcsbd.org/>.

[4] *Dhaka Ahsania Mission* is a non-government development organisation which is actively working with government to combat human trafficking. I visited a shelter home run by this NGO. To protect and rehabilitate trafficked victims it provides different services including legal assistance, counselling, training and health services. Chapter Six describes the work of three NGOs: *WinRock International, Dhaka Ahsania Mission, Rights Jessore* and their activities to combat human trafficking. Dhaka Ahsania Mission,'About Us', *Dhaka Ahsania Mission: Divine and Humanitarian Service* <http://www.ahsaniamission.org.bd/about-us/>.

[5] Since 1991 *Rights Jessore*, a human rights organisation, has focused on the rights of disadvantaged women and children, the promotion of safe migration, health rights, and voter education. In rescuing, recovery, repatriation, reintegration, legal aid, advocacy, and community mobilisation, this NGO is working actively to combat human trafficking with support of international NGOs. Rights Jessore,'Home', *Rights Jessore* (2020) <https://rightsjessore.org/>.

[6] The main function of UDDIPAN is to implement multi-dimensional programmes to improve the quality of life of people living in poverty. It works in 223 Police Stations (PS) of 40 districts since 1984 to establish a sound society without poverty, exploitation, oppression, injustice or discrimination. United Development Initiatives for Programmed Actions,'UDDIPAN Overview', *UDDIPAN* (2020) <https://uddipan.org/>.

[7] Winrock International is a non-profit organisation who is running different programs in different countries where people are more vulnerable to be trafficked. This NGO has partnership with other NGOs, government and other stockholders to prevent those situations which are responsible for this crime. Winrock International,'Bangladesh', *Winrock International* (2020) < https://www.winrock.org/country/bangladesh/>.

[8] UN Women,'Monitoring Cell for Anti-Trafficking at the Police Headquarters', *UN Women Global Database on Violence against Women* (2004) <https://evaw-global-

At first, I communicated with several local and international NGOs via email and phone. I then held a workshop with Rights Jessore (a local NGO).[9] I visited different shelter homes and victim rehabilitation centres run by NGOs and the Bangladesh Government. As a member state of the UN *Trafficking Protocol*, Bangladesh has specific obligations to ensure the rights of trafficked victims and to follow international standards for providing care and support to trafficked victims. (Chapter Six demonstrates how NGOs and the Bangladesh government are dealing with trafficked victims.) In front of victims and NGO workers, I explained my research and provided all relevant information about it, consistently with the ethics approval I received. When I was sure that respondents understood all the issues, I invited them to participate in the project.

A number of scholars have argued that qualitative interviews are the best methodology to employ when conducting research relating to human trafficking. Guri has argued that the 'best potential for good quality research lies in small-scale, thematically focused empirical studies, while attempts to describe worldwide trafficking across regions and arenas are less likely to be successful'.[10] Similarly, Anette and Rebecca emphasized that qualitative interviews are a superior methodology when researching trafficking, so long as steps are taken to ensure that research methods do not cause discomfort and are accessible for trafficked persons, and provided that ethical issues related to the conduct of such research with trafficked persons are clearly kept in mind (for example, interviewees need to be anonymised and care needs to be taken when dealing with vulnerable research subjects).[11]

Guri has also identified the need for selection mechanisms to distinguish victims from non-

database.unwomen.org/en/countries/asia/bangladesh/2004/monitoring-cell-for-anti-trafficking-at-the-police-headquarters>.

[9] The Project Title: '*Human and organ trafficking: Evaluating the response of the Government of Bangladesh compared with international law'* was submitted to the University Human Ethics Committee, La Trobe University on 28 November 2016. I submitted my application with a copy of the Participant Information Statement, Consent Form, Withdrawal of Consent Form, questionnaire and evidence of approval. The project was granted ethics approval on 10 February 2017 (the approval number is HEC16-135). The research commenced on 5th April 2017 and concluded on 12 May 2017. I submitted a final report to the Research and Graduate Studies Committee and University Human Ethics Committee after finishing the data collection and analysis.

[10] Guri Tyldum, 'Limitations in research on human trafficking' (2010) 48(5) *International Migration* 1.

[11] Anette Brunovskis and Rebecca Surtees, 'Untold stories: Biases and selection effects in research with victims of trafficking for sexual exploitation' (2010) 48(4) *International Migration* 1.

victims.[12] This mechanism depends on the experiences of the persons that qualify them as victim of trafficking. I interviewed both victims and non-victims who assist victims; NGO workers and law enforcement agencies are in the latter group. The lived experiences of the victims help me to identify and analyse the causes and different kinds of exploitation that they have suffered in their whole journey of trafficking. Conversely, the experiences of NGO workers and law enforcement agencies (non-victims) help to point out their responsibility and obligations towards victims and their challenges when combatting this crime.

B *Data collection techniques*

The objective of qualitative research is to faithfully present the experiences of participants. My objective has been to engage in skilful analysis, assessment and reconstruction by directly communicating with participants, capturing the voices of the participants in their natural environment, understanding their social environment, and presenting their experiences in a true form.[13]

I have used three well-known techniques to produce high quality data: focus groups, qualitative interviews and participant observations.

1 *Focus Groups*

It has been said that focus groups 'can facilitate the democratisation of the research process, allowing participants more ownership over it, and promoting more dialogic interactions and joint construction of more polyvocal texts.'[14] With these objectives in mind, I conducted a workshop with Rights Jessore to explain my research and to encourage victims of trafficking, the parents of the victims and other officials working with victims to participate. With the help of NGO workers,

[12] Tyldum (n 10) 48.
[13] Dilmi Aluwihare-Samaranayake, 'Ethics in qualitative research: A view of the participants' and researchers' world from a critical standpoint' (2012) 11(2) *International Journal of Qualitative Methods* 64.
[14] George Kamberelis and Greg Dimitriadis, 'Focus groups: Contingent articulations of pedagogy, politics, and inquiry' in Norman K Denzin and Yvonna S Lincoln (eds), *The Sage Handbook of Qualitative Research* (Sage, 5th ed, 2011) 545-561.

I conducted two focus groups, each with six members. I generated valuable material about trafficking-related issues and experiences which informed the interview research that followed.

2 *Qualitative Interviews*

Interviewing techniques are very important when working with trauma survivors. Having the capacity to empathise with the victim, letting them take the lead, and treating them respectfully, goes a long way to building trust and getting reliable results.[15]

Participants were selected if they came from one of the following five categories: (a) a victim of sexual exploitation related to trafficking; (b) a victim of labour trafficking; (c) a victim of some other form of trafficking; (d) an NGO worker dealing with the victims of trafficking; or (e) a member of the police or some other official working to prevent trafficking and to prosecute traffickers.

I visited the office of NGO Rights Jessore and organised a whole day programme with them. This was held on 30 April 2017, when I met victims and the officials of the NGO. Most of the victims were from sex trafficking and had been sold into brothels in India. After introducing myself and ensuring that people were comfortable with me and the work I was doing, I asked each interviewee whether he/she agreed to take part in the interview process. When they had given their free consent to participate in the interview process, I then conducted the interview. As mentioned above, I conducted personal interviews with victims, police personnel, other relevant officials and workers of NGOs.[16]

[15] Heather J. Clawson, Amy Salomon and Lisa Goldblatt Grace, 'Treating the hidden wounds: Trauma treatment and mental health recovery for victims of human trafficking' (Report No 1, US Department of Health and Human Services, 2008).
[16] When I talked to them, I found their experiences are quite similar. Therefore, I reduced the planned number of victims interviewed.

Target number of participants	Number of participants recruited in total	Number of participant withdrawals
30	21	0

Table 1: Number of Participants

I also interviewed five senior police officers of the government of Bangladesh and four NGO workers who are working directly against human trafficking.

According to Stuart, for complex, personal and sensitive issues, semi-structured interviews are an ideal methodology.[17] The focus group research provided me with material that enabled me to develop a semi-structured question protocol for the interviews, that was drawn from discussions with victims and relevant workers, ensuring that the questions asked had content and construct validity. The participation of the members of the focus groups, which included people with a lived experience of trafficking and people who provided services to such people, helped ensure this. Participatory research provides opportunities to participants whose life-world and meaningful actions are under study to express their personal opinions and relate their experiences with respect to particular situations.[18]

Mason has analysed the literature relating to the number of interviews needed to achieve 'saturation' of a topic. While Mason has observed that 30-31 interviews are ordinarily necessary, this figure is not to be applied mechanically.[19] In my research it was clear that by the time I had 21 interviews, patterns and trends could be clearly discerned and were being repeated. Tim Rapley has argued that qualitative researchers can do excellent work with small numbers of people, interactions, situations or spaces.[20]

[17] Stuart Hannabuss, 'Research interviews' (1996) 97(5) *New Library World* 22.
[18] Jarg Bergold and Stefan Thomas, 'Participatory research methods: A methodological approach in motion' (2012) *Historical Social Research/Historische Sozialforschung* 191.
[19] Mark Mason, 'Sample size and saturation in PhD studies using qualitative interviews' (2010) 11(3) *Forum qualitative Sozialforschung/Forum: qualitative social research*.
[20] Tim Rapley, 'Sampling strategies in qualitative research' in Uwe Flick (ed), *The SAGE Handbook of Qualitative Data Analysis* (SAGE, 2014) 49-63.

3 *Participant Observations*

The third technique I adopted was participant observation. This is an important technique for data collection and an essential part of ethnographic fieldwork.[21] Applying appropriate techniques, I observed the behaviour and attitudes of the victims, helping me to ascertain the social condition of the victims. I observed the situation of the victims and other research participants, and all the facilities of the shelter homes and other services provided by the Bangladesh Government and NGOs. The Bangladesh government provides a number of services to the victims of trafficking: rescue, repatriation and rehabilitation through the Task Force on Rescue, Recovery, Repatriation and Reintegration of Victims of Trafficking (RRRI), short term accommodation and counselling at victim support centres and legal assistance through the legal aid program. (The available laws and policies to support trafficked victims are highlighted in Chapters Five and Six.)

Building on relations with NGO workers and others, I created a friendly and trustworthy environment where I could gather accurate data through this type of observation.

4 *Ethics Clearance*

When addressing the ethical issues arising from the research, I considered the participants, my role as a researcher, and also the expectations of the University (the research organisation), the community and the broader public.[22] I obtained ethics approval for my research from La Trobe University's Human Research Ethics Committee, which complies with the (Australian) National Statement on Ethical Conduct in Human Research.[23] There are no specific research ethics guidelines in Bangladesh, so I adopted the Australian framework. (I have liaised with academic researchers in Bangladesh who confirm that there is no generally applicable national ethics review and approval process for research within the country.)

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[21] Michael Angrosino and Judith Rosenberg, 'Observations on observation' in Norman K Denzin and Yvonna S Lincoln (eds), *The SAGE Handbook of Qualitative Research* (SAGE, 5th ed, 2011) 467-478.
[22] Ibid.
[23] In the application for ethics approval associated with this thesis, I indicated that my research was qualitative in nature. The first component uses legal sources and the second component involves research participants. I also include three data collection methods: focus groups, qualitative interviews and participant observations.

As I indicated above, I explained my project to the participants and provided information consistently with the ethics approval. I provided participants with the Participation Information Statement, translated into Bengali,[24] which contained all relevant information, including my research objectives, methodology, and how the data would be used, in plain language. When I had confirmed that participants understood all of the issues, I asked them whether they were willing to participate in the project. Participants expressed their consent by signing the consent form.

When working with the victims, I remained mindful of the huge physical, psychological, and social impacts upon victims of trafficking. Victims are often isolated and depressed. There is a risk of re-traumatisation when people are recounting their experiences, as acknowledged in the relevant literature.[25] I had regard to the ethical and safety guidelines formulated by Zimmerman and Watts on behalf of the World Health Organisation (WHO) in order to sensitise working and researching with trafficked women, particularly with regard to safety risks that may threaten a trafficked woman if she participates in an interview with authorities or researchers.[26] I was very careful to follow these guidelines. After hearing of the traumatic experience of the victims, I myself experienced secondary trauma and I received support from the counselling service of La Trobe University.

Bangladesh is a country of cultural diversity which is strongly influenced by the local religion, socioeconomic conditions, beliefs, and movements and so on. As a Bangladeshi I have utmost respect for the religious, cultural and social values of my country, and it was not difficult to ensure that my interactions with participants complied with appropriate local customs.[27]

Lastly, I have ensured the confidentiality and authenticity of all sources. In every publication and presentation, I have used pseudonyms to ensure that participants' involvement in the data

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[24] See Appendix One.
[25] Oram Siân, *Human trafficking and health* (Edward Elgar Publishing, 2016); Denise Brennan, 'Methodological challenges in research with trafficked persons: Tales from the field' (2005) 43(1-2) *International Migration* 35; Cathy Zimmerman and Charlotte Watts,'WHO Ethical and safety recommendations for interviewing trafficked women', *World Health Organisation* (Document, 2003) <https://apps.who.int/iris/handle/10665/42765>.
[26] Zimmerman and Watts (n 25) 63.
[27] I put on traditional dress (Selwar -Kameez) and covered my head. I noticed most of the interviewees put on Selwar -Kameez and they also cover their head. According to our custom I said greetings to them by saying 'Assalamualaikum' (Blessing on you), then asked "how are you?" and offered them a seat.

collection process does not affect their social position or the respect in which they are held.

5 *Data Analysis and Use*

Having regard to the literature on appropriate analysis of qualitative data,[28] I recorded all of the interviews of the participants (which were conducted in the Bengali language).[29] With the support of the La Trobe University Social Research Assistance Platform, I had these interviews translated into English. After reviewing the raw data, I engaged in coding work.

I used NVivo software for this purpose. NVivo is a very useful tool which helps researchers analyse and interpret their collected information through technological means.[30] This software has been used to manage collected data, to identify research issues and patterns. I have followed three steps to complete data analysis through NVivo. At the outset, I created a project file called Human Trafficking and Bangladesh. I saved the interview transcriptions in a different file and then imported that file into my project file for analysis. The next step was to work with 'nodes', or themes emerging from the material. NVivo identified different nodes within the data based on key words in context. For example, one such node was '*Torture*' and it included the experiences of trafficked victims who faced torture in the process of trafficking.

I also divided the interview transcripts into three groups: victims of trafficking, government officials and NGO workers. From the raw data files, nodes emerged that helped me to organise my ideas and to connect interviewee experiences with my research objectives. The screen shot below drawn from the NVivo analysis illustrates the process:

[28] Sharon L Caudle, 'Qualitative data analysis' in Harry P. Hatry, Joseph S Wholey and Kathryn Newcomer (eds), *Handbook of Practical Program Evaluation* (John Wiley & Sons, 2004) vol 2, 417-438.
[29] David Silverman, *Doing Qualitative Research: A Practical Handbook* (SAGE Publications, 4th ed, 2013).
[30] Pat Bazeley, *Qualitative data analysis with NVIVO* (SAGE Publications, 2nd ed, 2013).

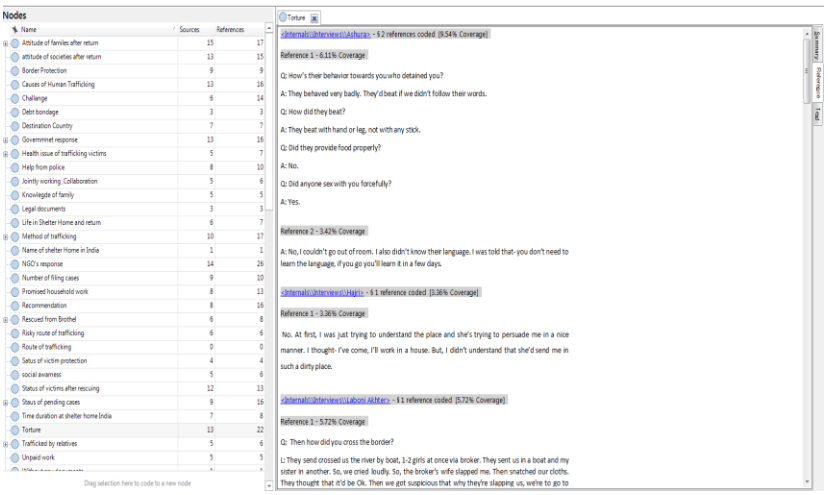

Figure 1: Data Analysis through NVivo

Themes emerged from the recorded experiences of the interviewees. I have used a narrative format to present and define specific patterns of my research findings, and to communicate victims' experiences to a larger audience.

Finally, I have confirmed the safety of all data, keeping hard copies in a locked filing cabinet, and soft copies in a password-protected online storage system that is only accessible by me.

C *Themes that emerged from the data*

The crime of human trafficking is very common in Bangladesh, though as noted previously, scholarship on this issue is limited. Scholarly research into the issue mainly focuses on different causes and forms of human trafficking. In addition, trafficking of men, trafficking of Rohingya refugees and organ trafficking are consistently unaddressed. Only a handful of researchers have pointed out the responsibilities of government, and existing research has not scrutinised whether official activities are effective, or compliant with international law applicable to human trafficking. No scholars have pointed out the responsibility of destination countries, and there is little detailed discussion according to theoretical perspectives. Moreover, past research has not given importance to the issue of child trafficking and special measures to rehabilitate child victims.

Human trafficking is an arduous journey which involves different processes, and victims suffer significant violations of their human rights at every step. The *Trafficking Protocol*,[31] which Bangladesh recently ratified identifies a number of these processes in its definition clause. The Prevention and Suppression of Human Trafficking Act[32] incorporates this definition of human trafficking in s 3 of the Act:

Human Trafficking means the selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring either inside or outside of the territory of Bangladesh of any person for the purpose of sexual exploitation or oppression, labour exploitation or any other form of exploitation or oppression by means of –

(a) Threat or use of force; or
(b) Deception, or abuse of his or her socio-economic or environment or other types of vulnerability; or
(c) Giving or receiving money or benefit to procure the consent of a person having control over him or her.
(d) If the victim of trafficking is a child, it shall be immaterial whether any of the means of committing the offence mentioned in clause (a) to (c) of sub-section (1) is used or not.[33]

Recruitment is the first process of the journey of trafficking and is facilitated by a range of factors. Traffickers follow various approaches which may involve different kinds of exploitation and different modes of transportation. Recruitment may involve selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring either inside or outside of the country. Several interviewees told me that they witnessed the exchange of money between traffickers and brothel owners. Victims often heard that *'they are being sold'.*

As noted above, the data has been divided into six groups, based on experiences of the participants. In this Chapter I firstly identify those persons who facilitate and are directly involved in the trafficking process. In the second part I identify all the strategies and methods used in the process.

[31] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, opened for signature 12 Dec 2000, 319 UNTS 2237 (entered into force 25 December 2003).
[32] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh).
[33] Ibid s 3.

The third part focuses on the routes which are used by the traffickers. The fourth part identifies the different causes of human trafficking which are responsible for their victims' vulnerable position. The fifth part of this Chapter addresses all the horrible experiences of trafficked victims that they have faced in destination countries. Finally, this Chapter highlights the social, economic and mental condition of trafficked victims after being rescued and returned to their home country, which demonstrates the weak or at times non-existent criminal justice and human rights-based responses of the government of Bangladesh. A warning: this Chapter contains details of some horrible experiences of trafficked victims, which may be confronting and stressful for the reader.

1 *The Identity of Traffickers*

Friends, family members, colleagues, neighbours and strangers can be part of the organised criminal networks that participate in human trafficking, and may be, effectively, untraceable and unreachable. I have found the following relations facilitate recruitment strategies.

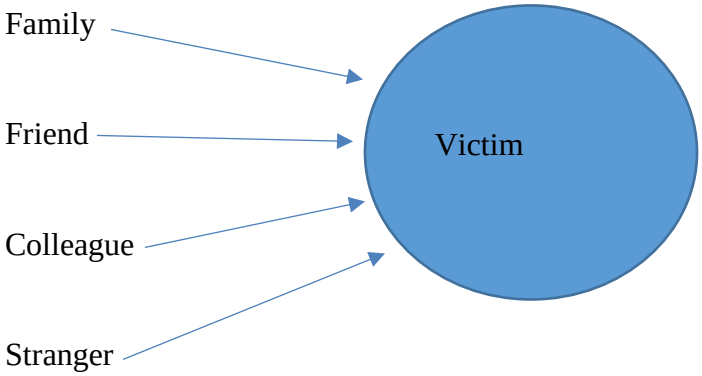

Figure 2: Identity of Traffickers

Sometimes family members are involved. For instance, Ajmi, a victim of sex trafficking, was trafficked by her brother-in-law.[34] Nila was trafficked by her maternal aunt. She took shelter at her maternal uncle's house but when they told her that they would send her to another 'nasty home' (a brothel), she fled.[35] Kalam strongly believed that his cousin was involved in his trafficking process.[36]

Other victims are exploited by their colleagues. Two victims, Arju and Reba, were trafficked by people who were working in the same textile factory.[37] Traffickers and their criminal gangs also use friendship tactics to trap victims (as explored further below).

Only one victim in my data was trafficked by a stranger (Lolita).[38]

NGO worker Monira confirmed:

> The trafficked victims we receive are trafficked by those closest to them. They may be their brother, father, (or) husband. They are trafficked for a very small amount of money, they don't even understand that this is a life-long experience.[39]

Sex trafficked victim, Sila, said

> There was a girl beside my room, her friend lives in India. So, she said she's going to visit her and asked if I wanted to go. That girl had stayed with me for 2 months. She said, 'let's go. You're poor, you'd get money.'[40]

D *The strategies of traffickers/recruitment of traffickers*

This section addresses two questions: who are the traffickers and how do they work to recruit

[34] See Victim No 11 of Part 01 in Appendix Four.
[35] See Victim No 5 of Part 01 in Appendix Four.
[36] See Victim No 12 of Part 01 in Appendix Four.
[37] See Victim No 6 and 10 of Part 01 in Appendix Four.
[38] See Victim No 3 of Part 01 in Appendix Four.
[39] See NGO Worker No 1 of Part 02 in Appendix Four.
[40] See Victim No 7 of Part 01 in Appendix Four.

victims? Traffickers are very well organised, working both within and outside of the country to trap victims by using many different strategies such as coercion, threats, force, kidnapping, abduction, fraud, deception, abuse of power and money.[41] Stranjojoska and Petrenski have classified all of these strategies into three types: forced recruitment, totally deceptive recruitment and partially deceptive recruitment.[42] In Bangladesh, traffickers commonly recruit victims by making false promises of good jobs or marriage. The interviewees I met indicated that they had become victims of traffickers via false promises of employment, what I will explain below as 'Loverboy' tactics, or by kidnapping or abduction.

NGO workers also summarised the various means by which victims become trapped by the traffickers. For instance, NGO worker Rashed, stated:

> Girls are told (they will get a) … good job, marriage, and honeymoon. Girls don't know what will happen. When a 15-16-year-old girl got married and if she's told to go for a visit abroad, she'd normally agree. For this reason, 15-16-year-old girls, even schoolgirls are being trafficked. And, from garment factories, they are being promised good work and then being trafficked via the border. And for domestic trafficking, government agencies are taking or recruiting them for household jobs. But, after being taken, they are being oppressed.[43]

Another NGO worker, Shahanara, also said:

> Trafficked victims are from the same background. They have come from the garment factories, eloped, (been) tempted for a good job, (and left in a) destitute condition. Currently, false promises of marriage and lover method are frequently used strategies of the criminals. Previously being trafficked by the husband was observed less. Nowadays, it has increased. Being tempted for marriage has increased a bit. Even girls who are educated can become a victim of trafficking.[44]

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[41] *The United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 209 UNTS 2225 (entered into force 29 September 2003).
[42] Angelina Stanojoska and Blagojce Petrevski, 'The process of trafficking in human beings: Phases of committing the crime' (2014) 16 *Horisons Series A* 39.
[43] See NGO Worker No 2 of Part 02 in Appendix Four.
[44] See NGO Worker No 3 of Part 02 in Appendix Four

1 *False Promises of Jobs*

As noted above, a common technique for trapping victims is for criminals to say they will provide good jobs abroad, and it will be easy to earn large amounts of money. Some victims have legal documents to travel, but most are without any kind of travel documents. When victims arrive in destination countries, the picture is totally different than what was promised. They have been deceived regarding the nature and condition of their work, and about payment. Different agencies send Bangladeshi women to Saudi Arabia and other Middle East Countries as domestic workers. To get to these countries all of them have proper legal documents. Yet often, it appears, they are exploited as sex workers and have become victims of forced labour. In addition, most of the trafficked women from Bangladesh are trafficked to India for sexual exploitation, on a promise of providing household work in India. Among the interviewed victims, six women who had been sold into brothels in India were originally promised household work.

Reba shared her experience:

> The Trafficker told me that there is no need to inform anyone. You will work in a good house, send money after each month and your parents, family, children can eat.[45]

Another victim, Rubina, said:

> Recruitment agencies told me you will work in a three-member family consisting of husband, wife and their one child. You have to take care of their child. They will pay 25 thousand Taka (AUD381) per month. If you stay two years, you'll be able to buy land by your own income. After arriving in Oman, I was asked to engage in sexual intercourse. I refused and said I haven't come here to do such work, I've come here for house-keeping activities.[46]

[45] See Victim No 6 of Part 01 in Appendix Four.
[46] See Victim No 1 of Part 01 in Appendix Four.

Ajmi said:

> They gave me a visa saying that that's for working in the household and you will get 20,000 taka per month (AUD 305) as a salary. But they didn't give me work in the household. They captured me and then sold me. They tortured me.[47]

2 *The 'Loverboy' Tactic*

The 'Loverboy' tactic involves seduction, romantic promises and the false promise of marriage. This is another technique used by criminals to create a trusting relationship with victims. Such strategies can be classified as totally deceptive recruitment.[48] Traffickers give the wrong information about their address and their personal life. Most of the victims' families have no idea about the traffickers. At first, traffickers gain the trust of the victim, and they then convince the victim to flee with them without informing their families. The final destination for the trafficked victims is the sex industry.

Mimi was one such girl. Mimi was nineteen years old and fell in love with a man who had initially been a wrong number on her phone. At first, she didn't realise he could be a trafficker. He said that he would marry her and take her to Delhi, and that he had a business there. He then put her in a house and left. After many days, she came to know that he had returned to Bangladesh after selling her to a brothel and he would never come. She saw him again two days before she ended up returning home. He had taken another girl by giving the same promise of marriage.[49]

3 *Forced Recruitment*

Kidnapping and abduction are the processes of trafficking where victims are recruited forcibly. There is typically no prior relationship between the traffickers and victims. The criminal gangs target women and children, and unaccompanied street children and slum dwellers are most at risk

[47] See Victim No 11 of Part 01 in Appendix Four.
[48] Ibid.
[49] Stanojoska and Petrevski (n 42).

of this practice.[50] In October 2017, large numbers of Bangladeshi and Rohingya trafficked victims were found who had been kidnapped and forcibly loaded into a fishing boat from Cox's Bazaar in Bangladesh.[51] Victim Kalam faced such a situation:

> Traffickers kidnapped me using a micro-bus with a logo saying shuvo-Bibah (Happy marriage). They took me via Norail ferry transport. From there, they snatched my phone and money. They sold me at Cox's Bazaar.[52]

Another victim, Lolita said:

> The trafficker told me he would drop me at a bus stand where my elder sister Sonia is waiting. He took me from school on 14th January and got me into the bus. Then gave me a chocolate and asked me to take it. I put that chocolate in my hand. It was hot inside the bus. Then he gave me a handkerchief to clean my sweat. I don't know what happened next. I woke up at Karimpur border.[53]

4 *Trafficking Routes*

After recruitment, transportation and movement of victims from one place to another is the next process involved in human trafficking. Traffickers take advantage of the geographical location of Bangladesh, as India and Myanmar are its border countries. They make victims cross a huge area to reach destination countries. Usually, criminals prefer risky routes which are not direct and where border protection is very poor.[54] There are three possible routes of trafficking: trafficking by land, trafficking by air and trafficking by sea.

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[50] Bangladesh Institution of Peace and Security Studies, 'Human trafficking a security concern for Bangladesh' (August 2011) *A Monthly Publication* <https://www.files.ethz.ch/isn/164375/Issue%209.pdf>.
[51] Shehara de Soysa,'*Case Study: Human trafficking of Bangladeshi and Rohingya boat people in Thailand* ', *Human Rights at Sea* <https://www.humanrightsatsea.org/2014/10/29/case-study-human-trafficking-of-bangladeshi-and-rohingya-boat-people-in-thailand/>.
[52] See Victim No 12 of Part 01 in Appendix Four.
[53] See Victim No 3 of Part 01 in Appendix Four.
[54] Stanojoska and Petrevski (n 42).

Figure 3: District map of Bangladesh[55](This image from the website mentioned in footnote)

Among Bangladesh's 64 districts, 28 share a border with India, and two districts have borders with Myanmar (see Figure 3 above).[56] Bangladesh and India share a land border of over 4,000 km,[57] along which there are roughly 20 transit points between Bangladesh and India which traffickers target as the easiest and safest land routes through which to traffic victims. Another well-known land route is via the Benapole border post, situated in Jessore and through which every year nearly 50 percent of victims[58] are trafficked into Kolkata (a state of India), before being sold and taken to Mumbai, New Delhi and other parts of India. The transportation system from Bangladesh to Kolkata is cheap and comfortable. All victims I interviewed originally came from the Jessore area. The aforesaid map indicates areas which share borders with India and Myanmar, and which are the most preferred routes of human trafficking.

During the journey of trafficking by land, victims are handed between and abused by different middlemen. Traffickers cross the border and hand over victims to other criminals. They tend to stay in temporary accommodation after crossing the border. In this process of transportation, the cost is very low, as traffickers frequently use buses and trains. Poor and illiterate victims have no

[55] Sudha Ramachandran, 'The India-Bangladesh Wall: Lessons for Trump', *Pakistan Defence Forum* (Article 15 February 2017) <https://defence.pk/pdf/threads/the-india-bangladesh-wall-lessons-for-trump.478395/>.
[56] Golum Sarowar, 'Trafficking of women and their Re-integration in Bangladesh' (2014) 8(1) *Prime University Journal* 167.
[57] BSF Director General, 'India-Bangladesh Border Fencing to Be Completed by March 2010', *Zee News* <https://zeenews.india.com/news/nation/indo-bangla-border-fencing-to-be-completed-by-march-2010_569528.html>.
[58] Sarowar (n 58).

knowledge about the risks of crossing the border illegally.

For instance, Arju said traffickers took her to a house and kept her captive there. The next morning, they took her in a car and kept her and others in another house. Then, they took her in a bus. The bus driver started driving and then stopped in front of a police station. Then police got them out of the bus.[59] Helena said that there were nine people in total travelling together, accompanied by a woman who made them cross the border. She was used to crossing the border frequently.[60] It is apparent from Arju's story that corrupt police may be involved in trafficking in some places.

Traffickers take calculated risks to avoid being intercepted by the Border Guard of Bangladesh (BGB) or other authorities. Traffickers travel at night to cross borders, and tell victims to hide when Border Guards are patrolling in the area. From first capture, it typically takes five to ten days to cross the border.

Middlemen and brokers also play an important role in the journey of trafficking. Most brokers and middlemen use their own houses or the houses of accomplices for temporary stays near border areas. For instance, Victim Sila said:

> We're told to go to Benapole, from there, brokers will take us. They took us on a bike. The broker kept us in his house for the night. On the next morning, we crossed the border. They told us to hide inside the banana fields. They crossed us over the river when the Bangladesh Border Guard went away from patrolling the area.[61]

While travelling, victims usually do not have sufficient money, food and clothing. They have to rely on traffickers for all their basic needs.

As victim Reba said:

[59] See Victim No 10 of Part 01 in Appendix Four.
[60] See Victim No 2 of Part 01 in Appendix Four.
[61] See Victim No 7 of Part 01 in Appendix Four.

> Actually, I don't know where India is. He took me to India through a field, crossed four or five swamps and a small canal. I didn't have any clothes with me, I had only the dress that I wore. Then he kept me in a middle-man's house. I stayed there seven days. They fed me. I dried my dress. An aunty was there who gave me a dress to wear while drying my dress. After 7 days, he took me from there to catch a train. I didn't know how far Bombay was. We passed two nights and one or two days in the train.[62]

There are different waterways along the land borders which are also used by traffickers to take victims across the border. Cox's Bazaar in Chittagong district is known as an important place for gathering victims before smuggling them out of the country to Myanmar by boat.[63] Figure 4 shows the sea route where victims are trafficked by boat to reach Indonesia and Malaysia. In this process, the cost is very low, but risks are very high. Finding floating dead bodies of victims in the sea is a common occurrence.

[62] See Victim No 6 of Part 01 in Appendix Four.

[63] (YPSA), Young Power in Social Action, 'YPSA-BCTIP (Bangladesh Counter Trafficking-in-Persons) Program (2nd phase) ' (15 August 2020) <https://ypsa.org/services-to-survivors-in-trafficking/>.

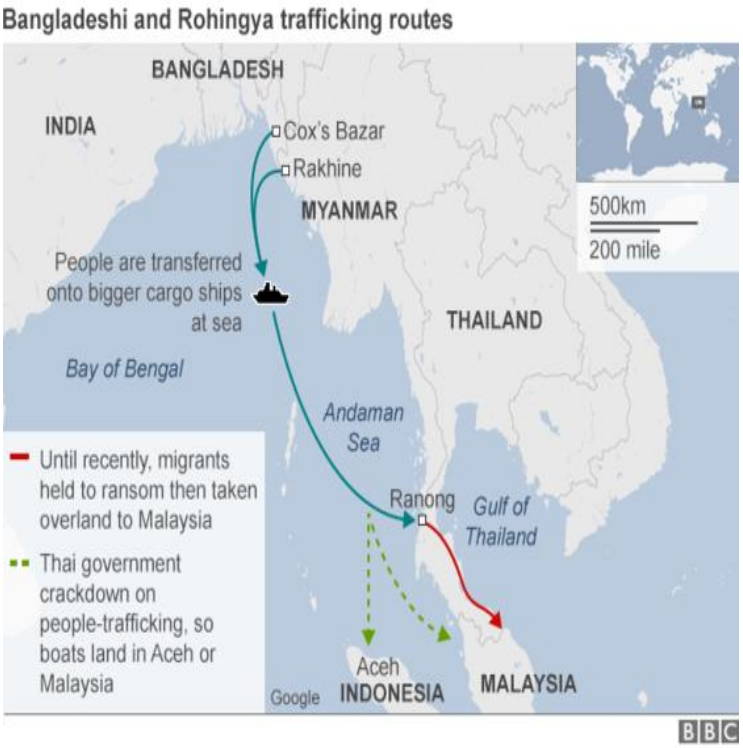

Figure 4: Sea Route of Trafficking [64]

Kalam, who was trafficked by land and sea, retold his horrible experience:

> Traffickers took me in the Jungle of Teknaf in a CNG (a small vehicle). I saw there were 80 men. All of the brokers were armed, young to old. I was the number 81. Then, we started to walk. We walked the whole night. I didn't have a broker, as I was separated from my previous group. We walked till morning, inside the jungles of Teknaf. Then, we reached the border. We saw that cows were crossing in a side and administrative staff were crossing on the other side. We boarded a small boat which was supposed to carry 20 people. Then we reached an island in the river. There was a fishing boat on the Burmese side with people loaded inside. We boarded into that boat. There were more than 100 people. When we were transferred to that ship, there were more than 300 people. Then the ship started in the evening. It took seven or eight days to reach the Thailand Sea. Then, suddenly it stopped. We reached Thailand. There were the ships each containing 500-2000 people. There was a big ship with even more people. That was the main one. When food and water were finished, they brought more from the big ship. One day the traffickers fled in a speedboat,

[64] Jonathan Head, 'Sold for ransom: On the trail of Thailand's human traffickers', *BBC News* (Online, 22 May 2015) <http://www.bbc.com/news/world-asia-32835811>.

> leaving us stranded.[65]

Generally, air routes are used by traffickers to traffic people into Middle Eastern countries and other parts of the world. Victims are trafficked under the guise of domestic workers, migrant workers and labourers. In this process of transfer, victims have legal documents, so the cost is very high, but the risk is very low. Sometimes victims are transported without any legal documents, by paying huge bribes to border and immigration officials.[66] As in Rubina's case:

> After reaching the airport, we completed all necessary activities in the airport, then they took my passport, visa and other documents. They took us in an empty house by a car. There were five men, among them they kept me in a separate room.

To sum up, organised criminals generally prefer land and sea routes to traffic victims from Bangladesh, as these routes are cheaper and safer to cross. The geographical location of Bangladesh not only facilitates trafficking, but the economic, social and cultural factors also make people vulnerable to this crime, as will be discussed in the next section.

In this section we have also seen that traffickers exploit victims' weaknesses and their vulnerabilities. They spend time building trusting relations with victims. To recruit to the sex industry, traffickers mostly use the technique of false promises of jobs and marriage to lure poor and illiterate women. Most of the interviewed victims had been promised good jobs in destination countries, but their final endpoint was the sex industry. Whereas in labour trafficking, many of the victims are recruited forcibly.

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[65] See Victim No 12 of Part 01 in Appendix Four.
[66] Stanojoska and Petrevski (n 42).

E *Vulnerability to trafficking*

Trafficking takes place within a context of, and is caused by, poverty, political instability, militarism, war, internal armed conflict, natural disaster, lack of human rights and other social and economic opportunities.[67] Such factors make victims vulnerable to exploitation, and desperate for a better life in other places (destination countries). Common social and cultural practices also facilitate trafficking in Bangladesh. The following are the common causes of trafficking which were confirmed through the experiences of interviewees.

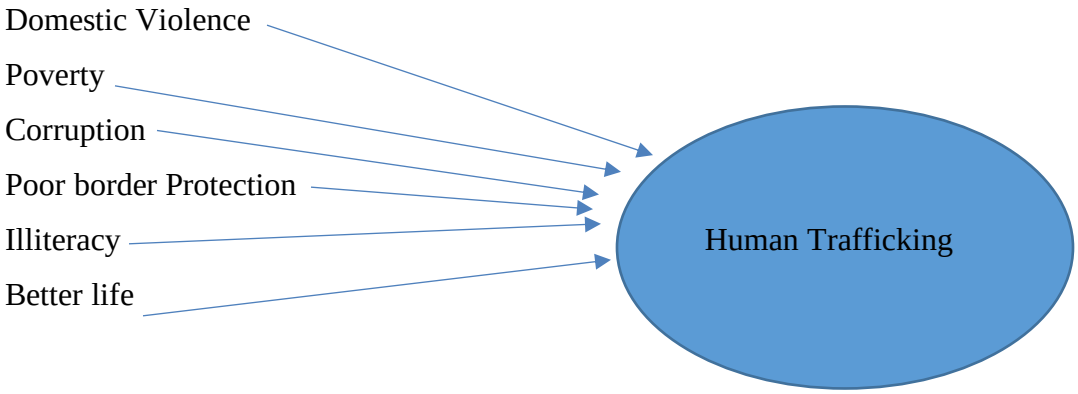

Figure 5: Causes of Human Trafficking

1 *Gender Oppression/Discrimination*

Women in Bangladesh are not a homogenous group. They are of different socioeconomic classes such as wealthy, middle class and poor, and from various cultural and ethnic minority groups.

However, traffickers particularly target those victims whose economic and social conditions are poor. The data indicates that women and children are most at risk, and traffickers seek out and profit from their vulnerability. Girls, in particular, suffer the worst kind of discrimination with respect to such basic human necessities such as intra-household distribution of food, clothes and access to education.[68]

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[67] Kevin Bales, 'What predicts human trafficking?' (2007) 31(2) *International Journal of Comparative and Applied Criminal Justice* 269.
[68] Farmin Islam, 'In Search of The Bright' Questions: Doing Gender Sensitive Legal Research In Bangladesh' XV(2) *The Dhaka University Studies* 27.

Women are more likely to be illiterate and they have less professional or technical education than men. In the workplace they face sex discrimination in hiring, and sexual harassment. Most Bangladeshi women (also) perform the work of maintaining 'the man's' house, doing the housework and taking care of children. They have limited choices and therefore tend to have limited ambitions.[69] Early marriage is another factor which often forces a woman to abandon her dreams.

Violence against women and discrimination against women are also factors that figure in human trafficking. As Bangladesh is a patriarchal society, women are made subordinate, dependent and dominated. This creates obstacles for women to access power and resources. Many men think of women as their property, as their sexual objects, and treat them as a commodity, not as a human being. This social structure makes many women submissive and results in them tolerating torture and permitting their inhuman treatment. Women and girls are often victims of physical violence and sexual abuse.

In this environment, the prospect of gaining economic independence and empowerment to enable them to support their family is so enticing, many women are easily exploited by the traps laid by traffickers. To escape family violence and to get a better life, illiterate women are often lured and deceived by false promises of good jobs or marriage. Some are then bought, abducted, kidnapped, coerced, threatened with force or placed in debt bondage.[70]

Helena, who was a victim of family violence, described why she was trafficked:

> My husband didn't like if I would talk to anyone. He would beat me. I tried to suicide two or three times. My daughter's age was 8 years. My daughter said that I should go somewhere else so that I will be alive and she'd able to call me Mom. So, I thought, I won't die. I'll find a way out. One day, I went to the market and met the lady. She said, 'Baby,

[69] CARE Bangladesh,'Women's Empowerment', *Care Bangladesh* (2009) <http://carebangladesh.org/publication_list.php?pub_cat=Women%20Empowerment>.
[70] Bangladesh Border Guard, 'Bangladeshi girls trafficked under honeymoon cover', *Deccan Herald* (Online, 19 May 2012) <https://www.deccanherald.com/content/250720/bangladeshi-girls-trafficked-honeymoon-cover.html>.

> you're struggling so much. Let's go to India. If you go there, you'd earn 300-400 taka (AUD 4.6-6.2) daily'. So, I thought, I'm unable to do anything here. So, if I go, I'll be able to do something for my child. For this reason, I went there.[71]

Another victim, Sobnom, expressed the situation which made her vulnerable to trafficking:

> During my first marriage, my husband tortured me, which was intolerable. I'd live with my husband in a rented house, where traffickers also lived. My mother asked me to leave him, but I waited for my husband to change. In the meantime, one day a woman came to me and offered me to go India for a job. She said if you go, you can manage yourself with freedom and you don't have to put up with your husband's oppression. I agreed with her without thinking.[72]

Reba explained that her husband married another woman and abandoned her. She was helpless and came from a poor family, where there was no breadwinner.[73] Such a situation made her vulnerable to being victimised.

2 *Oppression on the Ground of Ethnicity and Identity*

There are some people in Bangladesh who become victims of trafficking because of their ethnicity. Specifically, Rohingya refugees and Indigenous people are vulnerable to human trafficking because of their ethnicity and racial background. Indigenous people of Bangladesh who are living in the Chittagong Hill Tracks become victims of social exclusion because of political clashes, lack of access to modern facilities, land conflicts, poverty and insecurity.[74]

As a neighbouring country of Myanmar, Bangladesh has received Rohingyas for over 40 years.[75] Bangladesh has also received a huge number of refugees from Myanmar, particularly since the

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[71] See Victim No 2 of Part 01 in Appendix Four.
[72] See Victim No 8 of Part 01 in Appendix Four.
[73] See Victim No 6 of Part 01 in Appendix Four.
[74] Mashiur Rahman, *Struggling Against Exclusion: Adibasi in Chittagong Hill Tracts, Bangladesh* (Thesis, Sociologiska Institutionen, Lund University, 2011).
[75] Sultana Yesmin, 'Policy Towards Rohingya Refugees: A Comparative Analysis of Bangladesh, Malaysia and Thailand' (2016) 61(1) *Journal of the Asiatic Society of Bangladesh* 88.

violence in the Rakhine state of Myanmar on 25 August 2017.[76] Recently, more than 600,000 Rohingya arrived in Bangladesh and they are staying in Southern Bangladesh in sprawling refugee camps.[77] About 1,000 children are unaccompanied, and these children have become the target of trafficking networks.[78] Jean has stated 'young girls might enter into this type of trafficking and then end up in one of the big cities.'[79]

According to the Universal Periodic Report of the United Nations High Commissioner of Refugees, unregistered Rohingya women and children very frequently become victims of family violence, rape, forced prostitution and trafficking.[80] The Bangladesh government imposes restrictions upon inter-marriage between Rohingya and Bangladeshi, meaning that few Rohingya have any legal documents of marriage. This isolates the Rohingya and makes them more vulnerable to traps laid by traffickers,[81] as do their lack of legal status and fear of further persecution. Poor living conditions in the refugee camps of Bangladesh also make them vulnerable. According to a recent Reuters report, between January to June 2019 about 250 Rohingyas were rescued from traffickers.[82] The response of Bangladeshi laws and institutions to protect the rights of Rohingya refugees are discussed in detail in Chapters Five and Six.

3 *Oppression Due to Poverty and Other Factors of Human Trafficking*

Poverty and other related economic conditions also make people vulnerable to trafficking and result in illegal migration. According to the World Bank:

> Almost 1 in 4 Bangladeshis (24.3 percent of the population) live in poverty, and 12.9

[76] UN High Commissioner for Refugees (UNHCR), *UNHCR Submission on Bangladesh: 30th Universal Periodic Review (UPR) session*, 30 sess, (14 May 2018).
[77] Katie Arnold, 'Traffickers prey on lost Rohingya children in Bangladesh camps', *Reuters* (Online, 7 November 2017) <https://www.reuters.com/article/us-bangladesh-rohingya-children-traffick/traffickers-prey-on-lost-rohingya-children-in-bangladesh-camps-idUSKBN1D8015>.
[78] Ibid.
[79] Ibid.
[80] The United Nations High Commissioner for Refugees, *Universal Periodic Review: Compilation Report of Bangladesh for the Office of the High Commissioner for Human Rights*, 30 sess, (May 2018).
[81] Arnold (n,79).
[82] Naimul Karim, 'Rohingya refugees in Bangladesh warned to be wary with human trafficking rising', *Reuters* (Online, 23 August 2019) <https://www.reuters.com/article/us-bangladesh-myanmar-trafficking/rohingya-refugees-in-bangladesh-warned-to-be-wary-with-human-trafficking-rising-idUSKCN1VD0XD>.

> percent of the population live in extreme poverty. Between 2010 and 2016 poverty fell significantly but in recent years the rate of poverty reduction has slowed down. Poverty fell faster in rural areas. Urban poverty rates declined from 21.3 to 18.9 percent, while rural poverty decreased from 35.2 to 26.4 percent.[83]

Economic discrepancy and poverty are the factors which create the environment of exploitation of poor people. Income is unfairly distributed.[84] About 80% of people live in rural areas, where the poverty rate is comparably higher than urban areas.[85] Most of the trafficked victims who are the participants of my study came from rural areas and wanted a better life. For example, Lolita stated that there were five members in her family, and it was very tough to survive. Her elder sister was also trafficked with the promise of getting a good job in the capital city of Bangladesh.[86] Because of poverty, Laiju and her husband also went to India.[87] Another victim, Sila, stated:

> My husband works one day and misses the next day. I have a daughter. My husband said that he'd rather starve, but won't let me go. I have told traffickers that I don't have money. The trafficker said – you don't need money; my friend will carry all the costs. Then, I went with her with only 200 taka (AUD 3.10).
>
> At the beginning, I didn't do any dirty work (sex work). The brothel owner tried to persuade me saying that if I only do housework, I won't get enough money. Then I said that, no, I'd only work at home. I did nothing for 15 days. The brothel owner behaved very badly. Then, I went for that sex work. I have a child. She had pneumonia since her birth. At that time, her condition was severe. So, I got a phone call and they said that my child needs treatment. So, I had to work.[88]

My data has demonstrated that poverty and trafficking are interrelated, and this finding was

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[83] The World Bank,' Bangladesh Continues to Reduce Poverty But at Slower Pace', *The World Bank* (Online, 24 October 2017) < http://www.worldbank.org/en/news/feature/2017/10/24/bangladesh-continues-to-reduce-poverty-but-at-slower-pace>.

[84] Reaz Ahmad and Rejaul Karim Byron, 'Rich become richer, poor get poorer', *The Daily Star* (Online, 18 October 2017) <http://www.thedailystar.net/frontpage/rich-become-richer-poor-get-poorer-1477921>.

[85] Minhazur Rahman Rezvi, 'Poverty situation in Bangladesh', *The Daily Sun* (Online, 30 April 2017) <http://www.daily-sun.com/post/223106/Poverty-situation-in-Bangladesh>.

[86] See Victim No 3 of Part 01 in Appendix Four.

[87] See Victim No 4 of Part 01 in Appendix Four.

[88] See Victim No 7 of Part 01 in Appendix Four.

confirmed by NGO worker Rashed, who told me that poverty is the underlying cause of all trafficking, because it makes people more vulnerable.[89]

(a) Illiteracy or Lack of Education

Illiteracy or lack of education is a cause of poverty and powerlessness in Bangladesh. Ignorance and lack of social awareness result from illiteracy, which also facilitates human trafficking and makes the process of trafficking easier. Criminals can easily trap victims who are illiterate and have no idea about destination countries. Janie identified failure to provide equal and just educational and employment opportunities is responsible for discrimination against women which force women to trap in unsafe migration.[90] They may have no knowledge that they need legal documents to enter into another country. Most of the victims interviewed did not know how to write and read their own language. During the time of the interview, they informed me that they learnt their signature while they were staying in the shelter home after being rescued. The mother of a child victim (Nila) was also illiterate and had no knowledge about the nature and conditions of work in India where she had agreed to send her daughter.[91]

Education is one of the best method to reduce vulnerability and discrimination which prevents human trafficking.[92] It can aware people about this problem as such education and awareness are one of the main strategy of prevention of trafficking in almost every international and national policy framework.[93] Education also plays a pivotal role to help trafficked victim to resettle in the society and get out of their trauma. Education can help man to understand the rights of woman and their obligation towards them which will prevent domestic violence (one of the causes of human

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[89] See NGO Worker No 2 of Part 02 in Appendix Four.
[90] Janie Chuang, 'Beyond a snapshot: Preventing human trafficking in the global economy' (Pt JSTOR) (2006) 13(1) *Global Legal Studies* 137.
[91] See Victim No 5 of Part 01 in Appendix Four.
[92] Robert W. Spires, *Preventing human trafficking: Education and NGOs in Thailand* (Routledge, 2016).
[93] Office of the High Commissioner for Human Rights, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (Report The Economic and Social Council, 2002) <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>; Diana L. Betz, 'Human trafficking in Southeast Asia: Causes and policy implications' (Submitted in partial fulfillment of the requirements for the Master ofArts, NAVAL POSTGRADUATE SCHOOL MONTEREY CALIFORNIA, 2009).

trafficking). It also prevents the situation of re-trafficking. My fieldwork also reveals how trafficked victims are reintegrated into society after receiving education and training in NGO.

(b) The expectation of a better life

The expectation of a better life in a destination country is another factor of human trafficking. Some people have money to survive comfortably. But their desire for more may make them vulnerable to trafficking. For example, some parents sell their children to a rich family so that their children can have a better life and more opportunities. They want to follow the example of other people who are already abroad and earning foreign currency. The Overseas Employment Minister of Bangladesh, Khandoker Mosharraf Hossain, has said that the 'saddest part of the trafficking is that many of the rescued girls or young women (who) cooperate (with) the traffickers to cross the border are expecting a better life.'[94] For example, a victim of labour trafficking, Rubina went abroad to earn more money:

> My husband had no property. We had been living in a rented house for 19 years. I knew that most of the women in our locality were going abroad and earning lots of money.[95]

The overwhelming majority of my interviewees described their experiences of trafficking in terms that led me to conclude that they were trafficked in an organized way by experienced criminals. Accordingly, much of the analysis in the remainder of this thesis focuses on how far and to what extent the criminal justice system can be deployed to address this criminal activity.

The women I interviewed in my research were extremely poor people who had limited economic options and were often placed in difficult circumstances by male partners, relatives or criminals. For these reasons, ICESCR rights are relevant to an understanding of the contexts within which these women were enslaved and trafficked. Accordingly, I address the human rights issues under the ICESCR and other relevant international instruments later in the thesis.

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[94] Bangladesh Border Guard (n 72).
[95] See Victim No 1 of Part 01 in Appendix Four.

4 *Oppression Due to Corruption*

Corruption is a major problem in Bangladesh, which further fuels trafficking. In 2005, Bangladesh was listed as the most corrupt country in the world.[96] According to Transparency International, Bangladesh is ranked 145[97] in the Corruption Perceptions Index of 2016.[98] Some unauthorised recruitment agencies traffic women under the guise of migrant worker employment agencies. Some government departments are aware of this, but they do nothing because these unauthorised agencies pay bribes to government bodies. Sometimes they even have political backing. Allegations have also been made against the police department and border guards of Bangladesh: that they take bribes from cross-border trafficking gangs.[99] Such exchanges facilitate trafficking and create a favourable environment for the traffickers. All the victims interviewed said that they did not see any border guards or police while they were crossing the border illegally. Such poor border protection makes trafficking easier.

I have demonstrated that traffickers trap victims through false promises of jobs and marriage, and they prefer to use routes where the cost is low, but risk is high. Through my fieldwork I also confirmed there are different causes of human trafficking including poverty, domestic violence, and oppression on the ground of gender and ethnicity, lack of education and corruption. I have found that corruption is itself also responsible for poverty, which is one of the main factors of this crime. To address all of these problems, some victims decide to go abroad to get money to survive. Sometimes they give their consent without knowing what is going to happen with them during the time of travel and after arrival at destination countries.

The next section focuses on the lives of trafficked victims in the destination countries.

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[96] Transparency International,'Corruption Perceptions Index (2005) ', *Transparency International* (18 October 2005) <https://www.transparency.org/research/cpi/cpi_2005#results>.
[97] The lower-ranked countries in the index means they have untrustworthy and badly functioning public institutions like the police and judiciary. Bangladesh scored 26 out of 100 which is very low.
[98] Transparency International,'Corruption Perceptions Index (2016)', *Transparency International* (25 January 2017) <https://www.transparency.org/news/feature/corruption_perceptions_index_2016>.
[99] Asian Human Rights Commission,'INDIA/BANGLADESH: Police refuse to take action to rescue a girl trafficked to Bangladesh', *The Asian Human Rights Commission* (8 December 2011) <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-243-2011/>.

F *Exploitation in Destination Countries*

Globally, destination countries for human trafficking are mainly wealthy and industrialised nations.[100] Germany and the United States are considered the top two destination countries for sex trafficking, followed by Italy, the Netherlands, Japan, Greece, India, Thailand and Australia.[101] In the Asian region, India is a popular destination country for human trafficking. The Indian sex industry is based on the misery of Bangladeshi and Nepali trafficked victims. India also serves as a transit country for trafficking women and children from Bangladesh, Nepal and Myanmar to different Middle East countries.[102] Bangladeshi victims are also in demand in the Pakistani sex market. In this section, I address the various forms of exploitation and challenges which a victim faces after arriving in a destination country.

The main purpose of organised criminals is to earn more money by profiting from human misery and objectification, and they easily earn more than US $31 million through this devastating business.[103] Human trafficking and smuggling are considered one of the fastest growing illicit businesses, after arms and drugs.[104] It has been said that human trafficking will even surpass the business of arms and drugs within the next 10 years.[105] Traffickers use different strategies to exploit victims to fulfil their purposes and those means of exploitation differ from country to country.

Exploitation starts at the place of destination countries. 'The exploitation stage is the period when individuals are in a labour or service circumstance(s) in which their work and or body are exploited

[100] David R Hodge and Cynthia A Lietz, 'The international sexual trafficking of women and children: A review of the literature' (2007) 22(2) *Affilia* 163.
[101] Edward J Schauer and Elizabeth M Wheaton, 'Sex trafficking into the United States: A literature review' (2006) 31(2) *Criminal Justice Review* 146.
[102] Pratap Singh Shankar, *Transnational Organised Crime: The Indian Perspective* (2000) *UNAFEI Annual Report* 570.
[103] Maria Beatriz Alvarez and Edward J Alessi, 'Human trafficking is more than sex trafficking and prostitution: Implications for social work' (2012) 27(2) *Affilia* 142.
[104] Toman Omar Mahmoud and Christoph Trebesch, 'The economics of human trafficking and labour migration: Micro-evidence from Eastern Europe' (2010) 38(2) *Journal of Comparative Economics* 173.
[105] Schauer and Wheaton (n 104).

or abused.'[106] Generally, victims are exploited for the purpose of prostitution, forced and bonded labour, involuntary domestic servitude or removal of organs. Children become victims of forced labour and are sold at a high price in the sex industry. In addition, some children are abducted for working as combatants.

In the case of sex trafficking, victims are coerced, forced, or deceived into prostitution and are under threat to maintain and continue prostitution. It has been found in a study of the South Asian region that 24 percent of brothel-based sex workers are victims of trafficking.[107] According to the anti-trafficking unit within the United Nations Office on Drugs and Crime, 96 percent of trafficked women and children are victims of sex trafficking.[108] Sex and labour trafficking cases have been seen both within and outside of Bangladesh. Annually huge numbers of women and girls are trafficked from Bangladesh to throughout Asia, including to Pakistan, Bahrain, Kuwait and United Arab Emirates. Human rights groups estimate the number of victims to be between 10,000 to 20,000.[109]

I have found that among my interviewees, nine victims (Arju, Helena, Lolita, Laiju, Mimi, Nila, Reba, Sila and Sobnom) were sold into Indian brothels, and two victims (Ajmi and Rubina) were sent to Middle East countries where they were sexually abused.[110] One of the victims of sex trafficking said that if her husband wants to go abroad, he has to pay 4 to 5 lac BDT (AUD 6,227 to 7,227) to the recruitment agencies, while as a woman she requires a smaller amount of money. So, women prefer to go abroad more than men.[111] At present the rate of labour trafficking is growing at an alarming rate.[112] Traffickers lure poor and illiterate victims to enter into a new country by boat, with only a very small amount of money. Organ trafficking is another form of

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[106] Cathy Zimmerman, Mazeda Hossain and Charlotte Watts, 'Human trafficking and health: A conceptual model to inform policy, intervention and research' (2011) 73(2) *Social Science & Medicine* 327.
[107] Kamalesh Sarkar et al, 'Sex-trafficking, violence, negotiating skill, and HIV infection in brothel-based sex workers of eastern India, adjoining Nepal, Bhutan, and Bangladesh' (2008) 26(2) *Journal of Health, Population, and Nutrition* 223.
[108] United Nations Office on Drugs and Crime (UNODC), 'Global Report on Trafficking in Persons 2016 ' (Global Report, December 2016).
[109] Sigma Huda, 'Sex trafficking in South Asia' (2006) 94(3) *International Journal of Gynecology & Obstetrics* 374, 377.
[110] See Part 01 -Victims of Trafficking in Appendix Four.
[111] See Victim No 1 of Part 01 in Appendix Four.
[112] Labour trafficking becomes a sensitive issue when a massive graveyard had been found in the Thailand Jungle.

trafficking, though according to the yearly statement of the monitoring cell of Bangladesh Police there is no pending case of organ trafficking.[113]

As human trafficking is globalised in nature, victims are often required to travel long distances to reach destination countries.[114] On arrival in a destination country major violations of human rights take place.[115] Being in a new place, new environment, different cultures and language barriers put victims in a place of isolation. They lose their self-determination and freedom. Many times, they have no idea where they are. One of the victims interviewed was promised a job in Dhaka city, while actually she was trafficked into India.[116] She told me she was confused about where she was going. She thought she was in Dhaka, until a Hindu lady in a border area told her that it was India.

1 *Abuse of the Right to Physical and Mental Health*

Where trafficking involves torture and violence to control victims, this can have a devastating impact on their physical and mental health.[117] Physical health impacts include direct bodily consequences of trafficking and vary according to the different forms and nature of trafficking. Mental health impacts are those psychological harms which trafficked victims have to face during the whole process of trafficking and recovery. These may include anxiety, depression and post-traumatic stress disorder (PTSD).[118]

In cases of labour trafficking through sea routes, many victims are tortured and physically affected.[119] There are also travel-associated health risks which depend on the type and nature of

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[113] See Table 6. Tarek Mahmud and Mahadi Al Hasnat, 'World Day Against Trafficking in Persons: Bangladesh failing to take strong measures against human trafficking', *Dhaka Tribune* (Online, 30 July 2018) <https://www.dhakatribune.com/bangladesh/2018/07/30/world-day-against-trafficking-in-persons-bangladesh-failing-to-take-strong-measures-against-human-trafficking>.
[114] Louise Shelley, 'Human trafficking as a form of transnational crime' in Maggy Lee (ed), *Human Trafficking* (Taylor & Francis Group, 2007) 116-137.
[115] Schauer and Wheaton (n 104) 154.
[116] See Victim no 3, Part 01 in Appendix Four.
[117] Olga Gajic-Veljanoski and Donna E Stewart, 'Women trafficked into prostitution: Determinants, human rights and health needs' (2007) 44(3) *Transcultural Psychiatry* 338.
[118] Atsuro Tsutsumi et al, 'Mental health of female survivors of human trafficking in Nepal' (2008) 66(8) *Social Science & Medicine* 1841.
[119] Matilde Ventrella, 'Recognising effective legal protection to people smuggled at sea, by reviewing the EU legal framework on human trafficking and solidarity between member states' (2015) 3(1) *Social Inclusion* 76.

the journey and transportation.[120] One victim of labour trafficking told me he was beaten by the traffickers on a boat, from which he has a scar on his back and a leg injury. Traffickers gave them only a little bit of rice with dry chili. Many victims suffered from diarrhoea and many had fatal strokes.[121] Victim health on the boats was severely affected by overcrowding and confinement without any light or fresh air. Together with bad weather, this often leads to deaths at sea.[122] A poor environment and living conditions, insufficient food and drinking water are very common scenarios in labour trafficking cases.

Victims of sex trafficking face different kinds of health problems, such as sexually transmitted diseases (STDs), including HIV/AIDS, infertility, cervical cancer, ectopic pregnancy, chronic gonorrhea, syphilis, and chronic pelvic pain.[123] It has been reported that sex trafficked victims face beatings or deprivation of food and drinking water, wrongful confinement in a dark room for long periods of time, cigarette burns, ice baths, forced drug use and harmful medicine use.[124] The unhygienic and dirty environment of brothels is also responsible for different diseases.[125] Victims complain of tuberculosis, headaches, migraines and dizziness.

It has been established through earlier research that trafficked victims in a sex industry are more at risk of violence than any other victims.[126] When a victim has been sold into a brothel, she becomes the property of that brothel. Victims are bound to follow every instruction of the head of that brothel irrespective of their illness. If they do not agree they are tortured both physically and mentally.[127] Sometimes they become sick from having sex with many clients in a day.[128] They have been provided powerful medicine to reduce the pain, which could harm their lungs, kidney

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[120] Brian D Gushulak and Douglas W MacPherson, 'Health issues associated with the smuggling and trafficking of migrants' (2000) 2(2) *Journal of Immigrant Health* 67.
[121] See Victim No 12 of Part 01 in Appendix Four.
[122] Gushulak and MacPherson (n, 122).
[123] Chris Beyrer and Julie Stachowiak, 'Health consequences of trafficking of women and girls in Southeast Asia' (2003) 10 *Brown Journal of World Affairs* 105.
[124] Michele R Decker et al, 'Sex trafficking, sexual risk, sexually transmitted infection and reproductive health among female sex workers in Thailand' (2010) 65(4) *Journal of Epidemiology & Community Health* 334.
[125] Sabiha Yeasmin Rosy, 'Trafficking in Women in Bangladesh: Experiences of Survivors and Challenges to their Reintegration' (Masters Thesis, University of Bergen, 2013).
[126] Sarkar et al (n 110) 112.
[127] See Part 01 of Appendix Four. The interviewees who were sold into brothel all shared their experience of torture at brothel.
[128] Rosy (n 86) 124.

and other body parts.[129] Forcible sex or rape is endemic in sex trafficking, where brothel owners use alcohol and other drugs to facilitate rape. Victim Rubina said:

> Every day I was given medicine and forcefully raped by several people. When I refused, they put cloth in my mouth and hanged my hand with a rope. And sometimes they assaulted me brutally. They used to knock my head against the wall and cut my hair. I never thought I would survive.[130]

This victim is now suffering from a cervical infection.

Sex trafficked victims also suffer vaginal pain and irritation, pain in the whole body, and loss of appetite. A police officer said that a female victim from the Middle East came into his room and she could not sit down properly as she was bleeding too much due to a STD. Another theme I have found through my investigation is that condom use, to reduce the risk of an HIV/AIDs infection among the victims, is common. Most of my informants said they used condoms.[131] My interviewees understood that using a condom would prevent them from being pregnant and from any kind of sexual diseases. I found no victims with HIV. In other research, it has also been found that HIV infection rate is very low in Bangladeshi trafficked victims compared with victims from other South Asian countries.[132]

However, one interviewee had become pregnant after having unsafe sex with clients. Victim Mimi said:

> I got pregnant. After returning home, I told everything to a lady of this NGO who took me to a private hospital for an abortion.[133]

Besides the aforesaid physical health impacts, the mental suffering of the victims can start at the

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[129] Rosy (n 128) 124.
[130] See Victim no 1, Part 01 in Appendix Four.
[131] It has been found in different research that condom use depends on the negotiating skill and knowledge of victims with the client. See Sarkar et al (n 110) 112.
[132] Ibid.
[133] See Victim no 9, Part 01 in Appendix Four.

very beginning of trafficking when they find their life is in risk, that they will be raped, tortured and subjected to other physical abuse.[134] Monira, an NGO worker, said:

> When a victim knew that she was sent to a house for sex slavery, she didn't sleep continuously for 10 nights without having any food. She kept awakening with a stick and kept watching for a middleman who would send her to do such work.[135]

Other psychological issues, including PTSD, will be discussed at the end of this chapter.

The right of health care access is very limited for a victim of trafficking, as their freedom of movement is always restricted. When they become sick in the destination countries, they have no opportunity to get help from medical professionals. They may feel scared because of their legal status. Though health rights of the victims are ensured through different international instruments, there is scant research on the issue of physical and mental health of trafficked victims of Bangladesh.[136]

2 *Torture and Control*

Torturing victims is very common in the process of trafficking.[137] The use of torture to control trafficked victims is similar both in sex and labour trafficking. Through my fieldwork I found that in cases of sex trafficking, torture usually starts after arrival in a destination country. In contrast, labour trafficked victims are tortured throughout the whole journey of trafficking. Traffickers torture victims in different ways, such as physical assault, psychological intimidation, threats of harm to victims and their family members, starvation, and confinement in dark rooms for long periods of time.[138] Reba said:

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[134] Tsutsumi et al (n 121) 119.
[135] See NGO Worker no 1, Part 02 of Appendix Four.
[136] I found only one paper where the author considered the mental condition of trafficked victims, but she did not address their health rights and government responsibilities. See Rosy (n 86) 124.
[137] Although my research involved a relatively small number of qualitative interviews, a clear majority of the interviewees were tortured when they were being trafficked and/or at their destination (mostly at their destination). See Appendix Four.
[138] Shelley (n 117) 116.

> They tortured me brutally when I refused to work. When I would refuse to work, they would beat me brutally, they would threaten me.[139]

Victim Rubina added:

> Traffickers wouldn't provide any solid food. They only provide saline water. In 17 days, they provided bread loaf for two days and noodles for one day. I lived on only drinking water.[140]

When victims are trafficked through sea routes, they are always under the threat of torture by traffickers. If they are fortunate enough to arrive alive, the coast guards of Thailand, Indonesia and Malaysia arrest victims and take them to detention centres. They are often left alone by the traffickers without any food or drinking water for long periods of time. Sometimes they are wrongfully confined in the jungle of Thailand and brutally tortured by traffickers, who use this strategy to extort huge sums of money from victims' families. Victim Kalam said:

> There were five to six ships each containing 500 to 2000 people. There was a big ship with more people. We had 36 women in our ship. They made all the women pregnant. A child was crying, they threw the child into sea. We had nothing to do. We're weak, they were armed.
>
> There was no phone network. When they demanded money, they took us near to the hills to access the phone network and asked us to talk to our relatives. They threatened us that if we don't give them money, they will kill us.[141]

Interviewees revealed that during the journey conflicts can arise not only between traffickers and victims, but also between victims when they are abandoned without resources or assistance, and the situation is desperate. As Kalam said, there were 750 Bengali people and 150 Rohingya people in a boat. When the traffickers left them alone without any food or drinking water, they fought and killed each other to get control of the boat.

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[139] See Victim no 6, Part 01 of Appendix Four.
[140] See Victim no 1, Part 01 of Appendix Four.
[141] See Victim no 12, Part 01 of Appendix Four.

Victims can be controlled through confiscation of documents. There are many victims who have legal documents and who travel to work as domestic workers abroad. After arriving, traffickers confiscate their passports and other legal documents, making them more vulnerable in a new place. Without any identity documents, victims lose their legal status, making it difficult for them to seek help in their destination country or to escape from their captors.[142]

NGO worker, Monira, shared her observations:

> When victims reached the airport, they were taken in a building. There was another building where some women were screaming and saying, 'don't go to work'. And when a few women were sent to work, it was observed that they faced sexual harassment. In Saudi Arabia, the main work is entertainment; they are accustomed to amusing themselves with trafficked women. At night, 8 to 10 people of that family would use her continuously. If she refused going there, the wife and husband of the family tortured her seriously. Such scenarios continue day after day.[143]

Several times victims tried to escape from the coercion and deception of their traffickers. As they are illiterate and lack any legal documents, they become confused, not knowing where to go. The roads and city are totally unknown, and they do not understand the local language. When any victim tries to escape, she is punished brutally in front other victims. As victim Reba told:

> I went to the ground floor and saw, there were no girls. All girls were at the upper floor. And the girls and men were coming down. Then I tried to escape, and I understood, this place is not good. I said to myself Allah where have I come. Then I noticed that girls were dressed well and got down through the stairs. When I understood, I tried to escape. They caught me and beat me.[144]

[142] Ibid.
[143] See NGO Worker no 1, Part 02 of Appendix Four.
[144] See Victim no 6, Part 01 of Appendix Four.

3 *Poor Working Conditions*

Deception relating to working conditions and environments in trafficking cases is common. When victims arrive at a destination, they find that the nature of the job and its circumstances are totally different than what they have been promised. NGO worker Monira told the story of some women who worked in Jordan. They were promised domestic work. But in Jordan, they had to cut up big fish. They were drugged to make them work longer hours. Most of the time, they came back to home within one month.[145] Unpaid work and working excessively long hours without breaks or days off, or denying adequate food and living conditions, are very common situations that trafficked victims have to endure.[146]

Human Rights Watch interviewed some victims of forced labour and trafficking sent to Oman. One of the victims said that she was sold to a man by a United Arab Emirates recruitment agent. In Oman she was forced to work 21 hours a day for a family of 15 without any rest or day off, and without adequate food. She received not a single penny for her work. When she wanted to return home, the agency assaulted her brutally.[147] In my research, I have found the same pattern as Human Rights Watch found. I interviewed two victims who were trafficked to Oman. Rubina said*:*

> They said that if you want to stay here you have to do such work, what we want. Two men tied my hand and one raped me. After that another man came. After three men, I became senseless. When I woke up at midnight, one man took me into the washroom and got me drunk. They tortured me for 17 days.[148]

During my interviews, almost all the victims said they did not receive any money for their work in brothels. They were not allowed to go outside and talk to anybody. They were forced into sex with more than 10 people in a day without taking any rest. Some customers raped them forcibly and brutally. If they were fortunate they were rescued by law enforcement agencies. After their rescue, they faced new dilemmas, as discussed in the next section of this chapter.

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[145] See NGO Worker no 1, Part 02 of Appendix Four.
[146] Rothna Begum,'Bangladesh: Improve Protections for Migrant Domestic Workers', *Human Rights Watch* (Report, 8 December 2016) <https://www.hrw.org/news/2016/12/08/bangladesh-improve-protections-migrant-domestic-workers>.
[147] Ibid.
[148] See Victim no 6, Part 01 of Appendix Four.

G *Rescue, Repatriation and Reintegration*

> Q: Are you aware of your rights? That you have the right to receive compensation, the basic rights – food, clothing etc.?
>
> S: Who'd give it to us?

As victims of crime and victims of human rights violations, trafficking victims are entitled to a wide range of human rights.[149] Trafficked victims have the right to legal, social, economic and medical assistance without unnecessary delay. In addition, they have the right to return to their own country. It is one of the core obligations of the returning state to ensure safe return and take all necessary steps for their reintegration.

This section discusses all the stages following the life experiences of the interviewees which the victims have faced after being rescued. It outlines how trafficked victims are re-victimised in the hand of law enforcement agencies. It also outlines how their rights to rescue, repatriation and reintegration are hampered in the absence of an appropriate human rights-based approach.

1 *The Need for an Effective Criminal Justice Response*

> Q: Are you satisfied with the prosecution?
>
> NGO Worker: We're not receiving the justice. How can we be satisfied? There's a case, the alleged would have been punished. I had our witnesses. But they settled the case with the victim. What can we do? They say, I'll have to live here; will you defend if anyone harms us? They may have given some money.[150]

Similarly, another Victim Rubina said:

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[149] Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).
[150] See NGO Worker no 2, Part 02 of Appendix Four.

> I didn't get any verdict against the culprits. They are now out of jail, they get bail easily by dint of 1 lakh taka. They lead a normal life without any punishment. They're cutting crops, planting paddy and doing all sorts of household jobs too. They have destroyed my life but what happened to them? Nothing happened to them.[151]

The proper administration of justice means acknowledgement of victims' rights. A proper criminal justice approach would provide assistance to victims through the whole legal process, provide information about rights and possible remedies, and inform victims about the progress of their pending cases.[152] Victims of organised crimes may require more attention and protection as they are frequently intimidated by criminals not to file a police case, not to give evidence before the court, or to compromise their case.[153] In this section, I explain the experiences of the trafficked victims when they come into contact with criminal justice system of Bangladesh, focusing on the status of their pending cases.

It is very common in Bangladesh that trafficked victims are threatened by criminals, and isolated and pressured to compromise their case.[154] Sometimes, the offender may persuade the police and witnesses to say that the offence did not happen, and the case should not proceed further. Lengthy procedural delays and outdated laws also discourage women from taking legal action and enforcing their rights in the courts, as will be been further highlighted in Chapter Five. As most victims are from poor families, criminals or traffickers usually offer them money to drop their cases. However, those criminal cases are not compoundable and cannot be solved outside of the court. No significant steps are taken by the government of Bangladesh to protect victims. Chapter Six demonstrates the existing legal systems for protecting and assisting victims of crime (including trafficked victims) are not victim oriented and international standard.

Victim Sobnom said:

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[151] See Victim no 6, Part 01 of Appendix Four.
[152] Abdullah al Faruque and Sazzadur Rahaman, 'Victim Protection in Bangladesh: A Critical Appraisal of Legal and Institutional Framework' (2013) 13(1 & 2) *Bangladesh Journal of Law* 33.
[153] Ibid.
[154] Ibid. See Victim No 1, 3 and 8 of Part 01 in Appendix Four.

> I didn't file any police case as I didn't want to get involved with case related problems like harassment in the police station, or continuous threats from criminals to withdraw the case.[155]

Another Victim Reba said:

> I never went to the police station for filing a case. The village doesn't have any idea about what happened with me. There is a question of prestige [it is a shame in Bangladesh perspective to be rescued from brothel and victims are scared to face the society].[156]

Fieldwork also revealed that whoever had filed a case against criminals were very frustrated about the progress and the responsibility of the investigating authority. Most said they had no idea about their pending cases. They also blamed police for taking bribes and supporting the criminals. Victim Ajmi said:

> I sued against them 3 months after my arrival. Police arrested my brother-in-law. After one and half a month, he got bail by spending money. We didn't appear for the case, I also don't know if they have come.[157]

Another Victim Rubina said:

> Traffickers get support from police due to the money. They have money but I don't have [any]. That makes the difference between me and them.[158]

Interviewees were physically injured and mentally traumatised victims who had lost their confidence and trust in the criminal justice system, were re-victimised in the hands of the police, and received continuous threat from the criminals. Most of the interviewed victims were not aware of their rights. None received any compensation for their cases despite the physical, mental and

[155] See Victim no 8, Part 01 of Appendix Four.
[156] See Victim no 6, Part 01 of Appendix Four.
[157] See Victim no 11, Part 01 of Appendix Four.
[158] See Victim no 1, Part 01 of Appendix Four.

financial harms of being trafficked.

2 *The Need for a Human Rights-based Response*

A human rights-based response is victim oriented and outlines the positive obligation of states to ensure rights of the victims and prevent revictimisation. Victims' protection and support form the fundamental basis of a human rights approach to human trafficking. I apply this approach throughout this thesis to evaluate both the international and domestic responses. This section outlines the status of victims' rights in rescue, repatriation and reintegration process.

The obligation to identify victims is found in every legal instrument relating to human trafficking. However, because of the often hidden nature of this crime, it can be difficult for states to identify and locate victims of this crime. It has been further suggested that sometimes states disown the fact that they have trafficked victims in their territory, to absolve themselves of any responsibility to protect victims' rights.[159] There is a substantial risk in many cases that victims will be identified as illegal immigrants, and traffickers can then exploit this status to create impediments that prevent victims from claiming protection and being rescued and returned to their states of origin.[160] This dynamic can also undermine prosecution efforts.

Doctors, nurses and other health care professionals, as well as domestic violence and sexual assault shelters, crisis hotlines, social workers, good citizens, teachers and religious and community leaders have responsibility to assist with information for and about trafficked victims.[161]

Law enforcement agencies obviously have a critical role to play, which varies according to the nature of trafficking.

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[159] Gallagher (n 152) 135.
[160] United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights and Human Trafficking' (Fact Sheet No 36, United Nations, 2014) <https://www.ohchr.org/Documents/Publications/FS36_en.pdf>.
[161] Heather J Clawson and Nicole Dutch, 'Identifying victims of human trafficking: Inherent challenges and promising strategies from the field' (Study of the HHS Programs Serving Human Trafficking Victims, U.S. Department of Health & Human Services, <http://aspe.hhs.gov/hsp/07/humantrafficking/IdentVict/ib.htm>.

When it comes to sex trafficking, rescue campaigns can include brothel raids, arresting brothel keepers and customers, and conducting prosecutions.[162] If a victim is fortunate, she could be rescued during the journey over the border and before being sold. One informant in my research was arrested by the Indian police after crossing the border, though most had been rescued by Indian police during brothel raids. Police usually raid brothels at night after getting information from different sources. For example, one victim, Helena said:

> There were many Bangladeshi girls. Someone told police that there're Bangladeshi girls. Then Police came.[163]

Another victim, Sobnom, said:

> There were lots of girls in the house of the owner. One day a girl was beaten seriously, she informed some people below the building. The person informed the police station and police raid us. We got caught by police and they rescued us. We stayed in police station for two days. Later, police sent us to a safe home.[164]

Before a search is conducted, if the brothel owners get news of police intentions, they tell the victims to hide and keep silent. Sometimes police are able to arrest traffickers and criminals and identify and assist victims, but other times the criminals flee. Victim Reba said:

> When police raided the room, we fell to their feet and begged them to rescue us. Please, take us away from here. We want to go home. Then they said, alright, don't cry, we will take you out and send you to Bangladesh. We were glad. But then the owner pointed us and told that, don't tell your name and address, but I had already told them. Then the NGO people told us to pack our things. We packed everything, including money, ornaments. Then they took photographs and videos and took us to the police station.[165]

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[162] Janie A Chuang, 'Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy' (2010) 158(6) *University of Pennsylvania Law Review* 1655.
[163] See Victim no 2, Part 01 of Appendix Four.
[164] See Victim no 8, Part 01 of Appendix Four.
[165] See Victim no 6, Part 01 of Appendix Four.

Victim Nila said:

> I wasn't getting the way to escape from the brothel. After two to three months, I broke the bathroom window and jumped from 2nd floor. Then I went to a sister [a woman], who said she would send me to work if I wanted. Then I went to another girl – the last girl I stayed with. The girl was Bangladeshi. She said that I don't need to work, she'd work. [But] I was arrested on the first day that she forced me to work.[166]

Sometimes victims escape from brothels but are later arrested by police. Victims Laiju and Sila were able to flee from the brothels they were in but were then arrested by police and sent to shelter homes.[167] However, some victims are scared of escaping from their brothel, as they have no documents confirming their legal status. Victims may be afraid of being jailed, or maltreated or even tortured by police, unaware that as victims of trafficking they have certain rights. Sometimes, they convince the customers to help them to be rescued from the brothel. I have found only two such independent returnees. Victim Mimi said:

> I was afraid, thinking that if police put me into jail, that'd be worse. I thought, I would try myself. So, I contacted my uncle. He spent money and brought me back home via a broker.[168]

Another victim Nila said:

> Last time when I went for work, police raided the house and arrested me. To a customer I cried a lot and said that I want to go [home] to Bangladesh. He was police. Half an hour after he left, police raided.[169]

Some victims in Saudi Arabia and other Middle East countries cannot escape, as their passports

[166] See Victim no 5, Part 01 of Appendix Four.
[167] See Victim no 4 and 7, Part 01 of Appendix Four.
[168] See Victim no 9, Part 01 of Appendix Four.
[169] See Victim no 5, Part 01 of Appendix Four.

and other legal documents are kept by their employers. Their only option is to phone a family member and beg to be rescued. Family members may then spend hours in front of the Bureau of Manpower, Employment and Training (BMET)[170] but without any solution.

Victim Rubina said:

> After being abused, I phoned my husband through a man who was from Chittagong. I requested him to give his phone to call my husband, I convinced him by saying that we both are from same country, I will die if you do not do anything for me brother? I cried holding his hand and foot again and again. As I am going to die please give me the opportunity to talk to my family for last time. Then he gave his mobile to call to my husband. Then I told everything to my husband, and husband gathered all people of society and managed money to provide them as they demand. In the meantime, the clients tortured me so much, I was senseless. They thought I was dead. They managed an air ticket at 12 pm to send me by next day's flight to my country and left me in that same condition in the airport.[171]

After being rescued from brothels and being identified as trafficked, victims may be sent from police custody to shelter homes. Various Indian NGOs work with the Indian Government to repatriate Bangladeshi victims. Those NGOs then communicate with Bangladeshi NGOs, who assist with processing and repatriation, sometimes including visits to the Indian shelter homes. Once documentary evidence is verified, victims are handed over to the Bangladeshi NGOs.

The informants I spoke to were very happy with the service they received in the Indian shelter homes. Of course, this is a small sample, however the victims I interviewed indicated that the Indian shelter homes provided sufficient food, clothing and other necessities. In addition, the shelter homes gave victims vocational training, such as tailoring, crafting, sewing, designing and painting. Victim Rubina said*:*

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[170] The Bureau of Manpower, Employment and Training (BMET) is an attached department of the Ministry of Expatriates' Welfare and Overseas Employment, established by the government of Bangladesh in 1976.
[171] See Victim no 1, Part 01 of Appendix Four.

> Shelter home called my home, they let me talk. They took my address. They never hurt me. I have been there for 3 years. They never kept me locked in. I would frequently come out to the office and work.[172]

Another Victim, Reba said:

> They behaved well with us. We trespassed, went to India without government permission. But, if you behave well with someone, s/he must behave well with you. They are all like our mother-sister.[173]

Victim Sobnom said:

> After reaching safe home, I made contact with Bangladesh. They contacted with them and managed everything to come in country.[174]

None of my informants were concerned to escape the shelter, although all had been eager to return home and to reunite with their families, despite their fear of facing negative treatment by family and others.

In cases of labour trafficking, it is firstly the responsibility of the Bangladesh coast guard and other law enforcement agencies to rescue victims while they are within the Bangladesh territorial sea. Secondly, it is the responsibility of transit countries to rescue trafficked victims. Finally, destination countries have an obligation to rescue.

As I have mentioned in section one of this chapter, traffickers use sea routes to reach Indonesia and Malaysia, and use Thailand as a transit country. Traffickers also torture victims in the jungles of Thailand and Malaysia. Transit and destination countries have, generally speaking, demonstrated adverse attitudes towards trafficked victims.

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[172] Ibid.
[173] See Victim no 6, Part 01 of Appendix Four.
[174] See Victim no 8, Part 01 of Appendix Four.

It seems that often, no one wants to help a floating trawler which is loaded with trafficked victims, as they may think the victims are pirates. Due to language barriers, victims may not be able to talk with people, including law enforcement officials, on other ships. Sometimes they may be provided food or oil. But most of the time they are left alone; not only by the large ships but also by the coast guards of Indonesia and Malaysia.

Victim Kalam said that at first, they were rescued by Indonesian authorities, but when the Indonesians heard that there were 750 Bengali people and 150 Rohingya people on board, they became angry, and left them in the sea. They floated for three days before a Malaysian ship gave them some noodles and again left them in the sea. Finally, they were rescued by Indonesian authorities and then taken to Kalalangcha.[175]

Another victim, Halim said:

> When the Malaysian government started to crack down on the traffickers in their country, the traffickers took off engine of the trawler and floated it on the sea water. With no food, the trawler kept floating in the sea. After eight days, they reached the coast of Indonesia. The navy of Indonesia found them and towed the trawler with theirs into the deep sea, and cut off the roof and let the trawler float again in the sea.[176]

Usually labour trafficking victims are sent to detention centres or camps after being rescued. Then different local and international NGOs, together with the Bangladesh Government, bring the victims back to Bangladesh. Victim Kalam stayed in a camp for three months before being repatriated by a human rights organisation in Bangladesh.

After returning, many victims experience significant mental trauma, as they have lost so much. Some have even paid their traffickers due to false promises of good employment. Most of my interviewees were anxious about how they would survive, how they would start a new life, and

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[175] See Victim no 12, Part 01 of Appendix Four.

[176] A Victim from NGO YPSA. Young Power in Social Action,(YPSA), 'YPSA-BCTIP (Bangladesh Counter Trafficking-in-Persons) Program (2nd phase) ' (15 August 2020) <https://ypsa.org/services-to-survivors-in-trafficking/>.

how they would face the cruelty that had been inflicted on them. According to one NGO worker:

> The traffickers are the main culprit. Victims are not responsible, survivors are not accused. The victims are facing problems from their house to everywhere. In training, I have to learn that they said, madam, would you marry your child with victims? In that case, what should we say? Especially during training? It is an embarrassing situation. The victim women have a right to survive in the society with freedom and dignity. [177]

Reintegration is the final stage of the victim protection: ensuring the long-term safety and wellbeing of trafficked victims and resettling them in their family and society.[178] Effective reintegration prevents re-victimisation by addressing all types of needs of victims. Generally, the term reintegration means re-adoption and re-incorporation of the trafficked victims socially, culturally and economically in their country of origin.[179] Deborah Harrison has defined reintegration as legal assistance, providing health care, medical, psychological care and other material assistance to victims. [180] My fieldwork revealed various challenges associated with reintegration, as I discuss in this section.

Firstly, trafficked victims struggle to resettle in society after being rescued from traffickers. Every day they need to fight against social stigma and ostracism.[181] Most of the time, society treats victims of sex trafficking as prostitutes and women of bad character. Many seem to regard victims (rather than the traffickers) as the criminals and assume that victims were voluntary participants. Generally, people have no understanding of what human trafficking is and how it works. Heather Clawson and co-authors found that trafficked victims face humiliation, are isolated from their society and family, and, if they have been victims of sex trafficking, they feel ashamed to come

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[177]See NGO Worker no 1, Part 02 of Appendix Four.
[178] Andreas Schloenhardt and Mark Loong, 'Return and reintegration of human trafficking victims from Australia' (2011) 23(2) *International Journal of Refugee Law* 143.
[179] Ratchada Jayagupta, 'The Thai government's repatriation and reintegration programmes: Responding to trafficked female commercial sex workers from the Greater Mekong Subregion' (2009) 47(2) *International Migration* 227.
[180] Deborah L Harrison, 'Victims of human trafficking or victims of research' (Masters Thesis, School of Education and Professional Development, University of East Anglia, 2006).
[181] Kate Heath, 'Obstacles to Resettlement for Human Trafficking Victims' (2013) Paper 2 *Faculty Curated Undergraduate Works.*

forward.[182] Through my fieldwork I have found negative treatment by society, and both negative and positive attitudes from victims' families.

(a) Negative Behaviour

Social ostracism towards trafficked victims appears to commence at the very starting point of the repatriation process. Border guards and police may mistreat trafficked victims, and victims who return with diseases are ostracised by doctors. Monira, an NGO worker, observed:

> When a doctor knows that one came from prostitution, the doctor wants to touch them and undress them more than what is unnecessary. A human knows what is good and what is bad. If they refuse to do so, the doctor uses bad language, which is another type of oppression.[183]

Most of the interviewees experienced difficulty being accepted and reintegrating into their society and were still facing difficulties at the time of being interviewed. Victim Ajmi Said: 'My neighbours think that, I've come from abroad. I'm not a good person.'[184] Another victim Lolita experienced bad comments and continuous criticism from her community. These attitudes have a negative impact on victims' family lives.[185]

Trafficked victims are often eager to meet their family members after returning home. However, it can be very difficult for victims to live with family members, such as their husbands, who relate to them differently because they have had sexual intercourse with many people abroad. Many husbands have difficulty addressing this issue in the right way, and may become silent, or oppress the victim, including in front of their children. Family peace can be destroyed by trafficking. Family members can become miserable. Sometimes it is impossible for victims to reunite with

[182] Heather J Clawson et al, 'Study of HHS programs serving human trafficking victims' (Final report, US Department of Health and Human Services. Office of the Assistant Secretary for Planning and Evaluation, <http://aspc.hhs.gov/hsp/07/humantrafficking/final/index.pdf>.
[183] See NGO Worker no 1, Part 02 of Appendix Four.
[184] See Victim no 11, Part 01 of Appendix Four.
[185] See Victim no 3, Part 01 of Appendix Four.

their families.

Monira, an NGO worker, shared her experiences:

> A child was rescued from Narayangonj by Jessore raid group. The child was sent to a family for housekeeping, but the family sold her to Paturia-duladiya prostitution camp, the head of the brothel made her apply a cream for enlarging her breasts. After the rescue, we find her while she was screaming with irritation, which was a bad experience for her. She showed interest to go to her mother, so we called her mother by phone. That time her mother told us she'd suicide if we brought the child to her, but her child was worried to go to her mother. We also informed others through the community: everyone tried to bring back the child, but her mother refused to accept the child and threatened to suicide repeatedly. Her mother knew that her child stayed a long time in Duladiya. Finally, we failed to send the child to her family, and we managed a job for her in a garment factory instead.[186]

Another NGO worker Shahanara said:

> I've faced such a challenge, that a family said that they will not take the girl home. We asked them a lot and even we visited the home, but the guardian sneaked out so that I couldn't meet them. They said, don't talk to me if you want to talk about the girl. I phoned many times but failed. We planned to get the girl into some work, but we didn't manage to get her home. It is rare to be able to take a girl to her home. They even used abusive language when I took a girl to her house.[187]

Most victims of sex trafficking are not easily accepted by their family.

> I can't go to my father's home. They haven't accepted me yet. I don't have my father. My brother forbade me to go. But I didn't pay heed. He said, good people don't go abroad, you don't need to go. Since I returned, it's been two years, I couldn't go to my paternal home

[186] See NGO Worker no 1, Part 02 of Appendix Four.
[187] See NGO Worker no 3, Part 02 of Appendix Four.

yet.[188]

Another victim Rubina said she was now living with her husband, but he didn't take her as before, now he mistreats her. Usually, when a victim returns from brothel and prostitution, they are treated as wrongdoer and will never be accepted as before.

(b) Both Negative and Positive Family Attitudes

It is true that some victims have returned with the help of their families who have knowledge of what has happened, but many have no idea about the horrible experience of the victims. This means that victims have faced both positive and negative treatment, and a mix of attitudes, from their dearest ones.

Some victims are well accepted by their families. Victim Sila said: 'My husband accepted me well. He said that: what happened, happened; I don't mind, why would you mind; forget what happened.'[189] Sobnom was also accepted by her family. After coming home her mother insisted that she not go anywhere without being accompanied by her.[190] Such positive attitudes help victims to develop strength, start a new life, and to establish their rights.

Secondly, a lack of economic support is a significant factor when it comes to human trafficking in Bangladesh. It is a push factor, as many victims accept false promises or are tricked because they are living in poverty. But a lack of economic support also creates barriers to proper reintegration and rehabilitation of trafficked victims. I did not speak to a single victim who had earned money from the labour or sex work they were forced to do after they were trafficked. Instead, they lost everything, and many of them were then in debt because of this crime. Victims who were trafficked to Middle East countries as domestic workers told how they had to sell their land and borrow money to bear the cost of transportation and to pay to recruitment agencies. The economic situation of victims therefore either remains the same or becomes even worse after trafficking.

[188] See Victim no 11, Part 01 of Appendix Four.
[189] See Victim no 7, Part 01 of Appendix Four.
[190] See Victim no 8, Part 01 of Appendix Four.

In Bangladesh, the role of women and sometimes children in the family can become a complicating factor for reintegration, because the poverty of the family may mean that they are directed by men to engage in unsuitable work, or even to return to sex work, due to the poverty of the family. Sometimes victims return to their family, but the family sends them back to the same place to earn money.

To help trafficked victims become economically self-sufficient and to help them escape the poverty cycle, different international NGOs and local NGOs are working together. This process has been started at the shelter home of NGOs, where victims learn different skills. Monira, an NGO worker, observed:

> We try to send them to their family but most of the time family don't show a positive attitude, the family member may not even come to meet her. Then we keep them here, we train them with their interest, like a boutique, computer and sewing, and we manage job placement too. We send these survivors to some women related department of government-Café, Mukti. We also sent them to many organisations. Even in our organisation, these survivors are also working as employees.[191]

Victim, Nila said:

> The NGO provides support with training such as for garments, tailoring, parlour, mobile servicing. We've taken training in tailoring and garments machine operator. They've trained us and they'll employ us. They'll take the first month's salary for our residence and food. From the next month, salary is ours. That means they'll completely settle us and then provide a salary.[192]

Most of the victims said they received a small amount of money from NGOs to build small businesses. They were uniformly dissatisfied with the lack of economic support from the

[191] See NGO Worker no 1, Part 02 of Appendix Four.
[192] See Victim no 5, Part 01 of Appendix Four.

government.

The challenges posed by victims' precarious economic status undermines the long-term effectiveness of the reintegration process. Though the victims receive skills training, they may have very limited scope to apply their skills due to economic conditions and scarcity. Victim Mimi said:

> They (NGO) gave some money for business purpose – to buy cloth. But I sold on credit and all money has gone. No profit.[193]

Another Victim, Sila said:

> If they help, we can do business. My husband sells mangos. Now is mango season. He buys 200-300 Taka's mangos and sells them. We're running our family somehow. So, if they help, we can open a vegetable shop.[194]

In order to be successfully resettled in society and with their family, very careful attention needs to be given towards trafficked persons' overall needs and situations. Effective reintegration processes require practical assistance, education and training, and social support so that victims can lead a safe, respected and normal life in society.

> As a human I want to live normal life, no one should go through this suffering.[195]

Finally, trafficked victims need emotional support, as they are traumatised from their experiences of torture, physical abuse and working in a life-threatening environment. Research demonstrates that most of the trafficked victims suffer PTSD.[196] Mary-Ann Burkhart and Joyce Lombardi have

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[193] See Victim no 9, Part 01 of Appendix Four.
[194] See Victim no 7, Part 01 of Appendix Four.
[195] See Victim no 1, Part 01 of Appendix Four.
[196] Tsutsumi et al found that sex trafficked victims have higher level of anxiety, depression and PTSD. See Tsutsumi et al (n 121). In another study about Israel, it has been found that most of the trafficked victims have depression and PTSD symptoms. See Julie Cwikel et al, 'Trafficked female sex workers awaiting deportation: Comparison with brothel workers' (2004) 7(4) *Archives of Women's Mental Health* 243. Derugatis and Savitz conducted a research in Greece and identified that trafficked women have suffered more through PTSD than any other victims. See Mark E Maruish (ed) *Handbook of Psychological Assessment in Primary Care Settings* (Routledge, 2017).

said that human trafficking victims never recover, suffering lifelong PTSD, among other mental disorders.[197]

Generally, PTSD is a complex psychobiological condition which can cause depression, anxiety, sleeplessness, loss of appetite, suicidal ideation (and attempts), self-harm and feelings of hopelessness and helplessness.[198] Babette Rothschild says 'PSTD must have a symptom profile that includes a re-experiencing of the causal event (often, but not always, in the form of intrusive images), avoidance of reminders of the event, and persistent symptoms of hyperarousal, (sleep disturbance, concentration difficulties, hyper vigilance, etc.)'.[199] PTSD makes it very difficult for victims to lead a normal life.

While I did not apply psychometric tests in my research and therefore cannot be certain that the victims I interviewed had PTSD, many of the victims I interviewed complained of the symptoms outlined above. I found that many victims could not forget their experiences, were depressed and anxious and engaged in self-harm. It was apparent that they had difficulty trusting people. NGO worker Shahanara said:

> Most of the victims get used to sex and get drug addicted from being sex trafficked. They are the riskiest victims as they try to cut their hand, and body etc. … It becomes tough for us to deal with as we are just trying through counselling. Even, sometimes they directly asked me to get their demand fulfilled. They say it's hard for them without this. In that case, it becomes a challenge, and we use all possible ways and therapies to get her cured.[200]

Another Counsellor, Monira said:

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[197] M Burkhart and Joyce Lombardi, 'Maryland's Response to Human Trafficking' (2008) 41(4) *Maryland Bar Journal* 12. Before 1980, the term PTSD was only considered to be a disease experienced by soldiers who had a connection with combat. Then in the Third Revision of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III), PTSD was identified as a category of mental illness that could be experienced by anyone. Angela A. Jones, 'Post-traumatic stress disorder and victims of human sex trafficking: A perpetuation of chronic indignity' (2009) 4 *Intercultural Human Rights Law Review* 317.
[198] Ibid.
[199] Babette Rothschild, *The body remembers casebook: Unifying methods and models in the treatment of trauma and PTSD* (WW Norton & Company, 2003).
[200] See NGO Worker no 3, Part 02 of Appendix Four.

> They remain drug addicted as they stayed in brothel. They attempt to suicide. After coming here, the problem they face is withdrawal symptom. So, they attempt to suicide, set fire to the house.[201]

In this section, we have seen how social stigma and ostracism, negative responses of families, poor economic conditions and mental health problems create impediments for the proper rehabilitation and reintegration of victims. Both the government of Bangladesh and various international and local NGOs are working in this process, though they are facing numerous challenges. These challenges are discussed further in Chapter Five. Upon rescue and return, a victim does not have any capacity to decide where she will go and what she will do. NGOs and government actors apply different strategies and therapies to recover them and help them to return to their normal lives. Proper economic and mental support and positive behaviour of families and society can help them to be strong and to realise their rights.

H *Conclusion*

This Chapter has focused on the life experiences of trafficked victims and on the experiences of government officials, NGO workers and other officials who are working against human trafficking. The first section set out details regarding the data collection. These courageous people experienced horrible things and were deeply traumatised. I also suffered vicarious trauma and received counselling. During my fieldwork, I got full support from NGOs like *Right Jessore* and *Dhaka Ahsania Mission*, however, it was very tough to communicate with police personnel. The rest of this Chapter has summarised the outcomes of the data analysis.

The first theme identified was the recruitment strategies and routes of trafficking and the criminals who facilitate the recruitment strategies. The second theme was the pre-trafficking condition of the victims. Following the stories of participants, I ascertained various causes of and vulnerabilities to trafficking. Most of the trafficked victims involved in my fieldwork were victims of sex trafficking and are women, as they are in the most vulnerable position in Bangladesh. Most victims trafficked by land are victims of sex trafficking, while victims trafficked by sea were victims of

[201] See NGO Worker no 1, Part 02 of Appendix Four.

labour trafficking. Poverty, illiteracy and corruption are also responsible for expanding this organised crime.

The third section identified violations of human rights of trafficked victims at destination countries. Victims were deceived as regards their working place and conditions and payment. Most of the time they were forced to work against their consent. They also had very limited access to medical facilities in their destination country. I found that trafficked victims are tortured physically and mentally through such means as beatings, inadequate food, an absence of medical support, and the confiscation of status and immigration documents. As a result of torture, and infliction of physical and mental harm, ongoing mental health challenges are very common for trafficked victims. Most of the sex trafficked victims suffer from different sexually transmitted diseases. However, at least in my small sample, the numbers of HIV/AIDS infected victims were very low.

This Chapter also sought to explain the status of the trafficked survivors. This section has demonstrated the inadequacy of the legal system of Bangladesh, and seriously questions its capacity to provide justice. After being repatriated, victims often do not want to run their police cases, and do not agree to cooperate with prosecutions as they and their families receive threats from criminals. Most of my interviewed victims had not filed any police case as they feared harassment in police stations, the courts and in society more broadly.

Lastly, this Chapter focused on the need for a human rights-based response. The enjoyment of human rights depends on identification and rescue. At least when it comes to the cohort I identified, many of them had been rescued from brothels, which provides some evidence that law enforcement agencies and NGOS are working effectively in some destination countries, particularly India. However, there are many ill-fated victims who have been trafficked and exploited who are never rescued. Repatriation processes also appear to take a long time. In the case of labour trafficking through sea routes, victims are lucky to be rescued by transit and destination countries. Most of the transit and destination countries do not follow their international legal obligations to identify or rescue trafficked victims. It appears that sometimes law enforcement agencies in those countries do not have enough knowledge to identify trafficked victims, and they don’t want to provide special protection to the victims. This Chapter also addressed some of the challenges people face

when they are repatriated to their home country, such as the fight against social stigma, poverty and PTSD.

The findings of this Chapter form the background for an analysis of the response of the law and institutions of Bangladesh and the effectiveness of its anti-trafficking actions. But first, in the next Chapter I identify a number of theoretical frameworks for the analysis that follows. The theoretical frameworks that commended themselves to me after speaking with victims and their support workers consist of feminist theory, critical race theory, and Marxist theory on labour, as well as a human rights-based approach and criminal justice approach.

CHAPTER 2: THEORETICAL FRAMEWORKS

In the last chapter I observed that a number of different themes emerged from my fieldwork, including exploitation on the basis of poverty, on the ground of gender, race and ethnicity and identity. The fieldwork also indicated that there had been gross violations of human rights, and that the criminal justice system had been ineffective in providing justice to victims. In light of these findings from the fieldwork, I have adopted feminist theory, critical race theory, the Marxist theory of forced or unfree labour, a human rights approach and a criminal justice approach to evaluate both the international and domestic response to human trafficking. In this chapter I elaborate on these theoretical frameworks.

A *Feminist Theory*

The traditional 'security' approach saw trafficking as a threat to the nation state and its power to control its borders, even though trafficking is not a variety of military threat.[1] In contrast, Jennifer K Lobaz has argued that a feminist 'theory of trafficking establishes the necessity of gender as a category of analysis in a way that traditional and human security(y) (approaches)… do not.'[2] The focus of feminist theory has been to ensure the security of trafficked victims, placing victims at the centre.

Feminists started campaigning against human trafficking, prostitution and slavery during the 19th century and have continued this campaign into the 20th century and beyond.[3] Indeed, Kathleen Barry has argued that feminists were the first who addressed trafficked victims and their human rights.[4] Feminists have mainly highlighted the importance of having a separate international legal instrument to combat this crime.[5] They argue that in order to understand human trafficking and to

[1] Jennifer K Lobasz, 'Beyond border security: Feminist approaches to human trafficking' (2009) 18(2) *Security Studies* 319.
[2] Ibid.
[3] Barbara Sullivan, 'Trafficking in women' (2003) 5(1) *International Feminist Journal of Politics* 67.
[4] Kathleen Barry, 'Female Sexual Slavery: Understanding the International Dimensions of Women's Oppression' (1981) 3 *Human Rights Quarterly* 44.
[5] Ibid.

combat this crime successfully, a feminist approach to the adequacy of national and international legal orders is crucial.

Currently, feminist scholars can be divided into two categories: feminist abolitionists[6] and feminist critics of the abolitionists.[7] Abolitionists believe that both voluntary and involuntary sex work are a form of violence against women. Critics of the abolitionists believe that sex work can be a legitimate form of employment, and should be understood as such, when it is voluntary. On this view, a person has the right to choose sex work as a career. For instance, Larissa Sandy has argued that sexual services should be seen as a type of trade or profession.[8] According to this approach, some women take on sex work as a job in order to earn money for themselves and their family.[9] Western sex worker activists have argued that public discussion is necessary in order to make a distinction between voluntary and involuntary sex work, in order to establish and improve the rights of sex workers.[10] Scholars from the different feminist groups have varying opinions about sex work, but all share the opinion that it is the human rights of women who are being trafficked that must be central in any analysis of the problem of human trafficking.[11]

The distinction between voluntary and involuntary sex work has been rejected by the Coalition Against Trafficking in Women (CATW), who think that sex work is always coercive.[12] Alison Murray has drawn the distinction in the following terms: 'Voluntary prostitutes are Western sex workers who have the capacity to make rational choices about whether or not to sell sex and forced prostitutes are from developing countries, constructed as victims, passive, exploited objects, often prey for traffickers, (and) they are unable to make similar choices'.[13] The distinction is therefore

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[6] The first group Feminists abolitionists are also known as Radical and Marxist Feminists. See Julia Bindman and Jo Doezema, 'Redefining prostitution as sex work on the international agenda' (Report, ChildHub Academy, 1997) <http://www.nswp.org/mobility/redefining.html>; Joyce Outshoorn, 'The political debates on prostitution and trafficking of women' (2005) 12(1) *Social Politics: International Studies in Gender, State and Society* 141; Kathy Miriam, 'Stopping the traffic in women: Power, agency and abolition in feminist debates over sex-trafficking' (2005) 36(1) *Journal of Social Philosophy* 1; Lara Gerassi, 'A heated debate: Theoretical perspectives of sexual exploitation and sex work' (2015) 42(4) *Journal of Sociology and Social Welfare* 79.
[7] The second group - *Feminists Critics of the Abolitionists* - are known as sex positivists. Ibid.
[8] Larissa Sandy, 'Sex work in Cambodia: Beyond the voluntary/forced dichotomy' (2006) 15(4) *Asian and Pacific Migration Journal* 449.
[9] Kamala Kempadoo and Jo Doezema, *Global sex workers: Rights, resistance, and redefinition* (Routledge, 2018).
[10] Sandy (n 8).
[11] Lobasz (n 1).
[12] Kempadoo and Doezema (n 9).
[13] Alison Murray, *Debt-bondage and trafficking: Don't believe the hype* (Routledge, 1998).

controversial. While abolitionists argue that all sex work is a violation of human rights and it is no longer voluntary when it is a matter of survival, as such it should be abolished, sex positivists argue for the legitimisation and legalisation of sex work, as a livelihood choice.[14]

What is the significance of this distinction in the trafficking context? Firstly, there are a number of wealthy countries where prostitution is legal, and there is a demand for sex workers. The demand of those countries fuels human trafficking from poor countries to meet the demand. Julie Bindel has conducted research on sex work and has argued persuasively that decriminalisation of sex work fosters demand, and that this demand increases the trafficking of women and girls to both legal and illegal brothels.[15]

Seo-Young Cho, Axel Dreher and Eric Neumayer conducted research on human trafficking for sex work in Denmark, Germany and Sweden, and considered the situation both before and after the decriminalisation of prostitution.[16] After Sweden prohibited sex work in 1999, sex worker numbers dropped from 2500 to 1500 in 2002.[17] In contrast, Germany, which decriminalised sex work, reported some 32,800 trafficked victims in 2004, which is 62 times more than Sweden, according to the International Labour Organisation.[18] The US government has also stated that decriminalisation of sex work has expanded trafficking for sexual exploitation or commercial exploitation.[19]

India and Bangladesh share a heritage of British Colonial rule.[20] In Bangladesh and India, sex work has been decriminalised; however, child prostitution is illegal. However, recently, the British Broadcasting Corporation conducted an investigation into Bangladeshi brothels and found children as young as seven years of age in the sex industry, including in one of the world's largest licensed

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[14] Jane E. Larson, 'Prostitution, labor, and human rights' (2003) 37(3) *UC Davis Law Review* 673.
[15] Julie Bindel, *The pimping of prostitution: Abolishing the sex work myth* (Palgrave Macmillan, 2017).
[16] Seo-Young Cho, Axel Dreher and Eric Neumayer, 'Does legalized prostitution increase human trafficking?' (2013) 41 *World Development* 67.
[17] Ibid.
[18] Ibid.
[19] The Bureau of Public Affairs,'The Link between Prostitution and Sex Trafficking', *US Department of State Archive* (Webpage, 24 November 2004) <https://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.
[20] Subir K. Kole, 'From "veshyas" to "entertainment workers": Evolving discourses of bodies, rights, and prostitution in India' (2009) 1(2) *Asian Politics & Policy* 255.

brothels. [21] In 2000 the High Court of Bangladesh declared that prostitution is a legal occupation.[22] A woman needs to be registered by affidavit as a prostitute where they will give statement of free consent before entering into this profession.[23] However, this decriminalisation approach is inconsistent with the Constitution of the People's Republic of Bangladesh, which contains provisions directed to the prevention of prostitution.[24]

According to article 23(1) of the Universal Declaration of Human Rights, '[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'[25] However, whether we can apply the same approach in developing countries is another question. Voluntary sex work depends on a context that enables the worker to make a genuinely voluntary decision to engage in sex work (even then, a decision involving hazards and danger). In Western countries, which have a measure of social security, and where poverty is less common (though still in existence), it may be that some or even many women who choose to engage in sex work have done so on a voluntary basis. In these countries, the 'free choice' contemplated by the Universal Declaration of Human Rights is a meaningful choice.
The context in Bangladesh is very different. Women and children are vulnerable because of their social status. They do not have any social security. Bangladeshi women often do not have a free choice about what work they want to undertake. They engage in sex work to survive; to meet the necessities which the state has failed to provide. In such cases sex work cannot accurately be categorised as voluntary, as their participation cannot be classified as a free choice. My fieldwork demonstrated the effects of gender oppression, discrimination, poverty and illiteracy; the causes of vulnerability of women and children who ended up being exploited.

For the purposes of this thesis, the debate between feminist abolitionists and sex positivists can therefore be placed to one side. The value of feminist theory in my analysis is that it identifies the

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[21] BBC Investigation, 'Inside one of the world's largest licensed brothels', *BBC News* (Online, 26 September 2019) <https://www.bbc.com/news/av/world-asia-49830565/inside-one-of-the-world-s-largest-licensed-brothels >.
[22] Claudia Hammond, 'I'm just here for survival', *The Guardian* (Online, 10 January 2008) <https://www.theguardian.com/world/2008/jan/09/gender.humantrafficking>.
[23] John Godwin, 'Sex work and the law in Asia and the Pacific' (Report, United Nations Development Programme, October 2012) <https://www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf>.
[24] *Constitution of the People's Republic of Bangladesh (Bangladesh)* 1972 art 18(2). The State shall adopt effective measures to prevent prostitution and gambling.
[25] United Nations General Assembly, *The Universal Declaration of Human Rights*, GA Res 217A (111), UN GAOR, UN Doc A/810 (10 December 1948) art 23.

‘push factor’ behind sexual exploitation and underscores the point that gender and gender-based inequality is pivotal to a full understanding of human trafficking. In addition, feminist theory emphasises the experiences of trafficked victims and highlights the responsibility and obligations of state and non-state actors (such as NGOs) to protect the rights of trafficked victims, within the framework provided by the national and international legal order – rather than focusing first on the security issues (such as border control concerns) experienced by states in addressing human trafficking.

For the purposes of this dissertation, it is not necessary for me to take a position in these broader debates within feminism. If a woman has genuine economic power and choices and chooses sex work, that is a matter for her. As Alison Murray observes, there certainly should not be an assumption that a woman in Bangladesh, or a Bangladeshi woman who travels to another country to engage in sex work, is automatically being exploited. That said, all of the people I interviewed in the course of my fieldwork made it clear to me that they did not choose to engage in sex work, and prevailing economic conditions in Bangladesh make the idea that women have free choice difficult to accept. As discussed above, decriminalisation and legalisation of prostitution also help create a supportive environment for sex trafficking. A number of different reports have confirmed that there are many trafficked victims in the licensed brothels of Bangladesh.

Feminist scholar Lara Gerassi has identified that the reason that violence against women takes place in Bangladesh as a source country, transit country and destination country for trafficked victims is because these countries are patriarchal: there are substantial inequalities between men and women.[26] Gerassi has argued that many men in Bangladesh believe that females are subordinate to them and they have the right to torture them.[27] Hope Lewis, another feminist scholar in this field, has also argued persuasively that ‘gender norms and stereotyping are the main sources of controversy across racial-ethnic, religious and cultural boundaries.’[28]

[26] Gerassi (n 6).
[27] Ibid.
[28] Hope Lewis, 'Embracing complexity: Human rights in critical race feminist perspective' (2003) 12 *Columbia Journal of Gender and Law* 510.

Consistently with the findings of Anne Marie Gallagher,[29] I have found that Bangladeshi trafficked women are exploited in multiple ways that reflect the patriarchal system in which they live. They are victims of family violence perpetrated by men. They are victims of a patriarchically-ordered economic system that causes them to live in poverty and economic insecurity. They are victims of torture, unlawful confinement and other types of physical injury, psychological injury and deprivations inflicted by men. They are deprived by men of official documents in destination countries and are then exploited and suffer mistreatment by men due to their illegal status. They are subjected to social stigma by men and isolated by men (even after repatriation). They also receive inadequate social, legal and economic support after their repatriation by government officials, who are typically men.

The legal status of women is also regulated by religion. According to different religions women are regarded as inferior or subordinate to man and they have limited rights than men.[30] In a patriarchal society, women are subordinate, dependent and dominated, and they face obstacles to access power and resources. Chapter One has identified how women and children are oppressed in the patriarchal society of Bangladesh. Linda Cipriani argues that in Middle Eastern and other Muslim countries such as in Pakistan and Iran, the position of women is based on religion which persecutes them if they fail to follow its orders.[31] The social structures created by religion lead women to tolerate torture and inhumane treatment.[32] Yet when they attempt to free themselves from oppressive religious patriarchal situations, they are vulnerable, and vulnerable to trafficking.

For these reasons, a concern for the empowerment of women – a feminist approach – is adopted

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[29] Anna Marie Gallagher, 'Triply Exploited: Female Victims of Trafficking Networks-Strategies for Pursuing Protection and Legal Status in Countries of Destination' (2004) 19 *Georgetown Immigration Law Journal* 99.
[30] Adrien Katherine Wing, 'Critical race feminism and the international human rights of women in Bosnia, Palestine, and South Africa: Issues for LatCrit theory' (1996) 28(2) *The University of Miami Inter-American Law Review* 337.
[31] Linda Cipriani, 'Gender and Persecution: Protecting Women Under International Refugee Law' (1993) 7 *Georgetown Immigration Law Journal* 511.'Recently an 18-year-old Saudi woman got asylum in Canada as she was abused by her family and feared for her life if deported back home. Women in Saudi Arabia are vulnerable and to get rid of domestic violence and social pressure several women fleeing abuse by their families have been caught trying to seek asylum abroad in recent years and returned home. Human rights activists say many similar cases go unreported.' See Hannah Ellis-Petersen, 'Saudi woman fleeing family flies to Canada after gaining asylum ', *The Guardian* (Online, 12 January 2019) <https://www.theguardian.com/world/2019/jan/11/canada-and-australia-in-talks-with-un-to-accept-saudi-asylum-seeker-rahaf-mohammed-al-qunun>.
[32] Sharmeen A. Farouk, 'Violence against women: A statistical overview, challenges and gaps in data collection and methodology and approaches for overcoming them' (Expert Paper, UN Division for the Advancement of Women, 11 - 14 April, 2005) <https://www.un.org/womenwatch/daw/egm/vaw-stat-2005/docs/expert-papers/Farouk.pdf>.

and applied in this dissertation. Specifically, in Chapters Five and Chapter Six I outline how Bangladeshi laws and institutions fail to ensure the rights of vulnerable people, contrary to its Constitution. I point out that there are different provisions in various laws which criminalise child prostitution, forced prostitution, solicitation and the keeping of unlicensed brothels.[33] I argue that the inconsistency of existing laws creates an environment for criminals to trap vulnerable women and children in sexual exploitation.

In this thesis, I analyse both the international and domestic responses to human trafficking taking into account these feminist insights. In summary, this thesis demonstrates that the early and existing criminal legal framework and international law are inconsistent with a feminist account of the human rights protections required to protect victims of trafficking. Firstly, the early instruments – White Slave Traffic Convention 1921[34] and the White Slave Traffic Convention 1933[35]– are gender biased as these were not applicable to male adult victims. Secondly, the current international law – namely the *Trafficking Protocol* [36]– contains a number of (undefined) terms such as other forms of exploitation, forced labour and slavery-like practices.[37] However, the ambiguous definition of trafficking does not make it clear whether prostitution and other commercial sexual exploitation including child sex tourism, child pornography and forced marriage will come under the definition of exploitation.[38] Despite not having any direct definition of human trafficking, most of the international human rights instruments point out the obligations of states to fight against human trafficking.

As I demonstrate in this thesis, Bangladesh is a member state of some of the instruments which highlight the issue of trafficking and rights of women. Chapter Four describes international human rights instruments which focus on improving the status of women and children. For instance, the

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[33] *Penal Code 1860* (Bangladesh) s 290, 364A, 366A and 373; *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh) s 12, 13.
[34] *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 30 December 1921, 415 LNTS 9 (entered into force 15 June 1922). Chapter Three examines this instrument in detail.
[35] *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 11 October 1933, 431 LNTS 150 (entered into force 24 August 1934).
[36] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, opened for signature 12 Dec 2000, 319 UNTS 2237 (entered into force 25 December 2003). Chapter Three examines this instrument in detail.
[37] Sullivan (n 3).
[38] Ibid.

Convention on the Elimination of All Forms of Discrimination against Women 1979 came forward to protect women from all kinds of discriminations to improve their status of women in patriarchal society like Bangladesh.[39] In Bangladesh, a large number of trafficked victims are women who were sexually exploited within and outside of Bangladesh.[40] The relevant regional instrument – the SAARC Convention, of which Bangladesh is a party – also gives due consideration to sex trafficking but neglects other forms of trafficking.[41] This Convention also arguably violates the right of freedom of movement and the right to choose sex work as it criminalises voluntary sex work, although prostitution is decriminalised in Bangladesh.

Analysing the topic from a feminist perspective, this thesis demonstrates that the Bangladeshi criminal justice system does not provide sufficient protection for women and children. In Chapter Five and Chapter Six I apply feminist theory when evaluating the response of Bangladeshi laws and institutions to trafficking. Currently, the Bangladesh government has developed and implemented different policies that I argue are consistent with feminist theory, as these policies focus on the situations and causes which make a person vulnerable to human trafficking, such as poverty, inequality, discrimination, corruption and complexity, family violence, sexual abuse and other forms of exploitation of women and children. The Government and NGOs are working to implement those policies. Chapter Six addresses those policies and their implementation in practice.

Although the Government and NGOs are taking steps to implement policies that recognise that women and children can be victims of trafficking, these policies do not form a coherent strategy addressing consumers of sex worker services. There is no program that educates consumers, creates awareness about the interrelationship between sex work and human trafficking, or discourages people from fueling human trafficking by financing that sex work.

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[39] *The Convention on the Elimination of All Forms of Discrimination against Women* opened for signature 18 December 1979, 1249 UNTS 253 (entered into force 3 September 1981).
[40] Suvendu Biswas, 'Human Trafficking in Bangladesh: An Overview' (5 November 2015) *Foreign Affairs Insights and Review*.
[41] Asia-Pacific Human Rights Information Centre,'South Asian Convention against Trafficking', *FOCUS Archives* (Webpage, June 2005) <https://www.hurights.or.jp/archives/focus/section2/2005/06/south-asian-convention-against-trafficking.html>.

There is also scarcity of literature on feminist perspective on child trafficking. A handful of articles provide feminist perspectives on children's rights and child abuse, however, none of these address child trafficking. In the patriarchal family that is common in Bangladesh, the rights of women and children are regulated by fathers and other senior men and are always precarious. Both women and children are subordinate in these patriarchal relationships. Men are also predominantly responsible for violence against women and children.[42] Feminist theory focuses on the unequal power relationships between men and women, and men and children.[43] Feminist scholars have objected to the dominance of patriarchal societies and have advanced arguments in support of the rights of children.[44]

In this thesis I apply feminist theory to better understand the rights of children, who are vulnerable, as they are under the control and domination of men in Bangladesh. Chapter Four examines the Convention on the Rights of Children[45] and its applicability within the context of human trafficking.

Vulnerability to trafficking is not only gender-based. There are other factors, including race, to be considered.

B *Critical Race Theory*

Critical Race Theory is an important development in modern legal thought and has been used by scholars to evaluate legal principles, doctrines and regulations having regard to socially-constructed hierarchies arising from racism.[46] Adrien Katherine Wing has observed that 'critical race theory questions the ability of traditional legal strategies to deliver racial and social justice.'[47]

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[42] Julia Cream, 'Child sexual abuse and the symbolic geographies of Cleveland' (1993) 11(2) *Environment and Planning D: Society and Space* 231.
[43] Mary Valentich, 'Feminist theory and social work practice' (1996) 4 *Social Work Treatment: Interlocking Theoretical Approaches* 282.
[44] Cream (n 42).
[45] *The Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990).
[46] Kimberlé Crenshaw et al, *Critical Race Theory: The Key Writings that Formed the Movement* (The New Press, 1995).
[47] Wing (n 30).

To analyse racialised relationships between social groups and to categorise the powerful and powerless groups and identify social dominance, critical race theory (CRT) was firstly used to analyse the American legal system.[48] Third world scholars and activists have adapted critical race theory in order to develop arguments designed to advance the economic and social rights of historically subordinated peoples.[49] Relevantly, it has been applied in different countries where not only racism, but race-related issues of ethnicity, poverty, culture and religion all determine people's social and legal status, entitlements and lived experiences.

This thesis utilises CRT to analyse the situation of Bangladeshi trafficked victims who face discrimination on the basis of their race, ethnicity, religion and culture. The effect of gender discrimination on human trafficking was addressed in the preceding section. This section is divided into two parts: the first part examines how race is addressed in legal instruments. The second part illustrates how discrimination on the grounds of race, ethnicity and religion result in powerlessness that creates an environment within which human trafficking can flourish.

1 *How Race is Addressed by Legal Instruments*

This section of the thesis analyses the international instruments addressing human trafficking in chronological order, in the light of CRT.

The first response of the international community to human trafficking was the International Convention on White Slave Traffic.[50] According to Cheryl Nelson Butler, the 'White Slavery campaign … intentionally excluded non-white women from legal protection.'[51] CRT would clearly categorise the International Agreement for the Suppression of the White Slave Traffic 1904 and

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[48] Debito Arudou, "Embedded Racism in Japanese migration policies: Analyzing Japan's "revolving door" work visa regimes under Critical Race Theory' (2013) 3(1) *Journal of Asia Pacific Studies*.
[49] Penelope E. Andrews, 'Making room for Critical Race Theory in international law: Some practical pointers' (2000) 45 *Villanova Law Review* 855.
[50] *International Agreement for the Suppression of the White Slave Traffic*, opened for signature 18 May 1904, LNTS 83 (entered into force 18 July 1905); *International Convention for the Suppression of the White Slave Traffic*, opened for signature 4 May 1910, 101 LNTS 98 (entered into force 8 August 1912). *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 30 December 1921, 415 LNTS 9 (entered into force 15 June 1922); *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 11 October 1933, 431 LNTS 150 (entered into force 24 August 1934).
[51] Cheryl Nelson Butler, 'The racial roots of human trafficking' (2015) 62 *UCLA Law Review* 1464.

the International Convention for the Suppression of the White Slave Traffic 1910 as racialised and discriminatory towards victims of colour. These two Conventions among the four White Slave Conventions were adopted to protect only young white women from sexual exploitation, even though at the time about 99 percent of trafficked victims were women of colour.[52] Elizabeth Bruce has addressed this early response of international law as racist and sexist and inadequate to address the complexities of human trafficking.[53] Because of the limited scope and racialised nature of these instruments, the League of Nations failed in its efforts to combat trafficking.[54]

CRT also draws attention to social marginalisation and poverty, two of the risk factors for human trafficking. Because of poverty and marginalisation, both men and women in Bangladesh can be vulnerable to trafficking. There are also imbalances between source countries (predominantly populated by people of colour) and destination countries (some of which are predominantly populated by white people). Destination countries are usually solvent and industrialised nations where people want to go for a better future. For example, there are many trafficked victims in the USA who are non-white and from different regions like Central America, South America, East Asia, South Asia and Africa who are in economic hardship and therefore powerless.[55] This power imbalance facilitates the chain of supply and demand for trafficking of human beings. Wealthy nations' demand for cheap labour is easily met by the supply provided by source countries, and this creates the market of human trafficking.[56] This power imbalance is amply demonstrated by the sexual exploitation of Bangladeshi domestic workers in the Gulf States.[57] The experiences of victim Rubina (who was sent to Oman as domestic worker and sexually exploited) were shared in Introduction. The victims there are powerless, lacking legal status and access to justice, and

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[52] Eileen Scully, 'Pre–Cold War Traffic in Sexual Labor and Its Foes' in David Kyle and Rey Koslowski (eds), *Global Human Smuggling: Comparative Perspectives* (The John Hopkins University Press, 2001) 74-106.
[53] Elizabeth M. Bruch, 'Models wanted: The search for an effective response to human trafficking' (2004) 40 *Stanford Journal of International Law* 1.
[54] Ibid.
[55] Natividad Gutierrez Chong, 'Human trafficking and sex industry: Does ethnicity and race matter?' (2014) 35(2) *Journal of Intercultural Studies* 196.
[56] Patience Elabor-Idemudia, 'Race and gender analyses of trafficking: A case study of Nigeria' (2003) 22(3) *Canadian Woman Studies.*
[57] Areeb Ullah, 'Abuse in Saudi Arabia: How Bangladeshi maids escape "dream job"', *Middle East Eye* (Online, 25 May 2018) <https://www.middleeasteye.net/news/bangaldesh-women-in-saudi-domestic-workers-maid-are-sold-a-dream-flee-nightmare-brac-1336317441>; Staff Correspondent, 'Abused Bangladeshi domestic workers struggle for justice at home', *Aljazeera News* (Online, 31 October 2019) <https://www.aljazeera.com/news/2019/10/abused-bangladeshi-housemaids-struggle-justice-home-191031023902328.html>.

ignored by the government of Bangladesh. Their status is discussed in Chapters One and Chapter Six.

There is no literature available showing the power imbalance between source and destination countries in protecting trafficked victims. In the course of my research, I found a power imbalance between source and destination countries when it came to the protection of the rights of trafficked victims. I noted in Chapter One that victims are neglected by coastal guards. The power imbalance is also evident in the treatment of Bangladeshi domestic workers who have returned from Saudi Arabia and other Middle Eastern Countries describing horrible experiences of torture, and a lack of assistance from local authorities.[58]

Notwithstanding the gaps in protection identified above, a number of human rights conventions prohibit discrimination on the ground of culture, race, ethnicity and religion.[59] The International Convention on the Elimination of All Forms of Racial Discrimination 1965 creates legal restrictions on types of discrimination through different provisions.[60] Through its specific monitoring body (the Committee on the Elimination of Racial Discrimination), it reviews the implementation of this Convention.[61] The Committee has focused on the economic condition of women and their vulnerability to trafficking.[62] The Committee has also identified that racial discrimination has been overlooked and unaddressed in Bangladeshi criminal law,[63] and it has expressed concern about the poor living conditions of Rohingya people in refugee camps in Bangladesh,[64] which again creates vulnerability to trafficking.

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[58] Ullah (n 57).
[59] United Nations General Assembly, *The Universal Declaration of Human Rights* GA Res 217A (111), UN GAOR, UN Doc A/810 (10 December 1948) arts 2, 7; Federico Lenzerini, 'International Legal Instrument on Human Trafficking and a Victim-Oriented Approach: Which Gaps Are to be Filled' (2009) 4 *Intercultural Human Rights Law Review* 205; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 171 UNTS 999 (entered into force 23 March 1976) art 2, 2(2), 3.
[60] *International Convention on the Elimination of All Forms of Racial Discrimination* opened for signature 21 December 1965, 195 UNTS 660 (entered into force 4 January 1969) arts 1, 2, 4, 5 and 6.
[61] UN Human Rights Office of the High Commissioner (OHCHR),'Committee on the Elimination of Racial Discrimination', *OHCHR* (2020) <https://www2.ohchr.org/english/bodies/cerd/>.
[62] *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).
[63] UN Committee on the Elimination of Racial Discrimination, *Concluding Observation on periodic reports of Bangladesh*, 58 sess, UN Doc CERD/C/304/Add.118 (6–23 March 2001).
[64] Ibid.

In addition, the Refugee Convention such as the 1951 Convention relating to the Status of Refugees[65] and the 1967 Protocol relating to the Status of Refugees[66] also allow trafficked victims to claim refugee status on the ground of their race.

The most recent international legal response to trafficking – the *Trafficking Protocol*[67] – is not biased on the basis of race like its forerunners, but it focuses on women and children even though there are many trafficked victims who are men (such as forced labourers in agricultural or industrial work). Poverty is the most significant criterion of vulnerability, rather than race, here. However, it may be accepted that men, women and children from developing countries are more likely to be people of colour.

Similarly, the *Trafficking Protocol* has not defined organ trafficking appropriately. It is still unaddressed by the international community. There is a Council of Europe Convention against Trafficking in Human Organs,[68] however, it is not open for signature by non-European countries. From the perspective of CRT, it can be argued that the international response to organ trafficking involves no binding international conventions that address the responsibilities of developed and industrialised countries to reduce the demand of organs (from victims in developing countries).

In Chapter Four I consider the relevance and applicability of the aforesaid Conventions in combating human trafficking.

2 *Application of Critical Race Theory in Human Trafficking*

CRT focuses on the discrimination and maltreatment that people experience based on race. Trafficked victims in Bangladesh face multiple types of discrimination before and after being

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[65] *The Convention relating to the Status of Refugees* opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).
[66] *Protocol relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).
[67] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, opened for signature 12 Dec 2000, 319 UNTS 2237 (entered into force 25 December 2003).
[68] *Council of Europe Convention against Trafficking in Human Organs*, opened for signature 25 March 2015, CETS No. 216 (entered into force 1 March 2018).

trafficked. However, Mary Robinson has pointed out that women from particular racial groups who are living in poverty are more vulnerable to human trafficking as they experience discriminatory practices and face economic hardships and have very limited access to human and legal rights.[69] Robinson has also observed that racial discrimination is responsible for the rise in demand for trafficked people, both in source and destination countries.[70]

In Chapter Three, I show how people within the *Dalit* caste are discriminated against and sexually exploited in India. A similar dynamic occurs in Bangladesh, where Rohingya refugees have limited access to any kinds of rights. Rohingya women are the most vulnerable to trafficking because of their racial identity, which relegates them to a low social status.[71] As Natividad Gutierrez has argued: 'Racial and ethnic women are likely exposed to trafficking due to (1) structured poverty and marginalisation and (2) sexual violence is a common fact in domestic and social realms of socially excluded women and men.'[72]

Chapter Three focuses on situations in which trafficked victims can claim refugee status, while Chapter Five elaborates on the plight of Rohingya refugees. There are no specific instruments in Bangladesh protecting the rights of refugees, however I demonstrate later that refugees would fall within the jurisdiction of the *Prevention and Suppression of Human Trafficking Act* ('*Human Trafficking Act*').[73] Rohingya refugees could be classified as victims of human trafficking if they are exploited within the meaning of the *Human Trafficking Act 2012*.

The power imbalance between victims and traffickers is also apparent in the domestic legal sphere. Victims are exploited by powerful people and receive threats from traffickers. Victims are pressured by locally powerful people to compromise their criminal cases. Law enforcement agencies are uncooperative with victims and take bribes from powerful organised criminals.

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[69] Mary Robinson, 'United Nations World Conference against Racism, Racial Distribution, Xenophobia and Related Intolerance ' (Conference, Durban, South Africa, 31 August – 8 September 2001) <http://www.un.org/WCAR/e-kit/trafficking_e.pdf>.
[70] Ibid.
[71] Naimul Karim, 'Rohingya refugees in Bangladesh warned to be wary with human trafficking rising', *Reuters* (Online, 23 August 2019) <https://www.reuters.com/article/us-bangladesh-myanmar-trafficking/rohingya-refugees-in-bangladesh-warned-to-be-wary-with-human-trafficking-rising-idUSKCN1VD0XD>.
[72] Chong (n 55).
[73] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh) s 3. See Appendix 3 for facsimile copy of Act.

Another significant example of oppression is when victims cannot get justice because traffickers and abusers are senior government officials or members of parliament.[74]

Do Bangladeshi laws and policies address discrimination on the ground of race in a way that is relevant to human trafficking? The answer to this question depends on an analysis of current legal frameworks and policies. The Constitution of the People's Republic of Bangladesh provides for equality before the law and declares all types of discrimination to be illegal and violations of human rights.[75] The Constitution encourages the National Parliament (in Bengali, the Jatiya Sangsad**)** to make laws to protect against discrimination.[76]

Bangladesh has specific policies – such as the Women Development Policy 2011, the National Children Policy 2011 and the National Plan of Action (NPA) 2018-2022 – to address poverty, inequality and other types of discrimination. The National Plan of Action (NPA) 2018-2022 addresses the prevention of trade in humans by ensuring economic and social security. The NPA 2018-2022 also has a specific objective to reduce sexual violence and protect children who are in vulnerable situations. The NPA reflects the same concerns as CRT as it targets people who are marginalised and living under poverty.

The next theoretical framework is what I call the 'Marxist theory of forced labour'. This perspective, ultimately drawn from the work of Karl Marx, is used to analyse the supply and demand dimensions of human trafficking from Bangladesh and identify the factors underpinning the labour market of human trafficking. Chapters Four and Six explore the supply and demand issues of trafficking in detail and point out the relevant international and domestic legal obligations.

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[74] According to the recent Trafficking in Persons Report 2019, Bangladesh consular officer in USA found guilty of human trafficking and ordered to pay fine to the victims. And 2016 Trafficking in Persons Report states, 'Media reported on the alleged involvement of a Chittagong Division member of Parliament in smuggling, extortion, and possibly human trafficking related to the Andaman Sea migration crisis'. United States Department of State, 'Trafficking in Persons Report ' (Annual Report, Department of State, 30 June 2016) <https://www.refworld.org/docid/577f96376.html >; United States Department of State, 'Trafficking in Persons Report' (Annual Report, Department of State, June 2019) <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

[75] *Constitution of the People's Republic of Bangladesh 1972* art 27 & 28.

[76] Ibid art 28(4).

C *The Marxist Theory of Forced Labour*

Vulnerability to exploitation is not the only cause behind the crime of human trafficking. The principles of supply and demand play an important role in contributing to the expansion of this crime. Demand means the specific desire and preferences of employers, consumers and third parties for certain types of people or the services they can (be forced to) provide. 'However, the demand side should not be understood merely as the demand for [the] services of victims of trafficking, but rather more broadly, as an act that fosters any form of exploitation that, in turn, leads to trafficking.'[77] To understand demand and supply of human trafficking I apply Marxist theory on forced or unfree labour.

Economic, social and political globalisation is responsible for elevating the number of victims trafficked for sexual exploitation and forced labour. Imperialism has produced economic disparities both between different countries and within countries.[78] The theorist Karl Marx focused on the fundamental social relations between two classes of the society who are in opposing positions, with the proletariat exploited by the bourgeoisie.[79] According to Marx's theory, 'the value of a commodity can be objectively measured by the average number of labor hours required to produce that commodity.'[80] Capitalists can easily exploit workers as they have power over the means of production.[81] Kamala Kempadoo has summarised the problem of human trafficking as an incident of the inequality between 'the haves' and 'the have nots', as this international economic phenomenon creates vulnerability in the context of migration and work.[82]

Forced labour and human trafficking are closely connected with the concept of capitalist

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[77] UN News, 'Tackling demand key to combating global human trafficking, UN rights expert stresses', (Online 31 May 2013) <https://news.un.org/en/story/2013/05/441122-tackling-demand-key-combating-global-human-trafficking-un-rights-expert>.
[78] Phil Marshall, 'Globalization, migration and trafficking: some thoughts from the South-East Asian region' (Occassional paper No 1, UN Inter-Agency Project on Trafficking in Woman and Children in the Mekhong Sub-region, 2001)
[79] Anthony Brewer, *Marxist theories of imperialism: A critical survey* (Routledge, 2nd ed, 2002).
[80] David Prychitko,'Marxism', *The Library of Economics and Liberty* (Online Article, n.d.) <https://www.econlib.org/library/Enc/Marxism.html>.
[81] Ibid.
[82] Kamala Kempadoo, 'Revitalizing imperialism: Contemporary campaigns against sex trafficking and modern slavery' (2016)(47) *Cadernos Pagu*.

imperialism.[83] A thorough investigation of the effect of capitalist globalisation on human trafficking is outside the scope of this research. However, the surplus value theory of Marx's is key to an understanding of trafficking.[84] According to this theory, economic inequality regulates the social structures of capitalist societies and creates an environment where powerful actors can exploit vulnerable people.[85] Marxist theory states that free labour is exploitative as capitalism is exploitative, but he did not use the word unfree labour. Rather, Marx analysed different kinds of exploitation within free labour which reflects unfreedom.[86]

There is very limited research on unfree labour.[87] Some scholars exclude child labour from the definition of unfree labour, while others exclude slavery from labour exploitation.[88] However, several contemporary scholars have acknowledged that economic conditions make the difference between forced or unfree labour. Specifically, unfree labour is closely connected with poverty and vulnerability, as poverty creates the vulnerability to exploitation.[89] Generieve LeBaron and Nicola Phillips have identified unfree labour as exploitative practices which include forced labour, human trafficking and modern slavery.[90] Unfree labour is common in both developed and developing economies where labourers are in a relationship which is highly exploitative. Unfree labour and forced labour are parallel as coercion, deception and violence are common criteria in both sectors.

Forced labour does not only include economic necessity, low wages and poor working conditions. It also involves duress, coercion, deception and psychological menace and other kinds of human rights violations,[91] which have been confirmed through my fieldwork. Forced labour is divided into three categories: forced labour imposed by state; commercial sexual exploitation; and non-

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[83] Genevieve LeBaron, 'Slavery, human trafficking, and forced labour: Implications for international development' in Jean Grugel and Daniel Hammett (eds), *The Palgrave Handbook of International Development* (Springer, 2016) 381-398.
[84] Julie Kaye and John Winterdyk, 'Explaining human trafficking', *Human Trafficking* (CRC Press, 2011) 70-91.
[85] Siddharth Kara, *Modern Slavery: A Global Perspective* (Columbia University Press, 2017).
[86] Jamie Morgan and Wendy Olsen, 'Forced and unfree labour: An analysis' (2014) 4(1) *International Critical Thought* 21.
[87] Ibid.
[88] Genevieve LeBaron and Alison J. Ayers, 'The rise of a 'new slavery'? Understanding African unfree labour through neoliberalism' (2013) 34(5) *Third World Quarterly* 873.
[89] Nicola Phillips, 'Unfree labour and adverse incorporation in the global economy: Comparative perspectives on Brazil and India' (2013) 42(2) *Economy and Society* 171.
[90] Genevieve LeBaron and Nicola Phillips, 'States and the political economy of unfree labour' (2019) 24(1) *New Political Economy* 1.
[91] Morgan and Olsen (n 86).

sexual economic exploitation.[92] According to Jamie Morgan and Wendy Olsen there are many forced labour victims in Asia including India, Bangladesh, Pakistan, Indonesia, Myanmar and Philippines.[93]

Forced labour is a condition where victims engage in work without their consent under physical, psychological, financial or other threats.[94] The *Trafficking Protocol* includes forced labour as a form of trafficking;[95] however there is no definition of this term. *Trafficking Protocol* has limited scope as it highlights forced labour in transnational perspective, however, in practice trafficking for forced labour can take place within a country's borders too. Six elements which form the link between human trafficking and forced labour[96] are discussed further in Chapter Four.

In this section, I address different forms of forced labour or unfree labour which are experienced by workers in different sectors such as in the garment sector or fishing industry. This section also focuses on the relation between demand and supply and outlines the significance of theory on forced labour. It also analyses both the international and domestic responses to this phenomenon, taking this theory into account.

1 *The Significance of the Marxist Theory of Forced Labour*

As Dana Raigrodski has observed, a 'great amount of revenue generated by businesses in the global economy can be linked to the trafficking and enslavement of human beings. At the same time,

[92] Patrick Belser, 'Forced labour and human trafficking: Estimating the profits' (Working Paper, International Labour Organisation, 3 January 2005) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1838403>.
[93] Morgan and Olsen (n 86).
[94] *The Forced Labour Convention*, opened for signature 28 June 1930, no 29 (entered into force 1 May 1932) art 2(1).
[95] *Trafficking Protocol* art 3(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring 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. 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.
[96] Firstly, the victims are always under the threat which may include physical or sexual violence. Secondly, victims are confined in a room and they lose their right of freedom of movement. Thirdly, there are many cases where victims have no option to do work to pay the debt. Fourthly, forced labour victims rarely get their wages. Fifthly, when victims have arrived in a destination country, traffickers took their passports and other identity documents. Finally, they are always in threat of accusation as they have no legal documents.

current discourse on human trafficking fails to recognise the magnitude of benefit consumers, businesses, and economies gain from forced and trafficked labour.'[97] Marxist theory disentangles the issues of demand and supply relating to forced labour, and addresses the responsibility of destination countries, where demand originates, as well as source countries where there is plenty of supply.

Most of the source and transit countries where human trafficking takes place have comparatively worse economic conditions and weaker human rights protections than most destination countries (a notable exception being Saudi Arabia and other Middle Eastern countries where human rights protection is particularly weak). Bangladesh, India, Pakistan and other South Asian countries and South East Asian countries are in this group of countries where economic conditions may be particularly harsh for impoverished people. In contrast, destination countries are mostly financially developed and generally have extensive demand that fuels human trafficking.[98] Thus, generally speaking, capitalist societies fuel the demand that creates the supply of human trafficking.

A 2006 study conducted by Gergana and Patrick on supply and demand in human trafficking identified that economic globalisation, demand for sexual exploitation, and unemployment and poverty in source countries fuels the demand and supply of human trafficking.[99] They defined demand through identifying the purchasing power of customers of high income countries for sexual and other non-tradable services which influence organised criminals to exploit poor victims.[100] In addition, they identified youth unemployment and corruption of a country of origin fuel the supply side of trafficking.[101] International and national legal and institutional efforts to prevent human trafficking and realise the human rights of victims of human trafficking are inadequate in the face of these larger economic forces at play.

It is evident that Bangladesh has failed to address demand push factors effectively, given that the

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[97] Dana Raigrodski, 'Creative Capitalism and Human Trafficking: A Business Approach to Eliminate Forced Labor and Human Trafficking from Global Supply Chains' (2016) 8(1) *William & Mary Business Law Review* 71.
[98] Alexis A. Aronowitz, *Human trafficking: A reference handbook* (ABC-CLIO, 2017).
[99] Gergana Danailova-Trainor and Patrick Belser, 'Globalization and the illicit market for human trafficking: An empirical analysis of supply and demand' (Working Paper No 78, Policy Integration Department, International Labour Office.
[100] Ibid.
[101] Ibid.

number of trafficked victims is increasing day by day. The Bangladesh government identified 502 potential trafficking victims in 2018.[102]

The monitoring cell of the Bangladesh Police maintains a data of trafficking cases which includes numbers of identified trafficking victims, numbers of pending cases and convictions. According to that information victims are categorised as male, female or children. However, the data that is gathered is inadequate and incomplete in several respects. First, there is no clear indication of the number of Rohingya victims. Such kind of additional identification of Rohingya victims helps both the government and NGOs to undertake appropriate steps to protect ethnic minorities. There is also no official data available showing the number of labour trafficking and sex trafficking separately.

The applicability of the Marxist theory of forced or unfree labour will be considered in Chapter Four. Chapter Four describes how poor labourers become victims of human trafficking, and analyses the legal instruments of the International Labour Organisation (ILO) to combat forced labour and child labour. Chapters Five and Six examine Bangladeshi law and institutions through the lens of Marxist theory of forced or unfree labour.

The *Trafficking Protocol* outlines the responsibility of state parties to address demand, specifically through article 9[103] which is discussed in Chapter Three. The European Trafficking Convention also focuses on the adoption of different measures to discourage demand that fosters exploitation.[104] In addition, the UN Recommended Principles and Guidelines on Human Rights

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[102] This number was a significant decrease from the identification of 770 potential victims in 2017. However, the government also reported additional identification of 1,472 individuals which indicates that the number of trafficked victims is comparatively higher. In practice, there is no official data available showing this additional number. United States Department of State (n 74).

[103] *UN Trafficking Protocol*, art 9(5) states Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

[104] The European Trafficking Convention, art 6 - Measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including: a research on best practices, methods and strategies; b raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings; c target information campaigns involving, as appropriate, inter alia, public authorities and policy makers; d preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and

and Human Trafficking[105] identifies demand as a root cause of human trafficking and invites countries to consider all the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice.[106] The *Trafficking Protocol*, the European Convention and regional Conventions (mainly the SAARC Convention) all point out the responsibility of states to discourage demand for trafficked humans.[107]

The ILO is actively working to control the demand and supply of forced labour through different instruments, as highlighted in Chapter Four. Using the Marxist theory of forced or unfree labour, in Chapter Six I demonstrate that the Bangladesh National Action of Plan 2018-2022 and the Labour Policy of 2012 fail to address demand for forced or unfree labour and trafficked people, and the human rights of workers.

The supply of and demand for forced or unfree labour and therefore trafficked victims is controlled by different industries as they import and export huge amounts of products, particularly in manufacturing and raw material procurement and the fishing industry. For example, the US spends an estimated $1.5-$2.4 billion yearly purchasing apparel that is manufactured by unfree labour in Bangladesh and Cambodia.[108] Bangladesh is a country where mid-chain garment suppliers use unfree labour to generate billions of dollars in orders to world renowned retailers that are mostly based in the US and the EU.[109] Although not all of the labour involved in the Bangladesh garment industry is forced, much of it is unfree. This is because many millions of people in Bangladesh live in poverty, are illiterate and lack opportunities (such as education and small business finance), and governmental systems have challenges with corruption.

Labourers in the textile industries in Bangladesh have the right to leave their work, however, due

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integrity of every human being.

[105] UN Office of the High Commissioner for Human Rights (OHCHR), 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (Report, The Economic and Social Council, 2002) <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

[106] United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1.

[107] United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights and Human Trafficking' (Fact Sheet No 36, United Nations, 2014) <https://www.ohchr.org/Documents/Publications/FS36_en.pdf>.

[108] Raigrodski (n 97).

[109] Ibid.

to their poverty they have no other real option but to keep working in hazardous and poor conditions, for subsistence wages. The economy of both Bangladesh and the developed world therefore profit from the misery of unfree labour. After the collapse of Rana Plaza[110] and fire incidents in Taznin Fashion,[111] with the deaths and injuries of over a thousand workers, it is clear to the whole world how poor workers are mistreated in the textile industry of Bangladesh.[112] It has been demonstrated that the government has very poor monitoring over corporations in the textile industries, in order to ensure the rights of the workers.[113]

Journalists from The Guardian newspaper undertook an investigation and found out that workers are also exploited in the shrimp industry of Bangladesh and that there is evidence of human trafficking and forced labour.[114] The Guardian also identified the buyers of the shrimp as the giant retailers of the world.

Some have questioned whether designer labels and retailers should be held responsible for maintaining international labour standards, arguing that responsibility should lie with the labels and retailers to ensure a clean supply chain for any product.[115] On this view, responsibility should

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[110] On 24 April 2013 the garment factory at Rana Plaza collapsed where 1,134people died and about 2,500 people were injured. The building had a crack and the shops, and the bank of that building were closed, however, the garment workers were ordered to continue their work in that building. It has been reported that workers were forced to work and threatened not to be paid for the month if anybody did not come to work. Tansy Hopkins, 'Reliving the Rana Plaza factory collapse: A history of cities in 50 buildings, day 22', *The Guardian* (London, 23 April 2015) < https://www.theguardian.com/cities/2015/apr/23/rana-plaza-factory-collapse-history-cities-50-buildings>.

[111] The blaze broke out in Tazreen Fashion Factory in Bangladesh on 24 November 2012 where more than 100 workers died and over 200 were injured. It has been reported that poor working conditions, lack of safety standard, overcrowding and looked fired door are the main causes of this incidence. The workers, mostly women were trapped and could not able to get through narrow exits. Anbarasan Ethirajan, 'Dhaka Bangladesh clothes factory fire kills more than 100', *BBC News* (Online, 25 November 2012) <https://www.bbc.com/news/world-asia-20482273>; Anis Ahmed and Ruma Paul, 'Bangladesh's worst-ever factory blaze kills over 100', *Reuters* (Online, 25 November 2012) <https://www.reuters.com/article/us-bangladesh-fire/bangladeshs-worst-ever-factory-blaze-kills-over-100-idUSBRE8AN0CG20121125>.

[112] The Economist, 'Corporate Social Responsibility : Disaster at Rana Plaza', *The Economist* (Online, 4 May 2013) <https://www.economist.com/leaders/2013/05/04/disaster-at-rana-plaza>; Aron Cramer,'Lessons from Rana Plaza: Shocked, But Not Surprised ', *The Business of a Better World* (Article, 28 May 2013) <https://www.bsr.org/en/our-insights/blog-view/lessons-from-rana-plaza-shocked-but-not-surprised>; Raigrodski (n 97).

[113] Ibid.

[114] Nita Bhalla, 'Bangladeshis exploited so West can eat cheap shrimp - report', Reuters (Online, 22 January 2014) <https://www.reuters.com/article/bangladesh-shrimp/bangladeshis-exploited-so-west-can-eat-cheap-shrimp-report-idINDEEA0K0EH20140121>; Mark Tran, 'Bangladeshi shrimp workers routinely exploited, say campaigners', The Guardian (Online, 17 January 2014) <https://www.theguardian.com/global-development/2014/jan/17/bangladeshi-shrimp-workers-routinely-exploited>; Kari B. Jensen, 'Child slavery and the fish processing industry in Bangladesh' (2013) 56(2) Focus on Geography 54; LeBaron (n 83).

[115] LeBaron (n 83).

shift to the destination countries that create the demand for goods, which then results in vulnerable people being placed into conditions of forced or unfree labour.

The failure of laws and institutions to investigate, prosecute and punish trafficking cases further fuels the demand for trafficking and creates a favourable environment of supply. Chapter Five investigates forced and unfree labour conditions in Bangladesh and suggests legal frameworks to combat these phenomena. I also apply the Marxist theory of forced or unfree labour to analyse the effectiveness of the current policy, the National Plan of Action on Human Trafficking 2018-2022,[116] in Chapter Six. I note that the policies set out in the National Action Plan are only supply-based; there are no policies in the Plan designed to address the demand side of human trafficking. The implementation of supply-based policies will only be effective when they ensure the human rights of people of Bangladesh, regardless of demand.

In the next section of this Chapter I identify and elaborate upon two approaches that may enhance the rights of trafficked victims: a criminal justice approach and a human rights-based approach. I argue that these could be powerful strategies to combat human trafficking.

D *Criminal Justice Approach*

As human trafficking is a multifaceted crime, multi-dimensional approaches are needed to address this crime effectively. According to Kristof Van Impe, 'There is no easy or uni-dimensional solution to human trafficking since it is influenced by a complex set of factors, often working in combination with one another.'[117] International criminal law, international human rights and domestic legal instruments are used by states parties to combat this crime. In this thesis, I argue that all of these varieties of legal instrument are relevant, and that both a criminal justice approach and a human rights approach are needed in order to fight this crime.

An effective criminal justice system will ensure proper investigation, prosecution and punishment

[116] Ministry of Home Affairs, 'National Plan of Action to Combat Trafficking of Human Beings 2018-2022' (Policy, Government of Bangladesh, 2018).
[117] Ibid.

of criminals, supported by domestic and international law.[118] Legal procedures should also include assistance to and protection of victims and witnesses. Effective international investigation and cooperation can also play an important role in prosecuting and punishing traffickers. Here international investigation and cooperation means cooperation mechanism and legal tools which includes intelligence exchange among law enforcement agencies at national and international level, extradition and mutual legal assistance.[119]

There are several mechanisms needed for an effective criminal justice system. Firstly, law enforcement agencies must be well-educated and trained in the specialised techniques required to investigate trafficking-related cases.[120] At present however, in Bangladesh, law enforcement officials have a limited knowledge of trafficking, and this has been confirmed through my fieldwork. There is some evidence that law enforcement officers are receiving training through NGOs both local and international; however there is less evidence that officers investigating trafficking cases have an appropriate amount of specialist training.

Secondly, well-informed prosecutorial and judicial support can facilitate effective justice.[121] Backdated and lengthy procedural systems and corruption are reasons behind the low number of prosecutions in Bangladesh. Chapter Five discusses all reasons in detail.

Thirdly, a criminal justice approach can advance human rights when it provides protection and support to the trafficked victims.[122] In practice, however, victims receive continuous threats from criminals, are pressured to settle their cases, and they are offered no protection of their physical safety, or any of the other protections mentioned in the *Human Trafficking Act 2012*.

Finally, since human trafficking often takes place across national borders, an effective criminal

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[118] Kristof Van Impe, 'People for sale: The need for a multidisciplinary approach towards human trafficking' (2000) 38(3) *International Migration* 113.
[119] (OHCHR)(n ,107).
[120] Anne Gallagher and Paul Holmes, 'Developing an effective criminal justice response to human trafficking: Lessons from the front line' (2008) 18(3) *International Criminal Justice Review* 318.
[121] Ibid.
[122] Ibid.

justice approach depends on international and regional cooperation. Though there is a regional task force among South Asian countries relating to human trafficking, law enforcement agencies are often dissatisfied with the responses of neighbouring countries – a point that emerged in my fieldwork.

After the enactment of the *Trafficking Protocol*, many member states passed domestic legislation implementing its measures, however, actual enforcement of domestic laws is another matter.[123] Weak enforcement mechanisms facilitate human trafficking.

Human trafficking is a crime against humanity, and as such, the International Criminal Court has jurisdiction when a State fails to provide remedies.[124] However, the ICC has limited jurisdiction over human trafficking as it cannot exercise its jurisdiction until the concerned states refer the case to them. To date, no trafficking cases have been decided by the ICC. Chapter Three further explores the limitation of ICC to adjudicate trafficking cases.

As a fundamental international criminal instrument to combat human trafficking, it might have been expected that the *Trafficking Protocol* would include strong enforcement mechanisms. However, this instrument has been criticised because it lacks a review and supervisory mechanism.[125] Although the *Trafficking Protocol* has a specific provision on assistance and protection, those provisions impose limited obligations on states.[126]

While the punishment of criminals is the main objective of a criminal justice approach, the human dignity of victims is the main concern of a human rights approach.[127] Connie Rijken has argued that a criminal justice approach is not an appropriate one in the human trafficking context as it only focuses on the punishment of criminals rather than protecting the victims.[128] The

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[123] Heather M. Smith, 'Sex trafficking: Trends, challenges, and the limitations of international law' (2011) 12(3) *Human Rights Review* 271.
[124] Tom Obokata, 'Smuggling of human beings from a human rights perspective: obligations of non-state and state actors under international human rights law' (2005) 17(2) *International Journal of Refugee Law* 394.
[125] Anne Gallagher, 'Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis' (2001) 23 *Human Rights Quarterly* 975.
[126] Ibid.
[127] Lenzerini (n 59).
[128] Conny Rijken, 'A human rights based approach to trafficking in human beings' (2009) 20(3) *Security and Human Rights* 212.

amalgamation of criminal, social and administrative law that presently operates has proven to be insufficient to eradicate this offence. [129] This propels consideration of the human rights approach, which is better suited to addressing the needs of victims of this crime.

E *Human Rights Approach*

In this thesis I argue that human rights should be the centre of all efforts to fight human trafficking.[130] The UN General Assembly and the Human Rights Council have recommend 'a human rights-based approach' to understanding human trafficking[131] and have fought the crime through different international human rights instruments.[132] The main objective of the human right-based approach is to prevent revictimisation of trafficked victims by empowering them.[133] The human rights approach focuses on prevention of those situations which are responsible for human trafficking and it also ensures protection and assistance to trafficked victims. The UN General Assembly and Human Rights Council have also articulated the positive obligations of states to combat human trafficking, including appropriate legislative, administrative and procedural frameworks.[134]

For example, in the case of *Rantsev v Cyprus and Russia* the European Court of Human Rights applied a human rights-based approach by defining every element of trafficking in the light of human rights, and by identifying the positive obligations of the states concerned.[135] The Court said

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[129] Van Impe (n 118).
[130] Gallagher (n 125).
[131] A Human Rights based Approach is the framework to scrutinise – how human trafficking attack rights of human being and what are the obligations of the state parties to tackle this crime.
[132] United Nations Office of the High Commissioner for Human Rights (OHCHR) (n 107).
[133] Ann D. Jordan, 'Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings' (2002) 10(1) *Gender & Development* 28.
[134] Roza Pati, 'States' positive obligations with respect to human trafficking: The European Court of Human Rights breaks new ground in Rantsev v. Cyprus & Russia' (2011) 29(1) *Boston University International Law Journal* 82.
[135] Shahjahan Mondol and Reba Mondol, 'Constitution of Bangladesh and Human Rights: A Comparative Study' (2017) 22(11) *IOSR Journal of Humanities And Social Science (IOSR-JHSS)* 9; *Rantsev v Cyprus and Russia* (Application No 25965/04, European Court of Human Rights, Grand Chamber, 7 January 2010). The *Rantsev* case was about the death of a trafficked victim Oxana Rantseva who came to Cyprus from Russia to work as Cabaret Artiste. Father of that victim filed this case against Cyprus and Russia and alleged violation of certain fundamental rights of the victim which are ensured by the European Convention on Human Rights. In addition, the petitioner claimed that Russia has failed to protect its own citizen from the risk of trafficking and even it failed to conduct proper investigation of victim's death.

that it is the responsibility of state authorities to take appropriate measures to remove people from the risk of trafficking. If a state fails to do so, this will be treated a violation of that person's human rights.[136] A number of international cases[137] have identified positive obligations of states under human rights frameworks in order to protect trafficked victims.[138] The observations made in the *Rantsev case*, within the context provided by the more general international statements identified above, are used in Chapter Five to critically analyse the response of the Government of Bangladesh to trafficking.

Effective implementation of a human rights-based approach depends on strong enforcement mechanisms. Such mechanisms would make it possible to monitor a state's response under international and national anti-trafficking laws and policies, and make them legally accountable when they fail to perform their legal obligations.[139] Unfortunately, in the human rights arena there is no international enforcement mechanism that directly addresses trafficking.[140] In this thesis, particularly in Chapter Four, I identify the various limitations of the human rights-based approach, such as weak enforcement mechanisms both at the international and domestic level, and the non-binding nature of human rights instruments.

At the national level, the enforcement of both criminal laws (which I have discussed earlier) and human rights law primarily lies within states. However, Tom Obakata has identified the responsibility of both non-state actors and states under international human rights frameworks,[141] and has argued that generally, non-state actors have no legal obligations as they are only holders of human rights. However, human (non-state) actors can be responsible for human trafficking,

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[136] Ibid.

[137] Alexandra Amiel, 'Integrating a human rights perspective into the European approach to combating the trafficking of women for sexual exploitation' (2006) 12 *Buffalo Human Rights Law Review* 5.

[138]Ryszard Piotrowicz, 'States obligations under human rights law towards victims of trafficking in human beings: Positive developments in positive obligations' (2012) 24(2) *International Journal of Refugee Law* 181.

[139] Joshua Aston, N. and Vinay N. Paranjape,'Human Trafficking and its Prosecution: Challenges of the ICC', *SSRN* (Paper, 20 December 2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2203711>.

[140] *Siliadin v France* (Application No 73316/01, European Court of Human Rights, Grand Chamber, 26 October 2005); *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* [2001] 96 (International Criminal Tribunal for the former Yugoslavia (ICTY)); *Rantsev v Cyprus and Russia* (Application No 25965/04, European Court of Human Rights, Grand Chamber, 7 January 2010); *Osman v United Kingdom* (Application No 87/1997/871/1083, European Court of Human Rights, Grand Chamber, 28 October 1998).

[141] Obokata (n 123).

when human rights are applied horizontally at the domestic level.[142] Obakata argues that this horizontal application[143] is best done through empowering trafficked victims.[144] Trafficked victims can then start the process of accountability of the non-state actors by filing criminal and civil proceeding against traffickers. Hence enforcement of human rights law against non-state actors is made possible through the action of trafficked victims.

The horizontal application of human rights norms depends on courts, tribunals and other institutions. In Bangladesh, the police and the judiciary are the two main institutions in law enforcement. However, corruption, official complicity and lengthy procedural systems adversely affect the implementation and enforcement of existing laws. In Bangladesh, prosecution rates are very low and civil cases against criminals are rare.

As a follower of the dualist approach to international law, Bangladesh always gives priority to domestic law over international law.[145] However, as a part of the international community, it is argued in this thesis that Bangladesh should incorporate international human rights norms into domestic legislation. Chapter Five reviews Bangladeshi trafficking cases and addresses the international responsibilities of Bangladesh to combat human trafficking. Though the *Constitution of the People's Republic of Bangladesh* follows different international human rights conventions, the poor status of human rights, including economic and social rights, creates an environment where people can be exploited.

The second limitation of the human rights-based approach is its non-binding nature. Generally, the human rights-based framework follows different international human rights norms that have been highlighted in the different human rights conventions as discussed in Chapter Four. In addition,

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[142] Ibid.

[143] The origin of horizontal application of human rights has been found in Germany after the Second World War to define fundamental rights and its application in the private sphere. Myriam Hunter-Henin, 'Horizontal Application of Human Rights in France: The Triumph of the European Convention on Human Rights' in Dawn Oliver and Jőrg Fedtke (eds), *Human Rights and the Private Sphere: A Comparative Study* (Routledge-Cavendish, 2011) 98-124.In German word the doctrine of horizontal application of human rights is known as 'Drittwirkung'. The main objective of this doctrine is to protect vulnerable people through ensuring the responsibility of non-state actors. Danwood Mzikenge Chirwa, 'In search of philosophical justifications and suitable models for the horizontal application of human rights' (2008) 8(2) *African Human Rights Law Journal* 294.

[144] Ibid.

[145] *BNWLA v Government of Bangladesh* [2009] BLC 703 (High Court Division).

there are different UN documents and declarations, such as UN General Recommendations, which contain suggestions aimed at helping UN member states to follow international standards in the domestic sphere. However, the question arises whether these human rights instruments are binding. Generally, human rights instruments and declarations, UN Resolutions and recommendations are defined as 'soft law' instruments which are non-binding.[146]

The focus of human rights instruments in this area should be to figure out the obligations of source, transit and destination countries, and the objective should be to ensure human rights-based responses are effective in combating the crime of human trafficking. The violation of the human rights of trafficked victims during the journey of trafficking is elucidated in Chapter Four of this thesis. Chapters Five and Six highlight the present status of law and policies to identify the rights of trafficked victims. The poor condition of overall human rights, weak enforcement mechanisms and non-binding nature of international human rights make it difficult for victims in Bangladesh. I conclude that the human rights protections provided in Bangladesh are inadequate to protect the rights of trafficked victims.

The human rights-based approach that I recommend in this thesis is a combination of ideas that can incorporate feminist theory, CRT, and Marxist ideas relating to forced or unfree labour. This human rights-based approach focuses on victim assistance and protection, where government organisations and NGOs actively work together to advance the human rights of trafficked victims, both internationally and domestically. Chapter Six outlines the human rights-based responses of NGOs to fight human trafficking. I argue there that Bangladesh can save poor people from the crime of human trafficking by applying both the theory of human rights approach and a victim-oriented criminal justice approach in practice, informed by feminist theory, CRT, and the Marxist theory of forced or unfree labour.

Before evaluating the response of Bangladesh, this thesis firstly considers its obligations under

[146] Christine M Chinkin, 'The challenge of soft law: Development and change in international law' (1989) 38(4) *International and Comparative Law Quarterly* 850. Alexander Betts, 'Towards a 'soft law'framework for the protection of vulnerable irregular migrants' (2010) 22(2) *International Journal of Refugee Law* 209.

international criminal law and international human rights law. The next Chapter is on this topic.

CHAPTER 3: INTERNATIONAL LAW TARGETED AT TRAFFICKING

> Human trafficking is one of the world's most shameful ills - a heartless violation of human rights in which lives are traded, sold, exploited, abused and ruined. No country is immune, and millions of lives are at stake. We must take a united stand, shine a spotlight on the issue, put traffickers behind bars and give protection and support to victims and vulnerable people. (Secretary-General Ban Ki-moon)[1]

Trafficking poses major challenges to the criminal justice system and is a fast growing business.[2] This crime is now common and is considered one of the greatest violations of human rights.[3]

The trafficking of human beings is not a new phenomenon. Indeed, human trafficking as a transnational organised crime has a lengthy history.[4] The international community has fought this international crime through the League of Nations and the United Nations.

Over the course of the 19th and 20th centuries a web of international treaties has developed to combat human trafficking. Treaties have been developed in five relevant areas: slavery, prostitution, labour, human rights, and the rights of the child. The contemporary framework includes international criminal laws, international human rights law, and regional conventions.

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[1] United Nations Office of the High Commissioner, '13th United Nations Congress on Crime Prevention and Criminal Justice' (Congress Paper, UNOHC, 12 -19 April 2015) <http://www.unis.unvienna.org/unis/en/events/2015/crime_congress_human_trafficking.html>.

[2] Adam Edwards and Peter Gill (eds), *Transnational organised crime: Perspectives on global security* (Routledge, 2004).

[3] Cherif M. Bassiouni et al, 'Addressing international human trafficking in women and children for commercial sexual exploitation in the 21st century' (2010) 81(3) *Revue Internationale de Droit Pénal* 417.

[4] Slavery has a lengthy history. In recent centuries, Africans were the victims of slavery. The African Slave trade was legal for over 350 years in Western countries, and in the American colonies. A number of scholars have found that slavery was permitted by the Christian and Islamic religion, and slavery was expanding in Africa when Arab conquest took place. Slavery and trafficking was also practised in some African traditional religions: Daniel Tetteh Osabu-Kle, 'The African reparation cry: Rationale, estimate, prospects, and strategies' (2000) 30(3) *Journal of Black Studies* 331; John Alexander, 'Islam, archaeology and slavery in Africa' (2001) 33(1) *World Archaeology* 44; May Ikeora, 'The role of African Traditional Religion and 'Juju' in human trafficking: Implications for anti-trafficking' (2016) 17(1) *Journal of International Women's Studies* 1; Paul Finkelman, 'The American Suppression of the African Slave Trade: Lessons on Legal Change, Social Policy, and Legislation' (2009) 42 *Akron Law Review* 431.

The ultimate purpose of these international instruments is to determine the responsibilities and obligations of state parties, and to promote international cooperation.

This Chapter traces the history of human trafficking as reflected in international legal instruments. The purpose of the Chapter is to draw attention to the shape, scope, strengths, and weaknesses of the current international framework and to frame contemporary human trafficking law. Over the last century, there have been significant improvements in the protection of people from human trafficking. Chapter Three charts this development, having regard to the critical insights provided by feminist theory, critical race theory, and Marxist ideas relating to forced or unfree labour. The analysis also draws attention to the absence of a human rights-based response and an adequate criminal justice response. The historical analysis of the evolution of anti-slavery and anti-trafficking instruments is necessary because it provides a context enabling a better understanding of the scope and limitations of current legal frameworks.

Bangladesh is a party to some of the earlier instruments, such as the Slavery Convention 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery1956 and the Trafficking Convention 1949. Recently, Bangladesh ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000* ('*Trafficking Protocol*'). With the benefit of an historical analysis of the earlier instrument and the *Trafficking Protocol* it will be possible to evaluate the response of Bangladesh Government in later chapters. The analysis in this chapter also points out the issues that have been overlooked and unaddressed, and that need to be improved in order to combat trafficking effectively.

Chapter Three lays out the historical background of international human trafficking laws, across three sections. The first section demonstrates that previous international criminal law measures, including the anti-prostitution and anti-slavery conventions, created a very limited framework to address the issues of race and discrimination which facilitate the offence of human trafficking. The Four White Slavery Conventions from 1904 to 1933 were racially discriminatory and gender-biased. The anti-prostitution and anti-slavery conventions contained definitional and jurisdictional limitations, lacked enforcement mechanisms and monitoring bodies, and ultimately failed to take

a human rights-based response or provide a criminal justice solution, rendering them ineffective to combat trafficking.

Organised criminal groups are taking advantage of medical advances as well as modern technology to trap victims into different forms of trafficking. Previous international legal frameworks have proven ineffective to combat contemporary human trafficking. This has forced the international community to develop an instrument that addresses the contemporary challenges. In the second section of this chapter, I evaluate the different measures set out in the recent *Trafficking Protocol* in order to eradicate human trafficking. I demonstrate that the *Trafficking Protocol* adopts both a criminal justice approach and a human rights approach; however, it has no enforcement mechanism and monitoring body, which I will demonstrate creates obstacles to the fulfilment of its human rights objectives.

The final section of the Chapter examines how different states have used their regional strength and cooperated in order to combat human trafficking more effectively. This section outlines regional laws and policy relating to human trafficking, including the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2000), the Association of Southeast Asian Nations (ASEAN) Declaration on the Protection and Promotion of the Rights of the Migrants Workers (2007), the ASEAN Declaration against Trafficking in persons Particularly Women and Children (2004) and the Bangkok Declaration on Irregular Migration (1999) for Asia. The principal focus of this section is the SAARC Convention, as Bangladesh is a party to that regional convention. This Convention has similar legal gaps (limited scope, definitional limitation and limited human rights approach) to the treaties mentioned earlier, though it does introduce a specific enforcement mechanism to monitor its implementation.

A *Early Instruments on Human Trafficking:*

1 *International Convention on 'White Slave Traffic'*

The trafficking of people into prostitution is not a new phenomenon, but became the subject of

international attention in the late 19th century.[5] Dorchen Leidholt has argued persuasively that trafficking and prostitution are inextricably interconnected: 'sex trafficking is nothing more or less than globalised prostitution.'[6] The legal framework of international human trafficking has thus been strongly influenced by earlier international anti–prostitution Conventions.[7]

As noted previously, feminist scholars such as Josephine Butler have, put broadly, presented two different opinions on sex trafficking and prostitution. Feminist abolitionists argue that both free and forced prostitution constitute violations of human rights.[8] However, feminist sex positivists argue that sex work is just one type of work, and so long as the conditions of sex work are voluntary and safe, sex workers should have the right to engage in it.[9] As mentioned previously, for the purposes of this thesis it is not necessary to take a moral position on this difference of opinion, but it is sufficient to note that because prostitution is legal in some destination countries, this creates demand for forced or unfree sexual labour from developing countries such as Bangladesh.

To protect public health and prevent the spread of venereal diseases, prostitution was formally regulated in France under Napoleon III, through a system that has come to be known as the 'French system'. This system of regulating prostitution made women more vulnerable to sex trafficking in European countries, because it created a 'pull factor' in France. Abolitionists were and have been critical of the French system, because although procurers and traffickers earn money through prostitution, prostitutes themselves experience major violations of their rights. Abolitionists have

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[5] Kathryn E Nelson, 'Sex trafficking and forced prostitution: Comprehensive new legal approaches' (2001) 24 *Houston Journal of International Law* 551.

[6] Dorchen A. Leidholdt, 'Prostitution and trafficking in women: An intimate relationship' (2004) 2(3-4) *Journal of Trauma Practice* 167.

[7] Corin Morcom and Andreas Schloenhardt, *All about Sex?!: The Evolution of Trafficking in Persons in International Law* (University of Queensland Human Trafficking Working Group, 2011).

[8] The first group Feminists abolitionists is also known as Radical and Marxist Feminists who think that both voluntary and involuntary prostitution are violence against women. They focus on sexually exploited or trafficked victims. See Julia Bindman and Jo Doezema, 'Redefining prostitution as sex work on the international agenda' (Report, ChildHub Academy, 1997) <http://www.nswp.org/mobility/redefining.html>; Joyce Outshoorn, 'The political debates on prostitution and trafficking of women' (2005) 12(1) *Social Politics: International Studies in Gender, State and Society* 141; Kathy Miriam, 'Stopping the traffic in women: Power, agency and abolition in feminist debates over sex-trafficking' (2005) 36(1) *Journal of Social Philosophy* 1; Lara Gerassi, 'A heated debate: Theoretical perspectives of sexual exploitation and sex work' (2015) 42(4) *Journal of Sociology and Social Welfare* 79.

[9] The second group Feminists Critics of the Abolitionists is known as sex positivists who think prostitution is a form of employment. A person has the right to choose sex work as a career. See Bindman and Doezema (n 8); Outshoorn (n 8); Miriam (n 8).

argued that the French decriminalisation approach to prostitution should be abolished, and a system be created to protect the rights of women. They were and have been supported by many religious and secular intellectuals.

In response, the League of Nations set up a monitoring body in 1919 to analyse the connection between prostitution, sex trafficking and women's rights. Two major inquiries were then conducted, and both found that brothels and prostitution created a pull factor for national and international trafficking. The feminist abolitionist approach and the reports of the League of Nations[10] encouraged the international community to adopt an instrument to fight against prostitution and trafficking.

The early approach was reflected in the four series of international Conventions together known as the International Convention for the Suppression of the White Slave Traffic. 'White Slavery' was the abbreviation used to describe prostitution in Europe during the early 20th century.[11] When the economic conditions in parts of Europe were weak, young women and girls in poverty became prostitutes. They were captured and wrongfully confined against their will and forced into prostitution.[12] This alarming social development sparked the development of the four White Slave Traffic Conventions.

The first and most obvious critical observation to make is that the titles of the first agreement[13] and the second agreement[14] were racist; a fault left unaddressed by the drafters until the third Convention of this series: International Convention for the Suppression of the Traffic in Women and Children 1921 came into force.

Second, the first two Conventions named: International Agreement for the Suppression of the

[10] League of Nations, *Report of the Special Body of Experts on Traffic Children, Part I and 2*, UN Doc C.52. M.52. 1927. IV. C.T.F.E./Experts/55 (1927); League of Nations and Bascom Johnsen, *Commission of Enquiry into Traffic in Women And Children In the East: Report to the Council*, (1933).
[11] Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).
[12] Marlene D. Beckman, 'The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women' (1983) 72 *Georgetown Law Journal* 1111.
[13] *International Agreement for the Suppression of the White Slave Traffic* opened for signature 18 May 1904, 1 LNTS 83 (entered into force entered into force 18 July 1905).
[14] *International Convention for the Suppression of the White Slave Traffic*, opened for signature 4 May 1910, 101 LNTS 98 (entered into force 8 August 1912).

White Slave Traffic 1904 and International Convention for the Suppression of the White Slave Traffic 1910 proved inadequate to protect victims of colour, as the focus of the Convention was only Caucasian women and girls.[15] Even though bit is acknowledged that the so-called White Slave Trade Convention did not, in its terms, solely protect white women, and was capable of protecting women of colour, scholars have confirmed that the protective mantle it created was overwhelmingly relied on by white women.[16] So, for example, the so-called White Slave Trade Convention covered Dutch colonies, which included colonies in Africa (where black women lived) and South America (where brown women lived). To that extent, certainly, the Convention had a broader coverage than the label that is often used to describe it. That said, scholars have confirmed that it was generally concerned with the protection of white women. This was a major failing, since the shocking reality was that a majority of the people trafficked at this time were of colour.[17] Cheryl Nelson Butler has noted that the rights of women and girls of colour were always overlooked by the earlier legal instruments.[18] Karen Bravo has also observed that these international instruments were ineffective to combat human trafficking because they focused on the protection of a single racial group from sexual exploitation.[19]

The third Convention of this series was the 1921 Convention.[20] It extended the scope of protection by removing the controversial title 'White Slave' and included both women and children of any race under the category of victims.[21] It also applied to both male and female children, however it did not apply to male adult victims. For this reason, although the Convention was an improvement, it remained gender-biased (against men).

The fourth Convention of the series, the International Convention for the Suppression of the Traffic

[15] Cheryl Nelson Butler, 'The racial roots of human trafficking' (2015) 62 *UCLA Law Review* 1464.
[16] Petra De Vries , '"White Slaves' in a Colonial Nation: The Dutch Campaign against the Traffic in Women in the Early Twentieth Century' (Pt Sage Publications London, Thousand Oaks, CA and New Delhi) (2005) 14(1) *Social & Legal Studies* 39.
[17] Eileen Scully, 'Pre–Cold War Traffic in Sexual Labor and Its Foes' in David Kyle and Rey Koslowski (eds), *Global Human Smuggling: Comparative Perspectives* (The John Hopkins University Press, 2001) 74-106.
[18] Cheryl Nelson Butler, 'Blackness as delinquency' (2012) 90 *Wash. UL Rev.* 1335.
[19] Karen E. Bravo, 'The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse' (2011) 9(2) *Seattle Journal for Social Justice* 3.
[20] *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 30 December 1921, 415 LNTS 9 (entered into force 15 June 1922).
[21] Morcom and Schloenhardt (n 7).

in Women of Full Age 1933,[22] criminalised the traffic of women or girls of full age[23] who were trafficked abroad for immoral purposes.[24] It retained the gender bias of the previous incarnation, as it did not apply to male victims who were adults. In addition, the 'immoral purposes' provision of the 1933 Convention assumed that sex work can only be engaged in without consent; an assumption that is inconsistent with the right to (engage in sex) work.

I have previously noted that the early legal instruments combating trafficking, the 1904[25] and 1910[26] Conventions, were only applicable to the sexual exploitation of white women. These White Slave Traffic Conventions were inspired by the feminist abolitionist movement, and only addressed commercial sexual exploitation.[27] (While all four Conventions[28] commonly used the phrase 'immoral purpose', there was no clear explanation of this term.)

In addition, none of these Conventions considered other forms of trafficking such as trafficking for the purposes of forced labour, or organ trafficking.

That said, with every amendment these Conventions adopted a wider scope. For instance, the 1910 Convention expanded the process of trafficking by including different means and modes of trafficking.[29] The 1921 Convention enlarged protection under international law by including

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[22] *International Convention for the Suppression of the Traffic in Women of Full Age*, opened for signature 11 October 1933, 150 LNTS 431 (entered into force 24 August 1934).
[23] There is no clear explanation and definition of women who are of full age in the 1933 Convention. According to Paragraph B of the International Convention for the Suppression of White Slave Traffic 1910, 'the words ''a woman or a girl who is a minor, a woman or girl of full age" mean women or girls, who are either above or below twenty years of age. A law may, however, establish a higher age for protection on condition that it is the same for women and girls of every nationality.' The 1921 Convention amended that age limit and fixed the age limit for protection to 21 years old. So, a girl of full age is assumed to mean women who are 21 years old.
[24] Morcom and Schloenhardt (n 7).
[25] *International Agreement for the Suppression of the White Slave Traffic* opened for signature 18 May 1904, 1 LNTS 83 (entered into force entered into force 18 July 1905).
[26] Ibid.
[27] Morcom and Schloenhardt (n 7).
[28] *International Convention for the Suppression of the White Slave Traffic*, opened for signature 4 May 1910, 101 LNTS 98 (entered into force 8 August 1912); *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 30 December 1921, 415 LNTS 9 (entered into force 15 June 1922); *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 11 October 1933, 431 LNTS 150 (entered into force 24 August 1934).
[29] *International Convention for the Suppression of the White Slave Traffic 1910* art 2. Here, different means and modes of trafficking include fraud or use of violence, threats, abuse of authority, or any other means of constraint, hired, abduction or enticing a woman for immoral purposes.

children of both sexes in the category of victims. The 1933 Convention also elaborated upon the definition of women or girl victims who were full age.[30] The 1933 Convention also added a new definition of traffickers, including those who were involved in the procurement and transportation of victims abroad.[31]

All of the White Slave Traffic Conventions focused on cross-border trafficking and emphasised the process of recruitment and transportation of women and girls.[32] The women and girls who were already in brothels and forced to work as prostitutes were not protected under these Conventions, as dealing with prostitution was regarded as a criminal matter subject to national jurisdiction.[33] These instruments were also silent about the consequences of trafficking.[34]

The White Slave Traffic Conventions took a criminal justice approach, to the extent that they were drafted with the assumption that domestic legislation would be adopted in order to enable the prosecution of criminals.[35] The Conventions contemplated international exchange of information, victim identification and the development of extradition arrangements, relying on cooperation among member states.[36] However these Conventions proved ineffective because they did not include any provisions for enforcement, nor did they mandate such action on behalf of member States.[37] There were no penalties for a failure of action by parties to the Conventions.

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[30] Ibid art 1. There is no clear explanation and definition of women who are in full age in 1933 Convention. However, According to Paragraph B of the International Convention for the Suppression of White Slave Traffic 1910, 'the words "a woman or a girl who is a minor, a woman or I girl of full age" mean women or girls, who are either above or below twenty years of age. A law may, however, establish a higher age for protection on condition that it is the same for women and girls of every nationality.' The 1921 Convention amended that age limit and fixed the age limit for protection to 21 years old. So, a girl of full age means a woman who is at least 21 years old.
[31] Bassiouni et al (n 3).
[32] Morcom and Schloenhardt (n 7).
[33] Bassiouni et al (n 3).
[34] Ibid.
[35] *International Convention for the Suppression of the White Slave Traffic*, opened for signature 4 May 1910, 101 LNTS 98 (entered into force 8 August 1912) art 3; *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 30 December 1921, 415 LNTS 9 (entered into force 15 June 1922) art 3 4; *International Convention for the Suppression of the Traffic in Women and Children* opened for signature 11 October 1933, 431 LNTS 150 (entered into force 24 August 1934) art 2.
[36] *International Convention for the Suppression of the White Slave Traffic 1910* art 6,7; Tom Obokata, *Trafficking of human beings from a human rights perspective: Towards a more holistic approach* (Martinus Nijhoff Publishers, 2006).
[37] International Convention for the Suppression of the White Slave Traffic, opened for signature 4 May 1910, 101 LNTS 98 (entered into force 8 August 1912) art 6, 7; International Convention for the Suppression of the Traffic in Women and Children opened for signature 30 December 1921, 415 LNTS 9 (entered into force 15 June 1922) art 6; International Convention for the Suppression of the Traffic in Women and Children opened for signature 11 October

Notwithstanding their gender-biased definitional limitations and racially discriminatory operation, these instruments did have some positive elements. Jean Allain has argued that the White Slave Traffic Convention helps us to understand the means by which trafficking can take place, and the Convention also developed concepts that are found in the modern definition of human trafficking under the *Trafficking Protocol* (including references to abuse of authority, fraud, and threats of violence).[38] The *Trafficking Protocol* later expanded that definition of trafficking by adding two other elements: method and purpose.[39] Some human rights were also recognised in these early Conventions, including the right of identification, the right to obtain civil status in destination countries, the right of repatriation including the cost of repatriation, the right to unforced repatriation, and rights to shelter and security.[40] Anticipating later international human rights instruments, this Convention identified significant human rights victims as early as 1904.

However, there were no initiatives to address the push and pull factors – the supply and demand sides – of trafficking. From 1910 to 1933, the international community progressively extended its efforts to combat trafficking for prostitution, but they failed to develop monitoring and enforcement mechanisms.

The 1921 and 1933 Conventions also proved ineffective because they did not address the obligation of states to abolish prostitution domestically.[41] This limited the effectiveness of the Conventions because the existence of brothels can facilitate the crime of sexual exploitation (they are a pull factor).[42] While the international community had used the international legal framework to address prostitution, this would likely have been more effective if prostitution and brothels were criminalised.

1933, 431 LNTS 150 (entered into force 24 August 1934) art 3; Jean Allain, 'White slave traffic in international law' (2017) 1(1) *Journal of Trafficking and Human Exploitation* 1.

[38] Allain (n 37).

[39] The *Trafficking Protocol* illustrates recruitment, transportation, transfer, harbouring or receipt of persons as method of trafficking and figures out exploitation as the purpose of trafficking.

[40] International Agreement for the Suppression of the White Slave Traffic, opened for signature 18 May 1904, LNTS 83 (entered into force 18 July 1905) art 3.

[41] Allain (n 37).

[42] The debate on voluntary and involuntary prostitution has been discussed in detail in Chapter Two.

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted in 1949 to address defects in the White Slave Traffic Conventions.

2 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*

The Trafficking Convention of 1949 ('the 1949 Convention') came into force just one year after the Universal Declaration of Human Rights in 1948. The *1949 Convention* was the first international legal instrument to make the link between prostitution and trafficking, and ensured punishment of criminals and not the victims of trafficking and prostitution.[43] The *1949 Convention* was also the first international instrument that focused on the issue of prostitution as a matter of international law.[44]

The Convention was an extension of the earlier four White Slavery Traffic Conventions. The preamble indicates that the Convention came into force to protect women and children and aimed to improve the welfare of society. It was a significant improvement on previous efforts, despite its limited human rights protections and lack of enforcement mechanism.

I now set out the positive and negative features of the Convention, having regard to the theories and doctrines set out in Chapter Two.

Firstly, the criminal justice approach taken by the Convention has been criticised on the ground that it is ineffective if domestic laws are not tailored to match it.[45] Article 1 of the *1949 Convention* provides for the punishment of procurers, and people who own, manage or finance brothels are also liable to be punished under this Convention.[46] However, article 1 does not address the issue

[43] Malka Marcovich, *Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (Coalition Against Trafficking in Women, 2002).
[44] Janie Chuang, 'Redirecting the debate over trafficking in women: Definitions, paradigms, and contexts' (1998) 11 *Harvard Law School Human Rights Journal* 65.
[45] Bassiouni et al (n 3).
[46] *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* opened for signature 2 December 1949 (entered into force 25 July 1951).

of the consent of the victims, which is inconsistent with article 12. This is because under article 1, criminals cannot use consent as a defence against victims, however, article 12[47] confirms the Convention will not affect the domestic law of state parties – where criminals can use that defence against victims.[48]

According to this instrument, consent is immaterial to both voluntary and involuntary prostitution. However, as noted above, there are many countries, such as Germany, Greece, the Netherlands and New Zealand, where sex work is legal and considered an occupation.[49] As a result, many countries did not ratify this Convention.

In Bangladesh only licenced brothels have authority to operate their businesses, with registered prostitutes. However, it is very common for prostitutes to engage in sex work independently, from their own apartments. Yet, the Bangladesh Police have been known to raid hotels and arrest women who are involved in sex work, and to prosecute them for the offence of nuisance. This approach is inconsistent with article 16 of the Convention, which provides protection and other rights to women in prostitution.[50] Malka Marcovich has argued that 'Article 2 has been used as a tool of repression against women in prostitution, violating their elementary human right to housing'.[51] Prosecuting women who are renting premises to engage in voluntary sex work is inconsistent with both the Feminist Abolitionist Approach and the Sex Positivist Approach as doing so violates the right to housing.

The *1949 Convention* contemplates appropriate investigation of human trafficking through establishing a centre of information, and highlights the importance of state cooperation to share information on trafficking.[52] It points to joint investigations, sharing information, and the

[47] The *Traffic Convention (1949)* art 12 states the present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.
[48] Bassiouni et al (n 3).
[49] Julie Bindel, *The pimping of prostitution: Abolishing the sex work myth* (Palgrave Macmillan, 2017).
[50] The *Traffic Convention (1949)* art 16 states the Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.
[51] Marcovich (n 43).
[52] The Traffic Convention (1949) art 14, 15.

extradition of traffickers.[53] This instrument was signed by only 82 countries, as its provisions are inconsistent with the domestic law of many states. For instance, Iceland never signed the Convention. India was unable to implement the main provision of this instrument as it required a major amendment of its domestic criminal law. In contrast, Romania, Pakistan and South Africa signed it as the provisions were consistent with their national laws. Megan Brand has argued that the countries who have laws and policies consistent with this Convention cooperated in the drafting process; however, countries whose laws and policies were inconsistent with this instrument disregarded the Convention.[54] This plainly limits the effectiveness of the Convention.[55]

Articles 8 to 15 address different measures as part of a criminal justice system. These measures include cooperation among the state parties relating to the extradition of offenders (traffickers), collaboration for the purpose of investigation, information sharing about trafficking, and acknowledgement of foreign convictions of traffickers.[56] However it is arguable, as noted above, that these criminalisation measures render the Convention ineffective, as some countries have decriminalised prostitution, creating a pull factor for trafficking. If people who exploit trafficked prostitutes are not capable of being prosecuted, then this substantially, perhaps even fatally, undermines the anti-trafficking regime.

Unfortunately, there are other negatives with this instrument: firstly, as Silvia Scarpa has noted, it only addresses sex trafficking and no other forms of trafficking or mistreatments.[57] Thus, like the White Slave Traffic Conventions, this Convention is only concerned with sex trafficking even though in practice there are many forms of human trafficking, such as forced or unfree labour, and organ trafficking.

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[53] Katrin Corrigan, 'Putting the brakes on the global trafficking of women for the sex trade: An analysis of existing regulatory schemes to stop the flow of traffic' (2001) 25 *Fordham International Law Journal* 151.
[54] Venezuela passed legislation where they required women in prostitution require health certificate and medical examination which is against the article 6 of this Convention. Article 6 says, Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.
[55] Megan C Brand, *International cooperation and the anti-trafficking regime* (Refugee Studies Centre, Oxford Department of International Development, 2010).
[56] Susan Jeanne Toepfer and Bryan Stuart Wells, 'The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women' (1994) 2 *Michigan Journal of Gender & Law* 83.
[57] Silvia Scarpa, *Trafficking in human beings: Modern slavery* (Oxford University Press, 2008).

Secondly, the Convention lacks suitable enforcement mechanisms. In spite of provisions for the central management of information,[58] investigation and monitoring provisions,[59] and provisions for annual reporting to the United Nations,[60] the *1949 Convention* was ineffective because of its lack of enforcement mechanism and absence of a dedicated monitoring body.[61] The Working Groups of Contemporary Forms of Slavery (WGCFS) are the only United Nations bodies that produce an annual report relating to the Conventions. However, under the *1949 Convention*, this body has no power to compel any state party to submit any reports. It also has no authority to question state parties about their reports if they do produce them.[62] Like the White Slave Traffic Conventions, the Convention only suggests supervising employment agencies to protect women and children from sexual exploitation and prostitution.[63] In the absence of enforcement procedures, state parties have no binding obligation to comply with the Convention.

The *1949 Convention* was the only convention dealing with trafficking for more than half a century, but it has been heavily criticised by a number of commentators. The Convention has been considered a *desuetude* because of its ineffectiveness.[64]

Stephanie Farrior has criticised the *1949 Convention* for failing to have strong enforcement or control mechanisms. Farrior also notes that there is no supervisory body under the Convention to analyse and comment upon the responses of state parties. Farrior has also argued that the Convention has adopted a limited human rights-based approach, as it overlooked the rights of the victims and socio-economic causes of prostitution.[65]

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[58] *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* opened for signature 2 December 1949, 96 (entered into force 25 July 1951) art 14, 15.
[59] Ibid art 20.
[60] Ibid art 21.
[61] Marcovich (n 43).
[62] Stephanie Farrior, 'The international law on trafficking in women and children for prostitution: Making it live up to its potential' (1997) 10 *Harvard Human Rights Journal* 213.
[63] The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) art 20.
[64] Anne Gallagher and Elaine Pearson, 'The high cost of freedom: a legal and policy analysis of shelter detention for victims of trafficking' (2010) 32(1) *Human Rights Quarterly* 73.
[65] Farrior (n 62).

Ms Radhika Coomaraswamy has provided a useful analysis worth quoting at length, saying:

> The *1949 Convention* has proved ineffective in protecting the rights of trafficked women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason: rather the Convention views them as vulnerable beings in need of protection from the evils of prostitution. As such, the *1949 Convention* does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalisation and vulnerability to human rights violations. [66]

I do not completely agree with this assessment. This instrument had a wider application than previous efforts, and advanced human rights protection by addressing the prevention of trafficking, and the protection and rehabilitation of victims of prostitution and trafficking. It encouraged countries to use social, educational, economic, health and other services to fulfil that approach.[67] It also recognised the limited rights of victims to participate in a legal proceeding (if domestic laws allowed them to do so).[68] The right to free and voluntary repatriation is also identified in this Convention.[69] Victims are also entitled to obtain civil status and temporary shelter in destination countries.[70] The *1949 Convention* also identified the rights of migrant women and children who were vulnerable to trafficking and contained protection measures for them.[71] In these respects the *1949 Convention* was a real advance on previous international law efforts, and it presaged the 2000 *Trafficking Protocol* (the Protocol).

Another positive effect of the *1949 Convention* was that it applied to all victims, including men, women, and children of any age, of any colour or race. The title of the Convention, unlike its predecessors, was not racially discriminatory. The *1949 Convention* was race, gender and age-neutral.

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[66] Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against women, its causes and consequences*, UN Doc e/cn.4/2000/68 (29 February 2000).
[67] *The Traffic Convention (1949)* art 16.
[68] Ibid art 5.
[69] Ibid art 18 and 19.
[70] Ibid.
[71] Ibid art 17.

Although the *1949 Convention* lacked an elaborate definition of trafficking, exploitation or prostitution, it changed the previous 'immoral purpose' language to prostitution, and linked prostitution with trafficking. Moreover, it enlarged the application of previous conventions by including both internal and cross-border trafficking. The *SAARC Convention* and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child ('CRC') in 1989 were widely inspired by the principles of the *1949 Convention.*

That said, the *1949 Convention* did not include any measures to protect victims as witnesses and did not specifically outline the civil rights that people could claim as trafficked victims. Also, because the *1949 Convention* only focused on prostitution and sex trafficking, it overlooked the rights of victims of other forms of trafficking such as victims of labour trafficking.[72] On balance, the *1949 Convention* failed to provide adequate measures to stop human trafficking due to its lack of a strong monitoring body and enforcement mechanisms. It was not binding (and can therefore be categorised as a soft law instrument). Because it proceeded from an abolitionist perspective, it was relatively unpopular and only 82 States joined it, which is a low number compared with other international instruments aimed at the protection of human rights. That said, as an early international legal instrument on trafficking it highlighted some human rights of the victims, which inspired later international and regional instruments.

3 *The Slavery Convention*

Trafficking is conducted to support slavery – forced or unfree labour. Kevin Bales and Ron Soodalter have identified three criteria to identify a person as a slave:

> The first is the complete control of one person by another, through the use of violence – both physical and psychological. The second – hard labour for little or no pay – clearly applies as well … The third criterion is economic exploitation – making a profit for the

[72] Morcom and Schloenhardt (n 7).

slaveholder.[73]

All these characteristics are very common in trafficking cases. Thus 'slavery' as a concept is apt to include many forms of trafficking, and consideration of the applicability and viability of anti-slavery measures is relevant to the consideration of the effectiveness of international law in addressing trafficking.

Every person should be free from slavery. This is one of the basic human rights recognised by various international instruments.[74] The Vienna Congress Treaty of 1815 declared that slavery is illegal and proposed the abolition of the trade in slaves. Since this declaration, it has been accepted that slavery is contrary to the principles of humanity and universal morality.

Many different international treaties and soft law instruments have been adopted to fight slavery since 1815. Nearly 300 agreements have been developed to abolish slavery, but all have proven to be ineffective. The first defect of these treaties was that they focused only on the slave trade by land. The General Act of Berlin 1885 was adopted to eradicate slavery and the slave trade by land. Then the General Act of Brussels of 2 July 1890 enlarged the scope of application by prohibiting slavery including slave trade by both land and sea.[75] Article 21 of the Slave Trade and Importation into Africa of Firearms, Ammunition, and Spirituous Liquors (General Act of Brussels) describes the coastal zone and focuses on different initiatives that were necessary to stop the African slave trade.[76]

During the 19th century, the issue of slavery was recognised in international law. After the First World War, the League of Nations played a significant role in the development of this international law. It firstly established the Temporary Slavery Commission in 1924. The Slavery Convention was then adopted by the League of Nations on 25 September 1926.[77] The Slavery Convention

[73] Kevin Bales and Ron Soodalter, *The slave next door: Human trafficking and slavery in America today* (University of California Press, 2010).
[74] A. Yasmine Rassam, 'International law and contemporary forms of slavery: An economic and social rights-based approach' (2004) 23 *Penn State International Law Review* 809.
[75] Scarpa (n 57).
[76] *Convention Relative to the Slave Trade and Importation into Africa of Firearms, Ammunition, and Spiritous Liquors* opened for signature 2 July 1890 (entered into force 31 August 1891).
[77] *The Slavery Convention*, opened for signature 25 September 1926, 60 LNTS 253 (entered into force 9 March

provided a definition of slavery (although it obviously failed to eradicate the crime). In this section of the Chapter, I demonstrate that despite influencing contemporary definitions of trafficking, the Slavery Conventions, just like the anti-prostitution conventions, were ineffective to prevent human trafficking in Bangladesh. I analyse the positive and negative characteristics of this instrument below.

The first positive feature of the Slavery Convention was that it addressed definitional limitations in the (previously reviewed) anti–prostitution conventions. The *Trafficking Protocol 2000* follows the definition of slavery in the Slavery Convention,[78] which has been incorporated into contemporary definitions of human trafficking.[79] For instance, the concept of right of ownership is the first characteristic of slavery, whereby legal ownership was claimed over slaves through formal registration and investment. Likewise, today it is recognised that the whole process of human trafficking involves continuous exercise of ownership over victims. This phenomenon is apparent in the sex industry, as well as in fishing and in other industries.[80]

Secondly, the Slavery Convention focused on different means and methods of slavery such as capture, acquisition, selling and disposal, trade and transportation. Contemporary international law relating to trafficking sets out similar means.[81] In both Conventions, abuse of power plays a pivotal

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1927).

[78] *Slavery Convention 1926* art 1 states 'For the purpose of the present Convention, the following definitions are agreed upon: (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves'.

[79] *Trafficking Protocol 2000* art 3(a) states 'Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring 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. 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; (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) The recruitment, transportation, transfer, harbouring 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) of this article; (d) "Child" shall mean any person under eighteen years of age'.

[80] Obokata (n 36).

[81] 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.

role in making vulnerable people victims of slavery and trafficking. Again, the methods of slavery are now fully adopted in trafficking definitions.

Thirdly, the 1955 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery[82] included different forms of slavery such as debt bondage, serfdom, the sale of women and forced marriage, which are now all encompassed in contemporary international law relating to human trafficking. The *Trafficking Protocol* has adopted slavery, practices like slavery and servitude as forms of human ownership relevant to trafficking. Thus, older international legal concepts relating to slavery have influenced the *Trafficking Protocol.*

Finally, applying critical race theory, it is evident that people of colour are typically the victims of slavery.[83] However, Tom Obakata has argued persuasively that race cannot be categorised as the main reason for contemporary slavery.[84] He also identified poverty, discrimination and violence against women, and other grounds including humanitarian crisis, international or internal armed conflicts, as factors which force vulnerable people to move abroad for better opportunities.[85] In addition, poor economic conditions and a lack of choices in source countries push vulnerable people to move developed countries.[86] All these circumstances of source countries create a market for forced or unfree labour.

However, race is a significant matter in human trafficking. There is still debate going on definition of race, caste and ethnicity[87] and frequently caste is intertwined with race.[88] This study does not focus on that debate rather addresses the race, caste and ethnicity as a ground of discrimination. This is obvious when we see how Dalit people in India and Rohingyas in Bangladesh are exploited, and how their human rights are adversely affected. Poverty and marginalisation are also determined by our racialised societies, which makes people vulnerable to trafficking. Sometimes,

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[82] *The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery* opened for signature 7 September 1956, 3 UNTS 266 (entered into force 30 April 1957).
[83] African slave trade in America, Europe and Islamic Arab States. See Obokata (n 36).
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Harold Kincaid, 'Debating the Reality of Race, Caste, and Ethnicity' (Pt SAGE Publications Sage CA: Los Angeles, CA) (2018) 48(2) *Philosophy of the Social Sciences* 139.
[88] Deepa S. Reddy, 'The ethnicity of caste' (Pt JSTOR) (2005) *Anthropological Quarterly* 543.

racism leads to lack of opportunities for particular social groups. Poor living conditions and the poor status of human rights in the refugee camps of Bangladesh make Rohingya refugees vulnerable to many different types of crime, including human trafficking.[89] According to the report of Naimul Karim, between January and June 2019, roughly 250 Rohingyas were rescued from traffickers.[90]

The Slavery Convention also represented a positive development in international law relating to the treatment of trafficked people, by emphasising the importance of prevention and suppression of the slave trade. To prevent slavery, the Convention adopted a criminal justice approach and encouraged state parties to implement measures in domestic legislation to prosecute and severely penalise participation in the slave trade.[91] In addition, the Convention focused on the cooperation of member states in such prosecutions.[92]

However, in practice, these criminalisation measures were ineffective due to a lack of enforcement and monitoring mechanisms. Just like the anti-prostitution conventions, the Slavery Convention contained no provisions enabling evaluation of the international commitments made by state parties. Due to this lack of a strong monitoring body and enforcement measures, many state parties failed to comply. For this reason, the Slavery Convention has been criticised as a paper tiger.[93] Any state party could create laws inconsistent with its provisions, and, of course, there was no obligation to join in the first place.

Moreover, the use of the word 'undertakes' in multiple provisions of the Slavery Convention meant

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[89] Rohingya refugees and their status under existing legal system have been outlined in Chapter Five.
[90] Naimul Karim, 'Rohingya refugees in Bangladesh warned to be wary with human trafficking rising', *Reuters* (Online, 23 August 2019) <https://www.reuters.com/article/us-bangladesh-myanmar-trafficking/rohingya-refugees-in-bangladesh-warned-to-be-wary-with-human-trafficking-rising-idUSKCN1VD0XD>.
[91] *Slavery Convention 1926* art 6. Those of the High Contracting Parties whose laws do not at present make adequate provision for the punishment of infractions of laws and regulations enacted with a view to giving effect to the purposes of the present Convention undertake to adopt the necessary measures in order that severe penalties may be imposed in respect of such infractions. Art 7 - The High Contracting Parties undertake to communicate to each other and to the Secretary-General of the League of Nations any laws and regulations which they may enact with a view to the application of the provisions of the present Convention.
[92] *Slavery Convention 1926* art 4. The High Contracting Parties shall give to one another every assistance with the object of securing the abolition of slavery and the slave trade.
[93] Suzanne Miers, 'Slavery and the slave trade as international issues 1890–1939' (1998) 19(2) *Slavery and Abolition* 16.

that the instrument did not impose any specific liability upon the states to explain their conduct to the Secretary-General of the League of Nations. France and Italy, for example, declined to give protection to slaves who were victims of maritime traffic piracy,[94] and declined to send reports detailing their efforts to combat slavery to the League of Nations.[95]

The Conventions that were written before 1960, such as the Slavery Convention 1926, the 1956 Slavery Convention and the 1949 Trafficking Convention, contained no enforcement and monitoring mechanisms.[96] For this reason and the reasons set out above, these conventions were ineffective in combatting human trafficking. The international community adopted Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ('*Trafficking Protocol*')[97] to fill out the aforesaid gaps of early instruments.

B *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*

Recognising that human trafficking is a gross assault on the dignity and freedom of human beings,[98] in 2001 the international community adopted as an anti-trafficking effort the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. This Protocol[99] is considered a global language, and legal instrument to address the trafficking of human beings as a transnational crime. Compared to its predecessors – the anti-prostitution and anti-slavery Conventions as discussed above – the *Trafficking Protocol* is considered a significant improvement in the international response to human trafficking, as it adopts both a human rights-based approach and a criminal justice approach. The *Trafficking Protocol* is the first international instrument that has defined the term trafficking comprehensively and is the most important international law of human trafficking. [100]

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[94] Ibid.
[95] Ibid.
[96] Marcovich (n 43).
[97] Trafficking Protocol.
[98] Kalen Fredette, 'Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation' (2009) 17 *Cardozo Journal of International and Comparative Law* 101.
[99] *Trafficking Protocol*.
[100] Taejin Kim, 'An Assessment of Human Trafficking Laws in the Republic of Korea Based on UN Conventions

The aim of this part of the thesis is to evaluate this international response, as well as the responsibility of Bangladesh to implement it. Bangladesh ratified this instrument on 12 September 2019, some 19 years after its development. As a member state, Bangladesh has specific obligations to implement its provisions. In the analysis that follows, a human rights approach and a criminal justice approach will be adopted to analyse whether the response of the laws and institutions of Bangladesh are compatible with this Convention. Any inconsistencies will be identified and considered. Before this analysis, a brief history of the Protocol is provided for context.

The *Trafficking Protocol* came about due to the action of a number of key countries: Argentina, the United States, Austria and Italy. Argentina was concerned about what it regarded as insufficient international efforts to fight child trafficking.[101] When Argentina presented its proposal for reform of international law on child trafficking at the 1997 session, human trafficking became a significant topic in the international arena. European institutions decided to take this issue seriously, and the United States also took different measures to combat this crime.[102] Italy and Austria addressed the importance of international instruments on trafficking and smuggling by sea.[103] In 1998, an intergovernmental ad hoc committee was established by the UN General Assembly to draft the International Convention against Transnational Organised Crime[104] and its three supplementary Protocols.

The UN General Assembly decided to develop and adopt a new instrument to prevent the illegal movement of people across borders, smuggling, and other transnational crimes.[105] The ad hoc Committee then conducted 11 sessions and drafted the Transnational Organised Crime Convention and its Protocols in 2000, consulting 120 countries and INGOs.[106] The mother Convention (the Transnational Organised Crime Convention) and its Protocols were approved by the General

and Protocols' (2011) 10 *Korea University Law Review* 3.
[101] Gallagher and Pearson (n 11).
[102] Anne Gallagher, 'Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis' (2001) 23 *Human Rights Quarterly* 975.
[103] Ibid.
[104] *The United Nations Convention against Transnational Organised Crime*, opened for signature 15 November 2000, 209 UNTS 2225 (entered into force 29 September 2003).
[105] Laura L. Shoaps, 'Room for improvement: Palermo protocol and the trafficking victims protection act' (2013) 17 *Lewis & Clark Law Review* 931.
[106] Janice G. Raymond, 'The new UN trafficking protocol' (5) (2002) 25 *Women's Studies International Forum* 491.

Assembly in 2000 in Palermo, Italy where 80 states signed the *Trafficking Protocol* and 40 countries ratified it.[107] The Transnational Organised Crime Convention came into force on 29 September 2003 and was further supplemented by three Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;[108] the Protocol against the Smuggling of Migrants by Land, Sea and Air;[109] and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.[110]

At the time of the adoption of the Trafficking Protocol, Yves Doutriaux, the French delegate to the UN, stated that 'the Protocols are vital instruments, because they take into account, and set out specific measures for addressing, particularly serious types of organised transnational crime.'[111] The international community agreed to share information and increase mutual criminal assistance among states to enable identification and prosecution of traffickers.[112] Sergio Vento, the Italian delegate to the United Nations, stated that:

> trafficking in persons, especially women and children, is a particularly heinous crime. The Protocol on trafficking, which pays equal attention to the repression of illegal conduct and the protection of the victims, fills in many gaps in international law and provides an effective instrument for international cooperation.[113]

The main purpose of the *Trafficking Protocol* is to establish a framework to prevent trafficking, to assist the victims of trafficking by protecting their human rights and to increase cooperation among states to combat trafficking.[114] Through its '3P' paradigm (prosecution, protection and prevention) [115] it adopts a human rights-based approach, while reflecting feminist and critical race theory, and

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[107] LeRoy G. Potts Jr, 'Global trafficking in human beings: Assessing the success of the United Nations protocol to prevent trafficking in persons' (2003) 35 *George Washington International Law Review* 227.
[108] *Trafficking Protocol.*
[109] *Protocol against the Smuggling of Migrants by Land, Sea and Air*, opened for signature 15 November 2000, 507 UNTS 2241 (entered into force 28 January 2004).
[110] *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*, opened for signature 31 May 2001, 208 UNTS 2326 (entered into force 3 July 2005).
[111] *UN Convention against Transnational Organised Crime*, A/RES/55/25, 55 sess, 105 mtg, UN Doc A/55/383 (15 November 2000).
[112] Joan Fitzpatrick, 'Trafficking and a human rights violation: The complex intersection of legal frameworks for conceptualizing and combating trafficking' (2002) 24 *Michigan Journal of International Law* 1143.
[113] *UN Convention against Transnational Organised Crime* (n 111).
[114] Carol S. Brusca, 'Palermo Protocol: The First Ten Years after Adoption' (2011) 2(3) *Global Security Studies* 16.
[115] As trafficking is an organised crime, the *Trafficking Protocol* addresses three objectives as an international

takes a criminal justice approach. Consistent with critical race theory and feminist theory, through article 2 it pays special attention to women and children, and its internationally agreed definition of human trafficking is applicable to all people irrespective of race, culture, gender.[116]

This section is divided into four parts. Part one will demonstrate that this Convention successfully adopts a criminal justice approach and contains elaborate criminal justice provisions when compared to previous instruments. Part Two of this section will demonstrate that it adopts a human rights-based approach by highlighting the rights of victims, which were unaddressed by previous Conventions. Part Three of this section describes the different preventive measures which could be followed to implement the provisions of this Protocol, taking into account the theoretical perspectives and responses I have previously identified as important. Finally, Part Four identifies challenges to its effectiveness, and where there is room for improvement.

1 *Criminal Justice Approach*

"Nearly every country now has legislation in place criminalizing human trafficking."[117] Prosecution of traffickers is the first P of the '3P Paradigm' through which the *Trafficking Protocol*

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framework to eliminate trafficking. The United States firstly identified these three objectives as '3P' paradigm and these are – Prosecution, Protection and Prevention.115 These 3P (international framework to combat human trafficking) have also been discussed and analysed by Legislative Guides for Implementation of the United Nations Convention against Transnational Organised Crime and its Protocols and by the Recommended Principles and Guidelines for Human Rights and Human Trafficking of the UN High Commissioner for Human Rights. See United Nations Office on Drugs and Crime (UNODC), 'Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organised Crime and The Protocol Thereto' (Legislative Guide, UNODC, 2004) <https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf>; UN Office of the High Commissioner for Human Rights (OHCHR), 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (Report, The Economic and Social Council, 2002) <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>; Potts Jr (n 104).

[116] *Trafficking Protocol* art 3 states (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring 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. 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;
(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
(c) The recruitment, transportation, transfer, harbouring 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) of this article.

[117] United Nations Office on Drugs and Crime (UNODC), 'Global Report onTrafficking in Persons' (Global Report, UNODC, December 2018).

aims to ensure that there are no safe havens for traffickers. The obligation to criminalise trafficking is an important strategy to ensure that all aspects of the crime can be punished wherever they took place, and to ensure justice for victims. State parties are required to incorporate domestic legislation to penalise this crime: the *Trafficking Protocol* requires state parties to adopt legislative and other measures to criminalise human trafficking. State parties have obligations to implement policies and programmes that will improve the likelihood that traffickers will be prosecuted and victims will be protected. It is the responsibility of state parties to establish appropriate criminal jurisdictions before commencing investigations, prosecutions or judicial proceedings relating to trafficking. State parties should increase their mutual legal assistance in investigations, prosecutions and judicial proceedings in trafficking cases.[118]

The first positive dimension of the Convention is that it covers jurisdictional issues in detail. Article 15 of the Transnational Organised Crime Convention addresses the territorial jurisdiction of state parties. When trafficking is committed in the territory of any state, on board a vessel flying its flag, or on an aircraft registered under its law, it is the responsibility of that state party to take appropriate measures to establish its jurisdiction over that crime.[119] There are different circumstances where states can exercise their jurisdiction: when the victim of trafficking is a national of that state,[120] when trafficking is committed by its nationals outside its territory,[121] when trafficking occurs outside its territory, but connected with serious crime,[122] and when the trafficker is within the territory of the state, the state may exercise its jurisdiction on the ground of nationality ignoring the principle of extradition.[123] When different countries have concurrent jurisdiction over the same crime, their competent authorities shall consult each other to facilitate the investigation, prosecution and judicial proceedings.[124]

Secondly, like other past Conventions, the *Trafficking Protocol* indicates that state parties should undertake legislative and other measures to criminalise human trafficking (under article 5). It is

[118] *The United Nations Convention against Transnational Organised Crime* art 18.
[119] *The United Nations Convention against Transnational Organised Crime* art 15 (1) (a) (b).
[120] Ibid art 15 (2) (a).
[121] Ibid art 15 (2)(b).
[122] Ibid art 15 (2)(c).
[123] Ibid art 15 (3)(4).
[124] Ibid art 15 (5).

the obligation of state parties to incorporate the legal principles of this Convention into their domestic laws, and to prosecute and punish traffickers.[125] Article 11 addresses prosecution, adjudication and sanctions. It is the responsibility of each state party to ensure strong law enforcement measures to discourage this type of organised crime. In addition, state parties must adopt necessary judicial measures into their domestic laws, and to ensure that defendants are present at the time of the trial or appeal hearing.[126] Before considering the early release or parole of convicted persons, the courts or other competent authorities must take into account the heinous nature of trafficking.[127] Another obligation, found in article 23, is to take necessary measures to criminalise the obstruction of justice in trafficking cases.[128] In a first among the international instruments on human trafficking, the *Trafficking Protocol* also contains provisions intended to ensure the safety and protection of witnesses who will facilitate proceedings.[129]

Moreover, as a parent convention, the Transnational Organised Crime Convention ('*TOCC*') introduces a process of confiscation and seizure of the proceeds of crime, including income or other benefits from proceeds of crime, property and other things that are used in offences. This was another topic that had been overlooked by earlier instruments.[130] The *TOCC* also addresses the issue of compensation in criminal cases. According to this instrument, property and funds that come from the crime can be given as compensation to victims, or returned to the original owner, or provided to bodies who are working against trafficking, or even transferred to an account established under article 30(2)(c) of this Convention.[131]

The *TOCC* also provides clear guidelines about the principle of extradition, which is part of the process of criminalisation under the *Trafficking Protocol*. Extradition is a principle of law designed to advance international cooperation in criminal matters, by enabling countries to ensure that people accused of crimes are available to the relevant domestic legal process for prosecution.[132]

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[125] Ibid art 11(6).
[126] Ibid art 11 (3).
[127] Ibid art 11(4).
[128] Obstruction of justice means using physical force, threats or intimidation, undue influence or unlawful interference in proceeding and in official duties of justice and law enforcement agencies.
[129] *The United Nations Convention against Transnational Organised Crime* art 24.
[130] Ibid art 12.
[131] Ibid art 14.
[132] Gallagher (n 11).

According to the *TOCC*, trafficking is an extraditable offence as it is of course a serious crime and transnational in nature. The principle of extradition is generally applicable when trafficking is punishable under the domestic laws of both the requesting and requested state parties,[133] and both countries have extradition treaties with each other.[134] However, through article 16(4), the *TOCC* indicates that state parties have a legal basis for extradition to prosecute trafficking even in the absence of any extradition treaty between those states.[135] Moreover, during the process of extradition, the *TOCC* focuses on the human rights of the accused. In addition to extradition via bilateral and multilateral treaties relating to the transfer of people who have been sentenced, state parties may also have people complete their sentence in their own territory.[136] The *TOCC* also recommends streamlining extradition procedures by adopting appropriate measures to prosecute and punish cross-border criminals. As such, it recommends that state parties enter into bilateral and multilateral agreements in order to ensure that extradition for trafficking offences is effective.[137]

Another positive feature of the *TOCC* is that it highlights the importance of joint investigation and mutual assistance for an effective criminal justice response. As trafficking is a cross-border crime, mutual legal assistance is required to combat it successfully. Here, mutual assistance includes assistance relating to investigations, prosecutions and judicial proceedings relating to trafficking.[138] The *TOCC* contemplates that state parties may establish joint investigations through their competent authorities when different countries have jurisdiction over the relevant crime.[139] Also, to ensure the proper administration of justice, state parties may transfer criminal proceedings relating to trafficking offences to one another.[140]

States are no longer 'free' to do as they will in the domestic sphere, but are compelled by international law to punish criminals and protect individuals from the violation and abuse of human

[133] *The United Nations Convention against Transnational Organised Crime* art 16(1).
[134] Ibid art 16(3).
[135] Ibid art 16 (4).
[136] Ibid art 17.
[137] Ibid art 16 (17).
[138] *The United Nations Convention against Transnational Organised Crime* art 18.
[139] Ibid art 19.
[140] Ibid art 21.

rights according to the Doctrine of State Responsibility.[141] If they fail to do so, their ability to discharge obligations will be monitored and questioned by the Supervisory Bodies of different Conventions, as highlighted in Chapter Four. Unfortunately, the *Trafficking Protocol* does not have any specific monitoring body to review the implementation of this instrument.

Many countries have updated their legislation or enacted new legislation in response to the *Trafficking Protocol*. About 168 countries now have specific legislation on human trafficking, following this Protocol.[142] However, four countries remain that do not have any criminal law provisions relating to human trafficking.[143] Bangladesh signed the Convention on 12 September 2019, but it already had a domestic law on human trafficking since 2012.

The reasons for low conviction rates in source countries will be explained in Chapter Five, through presentation of the scenario in Bangladesh. In 2016, a large number of trafficked victims were detected worldwide, which was significantly higher compared to the previous 13 years.[144] The increasing number of trafficked victims is the evidence of more trafficking cases. Notwithstanding the low numbers of prosecutions in some countries, the *Trafficking Protocol* has a number of provisions to protect the human rights of trafficked victims, as will now be set out and reviewed.

2 *Human Rights Approach*

The obligation to provide remedies for breaches of human rights is an internationally recognised fundamental legal principle. This principle was stated in the Chorzow Factory Case,[145] in which it was decided that when any violation of international law takes place, it is the obligation of the state to ensure damages to the victim of the violation.[146] Trafficked persons are the victims of

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[141] Danwood Mzikenge Chirwa, 'The doctrine of state responsibility as a potential means of holding private actors accountable for human rights' (2004) 5 *Melbourne Journal of International Law* 1.
[142] United Nations Office on Drugs and Crime (UNODC) (n 117).
[143] Ibid.
[144] United Nations Office on Drugs and Crime (UNODC) (n 117).
[145] *Factory at Chorzów, Germany v Poland* (Permanent Court of International Justice, Judgement No 8, 26 July 1927).
[146] Inter-Agency Coordination Group Against Trafficking in Persons (ICAT), 'Providing Effective Remedies for Victims of Trafficking in Persons' (Issue Paper, United Nations Office on Drugs and Crime, January 2016) <https://www.unodc.org/documents/human-trafficking/ICAT/ICAT_Policy_Paper_3._Providing_Effective_Remedies_for_Victims_of_Trafficking_in_Persons_

crime, and their human rights have been violated.[147] Though the *Trafficking Protocol* and its Parent Convention are not human rights treaties *per se*, they impose legal obligations on state parties to remedy violations of human rights. Trafficked victims are entitled to remedies (depending on the circumstances of each case). Here, remedies mean all types of protection and assistance, which may include legal, medical and physiological support, financial assistance, compensation, restitution, rehabilitation, education and other vocational training.

Trafficked victims often need care as they have suffered physically and psychologically throughout the whole process of trafficking. Sometimes they are forced to do excessive work by the traffickers. Victims are also subject to serious health risks, mental health risks, anxiety, insecurities, fear, and trauma. Some victims are facing the problem of memory loss, depression, and some have suicidal ideation. Child victims are also affected emotionally and physically and they are psychologically traumatised. They often have no place to stay in destination countries and no means of support if they are repatriated.

Trafficking victims also face social ostracism, as family and friends sometimes do not want to accept victims of sex trafficking (back) into their home or community. In turn, victims become isolated and depressed, leading to re-victimisation. Moreover, victims are often afraid to come before the court. They sometimes receive threats from traffickers, and such intimidation creates impediments to achieving justice. As a result, victims rarely trust government officials, law enforcement, and the judiciary.[148] Trafficked victim Laila said:

> I didn't get any verdict against the culprits. They are now out of jail, they get bail easily by dint of 1 lakh taka (AUD 1,660). They lead a normal life without any punishment. They're cutting crops, planting paddy and doing all sorts of household jobs too. They have destroyed my life but what happened to them? Nothing happened to them.

2016.pdf>.

[147] Anne T. Gallagher, 'The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy' (2010) *Proceedings of the Expert Consultation Convened by the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children* 22.

[148] Ibid.

3 *Protection*

Plainly, victims of trafficking need protection. As noted above this is the second 'P' paradigm of the *Trafficking Protocol*. This instrument adopts a human rights approach to ensure the protection of, and provision of support and assistance to, trafficked victims. This has overcome the criticisms of the *1949 Trafficking Convention*, which was inadequate for the reasons outlined in the first section of this Chapter.

In addition, the Legislative Guide for the Implementation of the *Trafficking Protocol* and Recommended Principles and Guidelines on Human Rights and Human Trafficking ('Recommended Principles and Guidelines') of the Office of the High Commissioner for Human Rights (OHCHR) outlines other strategies to enhance protection of victims. The Recommended Principles and Guidelines contain human rights-based policy guidance for state parties to prevent human trafficking and protect the rights of trafficked victims. These were adopted to encourage the international community to integrate human rights-based responses in international, regional and national legal frameworks and other policies. The main objective of the Recommended Principles and Guidelines is to help policy makers and legislators of those countries to implement the provisions of the *TOCC* and its Protocols. Thus, although these Guidelines are non-binding, they help to achieve the objectives of the *Trafficking Protocol*. As with the *Trafficking Protocol*, the Recommended Principles and Guidelines reflect all the approaches and theories discussed in this thesis, including critical race theory, feminist theory, Marxist theory on forced or unfree labour, a criminal justice approach and a human rights approach. The United Nations Office on Drugs and Crime ('UNODC') also adopts a human rights approach, as it attends to identification and assistance of trafficked victims and international cooperation through its Toolkit to Combat Trafficking in Persons ('Toolkit').[149] This *Toolkit* also consists of guidelines to serve a human rights-based response to human trafficking.

While the *1949 Trafficking Convention* provided trafficked victims with only limited rights, the *Trafficking Protocol* requires state parties to adopt appropriate measures for assistance and

[149] United Nations Office on Drugs and Crime (UNODC), 'Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings' (Toolkit, UNODC, 20 May 2009).

protection of victims – as outlined in the remainder of this section.[150]

Under the *Trafficking Protocol*, member states' responsibilities include identification of victims, and then the provision of protection, legal and social assistance to them. While there is no specific methodology to estimate the numbers of victims of trafficking, victims' rights should be prioritised. It is one of the rights of victims to be identified as a victim by the destination, source and transit countries. The UNODC has made a list of indicators to identify trafficked victims, including child victims, and has adopted specific steps and questions that law enforcement agencies should follow in the victim identification processes.[151] It also provides guidelines for health care providers to identify victims. The Toolkit suggests training law enforcement and health care practitioners to identify trafficked victims effectively. In addition, the Recommended Principles and Guidelines also focus on victim identification through guideline 2: 'A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. A state is therefore under an obligation to ensure that such identification can and does take place.'[152]

If trafficked victims are misidentified as illegal or smuggled immigrants, they may have their rights as trafficked victims violated. They will not be allowed to access those rights to which they are entitled, such as the rights of repatriation, rehabilitation and reintegration into society, as well as compensation and other protections. As noted above, it is the obligation of states to undertake necessary victim identification measures. As confirmed through my fieldwork, trafficked victims are left alone in the sea without food and water by the coastal guards of Indonesia and Malaysia. Chapter Six also highlights that Malaysia, Indonesia, Thailand, India and other transit and destination countries are violating international law by sending trafficked persons to detention centres without identifying them as trafficked.[153]

Victims of trafficking may be re-victimised due to their vulnerability. One of the obligations of

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[150] *The United Nations Convention against Transnational Organized Crime* art 25(1).
[151] United Nations Office on Drugs and Crime (UNODC) (n 149).
[152] UN Office of the High Commissioner for Human Rights (OHCHR) (n 115).
[153] ,'Malaysia: Investigate Human Trafficking and Deaths in Immigration Detention Centers, Prosecute Human Traffickers; End Protracted Detention of Refugee, Migrants', *Fortify Rights* (News Release, 4 April 2017) <https://www.fortifyrights.org/publication-20170404.html>.

countries must therefore be the protection of the privacy and identity of victims.[154] The UN *Trafficking Protocol* requires state parties to incorporate that right in their domestic law.[155] This right protects victims from further harm, such as intimidation, threats and any kind of humiliation. To ensure this protection, state parties may need to change their procedural laws to ensure the confidentiality of relevant legal proceedings, and impose restrictions upon the presence of the public and the media at the time of proceedings, and/or provide new identities for victims.[156] The right to privacy and the protection of victims' identity is also ensured by the the Recommended Principles and Guidelines.[157]

In the Bangladeshi criminal justice system there is no such protection. Many of my interviewees confirmed that they had received threats from criminals, experienced social stigma and humiliation in society, and felt forced by local officials and others to compromise their cases.

When a victim serves as a witness, their physical safety should be ensured by the state.[158] The rights and wellbeing of victims should be guaranteed in the context of legal proceedings.[159] Victims have a right to physical safety – something which was not identified by the 1949 Trafficking Convention. The *Trafficking Protocol* does ensure physical safety and protection to trafficked victims, through article 6(5).[160] The *TOCC* also requires that victims and witnesses be protected: articles 24 and 25 require states to ensure the physical safety of victims by taking appropriate measures.[161]

Trafficking victims obviously play a significant role in facilitating proceedings, as they provide evidence of the guilt of traffickers. Accordingly, it is the obligation of state parties to provide all

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[154] *Trafficking Protocol* art 6(1).
[155] *Trafficking Protocol*. Article 6 states: 'A State party is to protect the privacy and identity of victims of trafficking in appropriate cases and to the extent possible under its domestic law.'
[156] United Nations Office on Drugs and Crime (UNODC) (n 115).
[157] *Recommended Principles and Guidelines*, guideline 6, "There should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial."
[158] *The United Nations Convention against Transnational Organized Crime* art 24 (2) (b).
[159] UN Office of the High Commissioner for Human Rights (OHCHR) (n 115). See guideline 6.
[160] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,* art 6(5) Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
[161] The United Nations Convention against Transnational Organized Crime art 24 and 15.

information about court and other administrative proceedings[162] to victims in their own language.[163] In addition, the state shall assist victims to present their views at the time of proceedings.[164]

To ensure victims' physical, psychological and social recovery, they need social assistance, accommodation, counselling, information about their rights, health services, education and training, and financial assistance.[165] The *Trafficking Protocol* requires state parties to provide these services in cooperation with NGOs and other civil society agents. This Protocol also acknowledges the civil rights of victims, and their entitlement to compensation for harm they have suffered.[166] State parties are expected to adopt measures to compensate victims,[167] and to take legislative and other measures to provide temporary or permanent residence to victims.[168] Temporary or permanent residence in a destination country facilitates legal proceedings against traffickers and protects victims from being re-trafficked, intimidated or threatened from criminals.

If victims are nationals or permanent residents of a different country, they have the right to be returned to their home country. Like the *1949 Trafficking Convention*, the *Trafficking Protocol* contemplates voluntary repatriation. But the *Protocol* is an improvement on earlier instruments because it states that repatriation should take place without delay.[169] States requested to do so have a duty to verify the identity documents of victims.[170] In cases where proper documents are unavailable, a requested state shall issue such travel documents for travel.[171]

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[162] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* art 6 (2) (a).
[163] UN Office of the High Commissioner for Human Rights (OHCHR) (n 115).
[164] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* 6 (2) (a) (b).
[165] Ibid art 6(3).
[166] Ibid art 6(6).
[166] Ibid art 6(6).
[167] *The United Nations Convention against Transnational Organized Crime* art 25(2).
[168] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* art 7.
[169] *Trafficking Protocol*, art 8: (1) The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
[170] Ibid. Article 13: At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.
[171] Ibid art 8.

While the rights of child victims were neglected by earlier Conventions, the *Trafficking Protocol* pays special attention to the needs of child victims, particularly to provide them support and assistance, and for their protection. When the age of a victim is uncertain, the state shall treat the victim as a child, as per the *CRC*.[172] The *OHCHR* has also emphasised the need for the adoption of special measures for the protection and support of child victims. This may include appointing a guardian to accompany the child during the process of protection and support, giving them training, ensuring that the child victim has no direct contact with a trafficker, the provision of accommodation, and other social assistance.[173] Child victims should also be cared for separately from adult victims.[174] It is the responsibility of the state to ensure the speedy, safe and voluntary return of the child victims in the best interest of those child victims.[175]

If we analyse the preventive measures included in this instrument, it can definitely be seen to take a human rights-based approach. The Human Trafficking Conventions from 1904 to 1949 failed to outline the root causes of trafficking, and to ensure the advancement and protection of human rights. In contrast the *Trafficking Protocol* addresses these important rights, and is better attuned to the vulnerabilities of victims, proposing necessary and effective measures to address these vulnerabilities. State parties are required to implement strong initiatives to eradicate the root causes of trafficking, which have made women and children vulnerable to the crime of trafficking.[176]

The *TOCC* has also emphasised the development and evaluation of national policies to address vulnerability to this crime. It suggests evaluating states' administrative and legislative responses to the prevention of human trafficking. This instrument highlights the importance of international and regional cooperation to address the social and economic conditions of marginalised groups who are vulnerable to trafficking.[177]

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[172] United Office on Drugs and Crime, 'Legislative Guides for the Implementation of the United nations Convention Against Transnational Organised Crime and The Protocol Thereto' (Legislative Guide United Nations 2004) <https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf>. See paragraph 65.
[173] UN Office of the High Commissioner for Human Rights (OHCHR) (n 115).
[174] Ibid 591.
[175] United Nations Office on Drugs and Crime (UNODC), *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organised Crime and The Protocol Thereto* UN Doc ST/ODC(09)/L514.
[176] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* art 9(4).
[177] *The United Nations Convention against Transnational Organized Crime* art 31(7).

The Recommended Principles and Guidelines also contain different measures to address the vulnerability of victims. The *OHCHR* has tacitly acknowledged the force of feminist theory and critical race theory by identifying that women and children are more vulnerable to trafficking, face discrimination, and experience gendered-based violence.[178] It has also tacitly acknowledged critical theories of labour, by concluding that economic power imbalances contribute to this crime: trafficking is generated through poverty and inequality. The *OHCHR* also acknowledges that demand and supply for trafficked humans is controlled and determined by economic disparities between source and destination countries. It has proposed a variety of preventive measures to address these vulnerabilities, including making available all legal documents (birth certificate, national identity), strictly regulating and monitoring travel documents, and protecting women and children from family violence and discrimination. The *OHCHR* also suggests increasing public awareness and ensuring the education of children.

In Chapter One I illustrated these vulnerabilities in Bangladesh, and their impact on victims' vulnerability to trafficking. The *OHCHR* has also emphasised the need to advance human rights of people in order to minimise their vulnerability to exploitation and trafficking.[179]

4 *Implementation and Enforcement Mechanisms*

The offence of trafficking occurs when employers demand slave labour, consumers demand goods and services that are produced by slave labour, and when customers demand sex from people who have been trafficked and who are not engaged in voluntary sex work. The recruiters, brokers and transporters are therefore part of the process of fuelling demand. It is the responsibility of state parties to adopt domestic legislation and measures – such as educational, social or cultural measures – to deter the demand that creates the market for trafficking.[180] Sometimes public officials also create demand, either directly or indirectly.

[178] United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights and Human Trafficking' (Fact Sheet No 36, United Nations, 2014) <https://www.ohchr.org/Documents/Publications/FS36_en.pdf>.
[179] Ibid.
[180] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* art 9(5).

To implement the *Trafficking Protocol* effectively, different preventive strategies are advanced. This Protocol specifies that law enforcement, immigration and other relevant authorities of state parties shall cooperate with each other and exchange information to verify travel documents which are used by individuals to cross international borders, to identify victims of trafficking, to determine means and methods of trafficking (such as the recruitment process and transportation of victims), and to take steps to detect criminals gangs that are involved in these processes.[181] It also emphasises the need to train law enforcement officials, immigration and other relevant officials to prevent trafficking, and that such training may include training in human rights and training relating to children and gender-sensitivity. Governments should organise this training in cooperation with NGOs and civil society.[182]

Part 3 of the *Trafficking Protocol* addresses other preventive measures, particularly relating to border controls to stop and detect trafficking. This Protocol reinforces the obligation of state parties to ensure freedom of movement and other internationally recognised human rights.[183] Article 11 then specifies the obligation of state parties to undertake legislative and other measures to prevent the transport or commercial carriage of people who have not had the authenticity of their travel and identity documents verified.[184] Here, commercial carriers includes transportation companies, their owners or operators. It is the duty of the commercial carriers to ascertain that all the passengers have necessary and legal travel documents for entry into their destination country.[185] If they violate that obligation, state parties have the right to impose sanctions under their domestic law, including the return of a person with inadequate travel documents to their country of origin.[186]

Under the *Trafficking Protocol*, it is the responsibility of state parties to verify the legitimacy and validity of travel and identity documents which are suspected of being used for trafficking in persons. The state shall do so within a reasonable time and on the request of another state.[187] States have an obligation to ensure the quality of travel documents in order to prevent fraud.[188] They shall

[181] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* art 10.
[182] Ibid art 10(2).
[183] Ibid art 11(1).
[184] *The United Nations Convention against Transnational Organized Crime* art 11(2).
[185] Ibid art 11(3).
[186] Ibid art 11(4).
[187] Ibid art 13.
[188] Ibid art 12(a).

also take appropriate measures to ensure that no one can unlawfully create and use those papers.[189] States have full rights to deny entry of people, or cancel their visas, if they are engaged in trafficking.[190]

Through article 32 the *TOCC* adopts a number of mechanisms to achieve its objectives, including state activities such as voluntary contributions, exchange of information, cooperation with both international and domestic NGOs, reviews of laws and policies, production of reports and the making of recommendations to ensure the effective implementation of the Convention. It is the obligation of state parties to inform the Conference of the Parties[191] about their programs, plans and practices. By establishing and maintaining direct channels of communication, state parties can also increase assistance among their border control agencies.[192]

States are also obliged to combat public corruption that assists trafficking. The *Trafficking Protocol* does not mention this matter separately, but its parent Convention (the TOCC) addresses the topic strongly by providing that states should adopt effective measures to fight against all forms of corruptions[193] and prevent, detect and punish those public officials who are involved in corruption.[194]

The *Trafficking Protocol* can be considered an improvement on past instruments. It adopts a human rights approach, compared to past trafficking instruments while the early responses – such as the International Agreements for the Suppression of the White Slave Traffic in 1904 and 1910 – which were criticised because of their racialised nature and limited scope. The *1949 Convention* also had a limited scope and limited human rights approach, as it addressed only prostitution and no other

[189] Ibid art 12(b).
[190] Ibid art 11(5).
[191] The Conference of the Parties (COP) is a supervising body to promote and review the implementation of the TOCC and its Protocols. In the COP, both signatories and non-signatory states, the Secretariat of the United Nations, as well as INGOs and NGOs can be attendees and observers. There are also some Working Groups who are working actively with the COP as consultative bodies, making recommendations on issues and submitting these to the COP for further decision. UNODC,'Conference of the Parties to the United Nations Convention against Transnational Organized Crime', *Doha Declaration: Promoting a culture of Lawfulness* (May 2018) <https://www.unodc.org/e4j/en/organized-crime/module-14/key-issues/conference-of-the-parties.html>.
[192] Ibid art 11(6).
[193] *The United Nations Convention against Transnational Organized Crime* art 8.
[194] Ibid art 9.

forms of trafficking. Nevertheless, the *Trafficking Protocol* does have a few drawbacks, which mean that it is not able to ensure the protection and advancement of human rights as effectively as it might. The following section identifies gaps in this instrument, and room for improvement.

5 *Gaps in the Trafficking Protocol*

While past human trafficking instruments have had definitional problems and limitations, the *Trafficking Protocol* provides an internationally agreed definition of this crime which is applicable to all people irrespective of race, culture or gender. According to article 3 of the *Trafficking Protocol:*

> (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring 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. 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;
> (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
> (c) The recruitment, transportation, transfer, harbouring 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) of this article.

Notwithstanding this internationally agreed definition, the Protocol has been criticised in a number of different ways. Laura Shoaps argues that the words 'consider', 'take into account' and 'endeavour to provide', in identifying the responsibilities of state parties in relation to the protection of victims, are not mandatory and do not provide a strong enough articulation of states' obligations.[195] Shoaps also argues that the extended definition of human trafficking provided by

[195] Shoaps (n 105).

the Protocol includes different means and elements which prosecutors have found difficult to prove against traffickers.[196] Member states have themselves expressed concern about different terms – such as 'exploitation' and 'sexual exploitation' – which are not defined in international law, nor in the *Trafficking Protocol*.[197]

Other significant concepts, including forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs are also not defined in the *Trafficking Protocol.*

The *Trafficking Protocol's* definitional limitations were confirmed by the Working Group in its second session in January 2010.[198] The Legislative Guide for the Implementation of the *Trafficking Protocol* did not define the term 'exploitation' properly. As a result, different states have taken different approaches. Some states have incorporated the approach taken in the *Trafficking Protocol* regarding exploitation,[199] while others have followed the Protocol but incorporated additional forms of exploitation.[200] Some states have adopted fewer forms of exploitation compared to the *Trafficking Protocol.*[201] Some countries[202] appear to have taken a different approach altogether. For example, according to the current legal framework of Australia, trafficking offences do not require any elements of exploitation: however, it makes a list of patterns of exploitation to identify the incidence of trafficking.[203]

The controversial feminist debate over voluntary and involuntary sex work and human trafficking is not resolved under the *Trafficking Protocol*.[204] The *Trafficking Protocol* includes trafficking for the purposes of sexual exploitation where consent is irrelevant due to coercion, fraud, abuse of power, or the vulnerability of victims. Vulnerability in this context is best understood within the

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[196] Ibid.
[197] Gabrielle Simm, 'Negotiating the United Nations trafficking protocol: Feminist debates' (2004) 23 *Australian Year Book of International Law* 135. Notably, the Convention on the Rights of the Child defines the term sexual exploitation of children in art 2(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
[198] United Nations Office on Drugs and Crime, 'The Concept of 'Exploitation' in the Trafficking In Persons Protocol' (Issue Paper, UNODC, 2015) <https://www.unodc.org › UNODC_2015_Issue_Paper_Exploitation>.
[199] Like Malaysia, United Arab Emirates.
[200] Like, Bulgaria, Egypt, Qatar, Thailand and Uganda.
[201] Like Brazil and Sweden.
[202] Canada and Australia.
[203] Shoaps (n 105).
[204] Gallagher (n 11); Simm (n 197).

framework of the social and economic status of victims vis-à-vis the Marxist theory of forced or unfree labour, according to feminist theory, and according to critical race theory, as outlined previously.

According to the context of the *Trafficking Protocol*, prostitution cannot be categorised as sexual exploitation unless there is an exploitative element.[205] Thus, in the absence of coercion etc, if a woman (and they usually are women) freely accepts involvement in sex work, and if there are no issues relating to the working conditions and environment which indicate the work is forced or unfree, migration for sex work would not be classified as a form of trafficking under this instrument. The critical question is whether this approach is appropriate, when conditions in Bangladesh and other third world countries are taken into account – where women have very limited alternatives or choices, and economic disparity, family violence, lack of social security and other vulnerabilities mean that they are unlikely to ever be in a position to freely consent to involvement in sex work.

The Trafficking Protocol has mandatory provisions on criminalisation in article 5.[206] However, article 6(1) states that 'In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.'[207] Shoaps has argued that due to this statement, state parties have no verifiable obligations to provide assistance and protection to trafficked victims.[208] Anne Gallagher has also criticised article 6(2), stating that 'the weakness of the Protocol's protection provision – particularly its failure to explicitly acknowledge the right to access to information and remedies – is likely to undermine its effectiveness as a law enforcement instrument.'[209]

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[205] United Nations Office on Drugs and Crime (n 198).
[206] *The Trafficking Protocol*, art 5: 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally. 2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article; (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.
[207] *The Trafficking Protocol* art 6.
[208] Shoaps (n 105).
[209] Gallagher (n 102).

To resolve jurisdictional issues, it could be argued that trafficking is a crime against humanity under the Rome Statute of International Criminal Court and the International Criminal Court ('ICC') would then have jurisdiction to hear criminal cases relating to trafficking. However, the *ICC* has limited jurisdiction unless concerned states refer matters to it. In addition, unwillingness and failure to prosecute crimes is a major challenge for the *ICC*.[210] The *ICC* also has limited executive power; it does not have its own investigating officers or law enforcement agencies to help in prosecutions.[211] Due to financial constraints, it currently cannot afford the cost of prosecuting cases, or the provision of assistance and protection to victims.[212]

The *Traffcking Protocol* apparently includes a jurisdictional limitation, as according to article 4, it is applicable to offences that are transnational in nature and committed by organised crime. However, as discussed above, article 5 requires that state parties adopt legislative and other measures to criminalise human trafficking. Ultimately, the success of criminalisation depends on the cooperation of member states. A lack of communication and cooperation among member states make it difficult to combat this organised crime successfully.[213]

One of the major purposes of the *Trafficking Protocol* is to provide assistance and protection to trafficked victims. However, there are no specific provisions relating to victim identification in this Protocol. The *OHCHR* has developed guidelines for the identification of victims. It has also recommended training for authorities and officials who have a role in the identification of victims, and increased cooperation among all relevant officials and authorities.[214] However, as noted above, this guideline has no binding force.

Another negative aspect of the *TOCC* is that it does not have any provisions relating to enforcement. Aside from the *COP* discussed above, the *TOCC* lacks any mechanism to implement its provisions and to review the activities of state parties. The *Trafficking Protocol* likewise has no

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[210] Joshua Aston, N. and Vinay N. Paranjape,'Human Trafficking and its Prosecution: Challenges of the ICC', *SSRN* (Paper, 20 December 2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2203711>.
[211] Ibid.
[212] Ibid.
[213] Gallagher (n 102).
[214] UN Office of the High Commissioner for Human Rights (OHCHR) (n 115).

supervisory body to monitor state parties' action to ensure its implementation. Similarly, although the *Trafficking Protocol* refers to victims' rights of compensation,[215] it does not mention any specific source of funding for such compensation.

Another negative feature of the *TOCC* is that it does not mention the issue of criminalisation or detention of victims. When victims are misidentified, they may be criminalised for violations of immigration law. Sometimes they may even be prosecuted by their home countries for unlawful departure.[216] State parties must guarantee that victims will not be criminalised or unlawfully detained.[217] Though the *Trafficking Protocol* has no provisions relating to the prosecution and punishment of victims, the Working Group[218] has recommended that state parties should not punish or prosecute the victims of trafficking, as they have been forced to engage in unlawful acts.[219]

The Trafficking Protocol is the legal foundation of the international community's response to human trafficking. Despite not having specific monitoring body, this Protocol becomes popular in both international and national legal framework as it focuses on the protection of human rights and assistance to victims with effective prevention, prosecution, and judicial cooperation.[220] It adopts strong human rights approach which is missing in early instruments. This Protocol addresses human trafficking on a transnational level and acknowledges more protection to victims compared with other instruments.There is no doubt that this Protocol provides an internationally agreed definition of trafficking that attempts to address the issue of demand, where the consent of the victims is considered irrelevant.

In terms of its impact, different countries have adopted various anti-trafficking policies and

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[215] *Trafficking Protocol* art 6(6): Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.
[216] United Nations Office of the High Commissioner for Human Rights (OHCHR) (n 115).
[217] Ibid. See guideline 2.
[218] It is an open-ended interim Working Group established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, to facilitate the implementation of the Trafficking Protocol. That Working Group organised its six session between 2009 - 2015.
[219] Conference of the Parties of the United Nations Convention against Transnational Organized Crime, *Report on the meeting of the Working Group on Trafficking in Persons* 5 sess, UN Doc CTOC/Cop/WG .4/2009/2 (14 to 15 April 2009). Gallagher (n102);
[220] Raymond (n 105).

programmes, and many have enacted new legislation and brought changes into their existing laws to follow the *Trafficking Protocol*. For example, the US implemented new legislation known as the *Victims of Trafficking and Violence Protection Act 2000*. The People's Republic of China has also started to punish traffickers and has reported that it has rescued many kidnapped children.[221] However, while Bangladesh recently signed the *Trafficking Protocol*, it is still considered in 'Tier 2', as it fails to meet the minimum standards for the eradication of trafficking.[222] The response of law and institutions of Bangladesh are explored in more detail in Chapters Five and Six.

To combat trafficking effectively, every state in every region needs international agreements and strategies to address human trafficking, which is a local, national, and international phenomenon. With this observation in mind, I now turn to consider regional conventions that relate to human trafficking.

C *Regional Conventions*

The security of the whole world is at risk due to the transnational nature of human trafficking.[223] But it poses a significant challenge to the legal and police systems of many nations. According to the United Nations Office on Drugs and Crimes (UNODC), every country of the world is affected by this crime, whether as a country of origin, transit or destination.[224] In human trafficking cases, the sources and destinations, the criminal activity and conspiracies, evidence, victims and criminals, can be scattered across different countries.[225] Since these cases often involve multiple jurisdictions, it can become difficult for states to investigate and criminalise trafficking-related offences. Organised criminals take advantage of the difficulty of mounting effective prosecutions, fleeing from country to country to escape punishment.[226]

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[221] Brusca (n 114).
[222] United States Department of State, 'Trafficking in Persons Report' (Annual Report, Department of State, June 2016) < https://www.state.gov/documents/organization/258876.pdf>.
[223] Gallagher (n 102).
[224] United Nations Office on Drugs and Crime,'Human Trafficking', *UNODC* (6 January 2020) <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>.
[225] Gallagher and Pearson (n 11).
[226] Ibid.

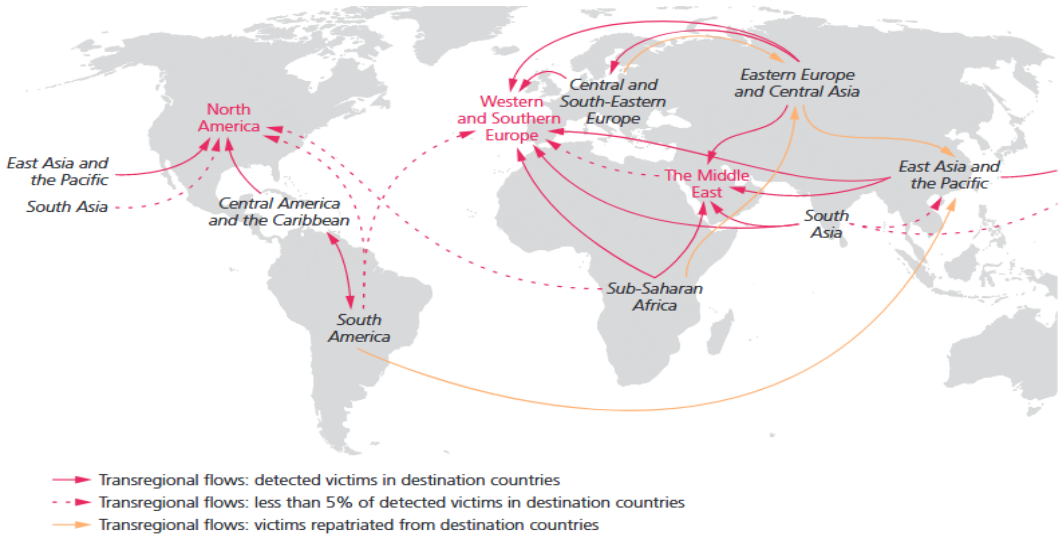

Figure 6: Main Destinations of Trans- Regional Trafficking Flows and their significant origins, 2014-2017[227] (I used it from the reference mentioned in footnote)

Figure 6 above shows the destination countries or regions of trafficking victims. Usually, traffickers target more developed countries as destination countries and less developed countries as source countries. This confirms the relevance of Marxist theory of forced or unfree labour. Applying this theory, it is evident that rich countries are destination countries as they have the demand, while source countries are those underdeveloped and developing countries where poverty, discrimination, gendered violence, unemployment and corruption and other social and economic problems operate as push factors within the supply chain of human trafficking. This is illustrated in Chapters Three and Five.

[227] United Nations Office on Drugs and Crime (UNODC) (n 117).

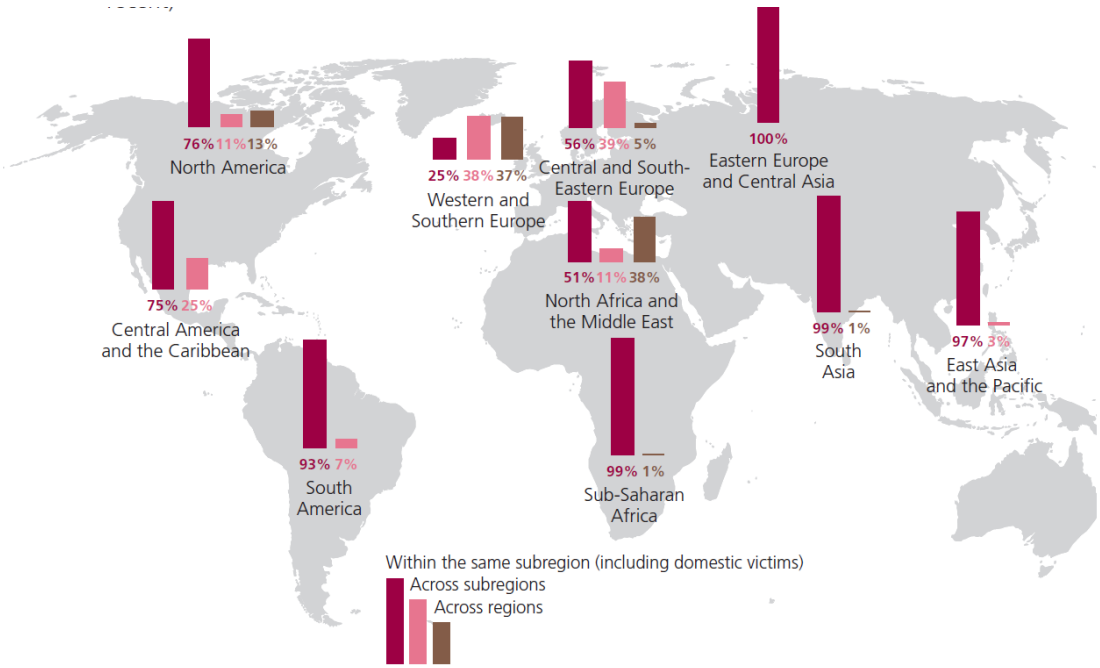

Figure 7: Detected victims by area of origin and of detection, by subregion, 2016 (or most recent) [228]

There are three patterns of trafficking: intra-regional, trans-regional and domestic trafficking.[229] The UNODC defines intra-regional pattern as including those trafficking cases which occur in the same subregion, and the trans-regional pattern includes trafficking which are across subregions and across regions.[230] Figure 7 above demonstrates the prevalence of each kind, in all regions.[231] To combat regional flows of human trafficking, the international community has adopted several international instruments, as discussed in Chapter Two and the present chapter. International conventions are the primary source of obligations for state parties, as they articulate state responsibilities to combat human trafficking. Tom Obakata also identifies different human rights obligations of state parties[232] to fight against human trafficking at the national, regional and

[228] Ibid.
[229] World Bank,'Social Development Notes: Conflict, Crime and Violence' (Report Notes, 6 January 2020) <http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human_Trafficking.pdf>.
[230] United Nations Office on Drugs and Crime (UNODC) (n 117).
[231] UNODC conducted research and data collection on 142 countries where it divided all countries in Four main Regions such as: 1. Africa and Middle East, 2. South, East Asia and Pacific, 3. The Americas and 4. The Europe and Central Asia. Under the Region of Africa and Middle East, there are two subregions; a. Sub-Saharan and North Africa, b. The Middle East. There are two sub-regions in Asia and Pacific Regions: a. South Asia and East Asia, b. The Pacific. Americas has three sub-regions: a. North America, b. Central America and Caribbean, c. South America. And Finally, Europe and Central Asia has also three subregions: a. Western and Southern Europe, b. Central and South Eastern Europe, c. Eastern Europe and Central Asia.
[232] 1) Obligation to prohibit trafficking;

international levels.[233]

Effective enforcement of international law depends on both national and regional responses. As human trafficking is a cross-border crime, without regional cooperation it is very difficult to rescue and repatriate trafficked victims and ensure effective investigations and criminal prosecutions. This is why, in the last decade, almost every region has developed specific regional and sub-regional agreements to fight human trafficking.[234]

Bangladesh is a member state of the SAARC Convention, and took part in the Bangkok Declaration on Irregular Migration.[235] As such this section highlights these two instruments and points out how effectively they both work to combat human trafficking. This section also analyses whether the regional responses are compatible with existing international law. This analysis identifies existing gaps in regional instruments which regions and sub-regions should focus on to

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2) Obligation to punish traffickers;
3) Obligation to protect victims; and
4) Responsibility to address the causes and consequences of the act.

[233] Tom Obokata, 'A human rights framework to address trafficking of human beings' (2006) 24(3) *Netherlands Quarterly of Human Rights* 379.

[234] *The European Convention on Human Rights* opened for signature 4 November 1950 (entered into force 3 September 1953). It prohibits slavery, servitude, and any type of forced or compulsory labour. Penelope Saunders, 'Traffic violations: Determining the meaning of violence in sexual trafficking versus sex work' (2005) 20(3) *Journal of Interpersonal Violence* 343.This instrument is the most significant regional development as it supplements the *UN Trafficking Protocol* and requires the enforcement of the *Trafficking Protocol* in order to combat human trafficking in Europe. *The European Convention* contains no provisions that conflict with the *Trafficking Protocol* and contains provisions to ensure that it is effective. Furthermore, the Council of Europe has developed principles concerning the issue of trafficking in human organs which have been followed by many states. Europe has also approved the *Additional Protocol Concerning Transplantation of Organ and Tissues of Human Origin* (opened for signature 24 January 2002) No.186.
Most of the countries of the American region are categorized as destination countries for victims of all kinds of human trafficking. This region has a number of general Conventions for the protection of human rights and specific conventions that address trafficking, including *American Declaration of the Rights and Duties of Man*, opened for signature April 1948 (entered into force 2 May 1948). *The American Convention on Human Rights*, opened for signature 22 November 1969 (signed and entered into force 18 July 1978); *The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights*, opened for signature 14 November 1988 (entered into force 16 November 1999). *The Inter-American Convention on International Traffic in Minors*, opened for signature 19 March 1994 (entered into force 15 August 1997). African Region has the *African Charter on Human and Peoples' Rights*, opened for signature 27 June 1981 (entered into force 21 October 1986). *African Charter on the Rights and Welfare of the African Child* opened for signature 1 July 1990 (entered into force 29 November 1999). *Protocol of the Rights of Women and the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children* (entered into force 19 November 2010). Likewise, the South East Asian countries have their own *ASEAN Convention against Trafficking in persons especially Women and Children* to combat trafficking and to protect the victims of trafficking.

[235] *The Bangkok Declaration on Irregular Migration* (entered into force 21-23 April 1999).

combat human trafficking more effectively.

1 *The Bangkok Declaration on Irregular Migration*

The Bangkok Declaration is the first initiative of the countries of the Asia-Pacific Region to come together to eliminate human trafficking. It focuses mainly on managing migration and protecting the rights of migrants in that region.[236] Ronald Skeldon argues that the response of Asian countries towards trafficking is negative as they primarily focus on border control.[237] He suggests the issue of trafficking and illegal migration can be properly addressed through regional cooperation.[238]

Bangladesh attended the International Symposium on Migration in Bangkok in April 1999. The Symposium adopted the Bangkok Declaration on Irregular Migration.[239] This instrument addresses two important issues, including the 'return of irregular migrants' and 'labour and trafficking'. The Declaration specifically highlights the importance of regional efforts to combat organised crimes in the Asia-Pacific region.

The first positive feature of this instrument is that it identifies the different causes and consequences of irregular migration and human trafficking. The Declaration reflects Marxist theory on forced or unfree labour, as it identifies the processes of globalisation, liberalisation and economic disparities as the reasons for human trafficking and illegal migration. In addition, the Declaration focuses on demand (pull factors) and supply (push factors) which cause human trafficking and illegal migration from less developed countries to more developed countries. Applying Marxist theory on forced or unfree labour, it is evident that poverty, financial and economic crises, unemployment and natural disasters in source countries push vulnerable people to being trafficked. To prevent human trafficking and illegal migration, this Declaration suggests economic growth and sustainable development in source countries.

Another constructive aspect of this instrument is that it adopts a feminist approach, as it encourages

[236] Ronald Skeldon, 'Trafficking: A perspective from Asia' (2000) 38(3) *International Migration* 7.
[237] Ibid.
[238] Ibid.
[239] *The Bangkok Declaration on Irregular Migration*, (entered into force 21-23 April 1999).

participating countries to incorporate laws and policies to prevent trafficking of human beings, especially women and children. It also identifies illegal migration where men, women and children can be victims.

In addition, the Bangkok Declaration on Irregular Migration promotes regional cooperation to combat organised crimes. Principle 7 encourages donor countries (United States, Germany, Japan, United Kingdom, Canada, Australia and other developed countries), international organisations and NGOs to take part in development processes such as poverty reduction and social development through various programs such as technical and financial assistance, providing training and sharing information.

Nevertheless, the Declaration has some drawbacks. Firstly, it has definitional limitations. It fails to draw a distinction between illegal immigration and human trafficking. An internationally agreed definition of human trafficking was later confirmed in *the Trafficking Protocol 2000*, but this Declaration was adopted in 1999. The term 'all forms of trafficking' used in the Declaration is not fully explained and there is no description of forms of trafficking. The reference in the Declaration to 'sources of cheap labour' indicates that the instrument only addresses labour trafficking.

Secondly, the Declaration takes a limited human rights approach. It addresses few rights of the victims, including the right of safe repatriation, and the right to health and other services. This instrument also recommends a humane and safe return and discourages any kinds of unfair treatment towards victims.

Another negative aspect of the Declaration is that as a soft law instrument, it does not have any binding force.

The Declaration adopts a criminal justice approach by encouraging member states to implement domestic legislation relating to human trafficking and extend regional cooperation by exchanging information to fight against trafficking-related crimes. It emphasises regional cooperation in prosecuting and penalising offenders.

A significant defect of the Declaration is that there is no specific monitoring body to review its implementation and application. It merely recommends that the participating countries and the region will continue to review all the aforesaid principles of illegal migration at the political and senior official levels.[240] For effective implementation of the Declaration, it suggests establishing a regional migration arrangement which will provide technical assistance, capacity building and policy support and information for the countries in the Asia-Pacific region. The countries in that region will utilise and strengthen their bilateral and multilateral arrangements.[241]

2 *ASEAN Convention Against Trafficking in Persons, especially Women and Children*

Due to its large population, economic growth, social change and political upheaval, Asia has become a favourable place for the business of trafficking. Mostly, Asian countries are categorised as source countries where vulnerable people become victims of human trafficking.[242] South East Asian countries[243] have a specific Convention: the ASEAN Convention Against Trafficking in Persons Especially Women and Children 2015[244] to fight against human trafficking ('*ASEAN Convention*'). Although Bangladesh is not a member state of this instrument, various countries of this sub-region are transit and destination countries for human trafficking from Bangladesh, so analysis of its operation is relevant.

Bangladesh shares borders with Myanmar (Burma), who is a member state of ASEAN. There are different waterways along the land border which are used by traffickers when crossing the border with victims. Victims destined for other countries, such as Indonesia and Malaysia, may first be trafficked by boat to Myanmar, and then onward to their destinations. The sea route of trafficking

[240] The Bangkok Declaration on Irregular Migration Principle 17.
[241] Ibid Principle 16.
[242] *United Nations Office on Drugs and Crimes* conducted research on 45 countries where data have been systematically available since (2007-2016). United Nations Office on Drugs and Crime, 'Global report on trafficking in persons' (Annual Report, UNODC, 17 December 2018) < https://www.unodc.org/unodc/data-and-analysis/glotip.html>.
[243] The member states of this Convention are: Brunei Darussalam, Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, and the Republic of the Union of Myanmar, The Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam.
[244] *ASEAN Convention Against Trafficking in Persons Especially Women and Children*, opened for signature 21 November 2015 (entered into force 8 March 2016).

is dangerous, where killing and torture of victims is common. One of my interviewees, Alam, witnessed such things while he was trafficked by sea. He luckily survived and was rescued by the coastal guard of Indonesia. In 2015, a mass grave of victims of trafficking was found in the jungle in Thailand. Traffickers have also used abandoned prison camps to torture victims to extort money from their families. Most of the victims of these events were from Bangladesh and Myanmar.[245]

To articulate the responsibilities of neighbouring countries, this section examines the *ASEAN Convention* and assesses how this instrument is successful in combatting human trafficking in this sub-region.

The first positive aspect of the *ASEAN Convention* is that it acknowledges previous, significant international legal work in this area. It refers to the Universal Declaration of Human Rights ('UDHR') and the *Trafficking Protocol* in its preamble. It also adopts the definitions and objectives of the Protocol. In these respects, it takes a human rights-based approach.

Secondly, this instrument identifies different rights[246] of the trafficked victims, just like the *Trafficking Protocol*. It also addresses the special needs of children. Again, in these respects it takes a human rights-based approach.

Thirdly, the *ASEAN Convention* outlines different preventive measures (in article 11) that focus on regional cooperation to prevent this crime.[247] It highlights the need for criminalisation of human

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[245] Ryn Jirenuwat and Russell Goldman, 'Dozens Found Guilty in Thailand in Human-Trafficking Case', *The New York Times* (Online, 19 July 2017) <https://www.nytimes.com/2017/07/19/world/asia/thailand-human-trafficking-case.html>.

[246] Right to be identified as victim, right to get physical safety, right of privacy, right to get appropriate housing, counselling, medical, psychological services, employment, education and training, right to stay in rescuing countries temporarily and permanently in appropriate cases, right to return in own countries, right to get protection as victim and witnesses, right to get compensation, right to reintegrate in the society.

[247] *The ASEAN Convention Against Trafficking in Persons Especially Women and Children* 2015 art 11 - Prevention of Trafficking in Persons:
1. The Parties shall establish comprehensive policies, programmes and other measures:
a. To prevent and combat trafficking in persons; and
b. To protect victims of trafficking in persons, especially women and children, from revictimisation.
2. The Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this Article shall, as appropriate, include cooperation with non-governmental organisations, other relevant organisations and other elements of civil society.
4. The Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate

trafficking through multiple provisions,[248] and recommends the development of legislation to penalise trafficking and ensure effective prosecutions.

Finally, the *ASEAN Convention* has a specific supervising body known as the 'Senior Officials Meeting on Transnational Crime' (SOMTC) to monitor and review the implementation of the Convention.[249]

Notwithstanding the positive features of the *ASEAN Convention*, there is evidently a failure of practical compliance given the failures to protect the rights of trafficked victims and provide them due care and support. Member states are plainly failing to satisfy their obligations to identify and rescue victims; they are also not performing their obligations when victims are left floating on the sea by the coastal guard, as has been confirmed in my research.

In addition, Malaysia, Indonesia, and Thailand are violating the *Trafficking Protocol* and other human rights treaties by sending trafficked persons to detention centres without identifying them as trafficked.[250] Bangladeshi and Rohingya people from Bangladesh have been treated as illegal migrants and prosecuted for status-related offences, contrary to international law. They face torture and inhumane treatment in detention centres. There is evidence that large numbers of trafficking victims occupy Malaysian detention centres surviving without proper food, sanitation, health and other facilities. A 2016 report indicated that there were some 325 Rohingya and 65 Bangladeshi trafficked victims still being detained in Malaysia under shocking conditions.[251] The United States Trafficking in Persons Report of 2019 ('TIP Report') showed that Victim's protection and rehabilitation services in Malaysia are inadequate and inconsistent with international law.[252]

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the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. The Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.

[248] *The ASEAN Convention Against Trafficking in Persons Especially Women and Children 2015* art 5-20.

[249] Ibid art 24.

[250] Forty Rights,'Government of Malaysia should investigate Human Trafficking and Deaths in Immigration Detention Centers, Prosecute Human Traffickers and end Protracted Detention of Refugee and Migrants' (Article) <https://rightsinexile.tumblr.com/post/160207008172/government-of-malaysia-should-investigate-deaths>.

[251] Patrick Kingsley, 'Rohingya Trafficking victims stuck in captivity, one year on', *The Guardian* (Online, 27 May 2016) <https://www.theguardian.com/world/2016/may/27/rohingya-refugees-stuck-in-captivity-one-year-on>.

[252] United States Department of State, 'The Trafficking in Persons Report' (Annual Report, 20 June 2019).

Under this report Malaysia is in the Tier 2 watchlist and Indonesia is in the Tier 2 list[253], as they do not fully comply with the minimum standard to eliminate human trafficking, despite making significant efforts to combat this crime. Myanmar is listed in Tier 3 as it fails to follow the minimum standard as well as failing to undertake significant efforts to combat human trafficking.[254] The Myanmar government has been criticised because their armed forces have displaced Rohingya Muslims, an ethnic minority in that country.[255] Rohingya have become prey to criminal gangs because of their vulnerability. Many of them have fled to Bangladesh and are staying in refugee camps there. The trafficking of Rohingya refugees is considered further in Chapters Five and Six.

Thailand is in Tier 2 and convicted 16 government officials in 2018, which is considered a significant effort in prosecuting corruption and official complicity. However, the response of the Thai government has been criticised by the TIP Report for failing to provide adequate protection of trafficked victims.

To sum up, the weak response of the *ASEAN Convention* to human trafficking has demonstrated that it is ineffective. ASEAN member states fail to follow human rights-based approach when they overlook the rights of victims, including their right of identification and repatriation.

[253] The Trafficking in Persons Report (TIP Report), is an annual report made by the Department of State, United States of America. It evaluates the response of different nations and divides the nations into four different groups according to their compliance with standards defined in the Trafficking Victims Protection Act (TVPA) of 2000. These groups are also known as Tier which represents the ranking of particular country to combat human trafficking. Here, Tier 1 includes those countries who are doing good to fight against this crime and they are following Trafficking Victims Protection Act (TVPA)'s minimum standard. Tier 2 are those countries who are making significant efforts to comply, however, they fail to fully follow the minimum standard. Lastly, Tier 3 are those countries who fail to follow minimum standard as well as fail to undertake significant efforts to combat human trafficking.
[254] Ibid.
[255] United States Department of State (n 252).

3 *SAARC Convention on Human Trafficking*

Another regional Convention is the *SAARC Convention* on Preventing and Combating the Trafficking in Women and Children for Prostitution ('*SAARC Convention on Trafficking*').[256] In April 1985 the South Asian Regional Cooperation (SAARC) was formed by the seven countries of South Asia (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka), with the purpose of promoting welfare and cooperation among South Asian countries on different fields including agriculture; rural development; telecommunications; meteorology; and health and population activities and sports, arts, and culture. Later, Afghanistan joined SAARC. All eight countries of South Asia are member states of this *SAARC Convention on Trafficking:* Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

SAARC first addressed the issue of trafficking in 1996, when a resolution on trafficking was adopted at the Ninth SAARC Summit. Bangladeshi activists[257] focused on the role of women in economic development and the protection of children during the SAARC Summits of the mid-1990s.[258] They encouraged SAARC to adopt a regional instrument against trafficking in women and children, as it was seen as a major problem in South Asia.[259] The Action against Trafficking and Sexual exploitation of Children – Bangladesh (ATSEC – Bangladesh) submitted first draft of such a convention to the prime Minister of Bangladesh after the SAARC Summit in 1997.[260] At the Tenth SAARC Summit, this draft Convention was formally considered. Finally, in 2002 at the Eleventh SAARC Summit, the *SAARC Convention on Traffficking* was adopted.[261] In the next section, I describe and discuss this Convention in detail, as this thesis is concerned with Bangladesh, which is a SAARC member state.[262]

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[256] *SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution*, opened for signature 5 January 2002 (entered into force 15 November 2015).
[257] Bangladesh National Women Lawyers' Association (BNWLA), Unnayan Bikalper Nitinirdharoni Gobeshona (UBINIG) (in English, Authors' Translation: Policy Research for Development Alternative) are two non-government organisations of early 1980 who work with different international NGOs and other local NGOs to ensure rights of women and their social and economic development.
[258] Afroza Anwary, 'Anti-Sex Trafficking Movement of Bangladesh and the Theories of Transnational Social Movements' (2007) *Social Thought & Research* 109.
[259] Ibid.
[260] Ibid.
[261] Gallagher (n 102); *SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution*, opened for signature 5 January 2002, (entered into force 15 November 2015). ('SAARC Convention')
[262] Eight member states of SAARC are Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri

The *SAARC Convention on Trafficking* is the first regional instrument addressing human trafficking that involves Bangladesh.[263] The main objective of the *SAARC Convention on Trafficking* is to develop and increase regional cooperation to fight against human trafficking for prostitution.[264] It adopts a criminalisation approach by stating that it is the responsibility of state parties to punish offenders under their own criminal law (as discussed further below).[265] It also indicates some of the factual circumstances which courts should take into consideration at the time of proceedings, and provides guidelines regarding procedural matters. The Convention also describes different kinds of assistance relating to prosecutions.

The *SAARC Convention on Trafficking* was adopted two years after the *Trafficking Protocol* of 2000; however, it does not fully follow the *Trafficking Protocol* and it has been criticised on different grounds. In 2004, the eight member states of SAARC identified five strategies to fight against trafficking. These five points include: to conduct better research about demand; strengthen protection measures; improve the system of collecting data about the victims; enhance cooperation with NGOs, the UN and other multilateral partners; and finally, to engage in more work with children and young people.[266] This section argues that the *SAARC Convention on Trafficking* is an improvement over previous efforts, particularly the *1949 Trafficking Convention*, and identifies gaps where this regional instrument fails to follow the *Trafficking Protocol*.

At the outset, the *SAARC Convention on Trafficking* identifies human trafficking as a violation of human rights. This regional instrument is an improvement on the *1949 Trafficking Convention*, as it acknowledges all relevant human rights instruments in its preamble, which were overlooked by the earlier instrument.[267] It can be considered an extension of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949 as it identifies

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[263] *SAARC Convention* was adopted in 2002 and came into force 15th November 2005. On the other hand, the *European Convention on Action against Trafficking in Human Beings* was adopted in 2005 and came into force in 2008 and that is after three years of the *SAARC Convention.*

[264] *SAARC Convention* art 1(3).

[265] Ibid art 3.

[266] Sigma Huda, 'Sex trafficking in South Asia' (2006) 94(3) *International Journal of Gynecology & Obstetrics* 374.

[267] *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; *the Convention on the Rights of the Child*, 1989.

different right of trafficked victims through its provisions.[268]

As indicated above, the *SAARC Convention on Trafficking* also adopts a criminal justice approach to the issue of trafficking. It is the responsibility of the state parties under the *SAARC Convention on Trafficking* to exchange all relevant information regarding those who are connected with trafficking, to create awareness of the crime of trafficking, and to take preventive measures against trafficking.[269] State parties are required to ensure repatriation of the victims to their countries. In addition, they shall adopt different measures for victims' care and maintenance, which may include legal advice, heath care facilities, counselling, job training, and the provision of homes and shelters.[270] In the process of rehabilitation, member states can also authorise NGOs to provide shelter and other facilities to trafficking victims.[271]

The *SAARC Convention on Trafficking* emphasises the need for mutual assistance and regional cooperation to ensure the protection and advancement of the rights of victims. Through article 8(7), this instrument focuses on preventive and developmental efforts to reduce vulnerability to human trafficking.[272] Another significant right identified in this Convention is the provision of financial support to victims through the establishment of a regional, voluntary fund, to which member states will contribute.[273] This right was included in the Declaration of the Eleventh

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[268] *SAARC Convention* art 5 - Right to get counselling and legal assistance, art 9 – Right of repatriation, right to get heath care facilities, providing protective homes and shelters for rehabilitation and receiving job training, right to get suitable acre and maintenance.
[269] Ibid art 8(5).
[270] Ibid art 9 states
1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.
2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.
3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counselling, job training and health care facilities for the victims.
4. The State Parties to the Convention may also authorise the recognised non-governmental organisations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
5. The State Parties to the Convention shall encourage recognised non-governmental organisations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
[271] *SAARC Convention* art IX.
[272] Ibid art 8(7). Here, developmental efforts include all measures for economic and social development in source countries.
[273] Asian Development Bank (ADB), 'Bangladesh: Integrating Human Trafficking and Safe Migration Concerns for

SAARC Summit.[274]

Unlike the *1949 Convention*, the *SAARC Convention on Trafficking* has highlighted the importance of implementation of its provisions through the establishment of bilateral mechanisms.[275] As noted above, the *SAARC Convention on Trafficking* encourages member states to incorporate legislative and other measures to implement the convention.[276] Furthermore, the *SAARC Convention on Trafficking* underscores the importance of providing training, sufficient means and other assistance to relevant officials (including law enforcement agencies, the judiciary, border guards and lawyers) to deal with this crime effectively.[277]

The *SAARC Convention on Trafficking* has also set up a Regional Task Force comprising officials of the member states and other bilateral mechanisms to implement the provisions of this Convention.[278] This Regional Task Force has been authorised to undertake periodic reviews and to arrange voluntary funds for the rehabilitation of the victims. The Regional Task Force operates as a monitoring body of SAARC to assess the implementation of its provisions and met annually between 2007-2013. In the first meeting it was decided that a Standard Operating Procedure (SOP) would be established to ensure the effective application of the Convention.[279] In 2009, the Regional Task Force adopted the draft of the SOP. The Standard Operating Procedure follows a human rights-based response, as the Home Ministry ensures safe and expeditious repatriation of trafficked victims through this SOP. Ministry of Home Affairs claimed that through the Task Force on Rescue, Recovery, Repatriation and Reintegration of Victims of Trafficking (RRRI Task force)

Women and Children Into Regional Cooperation' (Consultants Reports, 1 Oct 2009).

[274] 'The Eleventh SAARC Summit: Declaration ', (2002) 3(2) *South Asia Economic Journal* 311.

[275] *SAARC Convention* art 8(4).

[276] Ibid art 10.

[277] Ibid art 8.

[278] Ibid art 8.

[279] To fight against and prevent heinous cross - border crime, the Rescue, Recovery, Repatriation and Reintegration (RRRI) task force is the joint mechanisms of both Bangladesh and India which was first started between Government of Bangladesh and government of West Bengal of India. Bangladesh and UNICEF are working together to implement the objectives of this task force. In 2016 Bangladesh has undertaken a project, known as 'Anti- Trafficking Monitoring and Mechanisms' funded by UNICEF. The Home Ministry has also established the Standard Operative Procedure (SOP) to ensure safe and fastest reparation of trafficked victims. Government of the People's Republic of Bangladesh, 'Combating Human Trafficking' (Country Report, May 25, 2016) <https://mhapsd.portal.gov.bd/sites/default/files/files/mhapsd.portal.gov.bd/page/d9fa01c7_35a1_42f2_827c_1030c3e0e474/Country%20report%202016%20%20fina.pdf>.

and this SOP, by 2016 a total of 1,269 trafficked victims were repatriated successfully, many of them from India.[280]

In 2010 SAARC decided to set up two regional toll-free helplines that victims can call when they are in trouble in any of the member countries. One 11 May 2016, at a meeting of the SAARC Nations held in New Delhi, it was again urged that a toll-free child helpline be set up.[281] Currently, a project is still ongoing, to set up a toll free helpline for women and children throughout the SAARC member states.[282] The SAARC Development Fund is running that project, with a Project Budget of AUD 4,000,000, and AUD 547,200 allocated for Bangladesh.[283]

Another key feature of the *SAARC Convention on Trafficking* is that it focuses on punishment of criminals.[284] The *SAARC Convention on Trafficking* highlights the importance of mutual assistance

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[280] Ibid.

[281] Assya Pascalev et al, 'Trafficking in human beings for the purpose of organ removal: a comprehensive literature review' (Online Publication, HOTT Project, December 2013) <http://hottproject.com/userfiles/HOTTProject-TraffickinginHumanBeingsforthePurposeofOrganRemoval-AComprehensiveLiteratureReview-OnlinePublication.pdf>.

[282] SAARC Development Fund (SDF),'Toll Free Helplines for Women and Children in SAARC Member States ' (8 January 2019) <http://www.sdfsec.org/project-summary?project_id=340>.

[283] Ibid.

[284] *SAARC Convention* art 3 provides that: (1) The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature. (2) The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking. (3) Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.
art 4 - The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz. a) the involvement in the offences of an organised criminal group to which the offender belongs; b) the involvement of the offender in other international organised criminal activities; c) the use of violence or arms by the offender; d) the fact that the offender holds a public office and that the offence is committed in misuse of that office; e) the victimisation or trafficking of children; f) the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social and cultural activities; g) previous conviction, particularly for similar offences, whether in a Member State or any other country.
Art 7 – Extradition or Prosecution:
1. The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereinafter be concluded, between any of the Parties to the Convention.
2. If a State Party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, the Requested State shall, if so permitted by its laws, consider this Convention as the basis for extradition in respect of the offences set forth in Article III.
3. Extradition shall be granted in accordance with the laws of the State to which the request is made.
4. The State Party in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of

and cooperation among member states for this purpose, including information exchange to support its criminalisation measures.[285] Most South Asian countries have national legislation to penalise the crime of human trafficking.[286] Under the *SAARC Convention on Trafficking*, human trafficking is an extraditable crime, and as such, state parties can adopt bilateral and multilateral extradition agreements to ensure speedy and effective prosecutions.[287]

The *SAARC Convention on Trafficking* has been criticised on definitional, jurisdictional and other grounds. Despite having an internationally recognised definition of human trafficking in the *Trafficking Protocol*, the *SAARC Convention on Trafficking* has the same definitional limitation as the *1949 Trafficking Convention*. It only identifies trafficking for the purposes of sexual exploitation, while in practice there are many different forms of human trafficking in South Asian countries, such as labour trafficking, debt bondage, domestic servitude, illicit adoption, organ trafficking, and other forms of exploitation in which trafficking plays a role, including for ransoms.

The number of victims of sex trafficking in South Asia is comparatively higher than in any other part of the world.[288] Because of poverty, gender discrimination, racism, discrimination against people on the ground of ethnicity, and other forms of social exclusion including lack of opportunity to access social services and limited participation in the labour market, women and children are

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prosecution in accordance with the laws of that State.
5. In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention shall be prosecuted and punished by their courts.

[285] Ibid art 6. Art 8(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.

[286] Nepal has adopted the *Human Trafficking and Transportation Control Act (2007) and Regulation (2008) ('HTTCA')*. India has the *Immoral Trafficking Prevention Act 1956 ('ITPA')* against commercial sexual exploitation, the *Bonded Labour Prohibition Act 2002* against bonded and forced labour, the *Child Labour Act 2000*. Sri Lanka has its Penal Code 1883 to penalise this crime. Bhutan has also its Penal Code 2004. Pakistan adopted the *Prevention and Control of Human Trafficking Ordinance ('PACHTO') 2002*, Maldives has only its Constitution and no other domestic legal framework. In Afghanistan, there is the 2017 Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants. Bangladesh has the *Prevention and Suppression of Human Trafficking Act 2012*, as discussed further in Chapter Five.

[287] *SAARC Convention* art 7(1), 7(2), 7(3). In the absence of any extradition treaties among state parties, the *SAARC Convention* provides guidelines for the extradition of trafficking-related offences. The *SAARC Convention* also provides that if a state party does not want to extradite an offender, that state should ensure the prosecution of criminals as soon as possible under their domestic law. Ibid art 7(4). Under the *SAARC Convention*, the laws of the requesting and receiving state will be followed in extradition processes.

[288] Huda (n 266).

particularly vulnerable to sex trafficking. Sometimes, Bangladeshi women are trafficked on the basis of trickery by recruitment agencies in some Middle East countries (that is, they are promised domestic worker roles that do not eventuate). They often become victims of sex trafficking. In Chapter One, victim Rubina shared her experience of her recruitment as a domestic worker in Oman, and then being sexually exploited there. Some of the interviewees in my study also claimed that recruitment agencies are involved in this trafficking process. *The SAARC Convention on Trafficking* needs to recognise such patterns, by amending and enlarging its definition of trafficking in order to comply with the *Trafficking Protocol*, given the many forms of trafficking in South Asian countries.

In addition, there is no discussion about the difference between trafficking and people smuggling. It is evident through my fieldwork that trafficked victims are left alone in the sea by the coastal guard of Malaysia, Indonesia and Thailand, and are sometimes arrested as illegal migrants and sent to detention centres. This misidentification can result in the violation of the rights of trafficked victims. One of the interviewees claimed that law enforcement agencies are always confusing trafficking with smuggling.[289]

Finally, the *SAARC Convention on Trafficking* only refers to women and children as victims of

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[289] *The Protocol against the Smuggling of Migrants by Land, Sea and Air (2004)*, supplementing the *United Nations Convention against Transnational Organized Crime* in article 3(a) defines 'smuggling of migrants' as: the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.
On the other hand, according to article 3(a) of the *Trafficking Protocol* 'trafficking in persons' is: the recruitment, transportation, transfer, harbouring 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.
Following the aforesaid definition, there are some basic differences between smuggling and human trafficking. Firstly, in smuggling the individual provides consent to cross border illegally, however, in trafficking consent is irrelevant. Secondly, smugglers are approached by the individuals while traffickers target vulnerable people to be exploited. Thirdly, after crossing order smuggled persons are free to go and make their own way, but after arrival in destination countries trafficked victims are mostly confined and transferred to the housing and employment where they are always monitored by their employers and traffickers. In addition, trafficked victims are mostly sold and handed over to different persons. Fourthly, violence, torture, threat and deprivation of liberty are not common features of smuggling, however, the whole process of trafficking involves torture, violence, threat and deprivation of liberty. Making profit is the common purpose in both cases. While smugglers rely on negotiable single payment, traffickers make profit in different stage of trafficking. Jade Lindley, 'People smuggling versus trafficking in persons: What is the difference?' (2008) 2 *Transnational Crime Brief* 1; Brian Iselin and Melanie Adams, 'Distinguishing between human trafficking and people smuggling' (Paper, UN Office on Drugs and Crime, Regional Centre for East Asia and the Pacific, Bangkok, 2003).

trafficking. It says nothing about trafficking of men, and organ trafficking. Applying critical race theory, it is also gender biased as it did not apply to male victims – just like the four series of Conventions from 1904 – 1933.

As indicated above, every year a large number of Bangladeshi and Rohingya victims are kidnapped and transported by sea to Indonesia and Malaysia. If they are fortunate enough to arrive alive, the coast guards of Thailand, Indonesia and Malaysia arrest them and take them to detention centres. They are often left alone by traffickers without any food and drinking water for long periods of time. Sometimes they are wrongfully confined in Thailand's jungles. Sometimes they are brutally tortured by traffickers. Criminals use these strategies to extort huge sums of money from victims' families.[290] Most of these victims are men. Yet the *SAARC Convention on Trafficking* is totally silent on the human rights of these men. The narrowness of the *SAARC Convention on Trafficking*, in its scope and definitional terms, means that these destitute victims do not have the status of 'victims of trafficking' that would entitle them to get support including shelter, legal advice, medical support and speedy repatriation to their home.

Another criticism of the *SAARC Convention on Trafficking* is that it contains two provisions that are inconsistent with each other. Article 1(3) only refers to sexual exploitation for prostitution; however, article 3(1) uses the phrase 'any form of trafficking'.[291] Thus, this instrument has a definitional limitation as it does not have any provision defining the term 'any forms of trafficking'. The *Trafficking Protocol*[292] and the Council of Europe Convention on Action against Trafficking in Human Beings[293] discuss different means and methods of trafficking, but the *SAARC Convention* only identifies a few methods of trafficking, just like the *1949 Convention*.[294]

Another negative aspect of *SAARC Convention on Trafficking* is it has a limited jurisdiction; it is

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[290] Shehara de Soysa,'Bangladeshis and Rohingya Boatpeople Kidnapped by human trafficking gangs to be sold into slavery ', *Human Rights at Sea* (Case Study, 27 October 2014) <https://www.humanrightsatsea.org/wp-content/uploads/2014/09/20141027-HRAS_Case_Study_Human_Trafficking_Thailand.pdf>.
[291] Asian Development Bank (ADB) (n 273).
[292] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, opened for signature 12 Dec 2000, 319 UNTS 2237 (entered into force 25 December 2003).
[293] *Council of Europe Convention on Action against Trafficking in Human Beings*, opened for signature 16 May 2005 CETS 197 (entered into force 1 February 2008); Saunders (n 234).
[294] *SAARC Convention.*

applicable to both internal and cross border trafficking within the SAARC region only. By contrast, another regional instrument, the European Convention on Trafficking[295], is not limited in the same way: it applies to all forms of trafficking both national and transnational,[296] and is open for all states to sign)[297] – a reflection of the globalised nature of trafficking flows.

It is evident that the *SAARC Convention on Trafficking* focuses more on the rights of victims than the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949. However, there are many gaps in human rights protection under the Convention if we compare it with the *Trafficking Protocol.* Firstly, it fails to recognise the right of victims to participate in legal proceedings and to be informed about their rights in pending cases.[298] Secondly, the *SAARC Convention on Trafficking* does not address civil rights such as the right to compensation, to which trafficked victims are entitled[299] (and notably, there is still no fund under the Convention to support victims directly). Thirdly, the Convention does not acknowledge any protections for the identity and privacy of victims and victim witnesses.

The *SAARC Convention on Trafficking* has been criticised by different NGOs and UN agencies who argue that it fails to draw a distinction between voluntary sex work and involuntary prostitution.[300] According to the purpose section, the Convention considers sexual exploitation for prostitution or forced prostitution as a form of trafficking where victims have no consent and they are forced to work. As noted previously, feminist abolitionists contend that both voluntary and involuntary prostitution are violence against women, while sex positivists see sex work as a legitimate form of employment: a person has the right to choose sex work as a career.[301]

The *SAARC Convention on Trafficking* does not apply to voluntary sex work. Arguably, it may violate the right of women to travel to engage in sex work, which would then violate both the right

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[295] *Council of Europe Convention on Action against Trafficking in Human Beings*, opened for signature 16 May 2005 CETS 197 (entered into force 1 February 2008).
[296] *The European Convention on Action against Trafficking in Human Beings 2005* art 2.
[297] Ibid art 47.
[298] Asian Development Bank (ADB) (n 273).
[299] Ibid.
[300] Anwary (n 258).
[301] See Bindman and Doezema (n 8); Outshoorn (n 8); Miriam (n 8); Gerassi (n 8).

of freedom of movement and the right to work (according to sex positivists).[302] That said, given that prostitution is a lawful employment option in India (a destination country in South Asia) and in Bangladesh (a source country within South Asia), the existence of legal sex work can be argued to undermine SAARC because it lawfully creates demand for sex workers that leads to unlawful trafficking.

Although the *SAARC Convention on Trafficking* has a specific monitoring body – the RFT – to review the implementation of this Convention, there has not yet been a report produced by this body. The RFT meets annually, but all proceedings are confidential and never published.

More positively, the establishment of the *RRRI* between India and Bangladesh, and other initiatives including domestic legislation (as listed above) demonstrate that SAARC countries are trying to implement its provisions to combat human trafficking within their region.[303]

There is also a SAARC Child Welfare Convention, to protect the rights and interests of children in SAARC countries.[304] At the outset, this Convention follows a strongly human rights-based approach, as it acknowledges all the rights of children which are outlined in the UN Convention on the Rights of the Child.[305] It also requires state parties to consider survival, protection, development and participatory rights of children as part of the process of realisation of human rights and fundamental freedoms.[306] Children are entitled to enjoy all the rights provided both by national and international laws.[307] State parties shall undertake appropriate policy and programmes for the development of children.[308]

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[302] *SAARC Convention* art 8(6).
[303] Bangladesh and UNICEF are working together to implement the objectives of this task force. This *RRRI* Task force has established Child Affairs Desk in every police station to enforce *Children Act 2013*. This task force is currently working with other ministries and law enforcement agencies to prevent human trafficking. Government of the People's Republic of Bangladesh (n 279).
[304] *Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia*, opened for signature 5 January 2002 (entered into force 15 November 2005).
[305] *Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia,* art 1. UN Convention on the Rights of the Child is addressed further in Chapter Four.
[306] Ibid art 3(1).
[307] Ibid art 3(2).
[308] Ibid art 4.

The SAARC Child Welfare Convention also reflects feminist theory and critical race theory, as it focuses on principles of gender justice and equality and requires state parties to protect children from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence.[309] This instrument is also compatible with Marxist theory on forced or unfree labour, as it discourages hazardous and harmful labour and requires state parties to eliminate child labour.[310] It applies a criminal justice approach too, insofar as this instrument requires state parties to make special arrangements for speedy completion and disposal of any judicial or administrative inquiry where children are involved.[311] The SAARC Child Welfare Convention also requires regional cooperation and regional arrangement to ensure the rights of children.

Overall, as analysed in this section, at a regional level, limited scope and limited human rights approach within the *SAARC Convention on Trafficking* – and the existing controversy between voluntary and involuntary prostitution – make this instrument ineffective to combat human trafficking. Proposals have been made to extend the scope and application of the *SAARC Convention on Trafficking* by incorporating all forms of human trafficking.[312] On 2 December 2015, Women Rights Activists[313] urged such an amendment to the *SAARC Convention on Trafficking*.[314] Member states also presented their opinion to revise it through paragraph 63 of the Declaration of the Tenth SAARC Summit in 1998.[315]

D *Conclusion*

Human trafficking is increasing and presents a complex security issue for the whole world community. From the beginning of the 20th century, states have been trying to fight human

[309] Ibid art 4.
[310] Ibid art 4.
[311] Ibid art 5.
[312] Asian Development Bank (ADB) (n 273).
[313] Women Rehabilitation Centre, Nepal and Shakti Samuha, Nepal.
[314] Emily Kelly, 'International organ trafficking crisis: Solutions addressing the heart of the matter' (2013) 54 *Boston College Law Review* 1317.
[315] The Declaration of the Tenth SAARC Summit of the Heads of State or Government of the Member Countries of the South Asian Association for Regional Cooperation issued on 31 July 1998, in Colombo. Paragraph 63 reads: "The Heads of State or Government were also of the view that the scope of the Convention should be broadened to cover purposes other than prostitution''. South Asian Survey, 'Tenth Saarc Summit Colombo Declaration' (1998) 5(2) *South Asian Survey* 265.

trafficking and they have developed and adopted a series of international and regional legal instruments to do so. However, these efforts have proven ineffective, in part because of the vagueness of these instruments and the limited scope of their application. The instruments from 1904 to 2002 have also focused more on a criminal justice approach rather than ensuring the rights of victims and vulnerable people.

Prior international instruments relating to human trafficking were inadequate because they did not define the term trafficking broadly enough, and they only focused on prostitution and on women as victims.[316] These instruments were also racially discriminatory, gender-biased, and failed to make a distinction between forced and voluntary sex work. Both the anti-prostitution and anti-slavery conventions failed to define sexual exploitation, sex trafficking and prostitution. Even the recent *Trafficking Protocol* does not distinguish between involuntary and voluntary prostitution.[317] The definitional limitations of the early Conventions have not been fully addressed in the recent Trafficking Convention, which also fails to address organ trafficking.

The *Trafficking Protocol* has been criticised by scholars due to the lack of provisions on how to identify the victims, and the absence of mandatory provision for victim protection and assistance.[318] In addition, although the *Trafficking Protocol* assists the whole world to address the problem of trafficking, it has no enforcement mechanism (like past Conventions relating to trafficking).

As trafficking is a cross-border crime and transnational in nature, attention needs to focus on cooperation among states. As explained previously, due to economic conditions and geography, some countries are source countries, some are transit countries, and some are destination countries. Regional cooperation among destination countries is comparatively higher than in source and

[316] Kelly E. Hyland, 'The impact of the protocol to prevent, suppress and punish trafficking in persons, especially women and children' (2001) 8(2) *Human Rights Brief* 12.
[317] The Abolitionists have argued that the Protocol should not be ratified because it recognises voluntary sex work. On the other hand, sex positivist feminists have criticised the instrument for not explicitly acknowledging the rights of women to choose to engage in sex work. Simm (n 197).
[318] Ramona Vijeyarasa, 'A move in the right direction? The Model Law against Trafficking in Persons and the ILO Operational Indicators' (2019) 57(1) *International Migration* 177. Anne T. Gallagher, 'Two cheers for the trafficking protocol' (2015)(4) *Anti-Trafficking Review* 1. Bassiouni et al (n 3); Shoaps (n 105).

transit countries. While the American and European regions have had trafficking related regional Conventions since 1948 and 1950, South Asia and South East Asia (comprising mostly source and transit regions) have only had their regional Conventions since 2002 and 2015. To fight against trafficking properly, source and transit countries need to enhance their levels of regional and international cooperation.

Despite the aforesaid gaps, different organisations of the UN are working to interpret and explain every provision of the *Trafficking Protocol.* The UNODC was established in 1997 to fight against organised crime. Since 2006, the UNODC has published a Global Report on human trafficking by collecting data from 136 countries.[319] Recently it focused on migrants and refugees due to their vulnerability to trafficking.

In addition, the UNODC has established the UN Global Initiatives to Fight Human Trafficking ('UN.GIFT'), which works with the International Labour Organisation ('ILO'), the UN Children's Fund ('UNICEF'), the International Organisation for Migration ('IOM'), the *OHCHR* and the Organisation for Security and Co-operation in Europe ('OSCE') to combat human trafficking jointly. The *UN* also has a Human Trafficking Knowledge Portal containing databases of case law and legislation, designed to improve adoption and implementation of the *Trafficking Protocol*. The *UNODC* also has another programme known as Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants ('GLO.ACT')[320] which is a joint programme with the European Union.

To develop relationships between different agencies among the UN and other organisations working against human trafficking, the UN General Assembly has introduced a policy programme known as the Inter-Agency Coordination Group against Trafficking in Persons ('ICAT').[321] In

[319] United Nations Office on Drugs and Crime (UNODC),'Latest Publications - Human Trafficking', *UNODC Portal* (Publication List, 2020) <https://www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuside>.
[320] The Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants (GLO.ACT) is a four-year (2015-2019) ongoing project which is currently implemented in Belarus, Brazil, Colombia, Egypt, Kyrgyz Republic, Lao PDR, Mali, Morocco, Nepal, Niger, Pakistan, South Africa, Ukraine. It is project of €11 million where IOM, UNICEF are working with UNODC and European Union.
[321] ICAT is a policy forum which is working with 23 different to against different form of human trafficking. On 9 September 2019, the Inter-Agency Coordination Group Against Trafficking in Persons (ICAT) promotes multi-stakeholder partnerships to address trafficking in supply chains, including through public procurement.

addition, the UN has developed a Voluntary Trust Fund for Victims of Human Trafficking[322] to assist victims through government, NGO and other organisations.[323]

There is very limited scholarly works on the performance of the UN and its organisations in combating human trafficking. Cherif Bassiouni addresses international law and UN actions relating to human trafficking, where he briefly highlights the activities of different UN organisations.[324] The discussion provided in this Chapter has also been on the basis of various official websites of particular UN organisations, to describe their activities.

The adoption and ratification of international conventions are insufficient to eliminate human trafficking. Scholarly research and reports from different UN agencies has emphasised the need for international anti-trafficking instruments to be matched with domestic legislation.[325] Every state should develop and implement domestic laws that in turn adopt and implement the *Trafficking Protocol* and other relevant instruments. However, present laws, conventions and guidelines are insufficient to combat human trafficking. The genuine application of laws to achieve human rights and advance criminal justice remedies requires political will, financial support, and technical assistance from states. Many states have legislation in place, but the question is whether this legislation is effective. For instance, weak criminal justice systems may produce a low number of convictions.

Overall, there are a number of different international human rights instruments that describe the obligations of the international community and member states to combat human trafficking. The *Trafficking Protocol* improved the implementation of human rights principles, despite some limitations. Moving beyond international law specifically targeted at human trafficking, the next Chapter of this research paper considers whether international human rights law has provided an effective response.

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[322] To protect and assist the victims of trafficking *the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children* was established in 2010. Currently, the Fund has USD 6.7 million contributions as of May 2019 and it grants up to US$ 60,000 provided to NGOs in three-year grant cycles. This Fund supports 3,000 individuals every year through its NGO partners.
[323] Bassiouni et al (n 3).
[324] Bassiouni et al (n 3).
[325] Vijeyarasa (n 318).

CHAPTER 4: INTERACTION OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL LABOUR LAW WITH HUMAN TRAFFICKING

Every person in the world is entitled to basic human rights, upon foundational principles of dignity, humanity, equality and respect.[326] Since 1945, international instruments have been developed and adopted to establish an international legal framework for the whole world to advance and protect these rights.[327]

This legal framework guarantees a number of human rights that are placed under threat by human trafficking, including:

- there shall be no discrimination on the basis of race
- there shall be no discrimination on the basis of sex;
- that people are equal;
- that forced labour is illegal;
- the prohibition on arbitrary detention;
- debt bondage is illegal;
- forced marriage is illegal;
- the (sexual) exploitation of children, women and men is illegal;
- the right to freedom of movement;
- the right of social security; and
- the right to leave and return to one's own country.[328]

Human trafficking often violates these political, civil, economic, social and cultural rights, as was illustrated in Chapter One. Anne Gallagher has observed that trafficking 'goes to the very heart of what human rights law is trying to prevent'.[329]

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[326] UN Human Rights Office of the High Commissioner (OHCHR),'International Human Rights Law', *United Nations Human Rights Office of the High Commissioner* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.
[327] Ibid.
[328] United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights and Human Trafficking' (Fact Sheet No 36, United Nations, 2014) <https://www.ohchr.org/Documents/Publications/FS36_en.pdf>.
[329] Anne Gallagher, 'Using International Human Rights Law To Better Protect Victims Of Trafficking: The Prohibitions On Slavery, Servitude, Forced Labor, And Debt Bondage' in Leila Sadat (ed), *The Theory and Practice*

This Chapter examines how human trafficking has been addressed by different human rights instruments and analyses those instruments that are binding on Bangladesh.

A *The Universal Declaration of Human Rights*

The starting point for this analysis is the *Universal Declaration of Human Rights* ('UDHR').[330] The *UDHR* was adopted by the United Nations (UN) General Assembly in 1948 and contains 30 articles setting out civil and political rights, social, economic and cultural rights, and other fundamental rights. Professor Henry J Steiner[331] has observed that the UDHR

> has retained its place of honour in the human-rights movement. Parent to the two major covenants that followed it and grandparent to the many specialised treaties in the field … This remarkable Declaration has become the constitution of the universal human-rights movement.[332]

Rubina's story (as told in Chapter One) reveals that trafficked victims face great violations of their human rights. Rubina, a domestic worker, was deceived by criminal recruiters and then tortured and sexually exploited in her destination country. Traffickers took her passport and imprisoned her, unlawfully, without sufficient food. At the outset, the poor social and economic conditions and weak protection of human rights in her home country (Bangladesh) made her vulnerable to trafficking. Her rights to liberty, security, free movement and unforced work in just and favourable conditions were then violated in another (destination) country.

Many of these human rights are identified in the UDHR, which recognises that every human being is free from birth and that all have equal dignity and rights.[333] Every person is entitled to enjoy

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of International Criminal Law (Brill Nijhoff, 2008) 397-430.

[330] United Nations General Assembly, *The Universal Declaration of Human Rights*, GA Res 217A (111), UN GAOR, UN Doc A/810 (10 December 1948).

[331] Henry J. Steiner, Jr. Professor of Law, Emeritus, Harvard Law School, founding director of the Law School's Human Rights Program, and chair of the University Committee on Human Rights Studies.

[332] Henry Steiner, 'Securing Human Rights: The First Half-Century of the Universal Declaration, and Beyond' (1998) 45 *Harvard Magazine*.

[333] *UDHR* art 1.

those rights without any unreasonable interference.[334] The rights to life, liberty and security are significant,[335] as are the prohibitions against slavery, servitude and the slave trade in all forms through article 4.[336]

Article 4 states 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'. Article 23 prohibits forced labour by highlighting the right to work in just and favourable conditions:[337]

> 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
> 2. Everyone, without any discrimination, has the right to equal pay for equal work.
> 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
> 4. Everyone has the right to form and to join trade unions for the protection of his interests.

The UDHR also guarantees freedom of movement and choice of residency.[338] It acknowledges the right of repatriation and return to one's own country,[339] which is a fundamental right for victims of the trafficking.

Although the UDHR contains many human rights that are vital in the context of human trafficking, as a legal instrument it has flaws. Firstly, it has no enforcement clause and no monitoring body to evaluate its implementation. Secondly, it is a declaration not a treaty, and is therefore 'soft law' and non-binding.

Despite being non-binding, the UDHR has acted as an inspirational instrument for other human

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[334] *UDHR* art 2.
[335] Ibid art 3.
[336] *UDHR* art 4 - No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
[337] Ibid art 23.
[338] Ibid art 13.
[339] Ibid art 13(2) Everyone has the right to leave any country, including his own, and to return to his country.

rights instruments,[340] as it has been followed and integrated into other international and regional treaties.[341] The UDHR was a prominent human rights document for 28 years, until the *International Covenant on Civil and Political Rights* ('ICCPR')[342] and the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') were adopted in 1966.[343] Approved by the third Committee of the UN General Assembly in 1966, the ICCPR[344] deals with many of the rights that were part of the UDHR.

B *The International Covenant on Civil and Political Rights*

The *International Covenant on Civil and Political Rights* (ICCPR) guarantees the right to life,[345] the right to liberty[346], the right to security,[347] and the right to equality before law[348] – all of which are threatened by human trafficking. Article 8 refers to a number of further rights that are connected with human trafficking. It prohibits slavery, the slave trade, servitude,[349] and forced or

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[340] After independence in 1971, Bangladesh adopts the *Constitution of the Peoples' Republic of Bangladesh 1972* and incorporates article 27 to 47 following *UDHR*. This Constitution also follows different human right treaties such as ICCPR, ICESCR, CERD, CEDAW, CAT and CRC which are greatly influenced by the *UDHR*. Md. Shahjahan Mondol and Reba Mondol, 'Constitution of Bangladesh and Human Rights: A Comparative Study' (2017) 22(11) *IOSR Journal of Humanities And Social Science (IOSR-JHSS)* 9.

[341] Gillian Doreen Triggs, *International law: Contemporary principles and practices* (LexisNexis Butterworths, 2006).

[342] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 171 UNTS 999 (entered into force 23 March 1976).

[343] *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 3 UNTS 993 (entered into force 3 January 1976).

[344] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 171 UNTS 999 (entered into force 23 March 1976).

[345] *ICCPR* art 6(1) - Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

[346] Ibid art 9(1) - Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

[347] Ibid.

[348] Ibid art 14.

[349] *The Slavery Convention 1926* defines slavery; however, it does not mention the term "Servitude". Firstly, the Universal Declaration of Human Rights 1948 added the term Servitude through article 4, but there is no elaborate explanation of servitude. The *Supplementary Convention on Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956* expanded the definition of Slavery and added some practices which are analogous to Slavery such as servile status: debt bondage, serfdom, unfree marriages and exploitation of young people for their labour. Kevin Bales and Peter Robbin addressed servitude as similar to serfdom, debt bondage, unfree marriages and unfree forms of child labour. Kevin Bales and Peter T. Robbins, '"No one shall be held in slavery or servitude": A critical analysis of international slavery agreements and concepts of slavery' (2001) 2(2) *Human Rights Review* 18.

unfree labour[350] just like the UDHR.[351] However, it does not provide an elaborate definition of slavery and the slave trade. Importantly, this provision cannot be derogated from in a time of emergency.[352] The ICCPR does not contain any *specific* provisions *directly* relating to human trafficking, even though it came into force in 1976, some 27 years after the *1949 Convention*. For example, there is no provision in the ICCPR that victims will be informed about the progress and outcome of their pending cases.

Nevertheless, in this section of the thesis, I argue that the ICCPR focuses on human rights which, if realised, would help prevent human trafficking, and also that its monitoring body could help state parties to identify gaps in their legislative and administrative responses to human rights violations relevant to trafficking. The ICCPR imposes an obligation on state parties to protect people from slavery.[353] If states fail to eradicate slavery and the slave trade, it shall be presumed that they violate the state obligation of due diligence. The question of state responsibility arises when a state fails to perform due diligence to protect the people from violation of human rights and prevent private actors to commit the violations.[354] State's obligation for the full realisation of human rights depend on their available resources and their performance will be assessed according

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[350] The issue of unfree labour was addressed in 1966 by the *ICCPR* and *ICESCR*. Here, unfree labour means labour which are against free choice. Article 6 of the *ICESCR* states right to work means the opportunity where a person earns his living through a work which he chooses freely. The *ICESCR* also focuses on fair wages, equal pay and right to join and form trade unions which prevent forced or unfree labour.

[351] *ICCPR* Article 8(1) (2) (3) (a) states that all forms of slavery, slave trade and forced and compulsory labour are prohibited.

[352] *ICCPR* Article 4(2): No derogation from articles 6, 7, 8 (paras I and 2), 11, 15, 16 and 18 may be made under this provision. Article 6 (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
Article 8 (1): No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. (2) No one shall be held in servitude.
Article 11: No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.
Article 15: (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
Article 16: Everyone shall have the right to recognition everywhere as a person before the law.
Article 18(1): Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

[353] *ICCPR* art 8.

[354] Danwood Mzikenge Chirwa, 'The doctrine of state responsibility as a potential means of holding private actors accountable for human rights' (2004) 5 *Melbourne Journal of International Law* 1.

to that available resources. Some of the human rights treaties have progressive realisation clauses[355] in regards to economic, social and cultural rights. This concept of progressive realisation does not excuse States not to protect economic, social and cultural rights, however, states have immediate obligation to undertake appropriate measures for the full realisation of those rights.[356]

According to the due diligence standard, a state has an obligation: firstly, to undertake positive steps to prevent any kinds of violation of human rights; secondly, to ensure effective investigation, prosecution and punishment of any violations; and finally, to ensure effective remedies and protection to the victims.[357] State parties' duty to prevent violation of human rights, and the obligation of due diligence, are outlined in article 2 of the ICCPR:

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the

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[355] *International Covenant on Economic, Social and Cultural Rights* art 2 - Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Convention on the Rights of the Child. Article 4 states: Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Convention on the Rights of Persons with Disabilities. Article 4 - With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

[356] UN Human Rights Office of the High Commissioner, 'Frequently Asked Questions on Economic, Social and Cultural Rights ' (Fact Sheet No 33, OHCHR, December 2008) <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>.

[357] Chirwa (n 354).

present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

The main positive feature of the ICCPR is that it recognises the obligations of both state and non-state actors to promote and observe human rights.[358] It suggests that state parties incorporate legislation following its provisions.[359] It also prescribes rights and remedies for those who are victims of violations of human rights, as well as containing a right to legal assistance.[360]

The ICCPR also contains rights against discrimination that facilitate human trafficking, rights to humane treatment and the right of repatriation.[361] In Chapter One, victim Kamal explained how he was deprived of his liberty, confined and then tortured by criminals. He was detained on a boat for long periods of time without food or drinking water. The ICCPR stipulates that people who are deprived of their liberty must be treated properly.[362]At least in theory, then, the ICCPR has a bearing on the protection of trafficked victims.

The ICCPR has a monitoring body, the UN Human Rights Committee ('HRC'). Under article 40, state parties are bound to submit reports demonstrating compliance with their responsibilities under the ICCPR. The main task of the HRC is to review the reports of the state parties and provide

[358] See the preamble of *ICCPR*.
[359] International Covenant on Civil and Political Rights art 2(2).
[360] Ibid art 3(a) (b).
[361] Ibid art 11(2).
[362] Ibid art 10.

comments on their progress.[363]

Since 1977, the HRC has reviewed country reports and issued General Comments. Unfortunately, it has not yet provided any detailed comment about article 8, which as noted above has some connection with human trafficking. However, in General Comment No 28,[364] the HRC has provided general guidelines about human trafficking, stating that it is the responsibility of state parties to notify the Committee about all the measures taken by them to eradicate both internal and international human trafficking.

When the HRC held its 13th Session from 16th March to 2 April 2015, six States (Cambodia, Côte d'Ivoire, Croatia, Cyprus, Monaco and Russia) submitted their periodic reports regarding human trafficking upon the request of the HRC. There was no mention of human trafficking in the HRC's subsequent General Comment No 36 about the right to life.[365] But on 23 April 2014, in giving its observations on the fourth periodic report of the United States of America, the HRC provided guidance on preventive measures, protective measures, and the need for criminalisation to combat human trafficking.[366] The HRC was concerned about insufficient victim identification and protection, particularly when the rights of some workers like farm workers and domestic workers are unaddressed by labour laws.[367] It suggested providing protection to all categories of workers, to prevent vulnerability to human trafficking.[368] It also focused on proper investigation of forced labour and trafficking cases to prevent criminalisation of victims of sexual exploitation from prostitution-related charges.[369]

Bangladesh ratified the ICCPR on 6 September 2000. It registered some reservations to articles 10, 11 and 14, which are mainly concerned with the rights of offenders. Notably, Bangladesh did

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[363] Stephanie Farrior, 'The international law on trafficking in women and children for prostitution: Making it live up to its potential' (1997) 10 *Harvard Human Rights Journal* 213.
[364] Human Rights Committee (HRC), *General Comment no 28*, 68 sess, UN Doc HRI/GEN/1/Rev.9 (29 March 2000).
[365] UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, UN Doc CCPR/C/GC/35 (3 September 2019).
[366] UN Human Rights Committee (HRC), *Concluding observations on the fourth periodic report of the United States of America*, UN Doc CCPR/C/USA/CO/4 (23 April 2014).
[367] Ibid.
[368] Ibid.
[369] Human Rights Committee (HRC) (n 364).

not sign or ratify the optional Protocol to the International Covenant on Civil and Political Rights, which would provide people in Bangladesh with the opportunity to file a communication with the HRC in the event that Bangladesh violates the ICCPR.

In 2017, the HRC indicated that it was satisfied by the legislative and institutional measures taken by the government of Bangladesh to promote and protect human rights in Bangladesh.[370] In the concluding observations of its 2017 report on Bangladesh, the HRC did not address the issue of human trafficking.[371] But it did focus on discrimination and violence against women, which, as I explained before, are factors that can fuel human trafficking. The HRC also recommended the implementation of anti-discrimination legislation, and that Bangladesh take further steps to ensure consistent implementation of existing laws and policies addressing violations of human rights. The HRC also recommended that legislative and administrative measures be taken to protect the rights of indigenous people and Rohingya refugees. Bangladesh has denied the existence of Indigenous people in its country.[372] As noted in Chapter One, Indigenous people become victims of discrimination and social exclusion because of their ethnicity, which in turn makes them vulnerable to human trafficking.

The Bangladesh government presented their response to the Office of the High Commissioner for Human Rights ('OHCHR') on 27 March 2017, denying some observations and requesting amendments such as correcting a statistical error about the rate of child marriage.[373] The Bangladesh government also claimed that there was no political violence or forced disappearances in Bangladesh, and asked the HRC to change the language of its concluding observation.[374] On 18

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[370] Human Rights Committee (HRC), *Concluding observations on the initial report of Bangladesh*, 119 sess, UN Doc CCPR/C/BGD/CO/1 (6-29 March 2017). Bangladesh adopted *Domestic Violence Prevention and Protection Act* 2010, *National Women Development Policy* 2011; *The Prevention and Suppression of Human Trafficking Act* 2012: *The persons with Disabilities Rights and Protect Act* 2013; *The Torture and Custodial Death Prevention Act*. In addition, Bangladesh also ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Theirs Families*.
[371] Ibid.
[372] There are different indigenous people in Bangladesh. Bangladesh Indigenous Women's Network Kapaeeng Foundation, Bangladesh Indigenous Peoples Forum, Jatiya Adivasi Parishad, Achik Michik Society, International Work Group for Indigenous Affairs *A Joint Submission to the United Nations Human Rights Committee*, 119 sess, (6–29 March 2017).
[373] Government of Bangladesh, 'Comments to Concluding Observations ' (Comments, 27 March 2017) <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BGD/INT_CCPR_COB_BGD_27023_E.pdf>.
[374] Ibid.

April 2018, the HRC requested Bangladesh to submit a report on the implementation of the recommendations that it had previously made. On 16 October 2018, it again asked Bangladesh to submit their report. By 1 January 2020, the government of Bangladesh still had not responded, according to the official website of the UN Treaty bodies.[375]

Another enforcement mechanism, in article 41 of the ICCPR, is worthy of comment. Article 41 gives member states the opportunity to claim that another state party has failed to fulfill their obligations under the ICCPR. A petitioner state makes a declaration under this article, to recognise and accept the competence and activities of the HCR. Destination and transit countries could conceivably draw the attention of the HCR to those countries where trafficked victims face great violations of their human rights. For example, Bangladesh could invoke article 41 in order to draw attention to the failure of other countries to protect the human rights of Bangladeshi domestic workers. Unfortunately, Saudi Arabia and Oman, significant destination countries, have not signed the ICCPR. Bangladesh has not yet made any declarations under article 41 of this Convention.

This inter-state compliance procedure of article 41 is not a judicial or quasi-judicial dispute resolution mechanism.[376] It is considered a conciliation procedure, which is rarely used by the member states. This mechanism has also been criticised as a so-called procedure,[377] including on the following grounds: a) structural limitation: instrumental, procedural and institutional; b) limitations on the ground of political and economic grounds.[378] Some states prioritise their political and economic relations above protection of human rights. Political and economic interests may thus prevent particular states from making complaints against other states.[379]

The human rights principles enunciated in the ICCPR work as guidelines to state parties on what measures to incorporate in domestic laws directed to combating some aspects of human trafficking.

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[375] United Nations Office of the High Commissioner for Human Rights (OHCHR),'Human Rights Bodies', *UN Treaty Bodies Database* (2020) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx>.
[376] Thomas Buergenthal, 'The UN Human Rights Committee' (2001) 5(1) *Max Planck Yearbook of United Nations Law Online* 341.
[377] Pieter Hendrik Kooijmans, 'Inter-State Dispute Settlement in the Field of Human Rights' (1990) 3(3) *Leiden Journal of International Law* 87.
[378] Scott Leckie, 'The inter-state complaint procedure in international human rights law: Hopeful prospects or wishful thinking' (1987) 10 *Human Rights Quarterly* 249.
[379] Ibid.

The specific enforcement mechanisms implemented by the HCR and the OHCHR help ensure that its provisions are taken seriously. However, the absence of detailed provisions relating to human trafficking mean the ICCPR has been largely ineffective in combatting this crime.

Another treaty that focuses on the observation, promotion and realisation of human rights and freedoms relevant to human trafficking, and is therefore worthy of review and consideration, is the ICESCR.

C *International Covenant on Economic, Social and Cultural Rights*

As another major covenant of international human rights law, the ICESCR,[380] covers a range of human rights connected with the economic, social and cultural life of humanity. Whereas the ICCPR has 172 state parties, the ICESCR has 169 state parties.[381] Though the ICESCR does not directly mention human trafficking, it does guarantee some relevant rights, including the right to fair and just conditions of work,[382] the right to social security,[383] the right to choose work,[384] and the right of protection from economic and social exploitation.[385] All of these rights have a link with human trafficking. This section argues that the human rights principles and enforcement mechanism of ICESCR could operate to ensure that state parties take necessary steps for the realisation of those rights, and thereby help prevent human trafficking.

Applying critical race theory and Marxist theory on forced or unfree labour, it is evident that economic and social marginalisation and economic discrepancies make people vulnerable to human trafficking. My fieldwork has also confirmed that poverty, discrimination, lack of opportunities, lack of employment and illiteracy are among the causes of human trafficking. Thus, poor conditions of economic and social rights are partly responsible for the spread of human trafficking.

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[380] *International Covenant on Economic, Social and Cultural Rights,* opened for signature 16 December 1966, 3 UNTS 993 (entered into force 3 January 1976).
[381] As of December 2019.
[382] *ICESCR* art 7.
[383] Ibid art 9.
[384] Ibid art 6.
[385] Ibid art 10.

1 *Standard of Living*

A range of economic and social rights are highlighted in the ICESCR. The first such right relating to human trafficking is standard of living. Here, standard of living means adequate food, clothing, housing and improvement of living conditions. Trafficked victims are usually living under poverty and have a very poor standard of living. According to article 11 of ICESCR:

> 1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.
>
> 2. The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
>
> > (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;
> > (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

The right to an adequate standard of living can be gained through the right to work. As noted earlier in this Chapter, through Article 6 the ICESCR identifies unfree labour, as it makes a connection between the right to work, and work freely chosen or accepted. Article 6 states:

> The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Furthermore, the ICESCR requires states to arrange technical, vocational guidance and training

programmes, and to adopt policies and techniques to ensure economic, social and cultural development.[386]

Another right which prevents forced or unfree labour is the right to the enjoyment of just and favourable condition of work under article 7 of the ICESCR. Poor working conditions are very common in trafficking cases, which is against this right. My fieldwork has been confirmed that trafficked victims are forced to work without rest and adequate food. They often do not even receive any money for their work.

Other rights outlined in the ICESCR which also relate to human trafficking include: the right to form and join in trade union freely (article 8); the right to social security (article 9); and the right to education (article 13).[387] Development of the aforesaid economic and social rights can change the status of those people who have no choice and who are living under poverty. However, full realisation of those economic and social rights depends on available resources of particular states.[388] Moreover, the treaty body is an integral part of application and implementation of those rights.

2 *Treaty Monitoring Body*

A positive aspect of the ICESCR is that like the ICCPR, it has a monitoring body which evaluates the responses of member states in enforcing and implementing rights established in the Convention. It is the responsibility of the state parties to submit their report every five years to the Committee on Economic, Social and Cultural Rights (CESCR, a body of experts created by the UN Economic and Social Council).

After reviewing country reports from Togo (2001), the Czech Republic (2002), Greece (2204), Slovenia (2006), and Uzbekistan (2006), the CESCR opined about the responsibilities of the state

[386] *ICESCR* art 6(2).
[387] A. Yasmine Rassam, 'International law and contemporary forms of slavery: An economic and social rights-based approach' (2004) 23 *Penn State International Law Review* 809.
[388] *ICESCR* art 2(1).

parties to protect and assist the victims of trafficking.[389] Specifically, on 8 March 2016, the Committee issued General Comment No 23 about article 7 (the right to just and favourable conditions of work), mentioning the obligations of the state parties to ensure realisation of this right.[390] Importantly, the CESCR has delivered a report about Bangladesh.[391] The initial report from Bangladesh was due on 5 October 2000; however, Bangladesh only submitted its report on 10 July 2017 – that is, after 17[t] years.[392] The report gives no explanation for the long delay in submission, nor did the Committee request any such explanation.[393] Nevertheless, in its response to the report the CESCR identifies several gaps in the existing response of the Bangladesh government, and recommends different initiatives which constitute importance guidelines for Bangladesh to implement economic and social rights.[394]

The first gap identified by the CESCR is that the Covenant has not been fully followed and incorporated in the domestic legislation. It identified that provisions have been incorporated into the Constitution of the Peoples' Republic of Bangladesh as fundamental state policy – but this is not enforceable in court. As such, the CESCR recommends that Bangladesh incorporate the rights of the ICESCR into domestic legislation and ensure application by the domestic courts.

Secondly, the CESCR focused on the rights of Indigenous people, as there are no explicit rights for these people under Bangladesh's Constitution and legislation. The CESCR therefore suggested enacting law recognising the rights of Indigenous people.

Thirdly, the CESCR found that there is no specific anti-discrimination legislation in Bangladesh to prohibit multiple forms of discrimination and provide remedies to victims. In addition, the CESCR addressed that women are not enjoying equality in the fulfilment of their economic, social and cultural rights. The Committee recommended that Bangladesh adopt legislation to curb all

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[389] Silvia Scarpa, *Trafficking in human beings: Modern slavery* (Oxford University Press on Demand, 2008).
[390] Social and Cultural Rights Committee on Economic, *General comment no 23*,, 57 sess, UN Doc E/C.12/Gc/23 (8 March 2016).
[391] Bangladesh ratified this instrument on 5th October 1988. Bangladesh has not yet not signed Optional Protocol to the Optional Protocol to the International Covenant on Economic Social and Cultural Rights. Social and Cultural Rights Committee on Economic, Concluding observations on the initial report of Bangladesh, 63 sess, UN Doc E/C.12/BGD/CO/1 (12–29 March 2018).
[392] Ibid.
[393] Ibid.
[394] Ibid.

types of inequality and discrimination.

Fourthly, the CESCR was concerned about the legal status of Rohingya refugees in Bangladesh and the poor conditions of human rights in shelter camps. To ensure the rights of Rohingya refugees the Committee suggested undertaking effective measures and recognising the legal status of those refugees.

Fifthly, relating to the right to work, the Committee explored multiple gaps in Bangladesh's labour market: 90% of the labour force are working without any social and labour protection; there are no national minimum wages; abuse and exploitation and poor working conditions are common, especially in the garment sector; and there are only poor occupational and safety measures, and inadequate compensation to victims of occupational accidents or their families. Moreover, the CESCR identified poor mechanisms for ensuring labour and social protections for Bangladeshi migrant workers who are victims of sexual exploitation and torture in Middle Eastern countries. Finally, the Committee was concerned about child labour and suggested implementing legislation to prohibit child labour.

All state parties are expected to report to the CESCR every 5 years. There are some shortcomings of the reporting system for these treaty bodies, which have been identified by several commentators.[395] The reporting process is too lengthy and questionable.[396] For instance, there is a backlog of reports for consideration. When any state party submits its report to the CESCR, it can take 3-4 years before it is considered. This delay is 6-7 years when a report is before the Committee on the Rights of Persons with Disabilities (CRPD), and 2-3 years for other treaty bodies.[397] Non-compliance with the reporting system is also very common. As previously mentioned, Bangladesh only submitted its report to the CESCR after 7 years. Another weakness is that concluding observations are non-binding and do not impose any legal obligation on state parties, as treaty

[395] A. E. Koneva, 'Challenges facing the human rights treaty body system' (2014)(2) *Вестник Российского университета дружбы народов. Серия: Юридические науки*; Jan Lhotský, 'Human rights treaty body review 2020: Towards an integrated treaty body system' (Dissertation, Global Campus Europe (EMA), 2017); Michael O'Flaherty, 'The concluding observations of United Nations human rights treaty bodies' (2006) 6(1) *Human Rights Law Review* 27.
[396] Philip Alston, *International human rights: The successor to international human rights in context: Law, politics and morals,* ed Ryan Goodman and Henry J. Steiner (Oxford University Press, 2013).
[397] Koneva (n 395).

bodies do not have judicial power.[398] Finally, non-reporting, unpunctuality and misreporting by state parties commonly occurs.[399]

These weaknesses of the treaty bodies were identified in 2014 by the UN General Assembly, when there was a proposal to establish one single new treaty body by merging all the treaty bodies.[400] At the time of writing of this thesis in 2020, there is no such integrated treaty body.

Despite of all these weaknesses, concluding observations constitute importance guidelines for the implementation of human rights; such monitoring through treaty bodies is therefore an integral part of the application of human rights.

The UN has adopted more than twenty treaties relating to human rights, as addressed in the following sections of this Chapter. However, the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW')[401] and the Convention on the Rights of the Child ('CRC')[402] are the only two human rights treaties which have specific provisions relating to trafficking. These conventions are now analysed in detail.

D *Convention on the Elimination of All Forms of Discrimination against Women*

According to the preamble of CEDAW,[403] discrimination against women is against the principles of equality and human dignity. This instrument prohibits any discrimination which violates the rights of women. I will demonstrate below that such discrimination makes women more vulnerable to trafficking.[404]

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[398] O'Flaherty (n 395).
[399] Alston (n 396).
[400] Lhotský (n 395).
[401] *The Convention on the Elimination of All Forms of Discrimination against Women* opened for signature 18 December 1979, 1249 UNTS 253 (entered into force 3 September 1981).
[402] *The Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990).
[403] *The Convention on the Elimination of All Forms of Discrimination against Women* opened for signature 18 December 1979, 1249 UNTS 253 (entered into force 3 September 1981).
[404] Ibid art 6 - States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

CEDAW adopts both a feminist approach and a human rights approach. It is the only instrument that solely guarantees the fundamental rights of women. This instrument is also known as the Women's Convention,[405] and has been described as an 'international bill of rights' for women as it ensures non-discrimination and equality for women.[406] This section analyses how CEDAW's strong human rights-based response and specific monitoring body help member states to address discrimination and family violence, which are factors that push women toward trafficking.

1 *The Discriminations which Create Vulnerability to Human Trafficking*

CEDAW identifies a number of discriminatory practices that create an environment within which trafficking can flourish.[407] Women face inequality and discrimination in different grounds, and they experience discrimination in education, employment, marriage, and in enjoying different economic, social, civil and political rights.

Firstly, discrimination in education is not uncommon. For example, in Bangladesh although the participation of girls in primary education has been increased in recent times, every year a large number of girls drop out of their higher level education.[408] The socio-economic and cultural barriers such as child marriage, early motherhood and violence against women prevent them from finishing their studies. As a result a large number of women are unemployed in Bangladesh.[409]

Secondly, women experience discrimination in employment. Women and children are more at risk of human trafficking as they tend to be more vulnerable, and therefore at risk due to prevailing social and economic factors in a globalised world.[410] The economic discrepancies between men and women is also responsible for discrimination. Women's financial condition makes them

[405] Javaid Rehman, *International human rights law* (Pearson Education, 2010).
[406] Andrew C. Byrnes and Marsha Freeman, 'The impact of the CEDAW convention: Paths to equality' (2012)(7) *UNSW Law Research Paper* 1.
[407] Susan Jeanne Toepfer and Bryan Stuart Wells, 'The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women' (1994) 2 *Michigan Journal of Gender & Law* 83.
[408] UCEP Bangladesh and Diakonia Bangladesh, 'Education Scenario in Bangladesh: Gender perspective' (Project, Bangladesh Bureau of Statistics, February 2017).
[409] Ibid.
[410] Seo-Young Cho, 'Integrating equality: Globalization, women's rights, and human trafficking' (2013) 57(4) *International Studies Quarterly* 683.

helpless and discriminated against in society.[411] Despite women accounting for half of the population of Bangladesh, their number in the existing labour market is low. Of those women who are employed, they generally have poor social protection and job security. Steven Kapsos has argued that gender-based wage gaps are also apparent in the labour market, where women earn less than men.[412] There are also large numbers of female workers who are employed overseas as domestic workers and who have horrible experience of sexual exploitation and other violence.[413]

Thirdly, discrimination in marriage and in existing personal law also put women of Bangladesh in vulnerable position. At the outset, Muslim marriage law is discriminatory towards women, as Muslim women are not allowed to marry any non-Muslim, whereas a Muslim man can marry any Muslim, Christian or Jew.[414] Secondly, according to Sharia law a Muslim man can have four wives, while a Muslim woman is allowed to have only one husband. However, the Family Law Ordinance 1961 has modified that law, and now prohibits second marriage without prior permission of existing wife.[415]

Fifthly, in Muslim law a man has wide opportunity to divorce his wife, but a woman can divorce only on those grounds as outlined in the *Dissolution of Muslim Marriage Act 1939* – that is, only when she has received a delegated right of divorce from her husband during the marriage contract. Hindu law is also discriminatory towards women, as they are not allowed to initiate divorce; they can, however, request legal separation. It also permits polygamy for men only.[416] It is very common in Bangladesh that poor women are left by their husbands.

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[411] Meah Mostafiz, 'Discrimination against women in Bangladesh' (2015) *Available at SSRN 2653303*.
[412] Steven Kapsos, 'The gender wage gap in Bangladesh ' (Working Paper, ILO Regional Office for Asia and the Pacific, May 2008) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_098063.pdf>.
[413] International Labour Organisation,'Equality and discrimination in Bangladesh', *ILO* (2017) <https://www.ilo.org/dhaka/Areasofwork/equality-and-discrimination/lang--en/index.htm>.
[414] Muslim Sharia Law. However, in Bangladesh interfaith couples can marry under the *Special Marriage Act 1872*. Md Zahidul Islam, 'Interfaith marriage in Islam and present situation' (2014) 2(1) *Global Journal of Politics and Law Research* 36.
[415] *The Muslim Family Laws Ordinance, 1961 (Ordinance NO. VIII Of 1961)* (Bangladesh). See art 6(1) - No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under the *Muslim Marriages and Divorces (Registration) Act 1974*.
[416] Michele Brandt and Jeffrey A. Kaplan, 'The tension between Women's rights and religious rights: Reservations to Cedaw by Egypt, Bangladesh and Tunisia' (1995) 12(1) *Journal of Law and Religion* 105.

Sixthly, the most controversial discrimination is in inheritance law, which in Bangladesh is governed by Sharia law. A Muslim woman is entitled to receive only one half of the shares of her male counterparts. A Hindu woman cannot claim any property.

Finally, violence against women is another form of discrimination which is the result of inequality between men and women. Applying critical race theory helps to identify that it is the power imbalance between man and woman in the society which also facilitates domestic violence. Violence against woman is a gender-based violence which includes different forms such as domestic violence, child abuse and elder abuse.[417]

There are different perspectives on domestic violence and family violence. Some scholars have argued that traditionally, domestic violence involves a woman who becomes the victim at the hands of a male offender, who is an intimate partner.[418] Recently, instead of using domestic violence, the term 'family violence' has been used, as it includes different types of violence including 'violence between family members, spouses, de facto partners, former partners, siblings and parents, regardless of the gender of the people in the relationship.'[419]

From the perspective of Bangladesh, domestic violence has been defined as:

> different forms of abuse, i.e. physical (slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, murder), psychological (threats of abandonment or abuse, to take away custody of the children, verbal aggression and humiliation, threats of killings), sexual abuse (coerced sex through threats, intimidation, forcing unwanted sexual acts), economic (denial of funds, refusal to contribute financially, denial of food and basic needs, controlling accesses to health care and employment) etc.[420]

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[417] Patrick Tolan, Deborah Gorman-Smith and David Henry, 'Family violence' (2006) 57 *Annual Review of Psychology* 557.
[418] Tracy Cussen and Matthew Lyneham, 'Technical and Background Paper' (ACT Family Violence Intervention Program Review, Australian Institute of Criminology, 2012) <https://pdfs.semanticscholar.org/0503/8a96a1c9bfaa7ca56ebc5dba8168b3c7d98d.pdf>.
[419] Ibid.
[420] Mst Taslima Khatun and Khandaker Farzana Rahman, 'Domestic violence against women in Bangladesh: Analysis from a socio-legal perspective' (2012) 9(2) *Bangladesh e-journal of Sociology* 19.

The present social structure and patriarchal nature of Bangladesh is conducive to family violence and other forms of discrimination against women. It is very common in Bangladesh that poor women are left by their husband. In my fieldwork three interviewees were tortured by their husbands. To prevent the aforesaid discrimination, which makes women vulnerable, CEDAW has specific provisions to combat human trafficking.

2 *Direct Provision Prohibiting Human Trafficking*

Article 6 of CEDAW specifically deals with the issue of slavery and trafficking, by providing that 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.' Through this article CEDAW recognises all forms of trafficking in women and exploitation of women through involuntary sex work (prostitution).

However, CEDAW does not clearly define trafficking or set out its forms. It simply refers to 'all form of trafficking'.

Article 6 addresses the responsibility of state parties to take appropriate measures to combat trafficking. There has been debate about the meaning of the phrase 'appropriate measures' used in this article. Anne T Gallagher[421] has criticised article 6, saying that the provision is ambiguous, leading to uncertainty about the nature of the obligations of the state parties.[422] This term therefore needs more elucidation. As an appropriate measure, article 6 mentions to enact legislation to combat this crime. Through legislation it suggests to criminalise human trafficking.

On the negative side, CEDAW is racialised and gender-biased, similarly to the White Slave Trafficking Conventions discussed in chapter 3. It only focuses on women, and women involved in involuntary sex work. According to Article 1:

[421] Anne Therese Gallagher is a lawyer, practitioner and scholar. Gallagher is a global expert on the international law on human trafficking.
[422] Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).

> The term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The term discrimination on basis of sex makes a distinction between men and women, and in doing so it highlights the rights of women not men. The main focus of CEDAW is the rights of non-discrimination and equality, where women can have all the rights of which they are entitled under this Convention. CEDAW only addresses the rights of women and point outs different forms of discrimination which they face because of their gender and sex. It does not identify the rights of men, but rather focuses on vulnerability of women because of masculinity.[423]

In 2018, the United Nations Office on Drugs and Crime (UNODC) published its Global Report on Trafficking in Persons.[424] Figure 8, based on figures drawn from this report, shows that 49% of trafficking victims are women, 21% are men, 23% are girls and 7% are boys.[425]

[423] Simone Cusack and Lisa Pusey, 'CEDAW and the Rights to Non-Discrimination and Equality' (2013) 14 *Melbourne Journal of International Law* 54.
[424] United Nations Office on Drugs and Crime (UNODC), 'Global Report onTrafficking in Persons' (Global Report, December 2018)
[425] United Nations Office on Drugs and Crime (UNODC), 'Global Report onTrafficking in Persons' (Global Report, December 2018)

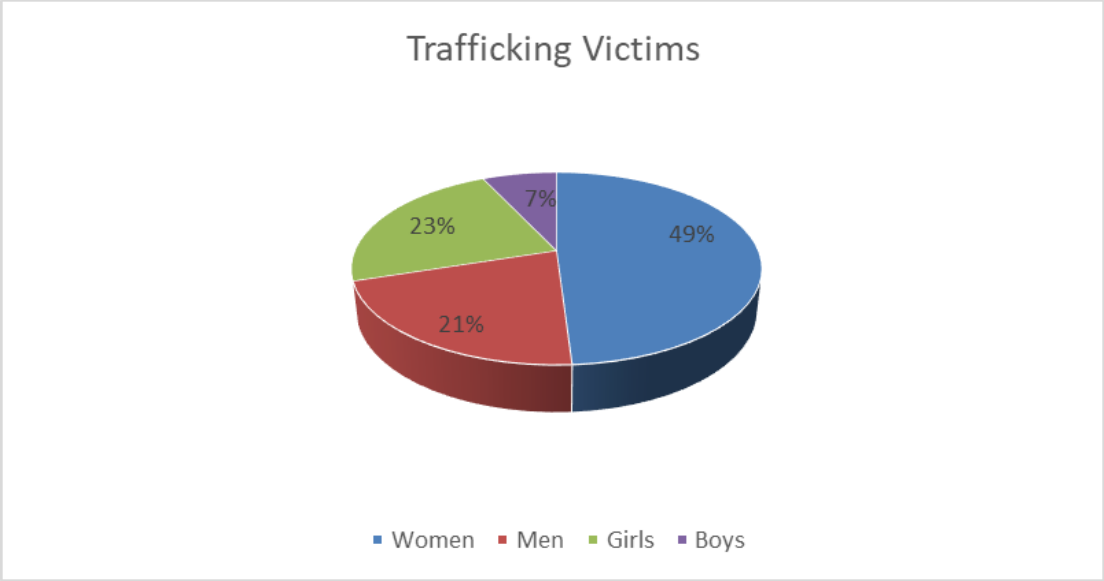

Figure 8: Trafficked Victims by Gender[426]

In 2017, the International Labour Organisation (ILO) estimated that 71% of slaves are women and girls.[427] If this is so, the gender-biased nature of CEDAW can be seen as justifiable.

3 *Conflicts between CEDAW and Family Laws*

Bangladesh ratified CEDAW on 6 November 1984, including its Optional Protocol.[428] However, when Bangladesh ratified CEDAW, it made reservations in respect of the following articles. I have placed the text of the articles that conflict with the family law of Bangladesh in bold:

> Article 2
>
> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
>
> (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure,

[426] Ibid.
[427] International Labour Organisation, 'Global estimates of modern slavery: Forced labour and forced marriage' (Report, ILO, 19 September 2017) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf>.
[428] *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 6 October 1999, 83 UNTS 2131 (entered into force 22 December 2000).

through law and other appropriate means, the practical realisation of this principle;

(b) **To adopt appropriate legislative and other measures,** including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

…

Article 13(a):

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits …

Article 16(1):

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters **relating to marriage and family relations** and in particular shall ensure, on a basis of equality of men and women.

…

(c) The same rights and responsibilities during marriage and at its dissolution;

…

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

The previous section demonstrated how women in Bangladesh experience discrimination in the areas of education, employment and religion. In that society there are many laws and norms, such

as in the rights and obligations relating to marriage, family benefits and property, which are inconsistent with CEDAW provisions.

Article 2, above, is the key to performance of obligations under CEDAW. The main reason for the Bangladesh government's reservations is the conflict with Sharia law, which is based on the Quran and Sunna.[429] However, Bangladesh has been criticised for not providing any specific explanation on its reservation: that is, how Sharia law is in conflict with those provisions of CEDAW.[430] As noted previously women in Bangladesh are able to enjoy less rights regards to marriage, dissolution of marriage, property rights and other family benefits under existing Family laws which is formed according to Sharia law. Article 2 prevents government to take action to repel controversial inheritance law. Moreover, the reservation of article 2 also prevents the application of CEDAW to establish the rights of non-Muslim women. Due to reservation on article 16 (1) (c), Bangladesh government is unable to ensure equal rights of men and women regards marriage and dissolution of marriage.

Thus, in Bangladesh women's human rights are in conflict with religious rights, and such inconsistency supports discrimination. Since its ratification of CEDAW, Bangladesh has been requested by the Committee on the Elimination of Discrimination against Women to withdraw all of its reservations.[431] In 1997, Bangladesh withdrew reservation of articles 13(a) and 16(1)(f).[432] However, its reservation on articles 2 and 16(1)(c) remains.

4 *Treaty Monitoring Body*

Like other Conventions, CEDAW has its own Committee, known as the Committee on the

[429] Elizabeth Lijnzaad, *Reservations to UN-human rights Treaties: ratify and ruin?* (Martinus Nijhoff Publishers, 1995).
[430] Brandt and Kaplan (n 416).
[431] UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women*, UN Doc CEDAW/C/BGD/5 (3 January 2003). Committee on the Elimination of Discrimination Against Women, *UN Concluding observations of the Committee on the Elimination of Discrimination Against Women* 48 sess, UN Doc CEDAW/C/BGD/CO/7 (22 March 2011). UN Committee on the Elimination of Discrimination against women, *General Recommendation no 34*, 63 sess, UN Doc CEDAW/C/GC/34 (7 March 2016).
[432] Byrnes and Freeman (n 406).

Elimination of Discrimination against Women (CEDAW Committee). Its focus is to monitor the implementation of the provisions of CEDAW. State parties must submit reports, detailing legislative, judicial and administrative measures taken to implement the Convention, every four years.

The CEDAW Committee has pointed to the obligations of state parties to eradicate the trafficking of women and has reinforced the responsibility of state parties in several further subsequent statements.

In General Recommendation No 19, issued in the 11th session of the Committee in 1992, the CEDAW Committee commented on article 6 of CEDAW, and noted the different varieties of trafficking, including sex tourism, labour trafficking etc.[433] It also identified different causes of trafficking, including poverty, unemployment, armed conflict, and the occupation of territories as factors that create an environment conducive to trafficking offences.

The focus of General Recommendation No 24 was to ensure information on sexual health and education for victims of trafficking.[434] General Recommendation No 26 emphasised the rights of migrant workers and stated that undocumented women migrant workers are vulnerable to exploitation.[435] When celebrating 30 years of CEDAW at its 52nd session, the CEDAW Committee concentrated on the issue of trafficking of women and girls.[436] The Committee focused on discrimination against women and suggested to undertake appropriate measures to eliminate discrimination relating to marriage and family relations. As a member state Bangladesh has responsibility to protect women from any kinds of discrimination.[437]

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[433] UN Committee on the Elimination of Discrimination Against Women, *General Recommendation no 19*, 11 sess, UN Doc HRI/GEN/1/Rev.8 (1992).
[434] UN Committee on the Elimination of Discrimination Against Women, *General Recommendation no 24*, 20 sess, UN Doc HRI/GEN/1/Rev.6 (1999).
[435] UN Committee on the Elimination of Discrimination Against Women, *General Recommendation no 26* 42 sess, UN Doc CEDAW/C/2009/WP.1/R (5 December 2008).
[436] Melanie O'Brien,'CEDAW Emphasises Its Concern over Trafficking in Women and Girls', *Opinio Juris* (Article 9 September 2012) <http://opiniojuris.org/2012/09/09/cedaw-emphasises-its-concern-over-trafficking-in-women-and-girls/ >.
[437] UN Committee on the Elimination of Discrimination Against Women, *Communication No. 32/2011*, 52 sess, UN Doc CEDAW/C/52/D/32/2011 (28 August 2012).

The CEDAW Committee convened its 63rd Session from 15 February to 4 March 2016 and issued General Recommendation No 34 about the rights of rural women. In this recommendation, the CEDAW Committee identified the responsibility of state parties to reduce the vulnerability of rural women by empowering them economically, raising awareness and providing information.[438] In the same session, the CEDAW Committee also recommended that state parties provide training on human trafficking to all of their agencies, including the judiciary, the police, border guards and social workers.[439]

In 2016, the CEDAW Committee considered the 8th periodic report of Bangladesh,[440] where it was concerned about the lack of information regarding numbers of prosecution and sentences since the passing of the *Human Trafficking Act 2012*.[441] The *CEDAW* Committee also claimed that Rohingya victims have limited access to the rights and services under this Act.[442] It recommended that Bangladesh take measures to protect the rights of women and children engaged in involuntary sex work (prostitution).[443] In addition, the CEDAW Committee recommended the development of a mechanism to monitor the working conditions of domestic workers.[444]

There are some limitations of the CEDAW Committee which impede the enforcement of the provisions of this instrument. According to article 20 the Committee has only two weeks to consider a country report. With such a limited time frame, the CEDAW Committee cannot examine and consider each report thoroughly.[445] In addition, some scholars have argued that the accuracy of the information provided in reports is not confirmed.[446] Non-reporting and overdue reports is another problem.[447] Moreover, the CEDAW Committee has only limited power to

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[438] UN Committee on the Elimination of Discrimination against women, *General Recommendation no 34*, 63 sess, UN Doc CEDAW/C/GC/34 (7 March 2016).
[439] Ibid.
[440] Bangladesh ratified CEDAW on November 1984.
[441] UN Committee on the Elimination of Discrimination Against Women, *Concluding observations on the eighth periodic report of Bangladesh*, 65 sess, UN Doc CEDAW/C/BGD/Q/8/ (24 October-18 November 2016).
[442] Ibid.
[443] Ibid.
[444] UN Committee on the Elimination of Discrimination Against Women (n 441) 9.
[445] Jennifer Riddle, 'Making CEDAW universal: A critique of CEDAW's reservation regime under Article 28 and the effectiveness of the reporting process' (2002) 34 *George Washington International Law Review* 605.
[446] Gay J. McDougall, 'Toward a meaningful international regime: The domestic relevance of international efforts to eliminate all forms of racial discrimination' (1996) 40 *Howard Law Journal* 571.
[447] Heisoo Shin, 'CEDAW and women's human rights: Achievements and obstacles' (Conference Paper, The Castan Center for Human Rights Law's Annual Conference, 3 December 2004).

conduct any inquiry into violations of this Convention under its Optional Protocol.[448] Under this procedure, the CEDAW Committee is authorised to designate one or more of its members to conduct an inquiry, which includes visiting that country with the consent of the state party.[449] According to the findings of that inquiry the member states shall submit its report within six months to the CEDAW Committee.[450] By not accepting the inquiry procedure of articles 8 and 9 of the Protocol, Bangladesh therefore restricts the ability for the Committee and other member states to carry out an inquiry into any grave or systematic violations of rights under CEDAW. Finally, the CEDAW Committee cannot exercise quasi-judicial powers against a state who violates CEDAW and cannot order any remedy for such violation.[451]

As noted above, CEDAW has been criticised because of the vagueness of article 6. However, its focus on the rights of women has made it a popular and relatively effective instrument among the international community. It does identify and prohibit a number of different discriminatory practices, and outlines human rights which, if implemented and enforced, could prevent women from being vulnerable to human trafficking. Despite being soft law, CEDAW has achieved some success by focusing on women's rights in the international arena and providing mechanisms to help ensure that state parries are taking steps to understand the rights of women, and to implement its provisions.

E *Convention on the Rights of the Child*

Traffickers tend to target women and children, as they are more vulnerable to being lured and victimised. The previous section addressed CEDAW, and specifically, the human rights of women.

According to a 2007 estimate by the United States Department of State, globally more than two million children are trafficked into the sex industry every year.[452] Children are trafficked for many

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[448] *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 6 October 1999, 83 UNTS 2131 (entered into force 22 December 2000).
[449] Ibid art 8.
[450] Ibid art 8.
[451] Riddle (n 445).
[452] US Department of State, 'Trafficking in persons report' (Report, 20 June 2019) <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

purposes, including prostitution, pornography, forced or unfree labour such as debt bondage, domestic servitude, begging, drug couriering, carriage of illegal goods, child soldiering, illegal adoption and organ trafficking.[453]

In Chapter One, child victim Lily shared her experience of being sexually exploited in an Indian brothel. She was trafficked to India by her maternal aunt at the age of 13 years old. Lily was forced to work as prostitute in various brothels of Mumbai, Delhi and Bengaluru.

The Declaration of the Rights of the Child,[454] and the Convention on the Rights of the Child (CRC)[455] with its two Optional Protocols, are significant achievements of the UN. In 1959 the UN General Assembly adopted the Declaration of the Rights of the Child to ensure the physical, mental, social, moral and spiritual development of children.[456] It is considered the first international instrument to declare fundamental principles of children's rights, including ten basic human rights. It aims to protect children from all forms of neglect, cruelty and exploitation. However, it is not a binding instrument, it did not define 'child', and did not mention anything about child trafficking.

To better protect the rights and interests of children, the international community developed and adopted the CRC in 1989.[457] One of the most widely accepted international instruments, the CRC not only establishes inalienable rights of children, but also takes steps to ensure their empowerment. In this section of the thesis, I analyse the efforts of the international community in addressing child trafficking via the CRC. I consider the positives and the negatives of the CRC, applying both the human rights approach and the criminal justice approach I identified in Chapter Three.

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[453] Silvia Scarpa, 'Child trafficking: International instruments to protect the most vulnerable victims' (2006) 44(3) *Family Court Review* 429.
[454] The United Nations General Assembly, 'The Declaration of the Rights of the Child' (Declaration 20 November 1959).
[455] *The Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990).
[456] United Nations General Assembly, *The Declaration of the Rights of the Child* 1386(XIV) (20 November 1959).
[457] *The Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990).

1 *An Improved Definition of Child Trafficking*

The first significant positive aspect of CRC is that it provides a definition of child trafficking. Previous instruments had overlooked the issues of child trafficking and forced labour: as we saw in Chapter Three, the first instrument relating to human trafficking, the International Convention for the Suppression of the White Slave Traffic, was focused on Caucasian women only, and the Trafficking Convention 1949 was concerned only with prostitution. Neither of these instruments defined the phrase 'child trafficking'.

In 2000 'child trafficking' was described by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Trafficking Protocol'), supplementing the UN Convention against Transnational Organised Crime (TOCC).[458] However, that definition has been criticised on different grounds: 'the scope of application is restricted to transnational organised crime and it does not criminalise internal child trafficking; it is neutral with regards to prostitution; and it has limitations on the age of victims.'[459]

There are several provisions in the CRC dealing with child trafficking and forced labour, as discussed in more detail below.[460]

The concept of child trafficking has been extended through a series of further protocols. In 2000 it was extended through the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.[461] This Optional Protocol establishes the responsibilities of the state parties to prevent the involvement of the children in armed conflict.[462] When children are transported, transferred, harboured or received and exploited for recruitment to

[458] The *Trafficking Protocol* art 3 (c) states: The recruitment, transportation, transfer, harbouring 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) of this article;
[459] Stefenie Tan Peik Yi, 'Child Trafficking: An International Problem ' (Masters, Faculty of Law University of Tasmania, 2013) <https://eprints.utas.edu.au/17165/2/Whole-Tan-thesis-2013.pdf>.
[460] See Appendix.
[461] *Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict*, opened for signature 25 May 2000, 222 UNTS 2173 (entered into force 12 February 2002).
[462] Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, art 4(2).

armed conflicts, whether forcefully or voluntarily, this is considered to be child trafficking.[463] This instrument suggests undertaking measures to assist physical and psychological recovery of child soldiers and their rehabilitation.[464]

Another instrument created in 2000 – the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography[465] – also defines the terms 'sale of children', 'child prostitution' and 'child pornography'. Here, sale of children includes transferring children's organs, forced labour and illegal adoption.[466]

2 *Taking a Human Rights Approach*

The CRC takes a human rights-based approach to the rights of children. Article 37 of the CRC prohibits torture, or the inhuman or degrading treatment and punishment of children, and prohibits the unlawful or arbitrary deprivation of liberty. All of these human rights are violated by trafficking.[467]

In addition, the CRC guarantees a number of significant economic and social rights relevant to trafficking. Poor conditions of economic and social rights create favourable conditions for child trafficking. Poverty, lack of education, poor health care, inadequate food, poor housing, abandonment by parents and homelessness are the common factors of trafficking of children in Bangladesh. According to a study conducted by M Rezaul Islam and Delwar Hossain,

> in Bangladesh poor and illiterate groups of people in the rural areas, low income people, slum dwellers in the city or town, street children, refugees in the border regions, children in the over populated regions and children in the coastal areas and char lands are the victims

[463] Scarpa (n 64).
[464] *Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict* art 6(3) and art 7(1).
[465] *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children Child Prostitution and Child Pornography*, opened for signature 25 May2000, 227 UNTS 2171 (entered into force 18 January 2002).
[466] Ibid art 3.
[467] Anna Gekht, 'Shared but differentiated responsibility: Integration international obligations in fight against trafficking in human beings' (2008) 37 *Denver Journal of International Law and Policy* 29.

of trafficking.[468]

Applying Marxist theory on forced or unfree labour, economic discrepancies and poverty push families to migrate from rural areas to urban areas, where they struggle to survive. Poor parents often have no choice but to expose their children to different kinds of exploitation, including child labour.[469] Moreover, there are many children who are homeless, living in the streets without parents or legal guardians.[470] Thus, a lack of economic and social rights make children vulnerable to human trafficking. Article 4 of the CRC recommends state parties to take all legislative, administrative and judicial measures for the effective enjoyment of economic and social rights which will prevent the circumstances of child trafficking.[471] Article 20 also mentions that the state should provide special protection, assistance and care to those children who are without their family.

Children of Bangladesh become victims of sexual exploitation, domestic labour and bonded labour. There are also some Dalit children in Bangladesh who are living in poverty in the colonies[472] or slums doing jobs like street sweeping, cleaning toilets and sewerage, and burying dead bodies.[473] They face caste discrimination and do not have any formal education.[474] As such, they easily become victims of human trafficking and other exploitation. The CRC recommends that state parties take all appropriate measures to protect children from all kinds of violence such as exploitation and sexual abuse.[475] Furthermore, articles 32, 34 and 36 of the CRC require

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[468] M. Rezaul Islam and Delwar Hossain, 'Protecting children from trafficing: Responses of the governmental and non-governmental organisations in Bangladesh' (2017) 10(1) *The Malaysian Journal of Social Administration* 1. Char lands are islands within the riverbanks where people are living under extreme and hazardous conditions of frequent and intensive flooding and erosion. Maminul Haque Sarker et al, 'Rivers, chars and char dwellers of Bangladesh' (2003) 1(1) *International Journal of River Basin Management* 61.
[469] Islam and Hossain (n 468).
[470] Bangladesh Institution of Peace and Security Studies, 'Human trafficking a security concern for Bangladesh' (August 2011) *A Monthly Publication* <https://www.files.ethz.ch/isn/164375/Issue%209.pdf>.,712).
[471] Sandrine Valentine, 'Trafficking of child soldiers: Expanding the United Nations Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict' (2003) 9 *New England Journal of International and Comparative Law* 109.
[472] This colony means a particular area where dalit people live. This place is commonly known as Sweepers Colonies. Dalit are also known as sweeper, methor, shebok, harijon and untouchable. Tanvir Hossain, 'The sweepers: A socially excluded community', *The Daily Star* (Online, 19 March 2013).
[473] International Dalit Solidarity Network (IDSN), *Dalit Children in Bangladesh*, 70 sess, (14 September-2 October 2015).
[474] Ibid.
[475] *The CRC* art 19.

protection of children from economic, sexual and other kind of exploitation by undertaking different legislative, administrative, social and educational measures.[476]

The *Trafficking Protocol* does not cover internal trafficking in children as it addresses only transnational child trafficking. However, in practice both internal and trans-border trafficking are common in Bangladesh. One of the purposes of child trafficking is illegal adoption both domestically and internationally. Article 21 of the CRC illustrates the responsibilities of states regarding child adoption. Through article 35, the CRC highlights the obligation of state parties to increase international and regional cooperation to prevent the illegal transfer of children.[477]

Chapter One of this thesis illustrated how trafficked victims, including child victims, may be tortured in the whole process of trafficking. Physical and sexual torture are common methods of controlling victims. Mental harm and physiological trauma have long lasting effects on the lives of children. As such, child victims need special care and attention. The CRC focuses on physical and psychological supports to child victims for their reintegration into society.[478]

To ensure the effective implementation of the human rights approach, the CRC has an enforcement mechanism known as the Committee on the Rights of the Child (CRC Committee).

3 *Treaty Monitoring Body*

A significant feature of the CRC and its Protocols is that it has a dedicated treaty monitoring body, the CRC Committee. State parties have an obligation to submit reports to the CDC Committee every five years. This Committee makes recommendations and develops guidelines after evaluating state party reports, and monitors compliance. The presence of this monitoring body is therefore more likely to lead to better human rights outcomes.

As with the other treaty monitoring bodies discussed in this chapter, the CRC Committee has made

[476] See Appendix Two.
[477] Ibid art 11.
[478] Ibid art 39.

a number of significant General Comments designed to advance the objectives of the CRC and its Protocols. Relevant to child trafficking, in General Comment No 6 the CRC Committee recommended that state parties take steps to protect children who are unaccompanied or separated from the families.[479] It observed that special protection and assistance is necessary as unaccompanied or separated children are more vulnerable to trafficking.[480]

In 2016, the CRC Committee also recognised that children are trafficked for sexual and economic exploitation, and said that state parties have an obligation to collect appropriate data about trafficking.[481] Moreover, it suggested that states should ratify all the Conventions and Protocols about trafficking, and incorporate these into their domestic legislation.[482]

Bangladesh ratified the CRC on the 3 August 1990, and on 6 September 2000 it ratified both the Optional Protocol to the Convention on the Involvement of Children in Armed Conflict, and the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. However, Bangladesh has not yet accepted the individual complaints procedure and inquiry procedure under those instruments. These reservations make it less accountable to the CRC Committee.

Notwithstanding these reservations, the operation of some accountability can be seen in the recent report the CRC Committee, which expressed both satisfaction that the government of Bangladesh had adopted a range of new legislation consistent with the provisions of these Conventions, and concern that implementation was poor. [483] In addition, the CRC Committee remarked on the inadequate and poor implementation of legislation and policies to prevent forced or unfree labour, as a significant number of children are working in hazardous and exploitative conditions and who are vulnerable to sexual abuse and violence.[484] Finally, the CRC Committee recommended that

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[479] Committee On The Rights Of The Child, *General Comment, Treatment Of Unaccompanied And Separated Children Outside Their Country Of Origin* 39 sess, No. 6 pt, UN Doc CRC/GC/2005/6 (1 September 2005).
[480] The Committee on the Rights of the Child, *General Comment no 6*, 39 sess, UN Doc CRC/GC/2005/6 (1 September 2005).
[481] The Committee on the Rights of the Child, *Draft General Comment on the implementation of the rights of the child during adolescence* UN Doc CRC/C/GC/20 (22 April 2016).
[482] Ibid.
[483] Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of Bangladesh*, 17 sess, UN Doc CRC/C/BGD/CO/5 (14 September-2 October 2015).
[484] Ibid.

Bangladesh prohibit and criminalise child prostitution, to tackle the increasing number of children trafficked into prostitution.[485] It focused on the need for appropriate data collection on the abduction, trafficking and sale of children, and it recommended that Bangladesh work with other state parties to raise awareness among parents and children about human trafficking.[486]

4 *A Criminal Justice Approach*

Along with its human rights-based approach and a specific monitoring body, the CRC and its Protocols provide a number of measures to criminalise trafficking.

Article 35 of the CRC directly addresses the obligations of state parties to combat child trafficking by taking all national, bilateral and multilateral measures necessary to prohibit trafficking, criminalise trafficking, and protect child victims. [487] The Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography ensures criminalisation of the sale of children, sexual exploitation, transfer of organs and forced labour in article 3. Articles 4 and 5 confirm extra-territorial jurisdiction and rules for extradition. This Protocol also recommends confiscation and seizure of goods in criminal proceedings.

Nevertheless, the criminal justice approach of the CRC mainly addresses the punishment and prosecution of perpetrators. It focuses little on the rights of victims who have suffered in their whole of journey of trafficking and faced great violation of their human rights in their rescue and reintegration process. The root causes of trafficking and demand and supply issues are always overlooked in a criminal justice approach.[488]

One of the problems identified in the responses of state parties is the focus on human trafficking and other related exploitation of children *after* the harm has happened. Adopting a human rights framework will ensure economic and social rights of children which will *prevent* child

[485] Ibid.
[486] Ibid.
[487] Susan Tiefenbrun, 'Child soldiers, slavery and the trafficking of children' (2007) 31 *Fordham International Law Journal* 415.
[488] Jonathan Todres, 'A child rights framework for addressing trafficking of children' (2013) 22 *Michigan State International Law Review* 557.

trafficking.[489] Despite not having any threat of sanction as an enforcement mechanism, the CRC Committee highlights those rights of children. The CRC and its two Protocols not only extend the concept of trafficking but also place more importance on the need for international cooperation and assistance to fight trafficking and to protect and rehabilitate child victims. The CRC Committee also plays a significant role in ensuring the implementation of those instruments by identifying the gaps in performance of state parties. State parties can therefore follow the child rights framework outlined in the CRC to strengthen their preventive measures along with their existing criminal justice approach.

F *United Nations Convention on the Rights of Persons with Disabilities*

The *United Nations Convention on the Rights of Persons with Disabilities ('CRPD')*[490] adopts human rights approach where it identifies different rights of persons with disabilities. This Convention has no direct provision of human trafficking, however through article 16 it outlines the obligation of state parties to undertake all appropriate legislative, administrative, social and education and other measures to protect persons with disabilities from all forms of exploitation, violence and abuse.[491] It also focuses on ensuring gender and age –sensitive assistance and support to disabled person and their families to prevent all forms of exploitation, violence and abuse.[492] Finally, it addresses the issue of rehabilitation and reintegration of victims in the society.[493] This Convention has a specific monitoring body where the state parties are bound to submit report in every four years.[494]

Though the Convention does not have any explanation on the term 'exploitation, violence and abuse', in General Comment no 3, the Committee of CRPD classifies trafficking, physical force, economic coercion, and deception are the forms of exploitation, violence and abuse.[495] The

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[489] Ibid.
[490] *Convention on the Rights of Persons with Disabilities*, opened for signature 6 December 2006, 3 UNTS 2515 (entered into force 3 May 2008).
[491] Ibid art 16.
[492] Ibid.
[493] Ibid.
[494] Ibid art 39.
[495] Committee on the Rights of Persons with Disabilities, *General comment No. 3 (2016) on women and girls with disabilities*, UN Doc CRPD/C/GC/3 (25 November 2016).

Committee also outlines economic and sexual exploitation are responsible for vulnerability to human trafficking.[496]

Bangladesh ratified this Convention on 30 November 2007, but submitted its report on 18 April 2017 which was due in 2010.[497] The Committee asked Bangladesh to submit report on article 16 which is about freedom from exploitation, violence and abuse.[498] Bangladesh has specific instrument on rights of persons with disabilities known as *Persons with Disabilities Rights and Protection Act 2013* which recognises different rights of disabled persons including right to free from violence and exploitation.[499] In a report there is no explanation how disabled persons become victim of trafficking and nothing about legislative and administrative measures to combat this crime. None of my interviewees have any disability. However, any persons who are victim of human trafficking are also entitled to ask remedy under the *Prevention and Suppression of Human Traffcking Act 2012*[500] which I have discussed in Chapter Five.

G *Refugee Law: Trafficking Victims as Refugees*

Everyone has the right to seek and to enjoy in other countries asylum from persecution.[501]

Refugees and displaced persons are a common phenomenon in world history. Due to war, torture, degrading treatment, political and religious persecution, economic crises, natural disasters, gender-based violence and other gross violations of human rights, distressed people move from one country to another to find better and safer lives for themselves.[502] Some are victims of human trafficking. Before World War I, there was no specific law concerning the protection and status of refugees. Under customary international law, the state only had a responsibility to protect its own citizens. Following World War I, devastating numbers of cross-border movements created pressure

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[496] Ibid.
[497] Committee on the Rights of Persons with Disabilities, *Initial report submitted by Bangladesh under article 35 of the Convention, due in 2010,* UN Doc CRPD/C/BGD/1 (30 August 2018).
[498] Committee on the Rights of Persons with Disabilities, *List of issues in relation to the initial report of Bangladesh*, UN Doc CRPD/C/BGD/Q/1 (6 May 2019).
[499] *Persons with Disabilities Rights and Protection Act 2013*(Bangladesh).
[500] *Prevention and Suppression of Human Traffcking Act 2012* (Bangladesh).
[501] UDHR art 14(1).
[502] Rehman (n 405).

upon the international community to develop international refugee law.[503] It came forward with the help of the League of Nations, to protect those who had been acknowledged as refugees.

Various international instruments from 1951 onwards[504] have dealt with the status of refugees and stateless persons. The Convention relating to the Status of Refugees 1951[505] and Protocol relating to the Status of Refugees 1967[506] are the two important instruments. In addition, through article 14, the *Trafficking Protocol* acknowledges the rights of refugees:

Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.

The United Nations High Commissioner for Refugees (UNHCR)[507] also has 'Trafficking Guidelines' which illustrate when and how the victims of trafficking can claim refugee status.[508] This section of the thesis demonstrates how the human rights-based and feminist approaches adopted in the Refugee Convention can be relied upon by victims of human trafficking who claim refugee status.

1 *Can Victims of Trafficking be Recognised as Refugees?*

Refugee status is determined through identification of the individual as a refugee by the United

[503] M. Rafiqul Islam and Md Jahid Hossain Bhuiyan, *An introduction to international refugee law* (Martinus Nijhoff Publishers, 2013).
[504] 1951 Convention relating to the Status of Refugees, 1967 Protocol relating to the Status of Refugees, 1954 Convention relating to the Status of Stateless Persons, 1961 Convention on the Reduction of Statelessness, 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1984 Cartagena Declaration on Refugees.
[505] *UN Convention Relating to the Status of Refugees* opened for signature 28 July 1951, 137 UNTS 189 (entered into force 22 April 1954).
[506] *The Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 267 UNTS 606 (entered into force 4 October 1967).
[507] UNHCR is an international institution established by the League of Nations in December 1949. It is the replacement of the IRO (International Refugee Organisation). UNHCR has two types of duties and these are – preventing the refugees and asylum seeker from trafficking and determining refugee status of the trafficking victims.
[508] Martina Pomeroy, 'Left out in the Cold: Trafficking Victims, Gender, and Misinterpretations of the Refugee Convention's Nexus Requirement' (2009) 16 *Michigan Journal of Gender and Law* 453.

Nations High Commissioner for Refugees (UNHCR).[509] To be recognised as a refugee under the Refugee Convention, a person must establish: firstly, that he/she has a well-founded fear of persecution; secondly, that they have fear of persecution on the ground of race, religion, nationality, membership in a particular social group or political opinion; thirdly, that he/she is outside of their own country; and finally, that he/she is unable or unwilling to seek any protection from that home country.[510]

(a) A Well-founded Fear of Persecution

Trafficking is a form of persecution. Here, persecution means any kinds of violation of human rights, threats to life and freedom, torture and degrading treatment, gender-based harms and discrimination.[511]

The UNHCR has identified different serious violations of human rights that are common in trafficking cases and which amount to persecution, including kidnapping, rape, sexual enslavement, forced prostitution, forced labour, organ removal, mental and physical torture, starvation and lack of medical treatment.[512] For example, in the case of *SZBFQ v Minister of Immigration* the Australian Federal Magistrates Court held that forced prostitution is a type of persecution under the Refugee Convention.[513] The UNHCR Trafficking Guideline has also identified re-trafficking and reprisals as grounds of persecution when they cause serious violation of human rights.[514]

There are a number of Canadian cases that are illustrative.[515] In the *Matter of S- (A# redacted*, the

[509] Islam and Bhuiyan (n 503).
[510] *The 1951 Refugee Convention* art 1(A), 2.
[511] United Nations High Commissioner for Refugees, *Guidelines on International Protection: The application of Article 1A (2) of the 1951 Convention and/ or 1967 Protocol relating to the status of Refugees to victims of Trafficking and persons at risk of being trafficked*, UN Doc HCR/GIP/06/07 (7 April 2006). See para 14.
[512] Ibid para 15.
[513] *SZBFQ v Minister for Immigration and Multicultural and Indigenous Affairs* (Federal Magistrates Court of Australia, 10 June 2005).
[514] United Nations High Commissioner for Refugees (n 511). See paragraph 17.
[515] Kaori Saito, *International protection for trafficked persons and those who fear being trafficked* (UNHCR, Policy Development and Evaluation Service, 2007).

victim was an ethnic Chinese woman who was adopted by a man at the age of 3.[516] Her adoptive father raped and assaulted her from an early age. At the age of 12, the victim started to work in a beauty salon in Bangkok, where she was raped. In Bangkok, she was lured by a woman who promised her to give a better life in the USA and convinced her to travel along with her. At the US airport, the victim was apprehended for presenting a false Thai passport and was considered stateless. The Immigration Judge decided that the victim was a member of an ethnic group in Thailand who had no rights of citizenship, and she had limited human rights. It was found that the Thai Government had engaged in limited efforts to protect the victim. For this reason, the victim was successful in establishing her case, and was granted refugee status as she had a well-founded fear of future persecution in Thailand.

(b) Trauma, Ostracism and Discrimination as Persecution

In addition, the UNHCR Trafficking Guideline has acknowledged trauma, ostracism and discrimination as forms of persecution. Trafficking victims often face social ostracism. At times, family and friends do not want to accept the victims of sex trafficking into their home or community. Victims become isolated and depressed, leading to re-victimisation. My fieldwork confirmed that most interviewees were not accepted by their society and were still facing difficulties.

One of the difficulties that victims face is advancing prosecutions of the criminals who have perpetrated the crime of trafficking. Similarly, in a case of asylum status the whole burden of proof depends on the victims of trafficking. The victim must establish the nexus between all the reasons of her persecution and the requirements stated in the Refugee Convention. She must also establish that she has asked for state protection but there were no effective and adequate measures available.

(c) Fear of Persecution on the Ground of Race, Religion, Nationality, or Membership in a Particular Social Group

[516] 'Matter of S- (redacted)', CGRS case no. 560, 18 June 2001.

There are also other grounds to claim refugee status under the Refugee Convention. Sometimes victims of trafficking are targeted because of their race, nationality, religion, membership in a particular social group or their political opinion against the present government of their country of origin. Feminist theory, critical race theory and the theory of forced or unfree labour are all relevant here. In trafficking cases, victims are often members of impoverished underclasses that have common backgrounds.[517] Women and children are considered a part of a particular social group as they are subjugated and controlled by men within a strongly patriarchal society.[518]

My fieldwork indicates that most Bangladeshi victims are women from very poor families and many of them are victims of family violence. They face discrimination because of their status as women. Many of the Rohingya refugees of Bangladesh have also been trafficked because of their race, religion and nationality.[519]

In a patriarchal society, women are subordinate, dependent and dominated, and they face obstacles to access power and resources. Linda Cipriani argues that in Middle Eastern and other Muslim countries such as Pakistan and Iran, the position of a woman is also based on their religion, which sanctions persecution of them if they fail to follow its orders.[520] Men often think of women as their property, control their sexual activity and treat them as commodities. Such social structures lead women to experience torture and inhumane treatment and can make them vulnerable to abuse and trafficking.[521]

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[517] Idil Atak and James C. Simeon, 'Human trafficking: Mapping the legal boundaries of international refugee law and criminal justice' (2014) 12(5) *Journal of International Criminal Justice* 1019.
[518] United Nations High Commissioner for Refugees (n 511). See para 38.
[519] Naimul Karim, 'Rohingya refugees in Bangladesh warned to be wary with human trafficking rising', *Reuters* (Online, 23 August 2019) <https://www.reuters.com/article/us-bangladesh-myanmar-trafficking/rohingya-refugees-in-bangladesh-warned-to-be-wary-with-human-trafficking-rising-idUSKCN1VD0XD>.
[520] Linda Cipriani, 'Gender and Persecution: Protecting Women Under International Refugee Law' (1993) 7 *Georgetown Immigration Law Journal* 511. 'Recently an 18-year-old Saudi woman got asylum in Canada as she was abused by her family and feared for her life if deported back home. Women in Saudi Arabia are vulnerable and to get rid of domestic violence and social pressure several women fleeing abuse by their families have been caught trying to seek asylum abroad in recent years and returned home. Human rights activists say many similar cases go unreported.' Hannah Ellis-Petersen, 'Saudi woman fleeing family flies to Canada after gaining asylum ', *The Guardian* (Online, 12 January 2019) <https://www.theguardian.com/world/2019/jan/11/canada-and-australia-in-talks-with-un-to-accept-saudi-asylum-seeker-rahaf-mohammed-al-qunun>.
[521] Sharmeen A. Farouk, 'Violence against women: a statistical overview, challenges and gaps in data collection and methodology and approaches for overcoming them' (Report, Bangladesh National Women Lawyers Association (BNWLA), 11-14 April 2005) <http://www.un.org/womenwatch/daw/egm/vaw-stat-2005/>.

Different forms of gender-based violence, including forced prostitution and sexual exploitation, constitute persecution and can form the basis of an asylum application for trafficking victims.[522] The UNHCR and its Executive Committee have confirmed this.[523] In paragraph 18 of the Guidelines on Gender Related Persecution, the UNHCR provides:

Some trafficked women or minors may have valid claims to refugee status under the 1951 Convention. The forcible or deceptive recruitment of women or minors for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence or abuse that can even lead to death. It can be considered a form of torture and cruel, inhuman or degrading treatment. It can also impose serious restrictions on a woman's freedom of movement, caused by abduction, incarceration, and/or confiscation of passports or other identify documents. In addition, trafficked women and minors may face serious repercussions after their escape and/or upon return, such as reprisals or retaliation from trafficking rings or individuals, real possibilities of being re-trafficked, severe community or family ostracism, or severe discrimination. In individual cases, being trafficked for the purposes of forced prostitution or sexual exploitation could therefore be the basis for a refugee claim where the State has been unable or unwilling to provide protection against such harm or threats of harm.[524]

An example is provided by the case of *Minister for Immigration and Multicultural Affairs v Khawar*, where the applicant was the victim of intimate partner violence inflicted by her husband, who was from Pakistan.[525] She asked for government protection several times but failed to receive such protection. Then she claimed asylum status on the ground that the discriminatory attitude of the government amounted to a lack of state protection. In that case the victim had to prove how the failure of the government of Pakistan to protect her from domestic violence was a form of persecution, and that she was a member of a particular social group as per Article 1A(2) of the Convention.[526] The High Court of Australia held that she was eligible for refugee status on this basis as she was suffering because of her status as a woman.

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[522] Anna Marie Gallagher, 'Triply Exploited: Female Victims of Trafficking Networks-Strategies for Pursuing Protection and Legal Status in Countries of Destination' (2004) 19 *Georgetown Immigration Law Journal* 99.
[523] United Nations High Commissioner for Refugees (n 511).
[524] Ibid para 18.
[525] *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 14 HCR 1.
[526] Ibid.

While some victims may obtain refugee status, many are forced to return to their home country. There are many cases where applicants for refugee status have their applications rejected.[527] About 325 Rohingya and 65 Bangladeshi trafficking victims are still being detained in Malaysia under shocking conditions.[528] Victims are detained for an indefinite period of time without enough support and facilitates (as will be discussed further in Chapter Six). As Amnesty International Researcher Khairunisssa Dhala states, 'One year on, these people who have been through this horrific journey are still being punished, rather than being treated as victims of human trafficking.'[529]

Bangladesh has not signed or ratified the Convention on Refugees,[530] and its Protocol,[531] the Convention on Stateless Persons,[532] or the Convention on Reduction of Statelessness.[533] However, Bangladesh is bound to follow internationally accepted and recognised standards which comprise customary international law. In addition, Bangladesh is a member state of different human rights treaties which also ensure the rights of refugees.[534] As a member state of different international human rights instruments – including the UDHR, ICCPR, ICESCR, CRC, CEDAW, Convention against Torture ('CAT')[535] and the International Convention for Elimination of all Forms of Discrimination[536] – Bangladesh has an obligation to ensure and protect the rights of refugee women and children and any other people who are in the position of being a refugee.[537]

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[527] Saito (n 515).
[528] Patrick Kingsley, 'Rohingya Trafficking victims stuck in captivity , one year on', *The Guardian* (Online, 27 May 2016) <https://www.theguardian.com/world/2016/may/27/rohingya-refugees-stuck-in-captivity-one-year-on>.
[529] Ibid.
[530] *UN Convention Relating to the Status of Refugees* opened for signature 28 July 1951, 137 UNTS 189 (entered into force 22 April 1954).
[531] *The Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 267 UNTS 606 (entered into force 4 October 1967).
[532] *The Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954 117 UNTS 360 (entered into force 6 June 1960).
[533] *The Convention on the Reduction of Statelessness*, opened for signature 30 August 1961 175 UNTS 989 (entered into force 13 December 1975).
[534] Mohammad Aktarul Alam Chowdhury, 'Challenges to the Protection of Refugee's Rights in Bangladesh: In Search of a Comprehensive and Effective Legal and Institutional Frameworks' 6(1) *International Journal of Ethics in Social Sciences* 51.
[535] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 85 UNTS 1465 (entered into force 26 June 1987).
[536] *International Convention on the Elimination of All Forms of Racial Discrimination* opened for signature 21 December 1965, 195 UNTS 660 (entered into force 4 January 1969).
[537] Chowdhury R Abrar, 'Legal protection of refugees in South Asia' (2001) 10(1) *Forced Migration Review* 21.

If we analyse the high number of trafficked victims, the very low number of trafficking-related prosecutions, and the overall situation of victims after returning to Bangladesh (as highlighted in Chapter One), it can be ascertained the legislative and administrative response of government of Bangladesh is not adequate to provide state protection against trafficking. On the ground of family violence (gender-based violence), trafficked victims can claim asylum showing evidence of state failure to protect them from persecution, and violation of their human rights.[538] To ensure the rights of trafficked victims the UNHCR Trafficking Guideline is working together with Refugee Convention. On the ground of well-founded fear of persecution, asylum may be granted to trafficking victims as they have already suffered serious violations of human rights both in their home and destination country.

That said, there are many challenges facing victims of human trafficking who seek to rely on international refugee law to protect themselves. A number of these challenges have been identified in this section. In Bangladesh, there are no specific domestic legal instruments to protect refugees at all. This is so even though Rohingya people have been coming to Bangladesh to escape persecution since 1978. There is also no regional instrument in South Asia to deal with this crisis.

Do international racial discrimination instruments fill the gap?

H *Human Trafficking and the Racial Discrimination Convention*

Historically, human trafficking has had a close connection with racial discrimination. When African slavery started, black women were addressed by the white society as 'Jezebels', meaning women who were sexualised, seen as more fertile, and treated as an enemy due to 'disobedience to God'.[539] Racial discrimination is still often used to justify abuse and violation of human rights.

At present a large number of victims of trafficking are from subjugated ethnic groups. For example,

[538] Deborah Anker, Lauren Gilbert and Nancy Kelly, 'Women whose governments are unable or unwilling to provide reasonable protection from domestic violence may qualify as refugees under United States asylum law' (1997) 18 *Immigration and Nationality Law Review* 415.
[539] Cheryl Nelson Butler, 'The racial roots of human trafficking' (2015) 62 *UCLA Law Review* 1464.

most victims of forced and unfree labour and sexual exploitation in the USA are people of colour.[540] Likewise, the Rohingya and Indigenous people of Bangladesh are most at risk of trafficking as they are deprived from enjoying all kinds of human rights that are essential for survival. In India, Dalits and some other tribal people are victims of sexual abuse, forced or unfree labour, involuntary sex work and other kinds of discriminatory activities.[541] Mary Robinson has observed:[542]

> Trafficking is … inherently discriminatory. In the case of trafficking into the global sex industry, we are talking about men from relatively prosperous countries paying for the sexual services of women and girls – and sometimes man [sic] and boys – from less wealthy countries. This is more than a labour rights issue or an issue of unequal development. It is a basic human rights issue because it involves such a massive and harmful form of discrimination.[543]

Though there is a clear link between racial discrimination and human trafficking, no international instrument has addressed this issue directly. To fight against racial discrimination, the international community has adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[544] This section demonstrates that while this Convention does not have any provisions directly related to human trafficking, it does contain guidelines and an enforcement mechanism relating to the prevention of racial discrimination, which may assist victims or potential victims of trafficking.

1 *Human Rights Approach*

ICERD follows the same human rights approach taken by the UDHR, ICCPR and ICESCR. Its

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[540] Natividad Gutierrez Chong, 'Human trafficking and sex industry: Does ethnicity and race matter?' (2014) 35(2) *Journal of Intercultural Studies* 196.
[541] Human Rights Watch, 'India: "Hidden Apartheid" of Discrimination Against Dalits, Government Fails to End Caste-Based Segregation and Attacks' (Report, , HRW, 2007) <https://www.hrw.org/news/2007/02/13/india-hidden-apartheid-discrimination-against-dalits>.
[542] United Nations High Commissioner for Human Rights (1997-2002), Secretary-General of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
[543] Mary Robinson, 'United Nations World Conference against Racism, Racial Distribution, Xenophobia and Related Intolerance in Durban' (Conference, Durban, South Africa, 31 August – 8 September 2001) <http://www.un.org/WCAR/e-kit/trafficking_e.pdf>.
[544] *International Convention on the Elimination of All Forms of Racial Discrimination* opened for signature 21 December 1965, 195 UNTS 660 (entered into force 4 January 1969).

preamble outlines the purpose of the Convention and focuses on promoting and observing human rights irrespective of race, sex, language or religion. As noted above, there is no specific provision about human trafficking in this Convention. But it does clearly define the term racial discrimination,[545] a factor which has already been identified in this thesis as facilitating human trafficking.

ICERD is also based on the principle of equality before law and it recommends state parties to undertake sufficient measures to prevent racial discrimination.[546] Discrimination in social, economic, cultural and other fields make people vulnerable to trafficking. Chapter Two has demonstrated how Rohingya in Bangladesh are discriminated against, and how they have been deprived from enjoyment of their human rights. The main objective of preventing racial discrimination is to ensure full and equal enjoyment of individuals' human rights and fundamental freedoms.

ICERD also emphasises ensuring rights of all – including the right to equal treatment before the law, the right to security and protection against violence or bodily harm, and economic, social, cultural, political rights and civil rights[547] – by prohibiting all types of discrimination.[548]

Through article 5(e) (i), ICERD has also focused on freedom of choice of employment and preferable conditions of works, fulfilment of which would help to prevent vulnerability to labour trafficking.

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[545] Ibid art 1(1).
[546] *International Convention on the Elimination of All Forms of Racial Discrimination 1965* art 2.
[547] Here civil rights mean: a) The right to freedom of movement and residence within the border of the State; b) The right to leave any country, including one's own, and to return to one's country; c)The right to nationality; d) The right to marriage and choice of spouse; e) The right to own property alone as well as in association with others; f) The right to inherit; g) The right to freedom of thought, conscience and religion; h) The right to freedom of opinion and expression; and i) The right to freedom of peaceful assembly and association. Economic, social and cultural rights mean: a) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; b) The right to form and join trade unions; c) The right to housing; d) The right to public health, medical care, social security and social services; e) The right to education and training; f) The right to equal participation in cultural activities; and g) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.
[548] Ibid art 5.

2 *Enforcement Mechanism*

Finally, the most important positive aspect of ICERD for the purposes of this analysis is that it has a specific monitoring body, known as the Committee on the Elimination of Racial Discrimination ('CERD'), to review the implementation of its provisions. CERD can take action against human trafficking. For example, after evaluating the report of Nigeria, CERD suggested that Nigeria include all facts relating to human trafficking in their periodic report.[549] In addition, the Committee recommended preventive measures against trafficking, including legislative and policy measures, measures for the protection and support of victims, and it emphasised the need for speedy and fair investigations to prosecute criminals.[550] Similarly, in its 17th session CERD was concerned about Dalit and tribal women of India who are victims of racial discrimination and vulnerable to trafficking.[551] India was advised to adopt various measures such as awareness creating, training for law enforcement agencies, encouraging victims to report incidents, and the provision of legal, medical and psychological assistance, and compensation, to victims.[552]

Since ratification of ICERD on 11 June 1979, Bangladesh has submitted four reports: in 1981, 1988, 1991 and 2000.[553] CERD made its observations on the 2000 report on 27 April 2001.[554] In these observations, CERD focused on the criminalisation of all acts of racial discrimination and pointed out that racial discrimination was overlooked and unaddressed in Bangladeshi criminal law despite being one of the causes of human trafficking.[555] Bangladesh has an obligation to incorporate provisions of ICERD into its domestic law.[556]

CERD was also concerned about the poor living condition of Rohingya in refugee camps of

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[549] UN Committee on the Elimination of Racial Discrimination, *Concluding Observation on periodic reports of Nigeria*, 67 sess, UN Doc CERD/C/NGA/CO/18 (27 March 2007).
[550] Ibid.
[551] UN Committee on the Elimination of Racial Discrimination, *Concluding Observation on periodic reports of India*, 17 sess, UN Doc CERD/C/IND/CO/19 (5 May 2007).
[552] Ibid.
[553] United Nations Office of the High Commissioner for Human Rights (OHCHR),'Human Rights Bodies', *UN Treaty Body Database* (2020) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx>. The last available report on the UN Treaty Bodies website is the report of 2000.
[554] Ibid.
[555] UN Committee on the Elimination of Racial Discrimination, *Concluding Observation on periodic reports of Bangladesh*, 58 sess, (6–23 March 2001).
[556] Ibid.

Bangladesh.[557] It explicitly addressed the issue of human trafficking, especially trafficking in women and children in Asia, and advised Bangladesh to submit a report addressing the issue of migration and human trafficking.[558] CERD also recommended raising awareness of human rights and arranging training for law enforcement officials.[559]

Nevertheless, CERD has limited scope to receive individual complaints from victims of violation of human rights of Bangladesh, as Bangladesh has not yet made any declaration recognising the individual complaints procedure under article 14 of ICERD. This means that trafficked victims have no opportunity to communicate directly with the monitoring body.

Also, there is no provision in ICERD penalising member states who fail to provide reports to CERD. According to CERD's concluding observation of 2001, Bangladesh was expected to submit its report on 11 July 2002. However, there has been no further report by Bangladesh since 2001.

ICERD also does not focus on the rights of trafficked victims. Although in article 5(d) it acknowledges different civil rights of the individual, only one right is concerned with trafficked victims, namely the right of repatriation. In addition, while this Convention adopts a human rights-based response, it does not adopt a strong criminal justice approach. Only articles 4 and 6 address the issue of criminalisation and penalisation of those acts which are racist and discriminatory.[560]

Despite its status as a soft law instrument, ICERD does provide clear human rights-based guidelines to prevent racial discrimination. CERD has also identified racial discriminations as a factor in human trafficking and has required member States to report on that topic.

I *The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*

[557] Ibid.
[558] Ibid.
[559] Ibid.
[560] *International Convention on the Elimination of All Forms of Racial Discrimination 1965* art 4 and 6.

Torture is an attack on human dignity and personality, just like slavery and human trafficking.[561] Torture and other ill-treatments are treated as a great violation of human rights, and are prohibited under international law. The prohibition of torture is a norm of *jus cogens* and is non-derogable in nature during the time of war and emergencies.[562] To address this issue seriously, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[563] was adopted on 10 December 1984 and came into force on 26 June 1987. In article 1, CAT defines torture thus:

> 1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[564]

Historically, slavery has had a close connection with torture: for example, only slaves who were under torture were allowed to give witness in civil or criminal proceedings during Greek and Roman times.[565] To fight against human trafficking effectively and to promote the rights of victims, including rights to protection and support, it is necessary to more closely examine how human trafficking is connected with torture and ill-treatment in present times.

This section elucidates the connection between human trafficking and torture and demonstrates that a strong criminal justice approach utilising the enforcement mechanism of CAT can help state parties to prevent these activities. This section also demonstrates that definitional limitations, as

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[561] Manfred Nowak, *The United Nations Convention against Torture: A commentary,* Elizabeth McArthur and Kerstin Buchinger (eds) (Oxford University Press, 2008).
[562] Organization for Security and Co-operation in Europe (OSCE) Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation,, 'Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment' (Occasional Paper Series, No 5, June 2013) <http://www.osce.org/secretariat/103085?download=true>.
[563] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* opened for signature 10 December 1984, 85 UNTS 1465 (entered into force 26 June 1987).
[564] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* art 1.
[565] Nowak (n 561).

well as the limited human rights response in this instrument, is likely inadequate to protect the rights of victims of human trafficking who are also victims of torture.

1 *Involvement of State Officials*

Corruption and poor governance help to fuel trafficking. In Bangladesh, different authorised and unauthorised recruitment agencies traffic women in the guise of migrant workers. Some government departments are aware of this fact, but they do nothing because such agencies pay bribes to those government bodies. Sometimes traffickers even have political backing. It has been alleged that the police department and border guards of Bangladesh take bribes from cross-border trafficking gangs.[566] Notably, most of the interviewees in my fieldwork said that they did not see any border guards or police while they were illegally crossing the border. Victim Laila said:

> Traffickers get support from police due to the money. They have money but I don't have [any]. That makes the difference between me and them.

It is a common scenario in source and transit countries that police and other security officers not only fail to investigate and prosecute the traffickers, but even facilitate trafficking themselves.[567]

2 *Severe Pain and Suffering*

The second element of torture is the infliction of severe pain and suffering. This may be physical and/or psychological torture, which affects the health and mind of victims very badly.[568] In the

[566] Asian Human Rights Commission,'INDIA/BANGLADESH: Police refuse to take action to rescue a girl trafficked to Bangladesh', *The Asian Human Rights Commission* (8 December 2011)
[567] Human Rights Watch,'Egypt/Sudan: Traffickers Who Torture, Egypt Should Use Sinai Security Operations to Suppress Trafficking', *HRW* (Report 11 February 2014) <https://www.hrw.org/news/2014/02/11/egypt/sudan-traffickers-who-torture>. Human Rights Watch published a report titled as 'I Wanted to Lie Down and Die: Trafficking and Torture of Eritreans in Sudan and Egypt' in 2014 on the basis of interviews of numbers of victims. As per that report, Egyptian traffickers have tortured victims through rape, burning, and mutilation for ransom. Most of the victims blamed that security officers of Sudan and Egypt had colluded with traffickers.
[568] Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment' (Occasional Paper Series, No 5, , Organization for Security and Co-operation in Europe (OSCE) June 2013) <http://www.osce.org/secretariat/103085?download=true>.226).

whole process of trafficking, victims may be controlled through torture, as demonstrated in Chapter One. Even after rescue, victims struggle to settle down in the society and to start a new life, given their horrid experiences. One study has shown that 56 percent of trafficked women and girls had similar levels of post-traumatic stress disorder (PTSD) as torture victims.[569] My fieldwork has also demonstrated how social stigma and ostracism, negative behavior of victims' families, poor economic conditions and mental illness of trafficked victims impede their proper rehabilitation and reintegration.

3 *Control Over Powerless Victims*

Perpetrators use a range of methods to control victims, including different types of punishment, coercion and discrimination. A common objective of torture is to get a confessional statement or other information. In the context of human trafficking, criminals use torture as a method of punishment, and as a means of coercion to exploit and establish control over powerless victims. There are also various purposes of human trafficking, including many types of exploitation such as prostitution, forced labour, begging, organ harvesting and other criminal activities. From different case studies, it has been found that traffickers coerce victims by threatening to report them to authorities, wrongfully confine them, force them to engage in involuntary sex work, beat them brutally when they refuse to work, and even beat child victims without any reason.[570]

4 *Excessive Power Over Victims*

Lastly, one of the elements of torture is that perpetrators use excessive power over victims. This also happens in trafficking. Traffickers impose restrictions on victims' freedom of movement and confiscate their passports and other travel documents to strengthen their power and establish control over their victims.[571] Interviewees for this study confirmed that during the process of trafficking they were tortured.

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[569] C Zimmerman et al, 'The physical and mental health status of trafficked women in seven service settings in Europe' (2006) *London School of Hyginie and Tropical Medicine LSHTM Research Online* 78.
[570] Mike Dottridge, 'Young people's voices on child trafficking: Experiences from South Eastern Europe' (Working Paper, United Nations, 2008).
[571] Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (n 226).

Besides torture, CAT also addresses other forms of cruel, inhuman and degrading treatment.[572] In the case of *Rantsev v Cyprus and Russia*[573] the European Court of Human Rights said that cruel, inhuman and degrading treatment has a close link with trafficking and exploitation.[574]

5 *Criminal Justice Approach*

Another constructive feature of CAT is that it adopts a criminal justice approach, requiring member states to undertake effective legislative, administrative and judicial or other measures.[575] It also focuses on procedural issues, including custody and inquiry, and describes the grounds whereby a member state can establish its jurisdiction.[576] Moreover, CAT addresses extradition for the purpose of effective prosecutions.[577] It requires prompt and impartial investigation of torture,[578] and identifies different rights of offenders such as fair treatment at all stages of enforcement proceedings.[579] To ensure rights of the detainee it suggests reviewing interrogation rules and methods which are used in the custody to treat the arrestee.[580] This Convention also focuses on cooperation among member states to ensure effective prosecutions,[581] and recommends training for enforcement, civil or military, medical professionals and public officials.[582]

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[572] Ibid.
[573] *Rantsev v Cyprus and Russia* (Application No 25965/04, European Court of Human Rights, Grand Chamber, 7 January 2010).
[574] Lorna McGregor, 'Applying the definition of torture to the acts of non-state actors: the case of trafficking in human beings' (2014) 36(1) *Human Rights Quarterly* 210. The Court notes that there is no evidence that Ms Rantseva was subjected to ill-treatment prior to her death. According to the court 'the use of violence and the ill-treatment of victims are common features of trafficking.' The court focused on the living and working conditions of artistes: they are forced to work; they are always under constant surveillance and guard of their employers; they are not allowed to go wherever they want; their passports and other personal documents are retained by their employers or artistic agents; and those who refuse to obey are punished by means of violence or by being imposed unnecessary fees. Such kind of inhuman or degrading treatment has inherently linked to human trafficking and exploitation. *Rantsev v Cyprus and Russia* (Application No 25965/04, European Court of Human Rights, Grand Chamber, 7 January 2010). See para 252, 85.
[575] *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984* art 2, 4.
[576] Ibid art 6.
[577] Ibid art 8.
[578] Ibid art 12.
[579] Ibid art 7.
[580] Ibid art 11.
[581] Ibid art 9.
[582] Ibid art 10.

6 *Enforcement Mechanism*

The most important positive aspect of CAT is that it has a monitoring body – the Committee against Torture (CAT Committee) – which provides recommendations relating to the management of trafficking in its reports relating to different countries.[583]

Bangladesh ratified CAT on 5 October 1998 and it is obliged to submit its initial report to the CAT Committee under article 19 of this Convention. However, Bangladesh was listing as being overdue in its reports, from 2000 to 2018.[584] After receiving its latest reminder from the CAT Committee on 10 December 2018, Bangladesh finally submitted its initial report on 23 July 2019 – that is, 20 years late, as its first report was due on 4 November 1999.[585]

The CAT Committee was satisfied that Bangladesh had ratified relevant human rights treaties and had adopted legislation to criminalise torture. However, the Committee was concerned about allegations of torture and poor treatment by Bangladeshi law enforcement agencies. In addition, it highlighted two major issues which are among the causes of human trafficking in Bangladesh: violence against Indigenous, ethnic and religious minorities and groups, and violence against women.[586]

The CAT Committee was concerned about allegations of torture including physical and sexual violence, and provided evidence of different incidents.[587] There is also a strong allegation that

[583] McGregor (n 574). In addition, the committee suggested Ukraine on the issue of violence against women and children including human trafficking. They emphasized mainly on victim protection and support measures. In 2014, the committee added more recommendations on the report of Ukraine and focused on preventive measures and measures of criminalization; such as strong international cooperation, providing training to all officials who are working to combat human trafficking and ensuring speedy and fair trial. The Committee Against Torture (CAT), *Concluding Observation on periodic reports of Bosnia and Herzegovina*, 45 sess, UN Doc CAT/C /BIH/CO/2-5 (1-19 November 2011). According to the Committee, Bosnia and Herzegovina should take appropriate measures such as international standard domestic legislation, contemporary victim identification system and rehabilitation programme and training and awareness programme.
[584] The Committee Against Torture (CAT), *Concluding Observation on periodic reports of Bangladesh* 67 sess, UN Doc CAT/C/BGD/CO/1 (22 July–9 August 2019).
[585] Ibid.
[586]The Committee Against Torture (CAT) (n 248) para 23, 38.
[587] Ibid.

domestic workers and migrant workers of Bangladesh are subject to ill-treatment and trafficking in Saudi Arabia.[588] The Committee addressed the increasing number of sexual assaults of children and the small numbers of prosecutions and convictions in rape cases.[589] It drew attention to the fact that victims are afraid to file complaints because they lack protection from the police, and because they are continuously threatened by traffickers. As shown in Chapter 1, this has confirmed by my interviewees.

The CAT Committee pointed out that Rohingya refugees are victims of sex and labour trafficking, and that there are more than one hundred cases confirming this. Notwithstanding this, the High Court of Bangladesh has refused to receive any complaints from Rohingya refugees, despite the fact that they are entitled to bring trafficking-related cases before the court under Bangladesh law.[590] This issue was also confirmed in the Trafficking Report of 2019.[591]

Like CERD, the CAT Committee has limited scope to entertain any individual complaints unless member states make a declaration (in this case, under article 22).[592] As Bangladesh has not yet made any such declaration, the individual complaint procedure is not available in Bangladesh. That said, a Bangladeshi national filed a complaint to the CAT Committee against a deportation order made by Sweden.[593] He argued he had been tortured and harassed in Bangladesh and that if

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[588] Kafala system is also known as sponsor system where employer has used excessive rights and power over employee. Generally foreign workers and domestic workers come into different Middle East countries through this system. Kafala is against the labour law and similar to slavery as workers are forced to work in a poor environment and without any payment. They are not allowed to take rest and leave. Most of the female workers become victim of sexual exploitation and other harassment. Employers take their passports and other legal documents. Workers are not allowed to change the job and leave the country without the permission of the authority. Even they are not authorised to lodge any complaints against their employer. Azhar Khan, 'Why it's time to end kafala', *The Guardian* (Online, 27 February 2014) <https://www.theguardian.com/global-development/2014/feb/26/time-to-end-kafala>.As per the committee, kafala system is facilitating the crime of trafficking and they suggested protecting migrant workers and domestic workers, reforming the kafala system, providing data on complaints of the victims and ensuring shelter and other facilities for victims of torture, ill-treatment, and trafficking. Likewise, Committee against Torture, UN Special Rapporteur on Torture issued a report about trafficking of women in order to improve the system of protection of women from torture. The Committee Against Torture (CAT), *Concluding Observation on periodic reports of Saudi Arabia*, 57 sess, UN Doc CAT/C/SAU/CO/2 (18 April-13 May 2016). See Paragraph 38-40.

[589] The Committee Against Torture (CAT) (n 248) para 38.

[590] Ibid.

[591] U.S. Department of State, 'The Trafficking in Persons Report' (Annual Report, 20 June 2019).

[592] *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984* art 22.

[593] The Committee Against Torture (CAT), *Decision on Communication No. 326/2007*, 41 sess, UN Doc CAT/C/41/D/326/2007 (14 November 2008).

he returned, he would be victimised again.[594] Overall, the CAT Committee is not satisfied with the performance of Bangladesh and it has required the country to submit a follow-up report by 9 August 2020. The next report of Bangladesh required after that is due on 9 August 2023.

Despite having a monitoring body to review state performance, CAT has been criticised on a number of different grounds since its adoption. In particular, it has been criticised as having definitional limitations and a limited human rights approach. It has only been applied in cases where public or state officials are involved, and it does not focus on the action of non-state actors. This is a significant gap because there are many non-state actors – including private individuals, criminal groups, and corporations – who are responsible for committing torture.[595]

In terms of a human rights-based approach, CAT highlights the right of individuals not to be subjected to torture or to cruel, inhuman or degrading treatment, just like article 5 of the UDHR and article 7 of the ICCPR. CAT also identifies the right of the complainant and witnesses to be protected by law enforcement officials.[596] Victims also have the right to fair and adequate compensation.[597]

J *International Labour Instruments*

As noted in Chapter Two, poverty and economic disparities both between and within countries creates an environment within which forced or unfree labour can become a problem. There are a number of different International Labour Organisation (ILO) instruments which prohibit forced and compulsory labour. In this thesis I focus on the one that is directly relevant – the Convention Concerning Forced or Compulsory Labour 1930 ('Forced Labour Convention').[598] At the outset, this section explores the connection between forced or unfree labour with human trafficking. It then demonstrates that by taking a strong human rights-based response and ensuring a strong enforcement mechanism, international law can work effectively against forced and compulsory

[594] Ibid.
[595] Robert McCorquodale and Rebecca LaForgia, 'Taking off the blindfolds: Torture by non-state actors' (2001) 1 *Human Rights Law Review* 189.
[596] *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984* art 13.
[597] Ibid art 14.
[598] *The Forced Labour Convention* opened for signature 28 June 1930, no 29 (entered into force 01 May 1932).

labour and thereby assist victims of human trafficking.

1 *Forms of Forced Labour*

Forced labour is a situation where a person is bound to work under threat of physical, psychological, or financial harm.[599] As noted previously in Chapter One, traffickers use different means of exploitation and tactic to create an environment of forced labour.

There are various forms of forced labour, such as child labour, bonded labour, domestic servitude, trafficking in persons, slavery and compulsory public work. Child labour refers to a situation where children who are under the age of 18 years are forced to work, which can be harmful and dangerous for their health and wellbeing. Migrant workers can also be the victims of labour exploitation. Often, irregular migrant workers are forced into labour after arriving at destination country. Migrant workers may also face forced labour conditions in destination countries even when they are recruited in a legal way. Victim Rubina, who shared her experience of sexual exploitation and forced labour in Chapter One, was a migrant worker who went to Oman through a recruitment agency in a legal way.

Forced or unfree labour can be found in different sectors such as in farms, fishing industry, factories, domestic situations, and construction.

In the fishing industry, victims are often under threat of physical harm, sexual abuse, and psychological pressure. Most times, the recruitment process and working conditions in marine capture, aquaculture and seafood processing operations are considered modern slavery, as it involves a gross violation of human and labour rights.[600] It has also been identified and documented in various studies that human trafficking, forced labour, child labour and violations of other human rights are a common scenario in the fishing industry.[601]

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[599] Ibid art 2(1).
[600] Ibid.
[601] FishWise,'Trafficked: Human rights abuses in the seafood industry', *FishWise* (Report, 2013) <www.fishwise.org/services/human-rights>.

In the textile industry, hazardous working conditions, as well as physical and sexual violence, are very common. Various renowned retail companies have been blamed because of child labour and forced labour conditions in their supply factories in developing countries.[602] The collapse of Rana Plaza and fire incidents in Taznin Fashion in Bangladesh is further evidence of the forced labour conditions in Bangladesh's textile industry. Both retailers and source countries have a responsibility to maintain international labour standards and human rights according to ILO Declaration.[603] The ILO is also working to control the demand and supply of forced labour through controlling the behaviour of member states and retail companies.[604]

Globally, some 25 million people are victims of forced labour, and 90% of these are victims of trafficking.[605] According to the ILO, 22% of forced labour victims are from forced sexual exploitation, and 68% are from forced labour exploitation.[606] None of the international human rights instruments discussed earlier identified the link between human trafficking and forced labour. Although the *Trafficking Protocol* (discussed in Chapter Three) includes forced labour in its trafficking definition, it does not explain the term in any detail. In addition, the custodian body of the TOCC does not address the issue of forced labour.[607]

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[602] S. L. Bachman, 'Impacts on International Business' [2000] 35(3) *Business Economics* 31; Debora L. Spar, 'The spotlight and the bottom line: How multinationals export human rights' (1998) *Foreign Affairs* 7; Muhammad Azizul Islam and Craig Deegan, 'Media pressures and corporate disclosure of social responsibility performance information: A study of two global clothing and sports retail companies' (2010) 40(2) *Accounting and Business Research* 131.

[603] The ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) art 4(j) in giving effect to their obligations under the Convention to suppress forced or compulsory labour, providing guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked. Protocol of 2014 to the Forced Labour Convention, 1930 art 2(e) of the ILO Protocol calls on member states to take measures 'supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour.'

[604] ILO is working with workers and employers to improve industrial safety, build the capacity of national regulatory bodies, and enhance Occupational Safety and Health in Bangladesh. Currently a project 'Decent Work Country Programme (DWCP) for Bangladesh 2017-2020' is running by ILO in Bangladesh which is based on 'partnership' among the tripartite constituents (government, employers and workers) and the ILO Country Office. International Labour Organisation, 'Decent Work Country Programme (DWCP) for Bangladesh 2017-2020 ' (Report, , ILO, 31 July 2018).

[605] International Labour Organisation, 'Global estimates of modern slavery: Forced labour and forced marriage ' (Executive Summary, ILO, 2017) <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575540.pdf>.

[606] International Labour Organisation, 'ILO Global Estimate of Forced Labour 2012: Results and Methodology ' (Report, , ILO, 1 June 2012) <http://www.ilo.org/global/topics/forced-labour/publications/WCMS_182004/lang--en/index.htm>.

[607]Hila Shamir, 'A labor paradigm for human trafficking' (2012) 60 *University of Chicago Law Review* 76.

2 *Established the Connection between Trafficking and Forced Labour*

There are six elements which need to be present in a case of forced labour. Firstly, the victims must be always under threat (this may include physical, sexual, or other types of violence). Rubina's horrible experience was set out in Chapter One. She was brutally raped by several people. When she refused, she was brutally assaulted. She had no idea that she would survive. Secondly, victims must be confined; they must lose their right of freedom of movement. Rubina was confined in a room for 17 days and was not allowed to talk to anybody during this time. Thirdly, there are many cases where victims have no option but to work on order to pay a debt. They effectively become a security against a debt or loan. Traffickers usually convert the cost of the process of recruitment and transportation into a debt which victims must pay by working. Fourthly, forced labour victims rarely get their wages. For instance, Victim Rubina was assured she would be given 25000 taka (AUD 413) as a monthly salary. She was never paid what she was promised. Fifthly, when victims arrive in a destination country, traffickers confiscate their passports and other identity documents. This was confirmed through my field work, and this happened to Rubina. Finally, victims are threatened with exposure for failing to have legal documents.

3 *Human Rights Approach*

As trafficking became a highly profitable business for organised crime, the ILO adopted the Declaration on Fundamental Principles and Right at Work ('ILO Declaration') in 1998.[608] This Declaration works as a foundation to combat forced labour and human trafficking by encapsulating four different principles.[609] It also emphasises the responsibility of state parties to respect and promote those principles.

[608] International Labour Conference, *ILO Declaration on Fundamental Principles and Rights at Work and its follow-up*, Declaration, 86 sess, (18 June 1998).
[609] *ILO Declaration on Fundamental Principles and Rights at Work 1998* art 2 states four principles and these are: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

The ILO Declaration includes all four major principles of human rights[610] following the UDHR.[611] Although a soft law instrument, it has been supported and acknowledged by a range of NGOs and labour rights organisations,[612] who pressure multinational companies to adopt workplace human rights standards according to the ILO Declaration.[613] Islam and Deegan found that retail companies are responding following the ILO Declaration, as it creates pressure on suppliers to adopt ILO standards: this has been confirmed through a case study conducted in Bangladesh's textile industry.[614]

Introduced in 1930, the Forced Labour Convention defines forced labour and addresses the particular situation where victims are forced to work involuntarily.[615] It also recognises different rights of workers, such as the right to compensation for accident or sickness,[616] and health rights.[617] It prohibits forced labour as method of punishment[618] and for the transport of goods and persons.[619] Through articles 14 and 15 this instrument suggests to undertake adequate measures to apply all the regulations strictly to prevent forced labour and to penalise all forced labour.[620] In addition,

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[610] Four Fundamental Workplace rights are:

1. Freedom of association and effective recognition of the right to collective bargaining
2. The elimination of all forms of forced and compulsory labour
3. The effective abolition of child labour
4. The elimination of discrimination in respect of employment and occupation.

[611] Muhammad Azizul Islam and Ken McPhail, 'Regulating for corporate human rights abuses: The emergence of corporate reporting on the ILO's human rights standards within the global garment manufacturing and retail industry' (2011) 22(8) *Critical Perspectives on Accounting* 790.

[612] Ibid. Labour Right organization includes The International Confederation of Free Trade Unions (ICFTU), World Confederation of Labour (WCL), International Textiles, Garments and Leather Workers' Federation (ITGLWF), Oxfam International, Ethical Trading Initiatives (ETI), Fair Labour Association (FLA) and Clean Clothes.

[613] Ibid.

[614] Ibid.

[615] *The Forced Labour Convention*, opened for signature 28 June 1930 (entered into force 1 May 1932). Moreover, it states some exceptional circumstances which cannot be treated as forced labour such as compulsory military service, some works under normal civic obligations, prison labour and emergency work. International Labour Organisation, 'Human trafficking and forced labour exploitation - guidance for legislation and law enforcement ' (Report ILO, 1 January 2005) < http://www.ilo.org/global/topics/forced-labour/publications/WCMS_081999/lang--en/index.htm>.

[616] *The Forced Labour Convention (1930)* art 15.

[617] Ibid art 16, 17.

[618] Ibid art 20.

[619] Ibid art 18.

[620] Ibid art 24 states: Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner. Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted. And art 25 states -- The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

the Forced Labour Convention identifies commercial sexual exploitation as one form of forced labour.[621]

Another relevant international labour law instrument is the Abolition of Forced Labour Convention,[622] which suggests the abolition of forced labour in the field of political coercion, mobilisation and discrimination, and no forced labour for economic development or for taking part in strikes.[623] This Convention also acknowledges earlier instruments on slavery which prohibit compulsory and forced labour, debt bondage and serfdom.[624] This instrument also mentions effective measures to abolish forced labour, though it does not directly penalise this offence.

These ILO Conventions adopt a human rights approach to identify the global supply and demand of forced labour. The ILO has given special attention to the issue of human trafficking through these different conventions.[625]

4 *Child Labour*

The ILO has also addressed the issue of child trafficking by adopting the Minimum Age for Admission to Employment Convention (Minimum Age Convention)[626] and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention).[627] These two treaties do not prohibit all kinds of child work.[628] According to ILO and UNICEF, some works which are suitable for the age and maturity, which help children to gain knowledge, skill, and to increase sense of responsibility,

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[621] International Labour Organisation (n 615).
[622] *Abolition of Forced Labour Convention, (No. 105)*, opened for signature 25 Jun 1957 (entered into force 17 Jan 1959).
[623] International Labour Organisation (n 615).
[624] *The Slavery Convention*, opened for signature 25 September 1926, 60 LNTS 253 (entered into force 9 March 1927); *The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery* opened for signature 7 September 1956, 3 UNTS 266 (entered into force 30 April 1957).
[625] International Labour Organisation (n 615).
[626] *Minimum Age Convention 1973, (No. 138) Convention concerning Minimum Age for Admission to Employment*, opened for signature 26 Jun 1973 (entered into force 19 Jun 1976).
[627] *Worst Forms of Child Labour Convention, (No. 182) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, opened for signature 17 June 1999 (entered into force 19 November 2000).
[628] Scarpa (n 389).

should not be abolished.[629] The ILO and UNICEF have also taken steps to address human trafficking in children.[630]

The Worst Forms of Child Labour Convention is the only international instrument that broadly describes child labour and its different modes of exploitation. Through this Convention, the ILO considered child trafficking as one of the worst forms of forced labour.[631] Article 3 defines the 'worst forms of child labour' as comprising:

> (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
> (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
> (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties and
> (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.[632]

However, these Conventions have proven ineffective. For that reason, in 2014 the international community decided to adopt a Protocol to the Forced Labour Convention,[633] and the Forced

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[629] Ibid.
[630] ILO and UNICEF address the differences between child work and child labour.[630] In addition, they give importance to those works which ultimately benefit the child and his family and which may include light work and not harmful for child's health. The 1973 Convention concerning Minimum Age for Admission to Employment prohibited child labour while the 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour focused on the abolition of worst forms of child labour. Convention no 138 fixed a minimum age 18 years for those types of employment which may cause suffering to the young persons. It suggests incorporating national policy to abolish child labour and to adopt national laws and regulations to penalise forced or compulsory labour. *Minimum Age Convention, 1973 (No. 138) Convention concerning Minimum Age for Admission to Employment, Worst Forms of Child Labour Convention, 1999 (No. 182) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. Corin Morcom and Andreas Schloenhardt, *All about Sex?!: The Evolution of Trafficking in Persons in International Law* (University of Queensland Human Trafficking Working Group, 2011). *Minimum Age Convention, 1973 (No. 138)* art 1, 3, 9.
[631] *Worst Forms of Child Labour Convention, 1999* art 3 (a).
[632] Ibid.
[633] *Protocol of 2014 to the Forced Labour Convention, 1930* opened for signature 11 Jun 2014 (entered into force 09 Nov 2016).

Labour (Supplementary Measures) Recommendation.[634] This new Protocol added strict obligations upon state parties and addressed the need for prevention and protection of human trafficking, and appropriate remedies for violations of victims' rights. It also identifies that migrant workers are at higher risk of becoming victims of compulsory or forced labour.[635]

5 *Supervisory Body*

The most important feature of the ILO Conventions is that there is a long-standing supervisory body known as the Committee of Experts on the Application of Convention and Recommendations ('CEACR') to monitor the implementation of its eight fundamental instruments.[636] This includes the Forced Labour Convention, the Minimum Age Convention, and the Worst Forms of Child Labour Convention.

ILO member states have an obligation to report to the CEACR on their legislative, judicial and administrative responses to ratified Conventions. Bangladesh has been a member state of the ILO since 22 June 1972. It has ratified a total of 35 ILO Conventions, including 7 fundamental instruments. However, Bangladesh has not yet ratified the Minimum Age Convention. Bangladesh submits its reports regularly, and according to CEACR's most recent concluding observation, Bangladesh needs to focus more on investigation, prosecution and victims' protection to ensure international labour standards are met.[637]

CEACR has highlighted the importance of strong law enforcement agencies to ensure identification and investigation of force laboured cases, and has requested that Bangladesh submit its next report on section 9 of the *Human Trafficking Act*, which is about forced labour.[638] To

[634] Masha Gessen, *Words will break cement: The passion of Pussy Riot* (Riverhead Books, 2014).
[635] *Protocol of 2014 to the Forced Labour Convention, 1930* opened for signature 11 Jun 2014, (entered into force 09 Nov 2016). See preamble.
[636] Unlike other treaty bodies, this Committee follows the ILO Constitution. It provides two types of comments such as observations and direct requests that focus on human rights violations, labour standards, labour market and management, production, wages, working environments and conditions, the rights of workers and other social protections. This Committee is working with other treaty bodies.
[637] The Committee of Experts on the Application of Convention and Recommendation (CEACR), *Concluding observation on reports of Bangladesh*, 107 sess, (2018).
[638] Ibid.

prevent child trafficking and child labour, CEACR has required member states to undertake a criminal justice approach involving effective investigations and prosecutions. To prevent child labour, it also encourages ensuring primary and secondary education for children.[639]

K *Migrant Workers in International Conventions*

The ILO has various instruments to protect the rights of migrant workers who are vulnerable for human trafficking.[640] Migrant workers are also protected by the all core international human rights treaties. To ensure the rights of migrant workers a specific instrument was created in 1990, known as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Worker Convention).[641] It addresses the exploitation of migrant workers, and protects both documented and undocumented migrant workers. Trafficked persons may fall into the category of migrant workers.[642] This Convention is considered complementary to the aforesaid ILO instruments.

1 *Human Rights Approach*

At the outset, the Migrant Worker Convention acknowledges all fundamental instruments on human rights. It follows a human rights approach and identifies various rights of migrant workers in part III (articles 7-35). It also identifies the rights of migrant workers at destination countries. This Convention is a gender neutral treaty applicable to all victims irrespective of race, gender, or culture. Furthermore, the Migrant Worker Convention has emphasised state responsibility to deal with the recruitment process and conditions and nature of jobs of migrant workers.[643]

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[639] Ibid.
[640] These instruments are Migration for Employment Convention (Revised), 1949 (No. 97), Migration for Employment Recommendation (Revised), 1949 (No. 86), Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) and Migrant Workers Recommendation, 1975 (No.151).
[641] *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, opened for signature 18 December 1990, 3 UNTS 2220 (entered into force 1 July 2003).
[642] Gallagher (n 522).
[643] Morcom and Schloenhardt (n 630).

2 *Monitoring Body*

Like other human rights treaties, this Convention has a specific monitoring body, known as Committee on the Protection of the Rights of All Migrant Workers and Member of Their Families ('CMW'). While there are a large number of Bangladeshi men and women working in different parts of the world, Bangladesh took a long time to ratify this Convention, and did not do so until 24 August 2011. Furthermore, Bangladesh has not yet made any declarations to accept the individual complaint procedures under article 77 of this Convention.

Bangladesh submitted its first report in 2015 (though it was due in 2012).[644] The CEACR then provided its concluding observations on 22 May 2017. It expressed dissatisfaction with the work of the National Human Rights Commission, which is authorised to examine the violation of rights of Bangladeshi migrant workers.[645] The CEACR recommended decriminalising illegal entry, to prevent abuse of human rights of foreigners.[646] It also expressed concern that consular assistance in destination countries was inadequate, and officers should be trained to provide specialist assistance and support to victims.[647] My fieldwork confirmed that the Bangladesh embassies in Middle Eastern countries are not taking adequate steps to support victims.

The CEACR has also focused on the rights of domestic migrant workers who are physically and mentally abused. Chapter One described how Rubina was sexually and physically assaulted when she was recruited as a domestic worker in Oman. The CEACR recommended that Bangladesh monitor recruitment agencies to prevent labour trafficking. It also recommended ensuring safe return and proper reintegration of victims. Notwithstanding this recommendation, the failure to address the conditions of returning domestic migrant workers creates the spectre of re-trafficking. Overall, the CEACR was dissatisfied with Bangladesh's efforts to compensate, rehabilitate, protect and provide support services to victims of trafficking.

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[644] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Consideration of reports submitted by States parties under article 73 of the Convention*, UN Doc CMW/C/BGD/1 (29 February 2016).
[645] Committee on the Protection of the Rights of All Migrant Workers and Member of Their Families (CMW), *Concluding observations on the initial report of Bangladesh*, 26 sess, UN Doc CMW/C/BGD/CO/1 (3-13 April 2017).
[646] Ibid.
[647] Ibid.

The ILO is still working to tackle labour trafficking by undertaking different practical approaches. These include conducting research on the issue of trafficking and forced labour, organising different awareness raising projects, developing law and policy, and adopting different rehabilitation measures for victims. By collecting data from different countries, the ILO is trying to establish a specific link between human trafficking and forced labour. The ILO Declaration is also playing a pivotal role by guiding state parties to incorporate hard laws to maintain international labour standards in their factories, although this Declaration does not put any strict obligations on retail companies.

While ILO Conventions are highlighting more of a human rights response than criminalisation, the ILO's supervisory body (the CEACR) focuses more on identification, investigation and prosecution of forced labour cases. The CEACR is also working with other treaty bodies, including the Migrant Workers Committee, to ensure international labour standards by interpreting the rights of workers and pointing out the gaps on actions of member states. However, their recommendations are considered soft law instruments which focus on only positive obligation of states to ensure labour rights. While the international human rights movement is paying more attention to the issue of social and economic rights, a labour-based anti-trafficking policy is badly needed for the effective implementation of labour rights.

L *Conclusion*

The elevated numbers of victims of trafficking have raised questions about the effectiveness of existing international criminal frameworks. Although the lack of implementation and monitoring mechanisms create controversy with regard to its application, international law in this area has paved the way for a human rights-based approach towards trafficking.

Most of the international instruments discussed in this Chapter adopt a human rights approach to fight against human trafficking. Unlike international criminal law, these instruments apply only a very limited criminal justice framework. The UDHR, ICCPR and ICESCR identify different civil, political, social and economic rights of individuals which are threatened by processes of

trafficking; and conversely, poor conditions of those rights are the causes of human trafficking. CEDAW, the CRC and CERD are protecting rights of individuals who are vulnerable to trafficking due to their race, gender, age, culture and ethnicity and religion. The CRPD focuses on rights of persons with disabilities and state obligation to protect them from any kinds of exploitations. The Refugee Convention also gives a great opportunity to trafficked victims to claim refugee status; however, it would be difficult for most trafficked victims to prove all conditions required under Refugee Convention. CAT prohibits all kinds of torture, which is very common in the whole process of trafficking, and this instrument influences the definition of contemporary trafficking. Lastly, international labour law, through its different instruments, is also trying to incorporate a labour framework into present anti-trafficking policies.

The key characteristic of all the aforesaid conventions is that they have specific supervisory bodies to review the application and implementation of their provisions. However, the non-binding nature of some instruments makes member states reluctant to perform their obligations; this is also responsible for irregularity in reporting systems. As I mentioned in section H.6 of this Chapter, although Bangladesh submitted its report under *CAT* after 20 years, there was no strict sanction by the concerned Committee against Bangladesh.

Ratification of relevant conventions and implementation of specific provisions are essential to combat this crime. Bangladesh has recently signed the *Trafficking Protocol*, and it is a signatory state of the ICCPR, the ICESCR, CEDAW, the CRC, ILO Conventions No 29 and its Protocol and other international human rights instruments. As a member state of relevant international criminal laws outlined in Chapter Three and human rights laws, how are Bangladeshi laws and institutions responding? This is the topic of Chapters Five and Six.

CHAPTER 5: DOMESTIC LEGAL INSTRUMENTS AND A CRIMINAL JUSTICE APPROACH TO HUMAN TRAFFICKING

As we have seen in Chapters Three and Four, the international community has urged countries to ensure that proper and effective investigations and prosecutions are conducted, and criminals duly punished, in cases of human trafficking.[1] An effective criminal justice approach also ensures justice for victims.[2] Some scholars focus on the activities of law enforcement.[3] Other researchers point out the importance of a human rights framework to ensure the rights of trafficked victims.[4] In truth, both are necessary.

The obligation to investigate, prosecute and punish trafficking has been addressed both in international human rights law and international criminal legal frameworks, as I have set out and analysed in the past two Chapters. Under international criminal law, trafficking is a crime and states have a positive obligation to take appropriate steps to prevent it. To that end, as noted above, Bangladesh has signed various international instruments, such as the *1949 Convention*, the *Slavery Convention*, the *SAARC Convention*, and it recently signed the *Trafficking Protocol*.

In addition, Bangladesh has an obligation under customary international law to investigate and prosecute violations of human rights.[5] As a crime against humanity, states have an obligation to

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[1] Anne T Gallagher and Nicole Karlebach, 'Prosecution of trafficking in persons cases: Integrating a human rights-based approach in the administration of criminal justice' (Background Paper, UN Human Rights Office of the High Commissioner (OHCHR), 2011).

[2] Tom Obokata, 'Shorter articles, comments, and notes: Trafficking of human beings as a crime against humanity: Some implications for the international legal system' (2005) 54(2) *International & Comparative Law Quarterly* 445.

[3] Mike Grewcock, 'Irregular migration, identity and the state-the challenge for criminology' (2003) 15 *Current Issues Criminal Justice* 114; Marie Segrave, 'Surely Something Is Better Than Nothing-The Australian Response to the Trafficking of Women into Sexual Servitude in Australia' (2004) 16 *Current Issues Criminal Justice* 85.

[4] See Tom Obokata, 'A human rights framework to address trafficking of human beings' (2006) 24(3) *Netherlands Quarterly of Human Rights* 379; Bernadette McSherry, 'Trafficking in persons: A critical analysis of the new Criminal Code offences' (2007) 18(3) *Current Issues in Criminal Justice* 385.

[5] Naomi Roht-Arriaza, 'State responsibility to investigate and prosecute grave human rights violations in international law' (1990) 78 *California Law Review* 449. For example, the *Universal Declaration of Human Rights 1948* ensures right to remedy which becomes customary international law and it reflects the obligation to investigate and prosecute perpetrators. Human trafficking is also categorised as crime against humanity according to article 7 of the Rome Statute. The *Rome Statue of International Criminal Court 1998* art 1 states: For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe

take action against non-state actors, and even against other states who fail to protect trafficked victims.

In spite of the different international instruments addressing trafficking, it has been reported that the prosecution numbers in source countries are low.[6] According to the UNODC Global Report on Trafficking in Persons, 'the overall criminal justice response to trafficking in persons, which has historically been very weak, has not improved significantly'.[7]

As a part of the international community, Bangladesh has responsibilities and obligations to address trafficking appropriately. As UN Special Rapporteur on Trafficking in Persons, Joy Ngozi Ezeilo, stated in her report to the UN Human Rights Council:

> States have a responsibility to protect against human rights abuses, including trafficking in persons and exploitation of persons by third parties, including business enterprises and criminal associations, through appropriate policies, regulation and adjudication.[8]

Table 2 below sets out the lists of international instruments of which are signed, acceded and ratified by Bangladesh.

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deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. Obokata, 'Shorter articles, comments, and notes: Trafficking of human beings as a crime against humanity: Some implications for the international legal system' (n 2). In addition, the International Criminal Tribunal for the Former Yugoslavia (ICTY) decided that human trafficking is a crime against humanity and which is under the definition of enslavement. Roht-Arriaza (n 5). *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* [2001] 96 (International Criminal Tribunal for the former Yugoslavia (ICTY)).

[6] United Nations Office on Drugs and Crime (UNODC), 'Global Report onTrafficking in Persons' (Global Report, UNODC, December 2018).

[7] United Nations Office on Drugs and Crime (UNODC), 'Global Report on Trafficking in Persons 2016 ' (Global Report, December 2016).

[8] UN News Centre, 'Tackling demand key to combating global human trafficking, UN rights expert stresses', *UN News Centre* (Online, 31 May 2013) <http://www.un.org/apps/news/story.asp?NewsID=45056#.Umzf04FSnVI>.

International Instrument	Signed/Ratified/Acceded
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	A
Convention on Equal Remuneration 1951	R
Convention on Abolition of Forced Labour 1957	R
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery 1956	A
Convention against Discrimination (Employment and Occupation) 1958	R
Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages 1962	A
International Convention on the Elimination of All Forms of Racial Discrimination 1965	R
The International Covenant on Civil and Political Rights (1966) (ICCPR)	A
International Covenant on Economic, Social and Cultural Rights (1966)	A
The Convention on the Elimination of All Forms of Discrimination against Women 1979	A
Convention on Punishment and Prevention of Torture and Inhuman and degrading Treatment 1984	R
The Convention on the Rights of the Child 1989	R
International Convention on the Protection of the Rights of All Migrant Workers and Member of their Families 1990	S
ILO Convention Concerning on the Prohibition and Immediate Action for the Elimination of the worst forms of Child Labour (No 182), 1999	R
Optional Protocol to CEDAW 1999	R

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children , Child Prostitution and Child Pornography 2000	R
SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution 2000	R
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000	R
Convention on the Rights of Persons with Disabilities 2006	R

Table 2: Status of Bangladesh Ratification of Treaties Relevant to Human Trafficking[9]

Despite signing and ratifying a range of relevant instruments, Bangladesh has been criticised for not taking sufficient measures to fight against human trafficking. As per the Trafficking in Persons Report 2019, Bangladesh is listed in the Tier 2 Watchlist (2WL) for the third consecutive year, as it still fails to meet the minimum standards for the eradication of trafficking.[10] As shown in Figure 9 below, this continues the trend of a worsening ranking for Bangladesh over time.

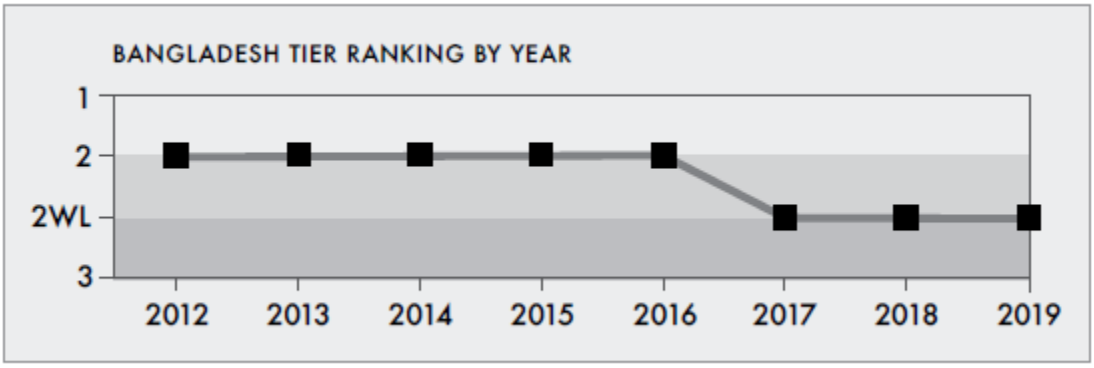

Figure 9: Bangladesh Tier Ranking by year[11]

[9] Winrock International, 'Review of Laws against Human Trafficking in Bangladesh prepared for Winrock International's Actions for Combating Trafficking-in-Persons (ACT) Program' (Project, Winrock International, 2011) <http://www.academia.edu/9498745/Review_of_Laws_against_Human_Trafficking_in_Bangladesh_prepared_for_Winrock_Internationals_Actions_for_Combating_Trafficking-in-Persons_ACT_Program>.
[10] United States Department of State, 'The Trafficking in Persons Report' (Annual Report, 20 June 2019).
[11] United States Department of State, 'Trafficking in Persons Report' (Annual Report, 28 June 2018).

The historical roots of national trafficking related laws can be found in the Constitution of the People's Republic of Bangladesh.[12] There is also legislation which specifically addresses human trafficking, along with other legislation addressing different criminal acts related to this crime. There are also rules, policies and regulations in Bangladesh to combat human trafficking.

This chapter considers the criminal justice approach adopted by Bangladesh to fight against human trafficking. It demonstrates that poor enforcement and implementation make these instruments ineffective to fight against human trafficking.

The first part of this chapter focuses on the legislation developed before the passing of the Prevention and Suppression of Human Trafficking Act 2012, to provide a historical context to the current laws. The second part of the chapter considers earlier laws that set out offences that are connected with human trafficking, and that also highlight human rights threatened by trafficking. This part also addresses instruments that criminalise human trafficking and forced labour. Part three of the Chapter addresses the current laws on human trafficking and considers why these have been poorly implemented. The final part of the chapter evaluates the Bangladeshi case law on trafficking in light of relevant international law.

A *Legislation Prior to the Human Trafficking Act (2012)*

This section of the chapter demonstrates how previous legal frameworks have proven ineffective.

The *Suppression of Immoral Traffic Act 1933*[13] was the first legislation in Bangladesh that was aimed at preventing prostitution and trafficking of women and girls for 'immoral purposes'. It had both positive and negative features.

The most positive contribution of the law was that it adopted a criminalisation approach, prohibiting brothels and punishing brothel owners.[14] Under s 6, the Superintendent of Police had

[12] Winrock International (n 9).
[13] *Suppression of Immoral Traffic Act 1933* (Bangladesh).
[14] Ibid s 4.

power to close down brothels. Soliciting for the purposes of prostitution was a punishable offence.[15] Section 9 prohibited procuring of people for the purpose of prostitution, and, importantly, section 10 ensured punishments for 'importing' a female for prostitution. Sections 11[16] and 12[17] of this Act prescribed punishment in cases of forced prostitution. Thus, punishment is the main objective of this Act.

Unfortunately, this legal instrument included definitional limitations, was racist, gender-biased, limited in scope and had a very limited human rights approach. Firstly, there was no definition of human trafficking in the Act. It defined brothel and prostitution, but not 'importing'. Secondly, this instrument was gender-biased as it did not apply to women who are over 18 years old, nor did it apply to male victims. The instrument authorised police to raid brothels and rescue girls who are under 18. But under the Act, adult victims did not have any remedy. Thirdly, the Act had a very limited scope, as it only focused on the commercialisation of sex work and it used the word importing instead of using the word trafficking.[18]

Finally, the *Suppression of Immoral Traffic Act 1933* only recognised a very limited range of human rights of victims. For victims under 16, they could be protected in safe custody by judicial order until their cases were addressed.[19] Detaining victims for the purpose of disposing of criminal cases is a great violation of victims' rights. The Act could rather have used the term shelter and rehabilitation to provide support to rescued girls. Under section 18, the Court and Magistrate may order parents or other people to provide maintenance to the girls who are in safe custody.[20]

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[15] Ibid s 7.
[16] Ibid. Section 11 states:
Any person who detains-
(a) any female under the age of eighteen years', against her will in any house, room or place in which prostitution is carried on, or
(b) any female against her will in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband, whether with any particular man or generally, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand Taka or with both.
[17] Ibid. Section 12 states: If any person having the custody, charge or care of any girl under the age of eighteen years causes or encourages or abets the seduction or prostitution of that girl he shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand Taka, or with both, and, if a male person, shall be liable also to whipping.
[18] Winrock International (n 9).
[19] *Suppression of Immoral Traffic Act, Bangladesh 1933* s 17.
[20] Ibid s 18.

Due to these legal gaps, at the turn of the century Bangladesh replaced this Act with the *Prevention of Women and Child Repression Act 2000* (subsequently amended in 2003).[21] This Act also adopted a criminalisation approach to ensure punishment of all types of crimes against women and children. This Act also repealed the *Prevention of Women and Children Repression (Act XVIII of 1995)*,[22] which had some specific provisions regarding human trafficking. This Special Act had been a modification of the Cruelty to Women (Deterrent Punishment) Ordinance of 1983.

Although there is no definition of human trafficking in the *Prevention of Women and Child Repression Act 1995*, it does criminalise importing, exporting, buying or selling, hiring or otherwise disposing of any woman for the purpose of prostitution or illicit intercourse or unlawful and immoral activities.[23] Through section 9 it also penalises abduction of women for the purpose of prostitution, immoral purposes, forced marriage and forced sexual intercourse. As this Act only focuses on prostitution and trafficking of women, trafficking of men and children (s 8 does not use the word children while describing penalty for trafficking)[24] and other forms of trafficking are unaddressed by this legislation.

The *Women and Children Repression Prevention Act 2000* is an effective legal instrument to fight against different types of crimes and violence towards women and children. The most important feature of this instrument for our purposes is that it has two provisions relating directly to human trafficking.[25] While it does not define human trafficking, it does define transportation of women

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[21] *Women and Children Repression Prevention Act (amended 2003) 2000* (Bangladesh).
[22] *Prevention against Women and Children (Special Act) 1995* (Bangladesh).
[23] The *Prevention of Women and Child Repression Act 1995*. Section 8 states: Penalty for trafficking etc. in women - (1) Whoever imports, exports, buys or sells or lets to hire or otherwise disposes of any woman with intent that such woman shall be employed for the purpose of prostitution or illicit intercourse or unlawful and immoral activities, shall be punishable with lifelong imprisonment, and shall also be liable to fine.
[24] Ibid.
[25] The *Women and Children Repression Prevention Act 2000* (Bangldaesh). Section 5 states:
i. Whoever fetches from abroad or dispatches or sends abroad for prostitution or, to engage a woman in illicit immoral act or sale or buy or, for the purpose of torturing her in rent or otherwise or, keeps a woman in his possession, custody or security for such purpose, he shall be punished with death or transportation for life or with rigorous imprisonment of either description which may extend to twenty years but not less than ten years and also with fine.
ii. If a woman is transferred through sale rent or otherwise to a prostitute or the caretaker of a brothel or the manager of it, the man transferring such, if not proved otherwise, shall be deemed to have sold or transferred the woman for

and children for sexual exploitation. As such, it acknowledges both internal and cross border trafficking and refers to different methods of trafficking, including buying, selling and stealing. Section 12 of this Act describes the punishment for removal of organs of children for the purpose of sale.[26] It also criminalises other activities that are connected with human trafficking, including rape,[27] sexual harassment,[28] and abduction of women and children.[29]

However, the Act has been criticised, as it is totally silent about the protection of victims and witnesses of trafficking cases.[30] As noted above, it also focuses exclusively on trafficking for prostitution, and is totally silent about other forms of exploitation such as labour and organ trafficking. Though trafficking is a cross border crime, the Act also lacks any specific provisions relating to investigation. The Act is more concerned with punishment than ensuring the rights of victims. Moreover, like its predecessor this instrument is not gender neutral; it continues to ignore the issue of male trafficking.

Before 2012, it was only the Special law which had any direct provision for human trafficking. The government of Bangladesh also passed the *Domestic Violence (Prevention and Protection) Act 2010* to prevent domestic violence (one of the causes of human trafficking) and to protect women and children from domestic violence. This Act defines domestic violence as 'any act of physical abuse, psychological abuse, sexual abuse or economic harm by a person against a woman or child with whom he has a family relationship'.[31] It also provides a range of rights to victims, including the right to obtain a protection order,[32] a compensation order if a victim has suffered any

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the purpose of prostitution and shall also be punished under sub-section (i).
iii. If the caretaker of a brothel or any person engaged in the management of the brothel, keeps in his possession or custody of any woman through sale, rent or otherwise, he shall be deemed, if not proved otherwise, to have bought or rented or taken in possession or custody of that woman to use that woman as a prostitute and shall be punished under sub-section (i).

[26] Ibid. Section 12 states: Punishment for impairing any limb of a child for the purpose of begging:
Whoever damages hands, feet, eyes or any other limb of a child, or makes disabled or disfigured by any means, for the purpose of making him a beggar or to sale any part thereof, he shall be punished with death or rigorous imprisonment for life and also with fine.

[27] Ibid s 9.

[28] Ibid s 10.

[29] Ibid s 7.

[30] Winrock International (n 9).

[31] *Domestic Violence (Prevention and Protection) Act 2010* (Bangladesh) s 3.

[32] Ibid s 14.

physical, psychological or financial harm or damage to movable or immovable property,[33] and a custody order.[34]

The next section addresses all the other existing domestic legal instruments relating to human trafficking.

B *The Constitution and Other Legal Instruments*

1 *The Constitution of the People's Republic of Bangladesh*

(a) A Human Rights-based Response

The Constitution[35] is the supreme law of Bangladesh, ensuring the constitutional rights of its citizens and enabling monitoring of the application and effectiveness of other domestic laws. It focuses on human rights of the individual and includes rights in Articles 27 – 47 that follow the UDHR the ICCPR and the ICESCR. Although the Constitution does not contain any provisions directly relating to human trafficking, a number of its articles address fundamental rights, some of which are relevant to the prevention of trafficking.

For example, article 27 ensures the right of equal protection under the law and equal treatment before the law.[36] Art 28 prohibits discrimination.[37] The right to protection of the law is also guaranteed under article 31.[38] Article 32 establishes the right to life and the right to personal liberty.[39] However, in practice women, children, Rohingya refugees and Indigenous people are more vulnerable to trafficking as they are most discriminated against in this society. Rohingya Refugees have limited human rights and they may face restrictions when trying to enroll their children at school. The status of Rohingya refugees was portrayed in detail in Chapter One. When

[33] Ibid s 16.
[34] Ibid s 17.
[35] *Constitution of the People's Republic of Bangladesh 1972.*
[36] Ibid art 27.
[37] Ibid art 28.
[38] Ibid art 31.
[39] Ibid art 32.

victims returned to Bangladesh and took initiative to sue criminals, they received continuous threat from criminals, as also highlighted in Chapter One. However, they are being adequately protected by the law. There is no specific law to protect witnesses who are involved in trafficking cases.

The Constitution indirectly mentions two forms of human trafficking, namely prostitution and forced labour, in articles 18 and art 34. There are many trafficked victims in brothels, and most of my interviewees were trafficked to India for purpose of prostitution. According to article 18(2), it is the responsibility of the state to take all initiatives to prevent prostitution,[40] and article 34 prohibits all types of forced labour under any circumstances.[41] In addition, articles 35 and 36 address different situations which are also relevant in trafficking cases. Article 35(5) states, 'No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.'[42] As per article 36, 'Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.'[43] Chapter One illustrates how trafficked victims are confined, tortured and forced to work. In addition, it is very common that trafficked victims have to face detention in transit and destination countries. Chapter Six provides further detail on various rights of victims, including the right to be repatriated and reintegrated in their home country.

(b) Feminist Approach

Another positive aspect of the Constitution is that it follows a feminist approach to recognise the different rights of women and children. As we have seen in Chapter One, victims are often women and children as they are vulnerable and a discriminated group within society. The Bangladesh Constitution encourages making laws in favour of women and children who are vulnerable to

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[40] Ibid art 18(2).
[41] The provision incorporates an exception for compulsory labour lawfully imposed. Ibid. Article 34 states:
(1) All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
(2) Nothing in this article shall apply to compulsory labour
(a) by persons undergoing lawful punishment for a criminal offence; or
(b) required by any law for public purposes.
[42] Ibid art 35(5).
[43] Ibid art 36.

treatment as second-class citizens.[44] The *Prevention of Women and Child Repression Act 2000*, the *Domestic Violence (Prevention and Protection) Act 2010* and the *Prevention and Suppression of Human Trafficking Act 2012* are examples of legislation to protect vulnerable women and children.

As the supreme law of the land, the Constitution also describes how to incorporate international law into domestic legislation.[45] However, the effectiveness of the Constitution in protecting human rights has been criticised because it is non-enforceable. That is, although most of the human rights which are threatened by the crime of trafficking are incorporated into the Constitution as fundamental principles of state policies, they are not enforceable in court.

If the Constitution is ineffective to protect people from trafficking, is the criminal law more effective?

(c) Penal Code

The *Penal Code*[46] is the main substantive criminal law instrument of Bangladesh, defining various crimes and setting out specific punishments. That said, the *Penal Code* does not refer to human trafficking or organ trafficking. It does, however, address various offences which may form parts of the crime of human trafficking, including kidnapping and abduction,[47] procuring a minor girl,[48] importing a girl from a foreign country,[49] buying or selling any person as a slave,[50] and buying or selling a minor for prostitution.[51] Forced labour is also penalised under section 374 of this Act. Moreover, according to the *Penal Code*, rape,[52] mock or invalid marriage,[53] wrongful

[44] Ibid art 28(4).
[45] Ibid art 145A.
[46] *Penal Code (Act No. XLV of 1860) 1860* (Bangladesh).
[47] Ibid s 360 – 369.
[48] Ibid s 366A.
[49] Ibid s 366B.
[50] Ibid s 370 – 371.
[51] Ibid s 372 -373.
[52] Ibid s 375- 376.
[53] Ibid s 439,496.

confinement[54] and wrongful restraint[55] are also punishable offences. But the Code does not criminalise child pornography or sex tourism and has been criticised for its insufficient penalties.[56]

2 *Passport Related Laws*

Passport related offences are penalised by the *Passport (Offenses) Act 1952* and the *Passport Order 1973*. Forged documents – such as fake passports, false birth certificates and other fake identity documents – are very common in trafficking cases. In child trafficking cases, traffickers use fake birth certificates to traffic boys and girls from Bangladesh to India. Passport fraud is also common in Bangladesh, and a significant number of victims are trafficked into different countries through forged passports.[57]

Any Bangladeshi passport holder can visit about 41 countries without any prior visa permit.[58] There are also 27 countries which will issue a visa on arrival to government officials of Bangladesh who have valid government passport.[59] Organised criminals have exploited these regulations to traffic victims to countries such as Turkey, Singapore, Malaysia and the Maldives.[60] It has been reported that in the first six months of 2015, about 150 passports were forged, accounting for five percent of total 3000 official passports.[61] According to an investigative report of Bangladesh's Department of Immigration and Passports, numerous corrupt passport officials, staff, brokers and travel agents have been responsible for creating forged passports.[62] Recently, 25 Bangladeshi people were arrested in the Klang Valley, Malaysia with 136 fake passports.[63] A trafficked victim

[54] Ibid s 342.
[55] Ibid s 341.
[56] Winrock International (n 9).
[57] M Abul Kalam Azad and Belal Hossain Biplob, 'Human traffickers find new route for victims from Bangladesh', *The Daily Star* (Online, 7 November 2015) <https://www.thedailystar.net/frontpage/human-traffickers-find-new-route-168727>.
[58] Enamul Haque Chowdhury, '42 countries you can visit without visa using Bangladesh passport', *The Daily Sun* (Online, 8 February 2015) <https://www.daily-sun.com/post/23112/42-countries-you-can-visit--without-visa-using-Bangladesh-passport>.
[59] Kamrul Hasan, '5% official passports found fake', *The Prothom Alo* (Online, 18 September 2015) <http://en.prothomalo.com/bangladesh/news/79639/5%25-official-passports-found-fake>.
[60] Ibid.
[61] Ibid
[62] Azad and Biplob (n 57).
[63] Hashini Kavishtri Kannan, 'Bangladeshi ring leader of human trafficking and false travel documents syndicate arrested', *The New Straits Times* (Online, 6 March 2018) <https://www.nst.com.my/news/crime-courts/2018/03/341981/bangladeshi-ring-leader-human-trafficking-and-false-travel>.

interviewed by the newspaper the *Prothom Alo* stated that he was sent to Turkey with a fake passport, after having paid a huge sum of money to traffickers to get an official passport.[64] It has also been reported that victims have been wrongfully confined and tortured by traffickers in Turkey to extort money from victims' families.[65]

As noted above, Bangladesh has a *Passport (Offenses) Act 1952*[66] and the *Passport Order 1973*.[67] Under both legal instruments, creating a forged passport is a punishable offense,[68] but the punishment is not sufficient to deter those who facilitate the crime of human trafficking. Furthermore, the 2015 investigation touched on above indicates that the effectiveness and implementation of these instruments is questionable. As there have been no significant changes to passport-related legal frameworks since 2015, there is little evidence of efforts to tackle passport fraud, which is a significant tool used in human trafficking.

3 *Extradition Act 1974*

Effective extradition legislation is vital in an effective criminal justice system, particularly when combatting the crime of human trafficking. As observed in my fieldwork, often victims are from one country, they experience transit through a second country, and are then exploited in a third country. Elements of the crime, and evidence, are therefore scattered across different countries.[69] In cases involving multiple jurisdictions, it becomes very difficult to conduct investigations. Organised criminals take advantage of this, and keep mobile, fleeing from one country to another to escape punishment.[70] States have an obligation to conduct investigations and run effective prosecutions in order to bring offenders to justice. The process of extradition is a significant mechanism in the fight against human trafficking, and to combat global organised crime.[71]

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[64] Hasan (n 59).
[65] Md Shah Alam, 'Analytical Techniques for Quality Investigations of Organised Crime: An Evaluation on CID Performance, Police Staff College (PSC)' (2014) 1(2) *Police Staff College Journal* 112.
[66] *Passport (Offenses) Act 1952* (Bangladesh).
[67] *Bangladesh Passport Order 1973* (Bangladesh).
[68] Passport (Offenses) Act 1952 (Bangladesh) s 3. s 3. Bangladesh Passport Order 1973 (Bangladesh).art 11.
[69] Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).
[70] Ibid.
[71] Umarkhanova Dildora, 'Extradition issues of members of criminal groups involved in human trafficking' (2016) 2 *International Journal of Law* 68.

Under the *Bangladesh Human Trafficking Act 2012*, human trafficking is, unsurprisingly, an extraditable offence.[72] Bangladesh also has a specific law, the *Extradition Act 1974*, that addresses issues and procedures relating to extradition to and from countries with which Bangladesh has signed an extradition treaty. Bangladesh has extradition treaties with many countries, including India, Thailand, the United Arab Emirates, Australia, Fiji, Malaysia, Papua New Guinea, Samoa, Sri Lanka, Vanuatu and Singapore.[73] (The *SAARC Convention on Trafficking* also contains rules and procedures regarding extradition in human trafficking cases, as I discussed in Chapter Three.)

A significant component of the *Extradition Act 1974* is its Schedule, which outlines a number of different offences that are connected with human trafficking. These include maliciously or willfully wounding or inflicting grievous bodily harm; rape; trafficking women and children for immoral purposes; kidnapping; abduction; false imprisonment; unlawful detention; child stealing; and aiding and abetting a person to commit any of those offences.[74]

Effective extradition depends on co-operation between state parties, effective diplomatic relations, and effective enforcement mechanisms. Such procedures can be time consuming, and this hampers justice, as justice delayed is justice denied. There are substantial questions about whether the system is effective at all when it comes to trafficking of people from Bangladesh. None of the people I interviewed in my fieldwork were aware of any case where extradition of a criminal involved in trafficking had been attempted. It is very unusual for Bangladesh to brings perpetrators from any foreign countries, whether destination countries or transit countries, to justice.

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[72] *Prevention and Suppression of Human Trafficking Act (PSHTA) 2012* (Bangladesh) s 4(4).
[73] The Lawyers & Jurists,'Common conditions of extradition', *The Lawyers & Jurists* (n.d.) <http://www.lawyersnjurists.com/article/common-conditions-of-extradition/>.
[74] *Extradition Act 1974* (Bangladesh).

4 *Legal Frameworks to Address Forced or Unfree Labour*

(d) Forced Labour in Bangladesh

Labour exploitation in human trafficking cases can be found both within and outside of Bangladesh. Trafficked victims may face forced and bonded labour, poor working conditions, working without any payment, and different kinds of torture – as described in Chapter One.

In Bangladesh, labour exploitation is common in several sectors of the economy, including in the garment industry, in construction, and in domestic service. Trafficked victims in forced labour within Bangladesh are found mostly in brick kilns and in the fishing industry. A study conducted by Kari B Jensen on child slavery in Bangladesh's fishing industry found that there were many slaves who had been kidnapped and lured through false promises of jobs, and that most were children, aged 8-9 years.[75] Jensen therefore argues that due to corruption and political influence, slavery as a crime remains unaddressed. On the basis of these findings, the US State Department, along with Kevin Bales,[76] placed pressure on leaders of the Government of Bangladesh to address the issue.[77] As a consequence, the Bangladesh police rescued victims from the fishing industry of Dublar Chor, and arrested a gang of traffickers who were responsible for trafficking in children in fishing industry.[78] Trafficked children are particularly affected, and often involved in the worst varieties of forced labour including begging, sexual exploitation in brothels, working in unhygienic and dangerous working environments, and being tortured in the fishing industry and as well as in domestic service.[79]

The National Child Labour Survey Report 2015 indicated that about 1.2 million children are victims of forced labour in Bangladesh.[80] To combat all forced labour and to maintain international

[75] Kari B. Jensen, 'Child slavery and the fish processing industry in Bangladesh' (2013) 56(2) *Focus on Geography* 54.
[76] A sociologist who works on contemporary slavery.
[77] Jensen (n 75).
[78] Ibid.
[79] Bureau of International Labour Affairs,'Child Labor and Forced Labor Reports: Bangladesh ', *United States Department of Labour* (2018) <https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/Bangladesh.pdf>.
[80] International Labour Organisation,'Child Labour in Bangladesh', *ILO* (2020)

labour standards, Bangladesh has a range of legal instruments, including the *Bangladesh Labour Act 2006*, the *Children Act 2013* and the *Human Trafficking Act 2012*. The next section of this Chapter evaluates the impact of *Bangladesh Labour Act 2006* and its efforts to eradicate forced labour eradication (demonstrating that this instrument, while taking a human rights approach and including specific criminal justice provisions, is contributing very little to combat forced or unfree labour).

Migrant workers may also be forced into labour upon arrival in destination countries, converting their travel into trafficking. The protection of migrant workers has also been addressed by specific legislation, known as the *Overseas Employment and Migrants Act 2013* (to be considered below).

(e) Labour Act 2006

As previously discussed in Chapter Four, the International Labour Organisation ('ILO') has recognised that there is a connection between human trafficking and forced labour and has sought to address human trafficking through its different international instruments. According to the ILO, Bangladesh has ratified 35 ILO Instruments.[81] Along these, the *Forced Labour Convention 1930 (No. 29)*,[82] the *Abolition of Forced Labour Convention 1957 (No. 105)*[83] and *the Worst Forms of Child Labour Convention 1999 (No. 182)*[84] are all concerned with forced labour, including in connection with human trafficking. From 1994, the ILO has been working with the Government of Bangladesh towards eradicating child labour under the *International Programme on the Elimination of Child Labour*.[85]

However, after the Tazren Fashion fire incident in 2012 and the Rana Plaza collapse in Bangladesh in 2013, the ILO has mostly focused on the issue of occupational safety and health of garment workers rather than forced or unfree labour. Retail companies are consistently putting pressure on

<https://www.ilo.org/dhaka/Areasofwork/child-labour/lang--en/index.htm>.
[81] International Labour Organisation,'Ratifications for Bangladesh', *ILO* (2020) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103500>.
[82] *Forced Labour Convention 1930* (No. 29) came into enforce in Bangladesh 22 June 1972.
[83] Ibid.
[84] *Worst Forms of Child Labour Convention 1999* (No. 182) came into enforce in Bangladesh 12 March 2001.
[85] International Labour Organisation,'Child Labour in Bangladesh' (n 80).

Bangladesh Garment Manufacturers and Exporters Association to adopt international labour standards.[86]

Bangladesh adopted a new law, known as the *Labour Act 2006*,[87] to ensure the rights of all labourers. This instrument is fully consistent with a human rights approach, addressing the different rights of workers relating to wages, compensation for injuries, health, safety and welfare. It also identifies different rights relating to working conditions. The strength of such an approach is that it ensures the rights of workers, which can help prevent forced labour (and trafficking to that end), and also shrinks the scope for unfree labour. Another key aspect of this instrument is that it prohibits any type of child labour,[88] and in 2013 incorporated a list of prohibited, hazardous work, which covers those kinds of work where forced child labour is common.

As I previously mentioned, the Constitution prohibits forced labour. However, there is no specific provision in the Constitution highlighting the rights of workers. By contrast, the *Labour Act 2006* ensures rights of the workers and provides more protection. This Act adopts a criminal justice approach, penalising child labour, and making employers accountable if they violate any of the Act's provisions. Also, under this instrument, a Labour Court has jurisdiction to deal with any cases relating to workers' rights.

However, the negative side of the *Labour Act 2006* is that it does not have definite provisions relating to human trafficking, to address situations where forced labour turns into trafficking. There is also no definition of forced labour. (Notably, the *Children Act 2013* and the *Human Trafficking Act 2012* both criminalise forced or bonded labour through specific provisions – as considered further below.)

To be effective, the legal principles governing workers' rights and workplaces under the *Labour Act 2006* require proper implementation. The ILO's Committee of Experts on the Application of

[86] Muhammad Azizul Islam and Ken McPhail, 'Regulating for corporate human rights abuses: The emergence of corporate reporting on the ILO's human rights standards within the global garment manufacturing and retail industry' (2011) 22(8) *Critical Perspectives on Accounting* 790.
[87] *The Labour Act 2006* (Bangladesh).
[88] Ibid s 34.

Conventions and Recommendations (CEACR) has made observations on the performance of Bangladesh. It has requested the Government of Bangladesh to undertake effective initiatives to detect and investigate the crime of forced labour, and it asked for a report about the implementation of section 9 of the *Human Trafficking Act 2012*.[89] It has emphasised the need for more investigations, more prosecutions, and victims' protection.

A Human Rights Watch report on labour rights found that in Bangladeshi garment factories, physical and verbal abuse, sexual torture, forced overtime, denial of paid maternity leave, failure to pay wages, unhygienic toilets and dirty drinking water are very common violations of labour rights.[90] The same NGO has also claimed that the Government of Bangladesh has failed to follow international labour standards under the Sustainability Compact in 2017.[91] It has identified that factory officials are still free from any allegation of attacks, threats and retaliation against workers.[92]

According to the Government of Bangladesh, there are no cases of forced or unfree labour in the country.[93] But the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families ('CMW Committee') has observed that there are many Rohinyga (from Myanmar), including children, who are victims of human trafficking, forced labour and sexual exploitation.[94] As pointed out earlier in this Chapter, workers from India also sometimes become victims of debt bondage in brick kilns.[95]

The ongoing violation of labour rights, poor working conditions and forced or unfree labour situation in different sectors demonstrate that the existing legislation, namely the *Labour Act 2006*, is not enough to combat forced labour. In addition, Bangladesh has not ratified 60 ILO instruments which are about rights of the workers.[96] However, the ILO is still working with Bangladesh to

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[89] CEACR Observation, *Worst Forms of Child Labour Convention1999 (No. 182)*, 107 sess, (2018). Section 9 of the *Human Trafficking Act 2012* prohibits forced or bonded labour or service and describes penalty for forced labour.
[90] Human Rights Watch, 'Whoever Raises their Head Suffers the Most' (Report, HRW, 22 April 2015).
[91] Human Rights Watch, 'World Report 2018 (Events of 2017)' (World Report, HRW, 9 January 2018).
[92] Ibid.
[93] International Labour Organisation,'Ratifications for Bangladesh' (n 81).
[94] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the initial report of Bangladesh*, 359 mtg, UN Doc CMW/C/BGD/CO/1 (22 May 2017).
[95] Ibid.
[96] *P029 - Protocol to the Forced Labour Convention 1930*, opened for signature 11 Jun 2014 (entered into force 09

ensure international labour standards in this region. It has also helped Bangladesh to adopt the *Overseas Employment and Migrants Act 2013* to ensure development of law and policy regarding migrant workers.

5 *Children's Act 2013*

As noted above, the Global Report of the UNODC has confirmed that child trafficking is very common in South Asia.[97] According to this report, 60% of trafficking victims are adults and 40% are children.[98] In addition, this report found that of the large number of Bangladeshi victims who were rescued in 2013, many were assisted by their parents, indicating that those rescued victims were likely children.[99] Figure 10 shows the number of trafficked victims who are children according to this report: the numbers peak in 2014, remain high until 2017, and drops significantly in 2018.

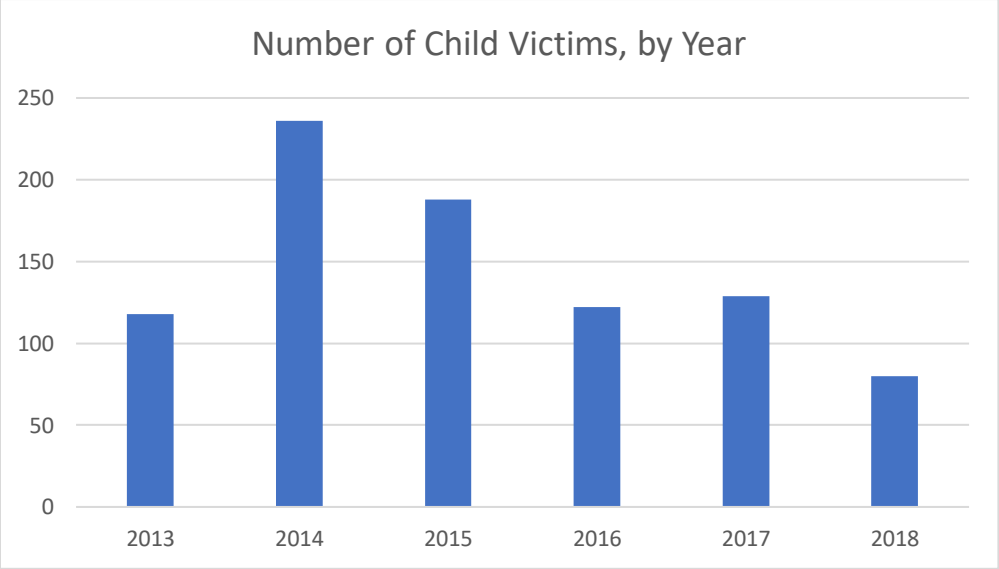

Figure 10: The number of Child victims from 2013-2018

Nov 2016). *C143 - Migrant Workers (Supplementary Provisions) Convention*, opened for signature 24 Jun 1975 (entered into force December 9, 1978). *Minimum Age Convention, (No.138)* opened for signature 26 June 1973 (entered into force 19 June 1976); *Domestic Workers Convention (No. 189)*, opened for signature 16 June 2011 (entered into force 5 September 2013).

[97] United Nations Office on Drugs and Crime (UNODC) (n, 8).

[98] Ibid.

[99] Ibid.

Bangladesh has a population of 164.7 million people, of which 42.6 million are young (0-14), and 15 million are aged under five years.[100] There are many children who are poor and homeless.[101] Street children and refugee children are most at risk for trafficking and child labour.

In 2013 Bangladesh adopted the *Children Act 2013*,[102] repealing the old Act of 1974 and taking legislative steps to protect the rights of children consistently with the UN Convention on the Rights of the Child (CRC).[103] To understand the role of the *Children Act 2013* in eradicating human trafficking, this section sets out the positives and negatives of this instrument. It argues that the *Children Act 2013* focuses on the rights of children involved in crime rather than the rights of children who are victims of crime. This means that it only goes part of the way in addressing the needs of children who are victims of human trafficking.

The *Children Act 2013* addresses a range of different offences and imposes punishments for people engaged in sex trafficking or labour trafficking of children. According to section 70 of this Act, any type of cruelty towards children is a punishable offence.[104] Punishment for breach of section 70 can be imprisonment for up to five years or a fine of up to one lac taka (AUD $1653).[105] One of the purpose of child trafficking is to engage children in begging. The *Children Act 2013* ensures penalty for any person who engages a child for the purpose of begging or causes any child to beg.[106]

It has also been reported that young girls in brothels are forced to have medicine to make them

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[100] United Nations Development Programme, 'Human Development Reports' (Report, UNDP, 2018) <http://hdr.undp.org/en/countries/profiles/BGD >.
[101] Md. Abdullah-Al-Helal, 'Tale of Homeless Children in Bangladesh', *The Daily Sun* (Online, 2 June 2017) <http://www.dailysun.com/magazine/details/230608/Tale-Of-Homeless-Children-In-Bangladesh/2017-06-02>.
[102] *Children's Act 2013* (Bangladesh).
[103] Imman Ali, 'The Children Act 2013: A Commentary by Justice Imman Ali' (Commentary, Bangladesh Legal Aid and Services Trust and Penal Reform International, 2013) <https://www.blast.org.bd/content/publications/The-Children-Act%202013.pdf>.
[104] *Children's Act 2013* (Bangladesh).
[105] Ibid s 70.
[106] Ibid s 71.

appear older to attract customers.[107] In addition, drug abuse is a very common issue in brothels. Those harmful medicine and drugs can destroy the kidneys and other organs of children.[108] Under section 73 it is prohibited to provide intoxicating liquor or harmful medicine to a child.[109] Sections 77, 78 and 80 have a close connection with trafficking issues. A child over the age of four years is not allowed or permitted to reside in a brothel, and if anybody violates this provision, they can be punished with imprisonment for up to two years, or a fine of up to fifty thousand taka (AUD $826), or both.[110] It is also a crime under the Act to lead or encourage children to engage in prostitution or other immoral activities.[111]Section 80 prohibits any type of exploitation where children are forced to take part in immoral activities.[112]

As well as prohibiting a range of activities involving children, the main objective of this instrument is to provide juvenile justice to those children who are in contact and conflict with the law. However, it does also address the human rights of victims who are children, to some extent. Using the term 'disadvantaged', it refers to children who are homeless, street children, without parents and legal guardian, those children who are forced in begging, who are victims of sexual assault, harassment and domestic violence, or who are vulnerable to being involved in criminal activity.[113] This term 'disadvantaged' helps to address the needs of those children who are vulnerable to human trafficking.

The *Children Act 2013* appears to establish Child Welfare Boards at national, district and local levels, to rehabilitate and reintegrate disadvantaged children and children who are in contact and conflict with the law.[114] Section 38 ensures compensation to the child victims. This instrument

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[107] Tania Rashid and Soraya Auer, 'I Am Not Like Before': Sex Workers in Bangladesh's Mega-Brothel Are Stuck in a Life of Drugs and Slavery', *Vice News* (Online, 5 Feb 2015) <https://www.vice.com/en_us/article/bjaqam/i-am-not-like-before-sex-workers-in-bangladeshs-mega-brothel-are-stuck-in-a-life-of-drugs-and-slavery>. Such medicine is normally used to impregnate cows.
[108] Ibid.
[109] Ibid s 73.
[110] Ibid s 77.
[111] Ibid s 78.
[112] Ibid s 80.
[113] Beh Lih Yi, 'Trafficked and abused: Indonesia's Middle East maid ban backfires', *Reuters* (Online, 6 March 2017) <https://www.reuters.com/article/us-indonesia-labour-trafficking/trafficked-and-abused-indonesias-middle-east-maid-ban-backfires-idUSKBN16D1F6>.
[114] *Children Act 2013* (Bangladesh) s 7.

also ensures safety and protection to child victims and witnesses.[115] Alternative care can also be arranged for children who are vulnerable to human trafficking and other crimes. Alternative care includes care within the family or the community, or institutional care (such as in a government-run children's home) where children are entitled to receive special protection, nursing, care, counseling, financial assistance, training, and psychological support.[116] A number of Children's Homes and State Orphanages are run by the Ministry of Social Welfare.

Bangladesh has signed and ratified the CRC as well as the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which have direct provisions to fight against human trafficking. However, the Committee on the Rights of the Child ('CRC Committee') is concerned about the implementation of legislation relating to children's rights.[117] The *Children Act 2013* is more concerned about the rights of those children who are involved in a crime rather than the rights of child victims. Although there is no available information about the establishment of any Child Welfare Board, under the Ministry of Social Welfare the Bangladesh government does have three Children's Development Centres, six Infant Homes, one Day care center, six divisional Safe Homes and six Disabled and orphan children training and rehabilitation centers to provide care, protection, food, housing, clothing, medical coverage, education, vocational training and counseling to the children under their care.[118]

C *Current National Legislation*

1 *Overseas Employment and Migrants Act 2013*

Every year Bangladesh sends a large number of workers to 157 countries around the world, including to different Middle Eastern countries, Northern Africa, Malaysia and Singapore.[119]

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[115] Ibid s 53.
[116] Ibid s 86.
[117] Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of Bangladesh*, 17 sess, UN Doc CRC/C/BGD/CO/5 (14 September-2 October 2015).
[118] Government of Bangladesh,'Ministry of Social Welfare', *National Portal Bangladesh* (2020) <https://msw.gov.bd/>.
[119] Bangladesh Institute of Labour Studies and International Labour Organisation, 'The homecoming: Profiling the returning migrant workers of Bangladesh' (Survey, ILO, 2015) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_407961.pdf>.

Foreign remittances of migrant workers are the second highest source of income to the Bangladesh economy.[120] Between 1979 and 2014, Bangladesh sent over 8 million workers to different countries.[121] Mostly, Bangladeshi migrant workers are sent to different countries as domestic workers.

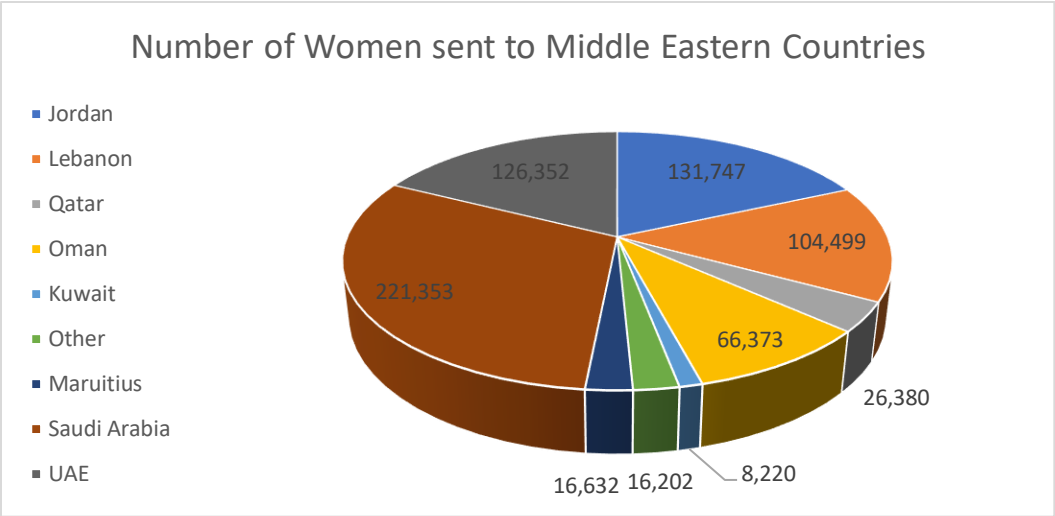

Figure 11: Number of Women sent to Middle Eastern Countries[122]

Figure 11 presents the number of Bangladeshi women migrant workers from 1991-2018. It indicates that Bangladesh sends the highest number of women to Saudi Arabia, then Jordan, and then the United Arab Emirates (UAE). Lebanon and Oman also recruit Bangladeshi women as domestic workers. The following bar graph shows the number of women sent to Saudi Arabia from 2008-2018.

[120] Areeb Ullah, 'Abuse in Saudi Arabia: How Bangladeshi maids escape "dream job"', *Middle East Eye* (Online, 25 May 2018) <https://www.middleeasteye.net/news/bangaldesh-women-in-saudi-domestic-workers-maid-are-sold-a-dream-flee-nightmare-brac-1336317441>.
[121] Bangladesh Institute of Labour Studies and International Labour Organisation (n 119).
[122] Areeb Ullah, 'Safe houses in Saudi Arabia: Bangladeshi maids find refuge amid abuse, torture', *The Middle East Eye* (Online, 31 March 2018) <https://www.middleeasteye.net/news/bangladesh-safe-house-embassy-saudi-to-protect-abused-women-maids-workers-from-employers-riyadh-dhaka-1618181860>.

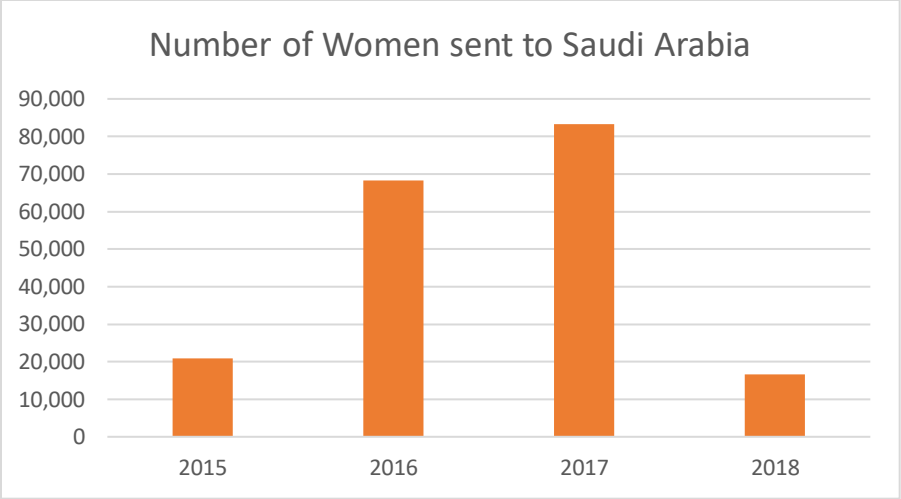

Figure 12: Number of Bangladeshi Women sent to Saudi Arabia 2015-2018[123]

There is always an intricate affiliation between human trafficking and migration. Through different research studies, it has been found that migrants are vulnerable to human trafficking.[124] How can a journey start as migration and end up in human trafficking? In Chapter One I demonstrated how victim Rubina was a migrant worker who became a victim of human trafficking. She was forced to engage in labour after her arrival in the destination country, where her passport and other legal documents were confiscated, her movement was restricted, she was forcefully confined and brutally tortured, and was deceived and misled about the terms and conditions of work that had been promised her.

Bangladesh adopted the *Overseas Employment and Migrants Act 2013* to protect the rights of migrant workers and try to prevent labour exploitation in destination countries. This section demonstrates that despite its strong human rights-based response and monitoring mechanism, the *Overseas Employment and Migrants Act 2013* has proven ineffective, and thousands of women have returned to Bangladesh, particularly from Middle Eastern countries, having experienced sexual exploitation and forced labour in horrific conditions.

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[123] Ibid.

[124] See Nazli Avdan, 'Human trafficking and migration control policy: Vicious or virtuous cycle?' (2012) 32(3) *Journal of Public Policy* 171; Michael Chibba,'Human Trafficking and Migration: Concepts, Linkages and New Frontiers', *Global Policy* (Essay, Deember 2013) <https://www.semanticscholar.org/paper/Human-Trafficking-and-Migration%3A-Concepts%2C-Linkages-Chibba/81865f9fa26b042aad3b064bce2617351ce4a176>; Mohammad Abdul Munim Joarder and Paul W Miller, 'The experiences of migrants trafficked from Bangladesh' (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 141; Nikolas Win Myint, 'Migration and trafficking: Putting human rights into action' (2008) 30 *Forced Migration Review* 38.

The *Overseas Employment and Migrants Act 2013* repealed the earlier *Emigration Ordinance 1982*. It was modelled on international instruments such as the International Convention on the Rights of Migrants Workers and Member of their Families, and other relevant labour and human rights instruments.[125] This Act only authorises the government of Bangladesh or its delegated authorities to recruit workers for overseas employment.[126] In the event that a Bangladeshi migrant worker is victimised overseas, the government may place restrictions upon migration to that country.[127]

One of the constructive features of this Act is that it outlines the obligations of recruitment agencies. These obligations include: firstly, providing the same job that has been offered in employment contract; secondly, ensuring payment for services provided; thirdly, providing a safe working environment; and finally, maintaining contact with the employer where the person is working.[128] In the event of a failure to perform those obligations, the licence of a recruitment agency can be suspended or cancelled.[129]

It is evident from different incidents that recruitment agencies have been very relaxed in the performance of their duties, and most of the time they have failed to protect the rights of migrant workers.[130] However, such kinds of negligence do not cause them to lose their licences. The following figure shows the number recruitment agency licences that were cancelled or suspended for facilitating illegal migrants from 2007 to 2016. However, there is no data indicating how many licences have been cancelled and suspended for allegations of human trafficking.

[125] *The Overseas Employment and Migrants Act 2013* (Bangladesh).
[126] Ibid s 3.
[127] Ibid s 8.
[128] Ibid s 15.
[129] Ibid s 12.
[130] Ashraful Azad, 'Recruitment of migrant workers in Bangladesh: Elements of human trafficking for labor exploitation' (2019) 5(2) *Journal of Human Trafficking* 130.

Year	Number of licences cancelled or suspended
2007	12
2008	40
2009	07
2010	28
2011	22
2012	15
2013	19
2014	26
2015	11
2016	13
Total	183

Table 3: Recruitment Agency Licences cancelled in Bangladesh[131]

A key aspect of this legal instrument is that it suggests forming a Labour Welfare Wing[132] in foreign countries and outlines some specific responsibilities.[133] The Labour Welfare Wing has the following obligations: to inspect the place of work in destination countries; to prepare an annual report about working conditions and payment status of migrant workers; if workers are victimised then to address the issue of whether they receive any compensation from employers; to provide information about all available services of Bangladesh Mission (Bangladesh Embassy); and to evaluate the current implementation status of any bilateral agreement with concerned country.[134]

Bangladesh has signed a Memorandum of Understanding (MoU) and bilateral agreements with

[131] Government of the People's Republic of Bangladesh, 'Bangladesh Country Report, Combating Human Trafficking' (Country Report, 2016) <https://mhapsd.portal.gov.bd/sites/default/files/files/mhapsd.portal.gov.bd/page/d9fa01c7_35a1_42f2_827c_1030c3e0e474/Country%20report%202016%20%20fina.pdf>.

[132] Bangladesh established total 29 Labour Welfare Wings in different countries including Abu Dhabi, Doha, Tripoli, Muscat Sultanate of Oman, Kuala Lumpur, Riyadh, Jeddah, Manama, Singapore, Seoul, Baghdad, Rome, Milan, Tokyo, Jordan, Amman, Bandar Seri Begawan, Athens, Canberra, Cairo, Madrid, Geneva, Male, Moscow, Bangkok, Hong Kong, Port Louis, Kuwait and Lebanon. Government of Bangladesh,'Ministry of Expatriates' Welfare and Overseas Employment ' (2020) <https://probashi.gov.bd/site/page/ca356285-7198-442f-85a3-0309d52362fc/List-of-Labor-Wing>.

[133] *The Overseas Employment and Migrants Act 2013* (Bangladesh) s 24.

[134] Ibid.

Saudi Arabia, Oman, Kuwait, UAE, Jordan and other Gulf states. These MoUs and other bilateral agreements are contemplated by section 25 of *Overseas Employment and Migrants Act 2013*:

> (2) Any memorandum of understanding or agreement of Migrant workers shall be concluded on the basis of, among others, the following principles: —
> (a) protection of the rights, safety and human dignity of all migrant workers within the country or while overseas;
> (b) protection of labour and other human rights of Bangladeshi migrant workers in the concerned country, and assuring conditions at work are compatible with the international standards; and
> (c) assurance of the migrant workers' right to information and the right to redress if their rights are violated in the concerned country.[135]

There have been strong allegations made against employers in Middle Eastern countries of torturing and physically and sexually abusing Bangladeshi domestic workers.[136] Every year a great number of victims return home recounting their horrible experiences. According to the Bangladesh Rural Advancement Committee ('BRAC') Migration Programme, there are many victims who are waiting in migration camps and safe homes[137] inside Saudi Arabia. Even the services provided by safe houses have been questioned, as there have been many incidences where mentally traumatised and physically injured victims tried to commit suicide.[138] Typically, migrant women who are trafficking victims have to wait for a long time to come back to their country.[139]

There are some provisions in the *Overseas Employment and Migrants Act 2013* which provide guidelines for the proper repatriation and return of migrant workers. This Act also addresses some

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[135] *The Overseas Employment and Migrants Act 2013* (Bangladesh) s 25. Bangladesh signed Memoranda of Understanding (MoUs) with different destination countries. Bangladesh has MoUs with Hong Kong (China), Iraq, Jordan, Libya, Kuwait, Malaysia, Oman, Qatar, the Republic of Korea, and the United Arab Emirates. The International Labour has conducted a review of these agreements to assist concerned government agencies. International Labour Organisation, 'Core elements of a bilateral agreement or a memorandum of understanding on labour migration' (Report, ILO, 2018) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_683754.pdf>.
[136] Ullah (n 122).
[137] The Bangladesh Government has established a safe house in Saudi Arabia to protect physically and sexually abused domestic workers.
[138] Ullah (n 122).
[139] Ibid.

rights of migrant workers including rights to justice.[140] In addition, the *Overseas Employment and Migrant Act 2013* sets out punishments for various offences.[141]

Despite having an apparently strong human rights-based response, this instrument has proven ineffective to ensure the rights of victims, due to its weak enforcement. The Act imposes responsibilities on the Government and Labour Welfare Wing; however, there is no provision to hold accountable the government and officer of Labour Welfare Wing if they fail to perform their obligations. The Bangladesh Government has failed to take appropriate steps to protect the rights of migrant workers, and to ensure the proper implementation of bilateral treaties as mentioned in

[140] Ibid. According to Section 26: Migrant workers shall have the right to be informed about the migration process, employment contract or the terms and conditions of the work overseas, and the right to know about their rights as per the law before his departure. But, in practice most times they are deceived about the working conditions, as has been confirmed through my fieldwork. Section 27 addresses the right to legal aid. Most of my interviewees who had horrible experiences of sexual exploitation and torture in Middle Eastern countries had no idea about the legal status of their pending cases. Under section 28, migrant workers have the right to file a civil suit for compensation if they are injured by the violation of any provision of this Act or of the employment contract. Unfortunately, none of interviewee who were sent to Middle Eastern countries filed any suit for compensation. Even they do not have any idea. Another right identified by this Act is right to return, under section 29: (1) A migrant worker who is detained or stranded, or otherwise is in situation of distress overseas, shall have the right to return to Bangladesh and to receive necessary assistance from the Bangladesh Embassy in the concerned foreign country. (2) If any sum of money is spent for repatriating a migrant worker, the money so spent may be recovered from that person. (3) If a migrant worker in a situation of distress due to the negligence or illegal activity of a recruitment agent, the Government may direct the concerned recruitment agent to bear the costs of repatriation of that migrant worker. (4) If a recruitment agent fails to pay the money ordered to be paid under subsection (3), the Government may recover the sum of money from the concerned recruitment agent in accordance with the provisions of the *Public Demands Recovery Act 1913*. However, the victim has to spend their own money to return to Bangladesh.

[141] The following Table 5.3 illustrates the offences with punishments.

Name of offence	**Penalty**
Penalties for sending migrant workers overseas in unlawful manner, and for charging unlawful amounts of fees, and such others; including false promises of jobs and deception about working place and condition. (Section 31)	Imprisonment up to five years and fine not less than Taka One lakh.
Penalty for Publishing unauthorised advertisements for purpose of recruitment for overseas employment. (Section 32)	Imprisonment up to one year and fine not less than Taka Fifty Thousand.
Penalty for using unlawful means for collecting demand note, visa or work-permit for overseas employment, or for trading in such documents. (Section 33)	Imprisonment up to seven years and fine not less than Taka Three lakh.
Penalty for arranging for departure through places other than the specified place of departure. (Section 34)	Imprisonment up to Ten years and fine not less than Taka Five lakh.
Penalty for other offences, for which there is no specific punishment mentioned under this Act. (Section 35)	Imprisonment up to Six months or fine may up to Taka Fifty thousand or both.
Penalty for abetment or instigation. (Section 36)	The abettor or instigator shall receive the same punishment as the perpetrator
Complaints to the Government. (Section 41)	Dispose of the complaints within three months.

the *Overseas Employment and Migrant Act 2013*, which is a clear violation of sections 8 and 25 of the Act. Furthermore, the Act does not have any provision that specifically sets out how Bangladeshi migrant workers can become victims of human trafficking after legal migration.

When various international and local NGOs, working to protect and ensure the rights of trafficking victims, have raised questions about the accountability of Middle Eastern Countries and the Kafala system (Kafala system has been demonstrated in Chapter Four)[142], some countries, such as Oman and Qatar, have changed their Kafala systems. However, Saudi Arabia has not taken any steps to reform its Kafala system. There are no cases where Saudi employers have been punished for torturing Bangladeshi domestic workers.[143]

In spite of this, Bangladesh continues to send poor women to Saudi Arabia, ignoring the apparent issues of torture and sexual abuse, at the same time as other labour source countries like the Philippines and Indonesia have imposed a ban on sending female workers to Middle Eastern countries.[144] In addition, as we saw in Chapter Four, Bangladesh is a signatory state of the Migrant Worker Convention, which addresses the rights of migrant workers. However, Saudi Arabia and other Middle Eastern Countries are not member states of this instrument. However, there have been no initiatives from the Bangladesh Government to bring Saudi Arabia to justice.

Thus, the instruments before the *Human Trafficking Act 2012* have definitional limitations and a very limited human rights-based response. The Constitution of Bangladesh mostly follows a human rights approach, but cannot be enforced by individuals. Other national legislation –

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[142] Kafala system is known as sponsor system where employer has used excessive rights and power over employee. Generally foreign workers and domestic workers come into different Middle East countries through this system. Kafala is against the labour law and similar to slavery as workers are forced to work in a poor environment and without any payment. They are not allowed to take rest and leave. Most of the female workers become victim of sexual exploitation and other harassment. Employers take their passports and other legal documents. Workers are not allowed to change the job and leave the country without the permission of the authority. Even they are not authorised to lodge any complaints against their employer. Azhar Khan, 'Why it's time to end kafala', *The Guardian* (Online, 27 February 2014) <https://www.theguardian.com/global-development/2014/feb/26/time-to-end-kafala>.

[143] Jessica Aya Harn, 'Bangladeshi women and maids continue to be tortured in Saudi Arabia', *The Muslim Vibe* (Online, 12 November 2019) <https://themuslimvibe.com/muslim-current-affairs-news/bangladeshi-women-and-maids-continue-to-be-tortured-in-saudi-arabia>.

[144] Enrico dela Cruz, 'Philippines' Duterte says may expand ban on outbound workers', *Reuters* (Online, 22 February 2018) <https://www.reuters.com/article/us-philippines-labour-kuwait/philippines-duterte-says-may-expand-ban-on-outbound-workers-idUSKCN1G616I?il=0>. Yi (n 113).

including the *Penal Code, passport related laws, and the Extradition Act 1974* – adopt a criminal justice approach, as they criminalise different offences which facilitate human trafficking. To protect labour rights both the *Labour Act 2006* and *Overseas Employment and Migrants Act 2013* penalise violations of labour rights. Nevertheless, the ongoing, and even increasing, rates of exploitation and return of migrant workers evidence how ineffective is the implementation of such legislation.

When migrant workers become victims of trafficking, they can also seek relief under the *Human Trafficking Act 2012*.

2 *Prevention and Suppression of Human Trafficking Act 2012*

As indicated earlier in this Chapter, Bangladesh has passed several pieces of legislation to combat human trafficking,[145] and has recently signed the *Trafficking Protocol*. Significantly, in 2012, Bangladesh passed the *Prevention and Suppression of Human Trafficking Act*.[146] This instrument purports to adopt *both* a human rights-based and a criminal justice approach. However, in this part of the thesis I demonstrate that prosecution and convictions in human trafficking cases are low, despite having the preventive and protective measures stated in the legislation. This section identifies a number of different reasons for the ineffective implementation of this legislation.

The most important contribution of this instrument is it solves the definitional limitation of previous domestic legal instruments by defining the term human trafficking. The definition of human trafficking is strongly influenced by the *Trafficking Protocol* and it acknowledges both internal and cross border trafficking. It is also a gender-neutral instrument, applicable to any person irrespective of gender, race, age, religion and ethnicity. The *Human Trafficking Act 2012* expands its application through addressing different forms of trafficking such as sexual exploitation and prostitution, forced and bonded labour, forced begging, forced marriage, removal of organs for trade and other kinds of exploitation.

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[145] Mohammad Barad Hossain Chowdhury,'Trafficking in Persons in Bangladesh', *United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders* (Online Resource Material Series No.89) <https://www.unafei.or.jp/publications/pdf/RS.../No89_PA_Chowdhury.pdf>.
[146] *Prevention and Suppression of Human Traffcking Act 2012* (Bangladesh).

This Act explains the situation when migrant workers can be classified as victims of human trafficking. According to the s 3 of this Act, when migrant workers are deceived about the terms and conditions of work and they are in forced labour conditions or in other conditions of exploitation or oppression, that situation can be treated as the offence of human trafficking. Secondly, this legal document identifies various rights of victims and provides protection measures for trafficked victims. In addition, it focuses on preventive measures to reduce vulnerability to human trafficking. Chapter Six describes protection and preventive measures as a response of human rights-based approach.

And finally, this Act has specific provisions to ensure punishment of criminals, including definitions of crimes, prescribed punishments, and processes for filing complaints and carrying out investigations. Table 5.4 outlines different offences with their corresponding penalties, as provided in this Act.

Nevertheless, this instrument has been criticised on several grounds. In this Act there is no clear explanation why the punishment is lower in sex trafficking compared with punishment of labour trafficking. Sections 11 and 12 replicated provisions from the *Suppression of Immoral Traffic Act 1933*, but with imprisonments and fines set higher in the Human Trafficking Act 2012. Mostly, however, this instrument is criticised for poor implementation and its ineffective criminal justice approach.

Name of Offence	Punishment	Section
Human Trafficking (Individual Offender)	Imprisonment not exceeding for life imprisonment but not less than 5 (five) years of rigorous imprisonment (imprisonment with hard labour) and with fine not less than taka 50 (fifty) thousand (AUD 860).	Section 6
Human Trafficking (Organised Offence)	Punishment is death or imprisonment for life or a rigorous imprisonment (imprisonment with hard labour) for a term not less than 7 (seven) years and with fine not less than 5 (five) lac (AUD 8,602).	Section 7
Instigating, conspiring or attempting to commit the offence of human trafficking	Imprisonment for a term not exceeding 7 (seven) years but not less than 3(three) years and with fine not less than 20 (twenty) thousand taka (AUD 344).	Section 8
Forced and bonded labour	Imprisonment for a term not exceeding 12 (twelve) years but not less than 5 (five) years and with fine not less than 50 (fifty) thousand taka (AUD 860).	Section 9
Kidnapping, stealing and confining any person for the purpose of human trafficking If any person steals or kidnaps newborn baby for human trafficking	Rigorous imprisonment for a term not exceeding 10 (ten) years but not less than 5 (five) years and with fine not less than 20 (twenty) thousand taka (AUD 344). Imprisonment for life or with rigorous imprisonment for a term not less than 5(five) years and with fine not less than taka 50 (fifty) thousand (AUD 860).	Section 10(1) Section 10(2)
Sex Trafficking and other sexual	Rigorous imprisonment for a term not exceeding 7 (seven) years but not less than 5 (five) years and with fine not less than taka	Section 11

exploitation	50 (fifty) thousand taka (AUD 860).	
Keeping brothel or allowing any place to be used as a brothel	Imprisonment for a term not exceeding 5 (five) years but not less than 3 (three) years and with fine not less than 20 (twenty) thousand taka (AUD 344).	Section 12
Penalty for soliciting for the purpose of prostitution	Rigorous imprisonment for a term not exceeding 3 (three) years or with fine not exceeding taka 20 (twenty) or with both (AUD 344).	Section 13
Penalty for threatening the victim or witness	Rigorous imprisonment for a term not exceeding 7 (seven) years but not less than 3 (three) years and with fine not less than 20 (twenty) thousand taka (AUD 344).	Section 14
Penalty for filing false case or complaint	Rigorous imprisonment for a term not exceeding 5 (five) years but not less than 2 (two) years and with fine not less than 20 (twenty) thousand taka (AUD 344).	Section 15

Table 4: Key offences under the Trafficking Act

Implementation: Why the Low Conviction Rate?

The success of a criminal justice system depends on proper implementation measures and effective enforcement mechanisms. In the course of my fieldwork I interviewed an employee of WinRock International (an international NGO working with victims of trafficking) who trained Bangladesh's police and judges about human trafficking. He told me that police officers and even judges are confused about the topics of human trafficking and migrant smuggling and conflate the two. A pervasive absence of proper legal knowledge about human trafficking was also confirmed in the 2018 Trafficking in Persons Report of the US Department of State.[147] According to this report, the Bangladesh Government trained 50,780 police officers about human trafficking in 2017.[148]

[147] United States Department of State (n 11).
[148] Ibid.

Prosecutions and disposal of human trafficking cases 2011	
Number of cases lodged	143
Cases under investigation	34
Number of accused arrested	455
Number of cases charged	70
Final report	39
Number of cases disposal	38
Conviction	9
Acquittal	29

Table 5: Prosecutions and disposal of human trafficking cases 2011 (before passing the Human Trafficking Act 2012[149]

Period	**Number of victims Trafficked**			**No of Person arrested**	**No of Person convicted**
	Male	**Female**	**Child**		
2013	916	319	118	233	0
2014	2316	354	236	807	13
2015	1218	327	188	1540	4
2016	365	283	122	136	3
2017	382	259	129	1594	1
2018	212	210	80	1310	8
	5,579	1,348	615	7,416	33

Table 6: Yearly Statement of Trafficking cases (2013-2018) [150]

[149] Md Abdul Halim and Farhana Helal Mehtab, *Human Trafficking: International and Bangladesh Perspective* (CCB Foundation, 2014).

[150] Tarek Mahmud and Mahadi Al Hasnat, 'World Day Against Trafficking in Persons: Bangladesh failing to take strong measures against human trafficking', *Dhaka Tribune* (Online, 30 July 2018) <https://www.dhakatribune.com/bangladesh/2018/07/30/world-day-against-trafficking-in-persons-bangladesh-failing-to-take-strong-measures-against-human-trafficking>.

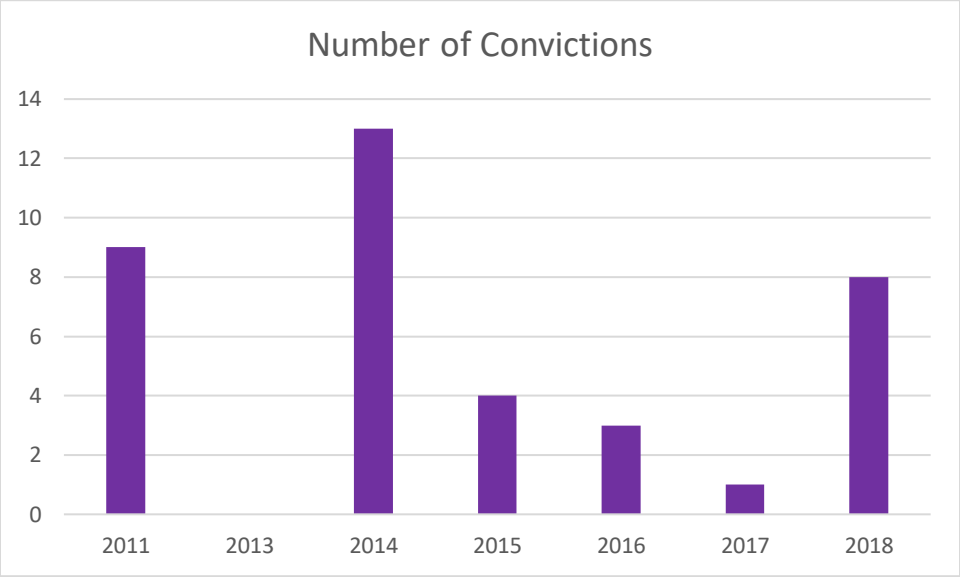

Figure 13: Conviction Rates for Human Trafficking 2011 – 2018 [151]

Following Figure 13 above, if we compare the conviction rate for 2011 (the year before the passing of the *Human Trafficking Act 2012*) with the conviction rate after 2012, it is apparent that the conviction rate, while initially rising, has then declined. The numbers are very small, and out of all proportion to the numbers of people who are likely victims. In addition, even the meagre data in the table 5.6 does not distinguish between labour trafficking and sex trafficking cases. The table 5.6 also does not indicate whether any trafficked victims have received compensation. There is no publicly available information about this, even though, according to the *Human Trafficking Act 2012*, victims are entitled to receive compensation for their suffering. In practice, however, no trafficked victims have received any compensation, almost ten years after the legislation was enacted. None of the interviewees in my fieldwork have received any compensation under the Act.

Since the adoption of the *Human Trafficking Act 2012*, there have been some 3,500 cases filed seeking justice until 2017.[152] In addition, it has been reported that in Cox's Bazar (one of the major routes of trafficking) about 733 victims were rescued and 242 cases had been filed.[153] There are

[151] Ibid.
[152] Staff Correspondent, 'Human Trafficking Cases: Conviction rate keeps falling, Faulty case filing, lengthy process, fear of reprisal among reasons', *The Daily Star* (Online, 31 July 2017) <https://www.thedailystar.net/frontpage/human-trafficking-cases-conviction-rate-keeps-falling-1441330>.
[153] Ibid.

592 trafficking cases recorded during the reporting period, according to the TIP Report 2019.[154] The Report also found courts gave eight convictions in five trafficking cases in 2019. Government claimed that investigations, prosecutions, and convictions for trafficking are still inadequate compared to the scale of the problem.[155] The TIP Report 2019 also identified that the conviction rate of trafficking cases from 2013-2019 was 0.4 % according to the yearly statement of monitoring cell.[156] Currently, more than 4,700 human trafficking cases are pending before the court.[157]

There are many problems underlying these figures. Firstly, lengthy procedural delays and faulty and backdated investigation systems are responsible. Investigation authorities take a long time to submit their investigation reports, which delays the pre-trial stage. It also impacts the trial time, as there is a provision to finish trial by 180 working days.[158] Inadequate and poor investigation reports thus help create an environment that is conducive to criminal conduct. Some of the interviewees in my fieldwork said that after filing their cases, they heard nothing from the police. This is so even though different international and local NGOs are providing training to the law enforcement agencies of Bangladesh. The very low conviction and case disposal rate makes it impossible to defeat this crime and creates a favourable environment for traffickers.

Secondly, since 2012 the Women and Children Violence Protection Tribunal has jurisdiction over human trafficking cases.[159] But this Tribunal already has a backlog of cases, and this is yet another new responsibility which hampers the speedy trial of offences both under the *Women and Children Repression Prevention Act 2000* and the *Human Trafficking Act 2012*. Bangladesh has just recently established special human trafficking tribunals, in February 2020. Whether the Tribunal will be successful in dealing with trafficking cases will depend on effective investigation and other

[154] United States Department of State (n 10).
[155] Ibid.
[156] Ibid.
[157] Porimol Palma, 'Human trafficking: Special tribunals to ensure speedy trials', *The Daily Star* (Online, 16 February 2020) <https://www.thedailystar.net/frontpage/news/human-trafficking-special-tribunals-ensure-speedy-trials-1868497>.
[158] *Human Trafficking Act 2012* (Bangladesh) s 24.
[159] Section 21(2) of the *Human Trafficking Act 2012* (Bangladesh) authorises government to empower this Women and Children Violence Protection Tribunal in absence of Human Trafficking Tribunal. There are mainly two reasons of choosing this Tribunal. Firstly, both the Tribunals are run by the Sessions Judge who exercises same jurisdictional power. Secondly, as women and children are more vulnerable to trafficking and it is an offence against them, as such the Women and Children Violence Protection Tribunal got jurisdiction to try human trafficking cases.

procedural matters. The Bangladesh government allows the Mobile court[160] to adjudicate smuggling cases, and smuggling cases may contain elements of trafficking.[161] This court has so far convicted eleven individuals, and imposed punishments of two and six months in two trafficking cases. Although the minimum punishment under the *Human Trafficking Act 2012* is five years, the Mobile court is only authorised to impose penalties of up to three years. Thus, Mobile courts are violating the jurisdiction of the *Human Trafficking Act 2012* by disposing of trafficking cases in this way.

Thirdly, as noted in Chapter One, trafficked victims have received continuous threats from traffickers after being rescued. Chapter One also demonstrated how victims are socially pressured to compromise their cases through money, which is confirmed in interviews with NGO workers and government officials. It has been found that in Cox's Bazar about 37 cases had been settled socially from 2012 to 2017.[162] However, as per section 16 of *Human Trafficking Act 2012* all types of human trafficking cases are non-compoundable, which means that trafficking cases cannot be settled. My interviewees confirmed that they did not want to cooperate with prosecutors or participate in cases because they were threatened by the criminals. Bangladesh does not have any specific legislation to protect victims, as was explained in detail in Chapter Six (Protection of trafficked victims).

Fourthly, as I discussed in Chapter One, corruption facilitates human trafficking. It has been alleged that investigative authorities have been subjected to political influence, and rich criminals receive privileges by giving bribes to the police such that their names never appear in police

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[160] The Mobile court was established through the Mobile Court Act 2009, which empowers executive magistrates to, on the spot, take cognisance and try for some offences (as specified in the schedule of that Act) to efficiently prevent crime. This Court sometimes exceeds their jurisdiction, and debates continue on the legality of the existence of this court, given that it is run by the executive branch and therefore blurs the executive and judicial branches of government. It is also inconsistent with the *Constitution of the People's Republic of Bangladesh 1972*. Staff Correspondent, 'Are Mobile courts serving justice?', Dhaka Tribune (Online, 14 March 2020) <https://www.dhakatribune.com/bangladesh/2020/03/14/are-mobile-courts-serving-justice-2>; Star Online Report, 'Running of mobile courts by executive magistrates unconstitutional', The Daily Star (Online, 12 July 2019) <https://www.thedailystar.net/city/news/running-mobile-courts-executive-magistrates-unconstitutional-1770487>.

[161] United States Department of State (n 10).

[162] Shamsuddin Illius, 'Hundreds of human trafficking cases pending in Cox's Bazar', The Independent (Online, 18 August 2017) <http://www.theindependentbd.com/arcprint/details/109967/2017-08-18>. There is a Village court in Bangladesh, however, this court does not have jurisdiction to decide any cases of human trafficking including civil and criminal.

reports.[163] Nurul Islam, an Advocate and Public Prosecutor, has observed,

> most of those facing trial are not the main culprits. They are people recruited by middlemen or are boatmen. The main culprits are never arrested. Besides, it is difficult to prove the cases due to flawed investigation. It seems to me that law enforcement agencies lack sincerity. It is necessary to form a tribunal to dispose of the cases quickly.[164]

Similarly, in an event known as 'Situation Analysis of Human Trafficking and Irregular Migration' organised by BRAC (a local NGO), migration expert Professor Abrar said, 'you don't have to try 1200 or 200 people. Just find out five big fish and punish them.'[165]

According to the UNODC, each year Bangladesh makes only 10 to 15 convictions in trafficking cases; this is much lower than the conviction rate of Nepal, which has a much smaller population, yet has 50 to 80 prosecutions annually.[166] Bangladesh could also follow the example of Thailand, as this country is taking proper steps to penalise trafficking and to make accountable those government officials who facilitate this crime, while emphasising regional attention and cooperation to fight against human trafficking. For instance, a Thai Court has penalised an army general to 27 years in jail for human trafficking.[167]

The *Human Trafficking Act 2012* contemplates the establishment of an Anti-trafficking Tribunal to deal with trafficking-related offences. Very recently, the Bangladesh government established such a special tribunal, but it still has not established protective homes and ensured the rehabilitation of victims. There are no special measures in place for victims who are children. Moreover, this Act focuses on post-occurrence measures that will be applied only when the offences of trafficking have already taken place, rather than focusing on pre-emptive measures.

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[163] Editorial, 'Quick disposal of human trafficking cases necessary ', *The Independent* (Online, 19 August 2017) <http://www.theindependentbd.com/arcprint/details/110065/2017-08-19>.
[164] Illius (n 162).
[165] Reaz Ahmad and Jamil Mahmud, 'Human Trafficking from Bangladesh: Kingpins remain unpunished', *The Daily Star* (Online, July 30 2017) < https://www.thedailystar.net/frontpage/human-trafficking-bangladesh-kingpins-remain-unpunished-1440769>.
[166] United Office on Drugs and Crime (UNODC), 'Global Report on Trafficking in Persons' (2016) *<https://www.unodc.org/.../data.../2016_Global_Report_on_Trafficking_in_Persons.pd...>*.
[167] Md Owasim Uddin Bhuyan, 'Cases pile up, victims get no redress', *The New Age* (Online, 21 April 2018) <http://www.newagebd.net/print/article/39467>.

Pre-emptive measures are essential to make people aware of the potential threat of trafficking, so that they might not become victims of this crime.

3 *Rohingya Refugees and their Protection from Trafficking*

Chapter Four considered whether trafficked victims could attain refugee status under international law. As noted previously, Bangladesh is not a party to the Refugee Convention. Nonetheless, it is useful to consider whether Bangladesh can protect Rohingyas who are staying inside Bangladesh from human trafficking by implementing existing laws and regulations.

Despite not having signed and ratified the *Refugee Convention*[168] and its Protocol,[169] the 1954 Convention on Stateless Persons[170] and the 1961 Convention on Reduction of Statelessness,[171] as a member state of various international human rights instruments[172] Bangladesh has an obligation to ensure and protect the rights of refugee women and children and any other people who are refugees.[173] First of all, the Constitution of Bangladesh addresses eighteen fundamental rights for all people of Bangladesh, of which some rights can be claimed by non-citizens such as refugees and foreigners.[174] The second section of this Chapter highlighted articles 31 – 35 which aim to prevent trafficking and protect trafficked victims.[175] Bangladesh has sizable refugee camps. Despite the human rights provisions in the Constitution, the poor living conditions and poor status of human rights in these camps make Rohingya refugees vulnerable to crime, including human trafficking. It has been reported that Rohingya people are restricted from leaving their camps

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[168] *The Convention relating to the Status of Refugees* opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).
[169] *The Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 267 UNTS 606 (entered into force 4 October 1967).
[170] *The Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954 117 UNTS 360 (entered into force 6 June 1960).
[171] *The Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 175 UNTS 989 (entered into force 13 December 1975).
[172] Such as the UDHR, the Four Geneva Conventions of and two Additional Protocols, the ICCPR, the ICESCR, the CRC, CEDAW, the CAT and CERD.
[173] Chowdhury R Abrar, 'Legal protection of refugees in South Asia' (2001) 10(1) *Forced Migration Review* 21.
[174] Nour Mohammad, 'International Refugee Law Standards: Rohingya Refugee Problems in Bangladesh' (2011) 11 *ISIL Year Book of International Humanitarian and Refugee Law* 401.
[175] *Constitution of the People's Republic of Bangladesh 1972*. Article 31 - Right to Protection of law, Article 32 - Protection of right to life and personal liberty, Article 33 – Safeguards against Arrest and Detention, Article 34 – Prohibition of forced labour and Article 35 – Protection in respect of Trial and Punishment.

without permission.[176] They have very limited access to employment, education and other human rights and social services.[177]

In the absence of any specific legal instrument[178] to protect the rights of refugees, can Rohingya refugees be considered victims of trafficking under the *Human Trafficking Act 2012*? This instrument uses the term 'any person' when defining trafficking, which means any natural person and any company, firm, or association or group of persons.[179] In addition, section 2 defines victims of human trafficking as those persons against whom the offence has been committed. The Act is therefore applicable to both citizens and non-citizens. As such, refugees can be classified as persons and victims of trafficking as in many cases this offence has been committed against them. However, the issue of trafficking of Rohingya refugees always remains unaddressed.[180] For instance, the Ministry of Home Affairs has recently reported that between January to June 2019, about 250 Rohingyas were rescued from traffickers; however, that number was not reported in their official data.[181]

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[176] Meenakshi Ganguly and Brad Adams,'For Rohingya Refugees, There's No Return in Sight: Why They Remain Stuck in Bangladesh', *Human Rights Watch* (Article) <https://www.hrw.org/news/2019/06/05/rohingya-refugees-theres-no-return-sight>.

[177] Ibid. For example, it has been confirmed through a Human Rights Watch report that since January 2019 many Rohingya Refugee children have been forced to leave school.

[178] Besides the Constitution, there are several statutes in Bangladesh – such as the *Foreigners Act 1946*, *Registration of Foreigners Act 1939*, *Passport Act 1920*, Bangladesh Citizenship (Temporary Provision) Order 1972, *Extradition Act 1974* and *Naturalisation Act 1926* – which address various issues relating to non-citizens. However, none of the statutory laws have any specific provision about rights of the refugees. Rather, refugees are scared of being arrested under the Foreigners Act 1946 because of their statelessness. Winrock International (n 9). UN High Commissioner for Refugees (UNHCR), *UNHCR Submission on Bangladesh*, 30 sess, (May 2018). Section 3 of the *Foreigners Act* authorises government to impose restriction on Foreigners. Under this s 3 government may make provision for prohibiting, regulating or restricting the entry of foreigners into Bangladesh or their departure therefrom or their presence or continued presence therein. Under this Act foreigners can get arrested, detained or confined in the interest of the security of Bangladesh.

[179] *Human Trafficking Act 2012* (Bangladesh) s 2(13).

[180] Chapter Four highlights the concluding observations and recommendations of different Human Rights Treaty Bodies on response of Government of Bangladesh to protect the rights of Rohingya refugees. The Committee on CEDAW also confirmed that Rohingya refugees have limited access to the rights and services. The Committee on Torture recently pointed out that there are more than 100 cases on human trafficking of Rohingya refugees, however, the High Court of Bangladesh refused to receive any complain. The Committee Against Torture (CAT), *Concluding Observation on periodic reports of Bangladesh*, 67 sess, UN Doc CAT/C/BGD/CO/1 (22 July–9 August 2019). So, weak enforcement of existing laws and neglecting attitude towards refugees create environment of re-trafficking. Refugees are entitled to get protection when they are in trafficking situation under the *Human Trafficking Act 2012*. The recent response of the Apex court and poor human rights conditions of refugees are the evidence that Bangladeshi legal responses are not satisfactory to ensure the human rights of the refugees and perform its legal obligation towards Rohingya refugee trafficked victims.

[181] Naimul Karim, 'Rohingya refugees in Bangladesh warned to be wary with human trafficking rising', *Reuters* (Online, 23 August 2019) <https://www.reuters.com/article/us-bangladesh-myanmar-trafficking/rohingya-refugees-

4 *Money Laundering*

Money laundering is a significant threat facing financial institutions and the economies of source, transit and destination countries. Organised criminals involved in human trafficking commonly use a "funnel account" to legitimise their illegal use of money.[182] This section considers how the *Bangladesh Money Laundering Prevention Act 2012* may facilitate the criminalisation of human trafficking.

The Criminal Investigation Department of Bangladesh uses various methods to investigate trafficking cases, including money flow charts, passport flow charts, victim flow charts, link charts, activity charts, event charts and charts of evidence.[183] Tracing money is one of these investigative techniques. If we analyse one of the money flow charts of human trafficking cases, it can be easily demonstrated how frequently money is transferred through source, transit and destination countries in ways that conceal the illegal sources of that money.

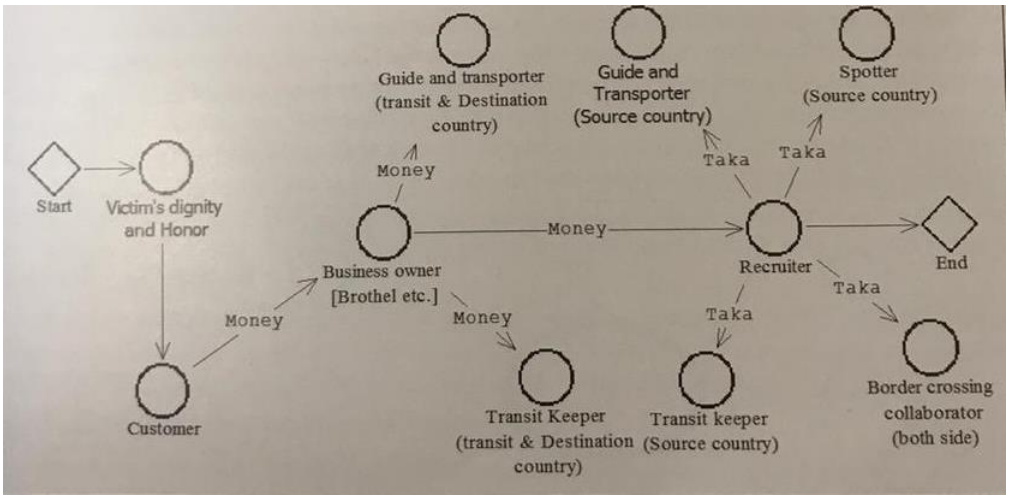

Figure 14: Money Flow Chart for Human Trafficking [184]*(I used this from the journal article outlined in*

in-bangladesh-warned-to-be-wary-with-human-trafficking-rising-idUSKCN1VD0XD>. This official report is prepared by the Monitoring Cell of Bangladesh Police. There is no specific instruction in *Human Trafficking Act 2012* to prepare this official data.

[182] Steven M. Reback, 'Human Trafficking Raises Money Laundering Risk' (Article Treliant New Coordinates, 2015) <https://www.slideshare.net/StevenReback/human-trafficking-article>.

[183] Md Shah Alam, 'Analytical Techniques for Quality Investigations of Organised Crime: An Evaluation on CID Performance ' (2014) 1(2) *Police Staff College Journal* 112.

[184] Ibid. Here the term 'money' has been used as a technique of investigation where the nature of the currency of

footnote)

In 2012, Bangladesh passed the *Money Laundering Act*[185] to prevent illegal money transactions. According to this Act, predicate offences are responsible for money laundering as they are the source of illegal money. This Act addresses kidnapping, illegal restraint, hostage taking, human trafficking, trafficking of women and children, and sexual exploitation as predicate offences.[186] It also sets out the punishment for money laundering, which is imprisonment for a term of at least 4 (four) years but not exceeding 12 (twelve) years, and fines of taka 20 lac (AUD 33071).[187] In addition, the Bangladesh Bank has a Bangladesh Financial Intelligence Unit formed under this Act, to provide information about money laundering and any other suspicious transactions to other countries and to request information from other countries.[188] The Bangladesh Government can also be a party to bilateral and multilateral agreements to fight money laundering.[189]

As human trafficking and money laundering are closely connected, one of my interviewees said that human trafficking cases should be filed in conjunction with a money laundering case. However this does not happen currently, and there is no evidence of any collaboration between Bangladesh and neighbouring and destination countries in money laundering cases. There are a number of impediments. Firstly, human trafficking cases are investigated by the Criminal Investigation Department, while money laundering is a scheduled offence under the *Anti-Corruption Commission Act 2004* and is therefore investigated by the Anti-Corruption Commission (or any other agencies authorised by this Commission).[190] Secondly, human trafficking cases are supposed to be tried by a special human trafficking tribunal. As noted above, in early 2020 the government

transit and destination countries is unknown. It is a matter of investigation to find out the nature of currency used in transit and destination countries. On the other hand, the term 'taka' has been used as a currency of Bangladesh which is also known as BDT and according to the chart source country means Bangladesh.

[185] *Money Laundering Act 2012* (Bangladesh).

[186] Ibid s 2. Predicate offences of money laundering are those offences which are committed within or outside of the country and from which the money or property have been laundered or attempt to be laundered. It includes any larger crimes such as human trafficking, smuggling, kidnapping, bribery, blackmail, extortion, fraud, theft, counterfeiting, illegal gambling, Infringement of intellectual property rights, offences related to environment and tax related offences. Mohammad Saiful Islam, Sharmin Akter Eva and Mohammad Zahed Hossain, 'Predicate Offences of Money Laundering and Anti Money Laundering Practices in Bangladesh Among South Asian Countries' (2017) 12(3) *Studies in Business and Economics* 63.

[187] Ibid s 4.

[188] Ibid s 24.

[189] Ibid s 26.

[190] Ibid s 9.

established this special tribunal to dispose of trafficking cases; that is, after eight years since the Human Trafficking Act was first passed. However, there is still no separate tribunal particularly for money laundering cases.

As a member state of the UN Convention Against Corruption,[191] Bangladesh has an obligation to conduct proper investigations into the financial infrastructure supporting human trafficking. Bangladesh needs to incorporate international frameworks and increase international cooperation to investigate money laundering as part of its effort to combat human trafficking. The effectiveness of the *Money Laundering Act* and other aforesaid domestic legal instruments depends on proper implementation and strong enforcement mechanisms.

D *Review of Bangladeshi Trafficking Case Law and International Obligations*

On 7 January 2010, in the case of *Rantsev v Cyprus and Russia*,[192] the European Court of Human Rights passed a landmark judgment on human trafficking.[193] This judgment is considered to be the first international judicial effort ascertaining the relevant obligations of European states.[194] *Rantsev* was about the death of a trafficked victim, Oxana Rantseva, who travelled from Russia to Cyprus to work as a cabaret artiste. Her father filed a case against Cyprus and Russia alleging violations of the European Convention on Human Rights.[195] In addition, the petitioner claimed that Russia

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[191] *The United Nations Convention Against Corruption*, opened for signature 31 October 2003, 41 UNTS 2349 (entered into force 14 December 2005).

[192] *Rantsev v Cyprus and Russia* (Application No 25965/04, European Court of Human Rights, Grand Chamber, 7 January 2010).

[193] *Siliadin V France* is the first case where European Court of Human Rights delivered judgment on a fact where Ms Siliadin a 15 years old girl from Togo was brought to France with promise of enrolling in school but she worked as domestic servant without pay. The decision of court was criticized for not recognizing this situation as trafficking, for failing to understand the prohibition of slavery as including slavery de jure and de facto and for narrow explanation of positive obligation of state parties. The court decided Ms Siliadin was subjected to forced labour and servitude within the meaning of Article 4 of the Convention, but she was not in condition of slavery in traditional sense. In this case, the court only focused on positive obligation to ensure adequate criminal law provisions. It ignored the human rights approach which is the key element of positive obligation. But in the Rantsev case, the court focuses on positive obligation of state parties (both the source and destination countries) in a very broad way. *Siliadin V France* (Application no. 73316/01, European Court of Human Rights, Grand Chamber, 26 October, 2005). Valentina Milano, 'The European Court of Human Rights' Case Law on Human Trafficking in Light of LE v Greece: A Disturbing Setback?' (2017) 17(4) *Human Rights Law Review* 701.

[194] Ibid.

[195] Such rights are – a) Right to life, art 2.
b) Freedom from torture, inhuman and degrading treatment, art 3
c) Freedom from slavery, servitude, forced and compulsory labour, art4.

had failed to protect its citizen from the risk of trafficking and failed to conduct a proper investigation of the victim's death.[196]

The Cypriot Ombudsman investigated the death.[197] According to their report 'the word artiste has become synonymous with prostitute'.[198] The Ombudsman further added that when artistes arrived in Cyprus, their passports and other legal documents were taken away by their employers, they were always under threat and under constant surveillance, and many of them were confined.[199] They were physically and mentally tortured if they refused to obey the command of their employers. Many of them were forced to engage in sex work without their consent.[200] The court focused on the obligations of member states of the European Union to take effective measures to fight human trafficking.[201]

Bangladesh is a dualist country, not a monist country, so it is up to its own Government to ensure the implementation of its international obligations.[202] Article 25 of the Constitution states:

> The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the national affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter…[203]

Article 145A of this Constitution illustrates the procedure of treaty incorporation into national legislation, which is entirely the task of the executive body of the government.[204]

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d) Right to liberty and security, art 5.

[196] Roza Pati, 'States' positive obligations with respect to human trafficking: The European Court of Human Rights breaks new ground in Rantsev v. Cyprus & Russia' (2011) 29(1) *Boston University International Law Journal* 82.

[197] Jean Allain, 'Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery' (2010) 10(3) *Human Rights Law Review* 546.

[198] Ibid.

[199] Ibid.

[200] Ibid.

[201] Siddharth Kara, 'Designing more effective laws against human trafficking' (2010) 9 *Northwestern Journal of International Human Rights* 123.

[202] Md Hosain and Christine Richardson, 'Application of International Law in Bangladesh: An analysis of the Supreme Court Judgments' [2015] *Jagannath University Law Journal* 1.

[203] *Constitution of the People's Republic of Bangladesh 1972* art 25.

[204] *Constitution of the People's Republic of Bangladesh 1972* art 145(a) - All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament: Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.

The application of international law becomes apparent in several judgments of Bangladesh superior courts. In the case of *Ershad v Bangladesh & Ors*, Justice BB Roy Chowdhury explained, 'although universal human rights norms, whether given in the UDHR or in the covenants, are not directly enforceable in national courts, they are enforceable by domestic Courts if such norms are incorporated into the domestic law'.[205] As international laws are not part of the *corpus juris* of the state, they are not binding unless implemented by national law.[206] However, Bangladeshi courts may have regard to international law when interpreting legislation.[207] In *Bangladesh & Or v Hasina & Or*, it was held that

> the inclusion of bill of rights in our Constitution is influenced by the international bill of rights and as a result we find most of the rights mentioned in the declaration and the covenants have been incorporated in some form or other in part III of the Constitution and some have been recognized in part II.[208]

Moreover, it was decided that it is the obligation of courts to interpret rights of part III of the Constitution consistently with international human rights instruments such as the *UDHR*, the *ICCPR*, and the *ICESCR*.[209]

Judges are in the best position to implement current trafficking laws, taking international law into account.[210] One significant decision is *Abdul Gafur v Secretary, Ministry of Foreign Affairs, Government of Bangladesh*.[211] This case was filed by the father of a 15 year old Bangladeshi girl who had been trafficked to India. The petition sought repatriation of the girl, who had been rescued

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[205] *Ershad v Bangladesh* (2001) 21 Bangladesh Law Chronicles 3, para 2 (Appellate Division).
[206] *BNWLA v Government of Bangladesh and others* (2009) 14 Bangladesh Law Chronicles 703 (High Court Division).
[207] Hosain and Richardson (n 202).
[208] *Bangladesh v Hasina* (2008) 60 Dhaka Law Report 90 (Appellate Division). See paragraph 82.
[209] Ibid.
[210] There are a number of decisions of Bangladesh courts relating to human trafficking. A notable one is *Bangladesh Society for the Enforcement of Human Rights (BSEHR) v Government of Bangladesh* (2001) 53 Dhaka Law Reports 1 (High Court Division). This case was about the rights and dignity of involuntary sex workers who were rescued from a brothel. There was no allegation of human trafficking; however, the court observed that there are many women and children who are victims of trafficking as well as sexual exploitation. The court emphasised the rights of sex workers by declaring that prostitution is not illegal in and of itself. However, the court directed the government to take proper steps to prevent involuntary sex work.
[211] Ibid.

and was staying in a shelter home in West Bengal. The court decided that the victim was entitled to protection under articles 27,[212] 31[213] and 32[214] of the Constitution, and ordered Bangladesh to take appropriate steps to repatriate her. Thus, it was decided that the right to repatriation is a constitutional right in Bangladesh. The court directed the government to deal with human trafficking cases very cautiously and seriously.[215]

That said, there are many instances where the apex courts of Bangladesh have overlooked the seriousness of human trafficking, and this hampers an effective criminal justice approach. In the case of *State v Anjali Devi*,[216] the court did not scrutinise or analyse the definition of human trafficking, but instead overruled the conviction of child traffickers on the basis that they had not been successful in their attempt to traffic the child to India.[217] Again, in the case of *Debobrata Baiddya v The State*,[218] the court did not find any elements of human trafficking even though there had been strong allegations made. It is the duty of the court to ensure prosecution of offenders as they are accused for violating the human rights and dignity of victims.[219] Most recently, the Trafficking in Persons Report 2019 stated that

despite at least 100 credible reports of forced labor and sex trafficking of Rohingya within Bangladesh, the government did not report investigating or prosecuting these potential crimes, and the Bangladesh High Court did not entertain anti-trafficking cases filed by Rohingya.[220]

E *Conclusion*

[212] *Constitution of the People's Republic of Bangladesh 1972*. Article 27 provides that: 'All citizens are equal before law and are entitled to equal protection of law.'
[213] Ibid. Article 31 provides: 'To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.'
[214] Ibid. Article 32 states: 'No person shall be deprived of life or personal liberty save in accordance with law.'
[215] Renee Gerber, 'Repatriation of trafficking victims is a fundamental right', *The Daily Star* (Online, 4 August 2007) <https://archive.thedailystar.net/law/2007/08/01/index.htm>.
[216] *State v Anjali Devi @ Monju Devi* (2009) 29 Bangladesh Legal Decisions 445 (High Court Division).
[217] Ibid.
[218] *Debobrata Baiddya v The State* (2006) 26 Bangladesh Legal Decisions 15 (High Court Division).
[219] Ibid.
[220] United States Department of State (n 10).

Chapter Five has concentrated on the various existing domestic legal instruments used in Bangladesh to combat human trafficking. Most of the substantive criminal laws have not addressed this crime properly. It has been demonstrated that these instruments have proven ineffective in eradicating this crime. They have not ensured the rights of trafficked victims to be rescued and rehabilitated.

At present, Bangladesh has specific legislation addressing human trafficking, with a broad definition of this crime. However, there are still a number of legislative gaps that need to be addressed. Despite having this instrument, Bangladesh has been categorised in the Tier 2 Watch list in 2017, 2018 and 2019.[221] These reports help to identify the gaps in existing measures and provide guidelines on how to improve the situation through implementing both international and domestic laws. In addition, investigations and cross-border cooperation seem limited. The increasing number of trafficking cases and low prosecution rates, and ongoing exploitative experiences of domestic workers in Gulf States demonstrate that Bangladesh is not doing enough to ensure effective prosecution of traffickers.

As has been observed by Stephen Bottomley and Simon Bronitt, 'law in general and legislation in particular, is an effective instrument of social engineering and public policy.'[222] However, the effectiveness of legislation depends on a complex range of different factors, power distribution in society, and effective implementation processes.[223] According to the analysis of legislation as provided in this Chapter, it is apparent that the Bangladeshi legal system focuses on a criminal justice approach rather than a victim-oriented human rights-based approach. However, despite having taken a criminal justice approach, implementation of this approach has been ineffective. Bangladesh has an obligation to prevent this crime and to protect and ensure the rights of the trafficked victims. Whether Bangladesh's institutions are applying due diligence and taking adequate steps to prevent trafficking and protect victims of trafficking is the topic of the next Chapter.

[221] United States Department of State (n 11).
[222] Stephen Bottomley, *Law in Context*, Simon Bronitt (ed) (Federation Press, 4th ed, 2012).
[223] Ibid.

CHAPTER 6: HUMAN RIGHTS APPROACH TO HUMAN TRAFFICKING: PREVENTIVE AND PROTECTION MEASURES

As discussed in Chapter Four, there are a number of international human rights instruments that address human trafficking.[1] The *Trafficking Protocol* has its '3P' Paradigm (Prosecution, Protection and Prevention).[2] The UN High Commissioner for Human Rights has also focused on three factors that should be prioritised by state parties.[3] These factors include:

> 1) factors which increase the vulnerability of victims and potential victims;
> 2) factors which create or sustain demand for the goods and services produced by trafficked persons; and
> 3) factors which create or sustain an environment within which traffickers and their accomplices can operate with impunity.[4]

Chapter Six considers to what extent the Government of Bangladesh has successfully implemented its international obligations to combat human trafficking. This chapter consists of three sections. Firstly, I will outline the institutional response towards human trafficking, and analyse the policies and programs of Bangladesh having regard to the theories set out in Chapter Two. Secondly, I closely examine the performance of institutions and laws to protect the rights of victims. Finally, the Chapter focuses on the response of NGOs, and demonstrates that their work better reflects the human rights-based approach than does the government's response.

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[1] See Chapter Four.
[2] See Chapter Three.
[3] United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights and Human Trafficking' (Fact Sheet No 36, United Nations, 2014) <https://www.ohchr.org/Documents/Publications/FS36_en.pdf>.
[4] Ibid.

A *Organisational Structure and Institutional Response to Trafficking*

Figure 15 sets out the structure of the government offices that are responsible for fighting human trafficking. This Section will firstly outline these institutions and their activities related to human trafficking. In the following section I analyse the policies implemented by those institutions.

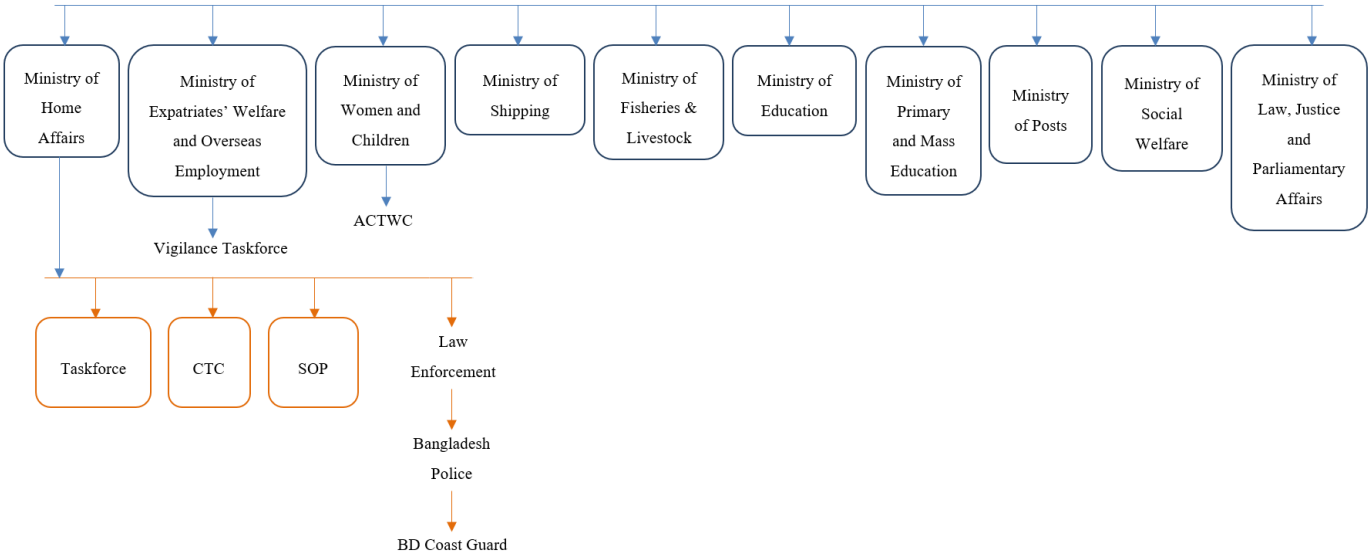

Figure 15: Organisational Structure of Bangladesh

1 *Ministry of Home Affairs*

The Ministry of Home Affairs of the Government of Bangladesh ('Home Ministry') plays the most important role in countering trafficking efforts in Bangladesh. It has worked with different INGOs and NGOs to implement the National Plan of Action for Combating Human Trafficking 2015–2017 and has set up a Task Force on Rescue, Repatriation and Reintegration of Victims of Trafficking (RRRI)[5] which focuses on the rights of victims. It also implements the *Human Trafficking Act 2012* and has developed and is currently implementing the National Plan for Action

[5] Government of the People's Republic of Bangladesh, 'Bangladesh Country Report, Combating Human Trafficking' (Country Report, 2016) <https://mhapsd.portal.gov.bd/sites/default/files/files/mhapsd.portal.gov.bd/page/d9fa01c7_35a1_42f2_827c_1030c3e0e474/Country%20report%202016%20%20fina.pdf>.

for Combating Human Trafficking 2018–2022 (National Action Plan). The government claims it has taken steps to engage in international cooperation and coordination to reduce the growth of this crime and ensure the rights of trafficked victims.[6] In a 2016 Country Report, the Home Ministry stated that there are Counter Trafficking Committees (CTCs) in every District, working to raise awareness about human trafficking.[7] However, in my fieldwork this claim was contested. On 16 January 2017, after five years of incorporating legislation on human trafficking, the Home Ministry adopted three new Rules and procedures to ensure effective implementation of *Human Trafficking Act 2012*.[8]

2 *What is the RRRI Task Force and How Does it Work?*

To fight against and prevent heinous cross-border crime, the RRRI Task Force has forged a relationship between the Government of Bangladesh and the Government of West Bengal (India).[9] Bangladesh and UNICEF are also working together to implement the objectives of this Task Force. In 2016, Bangladesh undertook a project called 'Anti-Trafficking Monitoring and Mechanisms', which was funded by UNICEF.[10]

The Ministry of Home Affairs has claimed that the RRRI Task Force has successfully repatriated 1,269 trafficked victims from India.[11] To ensure safe and fast repatriation of trafficked victims, the Home Ministry has also established a Standard Operating Procedure (SOP). To enhance application of the SOP and effectiveness of the RRRI Task Force, a number of bilateral meetings were organised, and on 30 May 2015 a Memorandum of Understanding was signed by Bangladesh and India (the destination country where most victims are trafficked).[12] At a national level, the

[6] Ibid.
[7] Ibid.
[8] In order to fulfil the purpose of the Human Trafficking Act 2012, on 16 January 2017 the government formed the National Anti-Human Trafficking Authority through the National Human Trafficking Agency Rules 2017. The government also formed the Human Trafficking Prevention Fund according to the Human Trafficking Prevention Fund Rules, 2017 which is the requirement of section 42 of the Act. In the same year, the government introduced the Human Trafficking Prevention and Suppression Rules 2017 which highlight the process of victims' rescue, identification and reintegration. Chapter Six focuses on several of these rules in section 6.C below.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.

RRRI Task Force is also working to enforce the *Children Act 2013* through establishing a Child Affairs Desk in every police station.[13]

On 30-31 May 2017, the UNODC organised a consultation session among senior government officials and experts from India, Bangladesh and Nepal in Kolkata and India.[14] The main purpose of that session was to elevate the SOP and to develop Regional Referral Mechanisms to ensure support to trafficked victims.[15] The session also considered better ways to share information among the different bordering countries, and develop a better victim identification system.[16] The Bangladesh Ministry of Home Affairs also attended that session.

3 *Law Enforcement Agencies*

As one of the main law enforcement agencies, the Bangladesh Police has a responsibility to combat human trafficking. Their focus is to prevent crime, to ensure punishment of traffickers, and to protect the rights of trafficked victims by implementing the *Human Trafficking Act 2012* and the National Action Plan.

At Bangladesh Police Headquarters there is a Human Trafficking Monitoring Cell, whose function is to collect information about trafficking cases and maintain a 'Crime Data Management System' to house information updates. In Chapter Five, Tables 5.5 and 5.6, which showcased the number of prosecutions and disposal of trafficking cases, were produced by the Human Trafficking Monitoring Cell and drawn from their database.

The Special Branch is another unit of the Bangladesh Police, working in every major airport and border checkpoint to prevent illegal migration and human trafficking and to police any other cross-border crimes. The Security Control Organisation Wing is part of the Special Branch and their

[13] Ibid.
[14] United Nations Office on Drugs and Crime,'Countering Human Trafficking: Strengthening cross-border cooperation between Bangladesh, India and Nepal', *UNODC South Asia* (Online, 30-31 May 2017) <https://www.unodc.org/southasia//frontpage/2017/May/strengthening-cross-border-cooperation-between-bangladesh--india-and-nepal-to-counter-human-trafficking.html>.
[15] Ibid.
[16] Ibid.

main responsibility is to monitor the safety of Bangladeshi nationals stranded abroad.

In addition, the Criminal Investigation Department has a responsibility to investigate any type of organised crime. It has a Trafficking in Human Being Cell, headed by senior police who have the power to investigate and monitor trafficking cases. The following table is the most recent one available that elucidates the status of investigation of trafficking cases.

Charge Sheet	96
Final Report	74
Pending investigation	445
Total cases	615

Table 7: Trafficking cases under investigation from January to December 2019[17]

To prevent human trafficking and ensure the rights of trafficked victims, the Bangladesh Police has also provided training to its members. The Police have a human trafficking module in their training program. Some police have even received training abroad, including by UN Missions.

The Police have also set up eight Victim Support Centres to give temporary support to trafficked victims. These Victim Support Centres are working with other law enforcement agencies and with different INGO and NGO to combat trafficking in human beings.

For the reasons set out in Chapter One, due to its geographical location Bangladesh has become a lucrative area for human trafficking. The Border Guard of Bangladesh (BGB) is responsible for preventing human trafficking at the land borders of Bangladesh. According to its 2016 Country Report,[18] the BGB has developed and conducted a number of different programs in border areas to create awareness about the crime of human trafficking. The BGB reports that it is continuously patrolling and monitoring the border area to prevent illegal and involuntary crossings. Members

[17] Ministry of Home Affairs,'Human Trafficking' (Statement of Cases, 28 January 2020) <https://mhapsd.portal.gov.bd/sites/default/files/files/mhapsd.portal.gov.bd/page/d9fa01c7_35a1_42f2_827c_1030c3e0e474/11.pdf>.

[18] Bangladesh Government published its first Country Report on Combating Human Trafficking in 2016. After 2016 there is no country report on behalf of Bangladesh.

of the BGB are trained, and work with the Indian Border Guard to prevent human trafficking. In 2016, only five traffickers were arrested, but a total of 279 victims were rescued (including 198 women and 81 children).[19]

Chapter One also highlighted the use of sea routes for trafficking. The Bangladesh Coast Guard is authorised to prevent human trafficking and smuggling by sea and in adjacent coastal areas.[20] They regularly patrol sensitive areas, checking ships and boats and conducting joint operations with other law enforcement agencies. In addition, they run a number of different awareness programs in remote coastal areas.

The Coast Guard has also received training on different human rights issues. According to the 2016 Country Report, the 'Bangladesh Coast Guard Force conducted a total number of 23,306 operations and has checked 1, 11,209 craft between January and December 2016.'[21] The Coast Guard has also published a report in Bengali on its official website, in which it reports that they arrested 999 people in 2014, and 230 in 2015, who were trying to go abroad illegally through sea routes. Unfortunately they did not use the word trafficked victim and rescue, when many of those arrested were under trafficking situations.[22]

The Bangladesh Ansar / Village Defense Party (VDP) is another organisation working at the grassroots level to prevent human trafficking. They are the only state security provider that can be found in every community of the country.[23] They have received different training courses relating to human trafficking. In addition, they have been providing technical and skill development training to vulnerable men and women.[24]

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[19] Government of the People's Republic of Bangladesh (n 5).
[20] Government of Bangladesh,'Home', *Bangladesh Coast Guard* (Webpage, 2020) <http://coastguard.gov.bd>.
[21] Government of the People's Republic of Bangladesh (n 5).
[22] Bangladesh Coast Guard, 'Yearly Achivement ' (Annual Report Bangladesh Coast Guard, 22 January 2018) <http://coastguard.gov.bd/site/view/annual_reports>.
[23] Government of Bangladesh,'Bangladesh Ansar and VDP', *Government Website* (2020) <http://ansarvdp.gov.bd/>.
[24] Ibid. It is a paramilitary auxiliary force whose main functions include ensuring human security, taking part in welfare activities and disaster management and assisting other law enforcement agencies.

4 *Other Ministries*

The Ministry of Expatriates' Welfare and Overseas Employment follows a human rights approach when they combat human trafficking. To prevent labour trafficking and illegal migration, this Ministry does important work through its Vigilance Task Force.[25] The main objective of this Task Force is to protect workers from fraud and deception. They have conducted a number of operations at the Hazrat Shahajalal International Airport in Dhaka, Bangladesh and detained illegal migrants.[26] They check legal documents of workers, such as their passports, visas, their employment status and whether they have clearance from the Bureau of Manpower, Employment and Training.[27]

This Ministry has suspended the licences of many recruitment agencies who have been involved in illegal migration. Chapter Five demonstrated the number of cancelling licences for facilitating illegal migrants, however, there is no available data showing the number of cancelled licences for human trafficking. This Ministry has also settled many complaints through its Monitoring and Enforcement Wing. It works to raise awareness through a range of programs, seminars and workshops.

Chapter One elucidated how Bangladeshi domestic workers have been exploited in Gulf States. The Bangladesh Government has claimed that it has taken appropriate steps to protect the rights of female workers employed in these countries.[28] However, the 2016 Country Report has not mentioned any specific initiatives or steps. To ensure the rights of workers and their occupational health and safety, the Ministry of Labour and Employment has implemented several policies addressing forced labour, as were highlighted in section 6.B of this Chapter.

As previously discussed, a majority of trafficked victims are women and children, as in Bangladesh these groups are more likely to be vulnerable. The Ministry of Women and Children Affairs works

[25] Ministry of Expatriates,'Welfare and Overseas Employment', *Government Website* (2020) <https://probashi.gov.bd>.
[26] Ibid.
[27] Ibid.
[28] Government of the People's Republic of Bangladesh (n 5).

to empower women through various workshops, training programs and projects, and its work is informed by feminist theory.[29] The Department of Women Affairs and Jatiya Mahila Sangstha[30] are working under this Ministry to prevent human trafficking.

The Ministry of Social Welfare and its organisation the Department of Social Services are also active in the prevention of human trafficking. It organises meetings, conferences and rallies and has produced posters to raise awareness about human trafficking among poor people. It also arranges for the provision of micro-credit for affected people.[31] In 2015, Bangladesh attended the UN Sustainable Development Summit in New York, and agreed to a document titled 'Transforming Our World: The 2030 Agenda for Sustainable Development'.[32] Under this Agenda, the Ministry of Social Welfare has agreed to a number of relevant goals including the eradication of poverty, human trafficking, and forms of child labour, by 2025. The 2030 Agenda also focuses on gender equality and the empowerment of women and girls, which will assist in preventing human trafficking.[33]

As seen in Chapter One, illiteracy and poor education creates an environment where human trafficking can flourish. To build awareness among students, the Ministry of Education has incorporated the topic of human trafficking in national curricula and textbooks. The Ministry of Primary and Mass Education has also implemented a number of programs to raise awareness of human trafficking among children, teachers and the community.[34]

The Ministry of Shipping also has a significant role in preventing human trafficking. The Mercantile Marine Office within the Ministry of Shipping conducts regular inspections of fishing

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[29] Ministry of Women and Children, 'Annual Report 2018-2019' (Annual Report, MWC, Bangladesh, 15 October 2019) <https://mowca.gov.bd/site/view/annual_reports/বার্ষিক-প্রতিবেদন>.
[30] Jatiya Mohila Songstha is a government organisation formed by the Jatiya Mohila Songstha Act 1991. It works with various organisations under the Ministry of Women and Children Affairs to ensure women's rights and development.
[31] Government of the People's Republic of Bangladesh (n 5).
[32] Transforming Our World: The 2030 Agenda for Sustainable Development is a declaration (which is non-binding) made by the UN to end poverty, hunger and inequality, take action on climate change and the environment, improve access to health and education, care for people and the planet, build strong institutions and partnerships, and more.
[33] Ministry of Social Welfare,'Sustainable Development Goals, Bangladesh', *Government Website* (Article, 2016) <https://msw.portal.gov.bd/sites/default/files/files/msw.portal.gov.bd/page/e378846c_627e_4066_98c3_748923136cfd/SDGs%20and%20MoSW%20New%20WEB.pdf>.
[34] Government of the People's Republic of Bangladesh (n 5).

vessels in order to issue certificates of registration. This inspection and registration process can disclose information relating to human trafficking.[35]

Similarly, the Ministry of Fisheries and Livestock has a role in placing restrictions upon fishing vessels and fishers. It is responsible for the provision of identity cards to fishermen. It also works with other law enforcement agencies to ensure that no foreign vessels enter Bangladesh illegally, and in doing so, can help prevent human trafficking.[36]

Another ministry, the Ministry of Post, Telecommunications and Information Technology, has been publishing SMS messages about safe and legal migration and human trafficking through three mobile networks.[37]

The Ministry of Law and the Ministry of Health also have specific responsibilities to prevent human trafficking, however, the Country Report 2016 does not refer to either of these two Ministries. The Ministry of Law, Justice and Parliamentary Affairs has two divisions: the Law and Justice Division and the Legislative and Parliamentary Affairs Division. The Legislative and Parliamentary Affairs Division has a website setting out the human trafficking laws of Bangladesh.[38]

The Law and Justice Division is authorised to create different courts and tribunals, and to establish their jurisdiction and powers to address human trafficking.[39] As discussed in Chapter Five, the Division has an obligation to create a separate special tribunal to dispose of trafficking related cases, and it has recently established such a special tribunal. The Judicial Administration Training Institute is another organisation within the Law and Justice Division that provides training to judicial officers about human trafficking. The National Legal Aid Services Organisation, which is also part of the Law and Justice Division, also provides legal assistance to victims of trafficking.

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[35] Ibid.
[36] Ibid.
[37] 'These messages are: Legal migration ensures safe future for the migrants and their families. Support to identify the human traffickers. Be aware of human traffickers who stay and move around us.' Ibid.
[38] Legislative and Parliamentary Affairs Division,'Laws of Bangladesh ', *Laws of Bangladesh* (2020) <http://bdlaws.minlaw.gov.bd/>.
[39] Government of Bangladesh,'Ministry of Law, Justice and Parliamentary Affairs ' (2020) <www.lawjusticediv.gov.bd/site/page/443250d6-48d4-482c-809b-bc0885be052e/বিচার-শাখা---৪>.

The Bangladesh Counter Trafficking in Persons (BC/TIP) Program – a program of the National Legal Aid Services Organisation – is supported by USAID pursuant to a Memorandum of Understanding (MoU) signed on 16 February 2016.[40]

As noted above, the Ministry of Health has a potentially significant role to play in ensuring the physical and mental health of victims (a topic touched on in Chapter One). Trafficking victims often experience threats and are beset by fear, shame and language barriers which prevent them from sharing their trafficked condition to medical care providers.[41] To combat human trafficking, health care professionals therefore need to increase their awareness about this crime.[42] But the Country Report 2016 for Bangladesh does not include any information about how the Ministry of Health is working, and the Ministry of Health website is silent on the topic. It is not clear whether medical professionals have adequate knowledge and training to identify trafficking victims (by reference to their behaviour or presentation, for example), or to identify criminals.

The Government faces many different challenges in combating human trafficking. The next section considers the effectiveness of its policies.

B *Analysis of Policy Effectiveness*

This section analyses and discusses the current policies of Bangladesh to prevent human trafficking. I consider what reasonable and necessary steps could be taken to address this crime. The OHCHR has identified several approaches[43] to deal with human trafficking.[44] Jonathan Todres has also identified the need for a human rights-based response[45] in the development of a sustainable solution strategy to prevent sex trafficking.[46] In this section of the thesis I utilise these strategies

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[40] Winrock International, 'Counter Traffcking Newsletter', *BCTIP Newsletter* (Online, January - March 2016) <https://www.winrock.org/wp-content/uploads/2017/02/BCTIP-Newsletter-_-Issue-2_Jan-Mar-20162.pdf>.
[41] Susie B. Baldwin et al, 'Identification of human trafficking victims in health care settings' (2011) 13(1) *Health Human Rights* e36.
[42] Ibid.
[43] Such as: Prevention through addressing vulnerability to trafficking; Prevention through addressing demand and prevention through addressing corruption and complicity.
[44] United Nations Office of the High Commissioner for Human Rights (OHCHR) (n 3).
[45] Five other Rights: 1) Right to be free from gender-based violence and discrimination; 2) Right to be free from other forms of discrimination; 3) right to birth registration; 4) Health rights; 5) Right to education.
[46] Jonathan Todres, 'The Importance of Realising Other Rights to Prevent Sex Trafficking' (2005) 12 *Cardozo*

and measures to evaluate the effectiveness of current plan and policies. I demonstrate that while most of these policies and programs are consistent with a human rights approach, feminist and critical race theory and the Marxist theory of forced and unfree labour. However, it seems that existing institutions are failing to implement these policies in an active way.

1 *Policy Addressing Vulnerability to Trafficking*

The principal policy of Bangladesh addressing human trafficking is the National Plan of Action. Since 2002 Bangladesh has undertaken three National Plans of Action to combat human trafficking: in 2009-2011, 2012-2014 and 2015-2017. The fourth National Plan of Action (NPA) 2018-2022 is fully consistent with a human rights-based approach as it is based on the Sustainable Development Goals (SDGs) and the 7th five-year plan,[47] where both plans are working both directly and indirectly to combat human trafficking.

Three goals of the SDGs are directly concerned with the prevention and suppression of human trafficking.[48] To begin, Goal 5 is to achieve gender equality and empower all women and girls. Chapter One demonstrates how women and children are discriminated in Bangladesh's patriarchal society. Gender equality and empowering women will help to realise and enjoy their full rights. Another is Goal 8 – to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Economic discrepancies and poverty are one of the causes of human trafficking, as described in detail in Chapters One and Two. Poverty reduction and employment can prevent human trafficking effectively. Finally, there is Goal 16 – to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and

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[47] The 7th Year Plan for the period FY 2016-2020 was adopted in October 2015 by Bangladesh. It is a policy document to ensure development in the public sector and provide direction to the overall national development for a period of 7 years. The main aim of this Policy document is to meet Sustainable Development Goal (SDG) targets. General Economics Division (GED) Planning Commission, 'Integration of Sustainable Development Goals into the 7th Five Year Plan' (Workshop Document, GED Planning Commission, February 2016) <http://pksf-bd.org/web/wp-content/uploads/2018/11/4.-Integration-of-Sustainable-Development-Goals-into-the-7th-Five-Year-Plan.pdf>.

[48] Goal 5: Achieve gender equality and empower all women and girls.

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

build effective, accountable and inclusive institutions at all levels. This highlights the institutional responsibility to ensure justice for the victims. In Chapter One I demonstrated how victims are frustrated with not getting support in the existing criminal justice system.

Thus, Goals 5 and 8 are both preventive measures to combat human trafficking, while Goal 16 focuses on protection of the rights of victims. Following these three goals and other SDG targets, NPA adopts five objectives to fight against human trafficking: prevention of human trafficking; protection of victims; ensuring an effective trial; partnership and cooperation; and monitoring and evaluation. [49] These five objectives reflect the *Trafficking Protocol*. Different programs are undertaken by the government to fulfil those objectives, as will be illustrated in the following discussion.

A few of the limitations of the earlier NPA 2015-2017 have been addressed in the new NPA 2018-2022. The NPA 2015-2017 faced a range of challenges, including: inadequate and improper processes to raise awareness, lack of coordination in identifying victims and people vulnerable to trafficking, and funding and resources issues in running CTCs and other programs.[50] The current NPA 2018-2022 highlights the need for more social and economic security, given that (as I have previously demonstrated) poor social and economic conditions are one of the environmental triggers of human trafficking. In contrast, the previous NPA focused more on raising awareness of trafficking. The current NPA seeks to address the causes of vulnerability to human trafficking, such as poverty, inequality, discrimination, family violence, sexual abuse, exploitation of women and children, and corruption. In the following paragraphs I address these environmental triggers of human trafficking in more detail.

2 *Policies Addressing Poverty and Inequality*

As observed in Chapter One and throughout the thesis, poverty and inequality make individuals vulnerable to human trafficking. People from Bangladesh move to wealthier places to free

[49] Ministry of Home Affairs, 'National Plan of Action to Combat Trafficking of Human Beings 2018-2022' (Policy, Government of Bangladesh, 2018).
[50] Ibid.

themselves from poverty. According to the imperial theory of forced or unfree labour described in Chapter Two, this creates a power imbalance between rich and poor that facilitates the exploitation of vulnerable people. As the Council of Europe has explained:

It is widely recognised that improvement of economic and social conditions in countries of origin and measures to deal with extreme poverty would be the most effective way of preventing trafficking. Among social and economic initiatives, improved training and more employment opportunities for people liable to be traffickers' prime targets would undoubtedly help to prevent trafficking in human beings.[51]

Poverty reduction is one of the specific objectives of the NPA 2018-2022, and as a policy is consistent with the theories identified in Chapter Two. The NPA elaborates on strategies such as the reduction of disaster-induced vulnerability; the vulnerability of marginalised households to human trafficking; and the reduction of risks affecting the most vulnerable people, including people with disability, Indigenous people, vulnerable children, and young people. Bangladesh has also set targets within the SDGs to eradicate poverty by 2030. It has also taken numerous initiatives, including the Vulnerable Group Development Program (2017-2021), and Micro-Credit for Poor Divorced Helpless Women (2017-2021).

According to the 2016 Household Income and Expenditure Survey (HIES) conducted by the World Bank, the poverty rate in Bangladesh has declined. In 2016, the poverty rate was 24.3%, down from 31.5% in 2010, and extreme poverty was 12.9% in 2016, down from 17.6% in 2010.[52] During this period Bangladesh plainly made significant progress, but it has failed to reduce the discrepancy between the household consumption of the rich and poor.[53] The recent emergence of COVID-19 is unlikely to assist Bangladesh in its efforts to combat poverty.

[51] United Nations Office of the High Commissioner for Human Rights (OHCHR) (n 3).
[52] The World Bank, 'Bangladesh Continues to Reduce Poverty But at Slower Pace' (Report, 24 October 2017) <https://www.worldbank.org/en/news/feature/2017/10/24/bangladesh-continues-to-reduce-poverty-but-at-slower-pace>.
[53] Ibid.

3 *Policies Addressing Discrimination, Gender Violence and Vulnerability of Children to Trafficking*

The existing policies addressing discrimination, gender violence and vulnerability of children to trafficking are consistent with feminist theory and critical race theory. I have previously set out in Chapter four that human rights need to be addressed to reduce vulnerability to trafficking, and in Chapter One I explained how gender-based violence and discrimination – including physical and mental torture and any other violence and discrimination on the ground of gender inequalities[54] – are push factors in human trafficking. Nonetheless, according to the Report on Violence against Women (VAW) Survey 2015, women in rural areas remain vulnerable to violence. The rate of physical violence was 49.6 % in 2015, up slightly from 47.8 % in 2011.[55]

In Bangladesh, women and children are being trafficked for sexual exploitation and forced prostitution. Currently, a huge number of Rohingya women and children are among trafficked victims.[56] In Bangladesh prostitution is not illegal. There are two largest brothels in Bangladesh: one is Daulatdia, which is one of the biggest brothel in the world, where about 1,500 prostitutes live.[57] Another brothel is the Kandapara brothel which is 200 years old. In 2014, the court ordered to demolish Kandapara brothel, but with the help of a local NGO it was re-established.[58] It is evident that some victims are sold to brothels by their families, and many are kidnapped or abducted; some girls in brothels are as young as 10 years old.[59] This thesis does not argue whether prostitution should be legal or illegal; rather it focuses on forced prostitution where most of the victims are trafficked, and considers the responsibilities of those who generate demand for such

[54] United Nations High Commissioner for Human RIghts, 'Handbook for the Protection of Internally Displaced Persons' (Handbook, UNHCR, 22 October 2009) <https://www.unhcr.org/protect/PROTECTION/4794b3512.pdf>.
[55] Bangladesh Bureau of Statistics, Statistics and Informatics Division, Ministry of Planning, Government of the People's Republic of Bangladesh. UN Women, 'Report on Violence Against Women Survey' (Report, 2015) <http://evaw-global-database.unwomen.org/en/countries/asia/bangladesh/2015/report-on-violence-against-women-vaw-survey-2015>.
[56] Karishma Vyas, 'Tricked and trapped: Inside the Rohingya trade', *Aljazeera* (Online, 13 March 2018) <https://www.aljazeera.com/indepth/features/tricked-trafficked-traded-rohingya-trade-180312071402525.html>.
[57] Dominique Mesmin, 'Bangladesh's Biggest Brothel', *Aljazeera* (Online, 27 July 2017) <https://www.aljazeera.com/programmes/101east/2017/07/bangladesh-biggest-brothel-170726081750179.html>.
[58] Kenneth Dickerman, 'Within these walls: Inside the legal brothels of Bangladesh', *The Independent* (Online, 31 October 2016) <https://www.independent.co.uk/news/world/within-these-walls-inside-the-legal-brothels-of-bangladesh-a7388676.html>.
[59] Mesmin (n 57).

trafficking.

The first responsibility relies upon the purchaser of sex acts; secondly, the person who makes profit through sex industries; and thirdly, the society which facilitates trafficking by normalising prostitution. There are many countries in the world (such as South Korea, Sweden, Macedonia, Croatia and Finland) who criminalise men who purchase sex work. Cecilie Hoigard and Liv Finstad have defined those men as 'faceless and nameless' who purchase sex acts.[60] In Bangladesh there is no available research on the number, behaviours and attitudes of customers who buy sex work.

As a signatory state of CEDAW, Bangladesh has a responsibility to protect women from all forms of discrimination. As noted above, empowering women by realising their economic and social rights is the best way to reduce their vulnerability to trafficking. The NPA 2018-2022 has specific goals to reduce sexual violence and protect children who are in vulnerable situations. Through empowering women, raising awareness, ensuring education and reducing economic discrepancies, violence against women and children could be reduced. Moreover, this policy focuses on protection of the best interest of the children and highlights the importance of elimination of all kinds of forced labour. Both the National Women Development Policy 2011[61] and National Child Policy 2011[62] are also working alongside this NPA 2018-2022 to ensure the rights of vulnerable children and women.

As previously discussed in Chapter One, illiteracy and low levels of education make victims more vulnerable to trafficking. In Bangladesh, primary education is free and compulsory, but girls and boys often drop out. The Ministry of Education and Ministry of Primary and Mass Education work to raise awareness of the importance of education in schools and the community.[63] The NPA addresses that topic. A project known as the Secondary Education Sector Investment Program (SESIP) (2014-2019) was run by the Secondary and Higher Education Division of Education

[60] Cecilie Høigård and Liv Finstad, *Backstreets: Prostitution, money, and love* (Penn State Press, 1992).
[61] Government of Bangladesh,'Ministry of Women and Children Affairs', *Government Website* (2020) <https://mowca.gov.bd>.
[62] Ibid.
[63] Government of the People's Republic of Bangladesh (n 5).

Ministry.[64] The Secondary and Higher Secondary Stipend Project is another ongoing project to encourage young girls to finish their education.[65] However, more needs to be done to raise awareness of human trafficking, and to explain the nexus between low levels of education and vulnerability to trafficking.

Violence against women and children is one of the main causes of human trafficking, which is also confirmed by my fieldwork. The Ministry of Women and Children Affairs adopted a National Action Plan to Prevent Violence against Women and Children (2013-2025), which is an ongoing plan amalgamated with the National Action Plan for the National Women Development Policy 2011[66] and National Child Policy 2011.[67] This section points out the key policies from the National Action Plan and assesses how far that policy is effective to reduce vulnerability of women and children to trafficking.

Under the National Action Plan to Prevent Violence against Women and Children 2013-2025, there are many initiatives undertaken by the government of Bangladesh as well as by private organisations. The first activity is a multi- sector program to prevent violence against women which includes: 1) a one-stop Crisis Centre (OCC) to provide health, legal and counselling services to victims; 2) a DNA laboratory to ensure DNA tests of victims who have been raped and/or killed, and to prove the legitimacy of children; 3) a National Trauma Centre to provide counselling to victims; 4) a gender violence database; 5) a one-stop Crisis Cell (under this program there are to be a total of 60 such Cells to provide health services to vulnerable women); and 6) a National Helpline that victims can use to report violence.[68] A second program includes establishing a Women Friendly Hospital under the supervision of the Ministry of Health in collaboration with UNICEF.[69] A third initiative is a Women's Support and Investment Division at Dhaka Metropolitan city under Bangladesh Police in order to provide quick support to victims.

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[64] Government of Bangladesh,'Minstry of Education', *Government Website* (2020) <https://moedu.gov.bd/>.
[65] Ibid.
[66] Government of Bangladesh,'Ministry of Women and Children Affairs ', *Government Website* (2020) <https://mowca.gov.bd>.
[67] Ibid.
[68] Ministry of Women and Children Affairs, 'National Action Plan to Prevent Violence against Women and Children 2013-2025' (Policy, 21 September 2014) <https://mowca.gov.bd/>.
[69] Ibid.

Besides these domestic initiatives, the Bangladesh Government is part of a South Asian Initiative for Violence against Children in which all the SAARC countries have been working to ensure the safety and rights of vulnerable children. Chapter Three presented the responsibilities of SAARC countries under the SAARC Convention and the SAARC Child Welfare Convention to protect vulnerable children.

Finally, Bangladesh has been working with local and international NGOs to combat gender violence through various programs and policies.[70] One of these is the Women Development Policy 2011,[71] which was adopted to protect women and children from all types of violence and discrimination, to ensure their fundamental human rights, and to take all initiatives to empower women. All the policies mainly address those situations which make women and children vulnerable. Within the Women Development Policy there are several specific goals about human trafficking, which include strict enforcement of trafficking laws against child trafficking,[72] to rehabilitate trafficked victims and stop trafficking in women,[73] and to dispose of trafficking cases involving women and child victims within six months and make the whole proceeding easier.[74]

Another Policy is the National Children Policy which Bangladesh firstly adopted in 1994 after signing the CRC in 1990. The current National Children Policy 2011 focuses on the rights of children by fighting against all types of violence and discrimination. It includes provisions governing birth registration,[75] the empowerment of girls, and provisions ensuring the rights of

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[70] a) Protecting Human Rights Program (PHR) Plan International Bangladesh
b) Activities of Bangladesh Mohila Parishad
c) Bangladesh National Women Lawyers Association and their programs
d) BRAC NGO and their programs
e) Foundation for human beings
f) Acid Survivors Foundation
g) National Forum against gender violence under Action Aid Bangladesh
h) Dhaka Ahsania Mission and their activities
i) Safe Program under ICDDRB and
j) We can do, Campaign.

[71] At the time of writing of this thesis, there is no recent policy. However, government has undertaken different plans following that policy.

[72] Ministry of Women and Children Affairs, 'Women Development Policy 2011' (Policy, 3 March 2016) para 18.1 <https://mowca.gov.bd>.

[73] Ibid para 19.4.

[74] Ibid para 19.7.

[75] Birth registration is one of the rights of children to get their identity. UNICEF identified that birth registration can protect children from child marriage, trafficking and child labour. There are about 10 million Bangladeshi children who are under five years old do not exist officially as they are not registered after their birth. According to TIP

child workers.[76] Moreover, the current human trafficking policy addresses the issue of child labour and child marriage. Government bodies have also adopted different programs to rehabilitate street children and women, and child beggars.[77]

4 *Policy Addressing Demand for Forced Labour and Trafficking*

As previously discussed in Chapters Two and Three, Anne Gallagher has identified four patterns of demand for trafficking: demand of employers for cheap and exploitable labour; the demand of consumers for goods and services produced by trafficked victims; the demands of criminals and traffickers to make money; and the demands of corrupt officials who receive benefits from trafficking.[78] In addition, according to the UN Recommended Principles on Human Rights and Human Trafficking 2002, low prosecution rates, failed investigations and an ineffective criminal justice system can facilitate demand for trafficking.[79]

As I have explained in Chapters Three and Four, to mitigate these demands, nation states and individuals have important roles and responsibilities that have been set out in international instruments.[80] This section consists of two parts: the first part demonstrates that the current NPA 2018-2022, when considered through the lens of the Marxist theory of forced or unfree labour, fails to address demand for that labour. The second part demonstrates that the Labour Policy 2012, while adopting a human rights approach, and being ostensibly consistent with the theory of labour set out here, has done little to control the supply or demand for forced or unfree labour.

Report 2019, birth registration of Rohingya refugees has been suspended which increases vulnerability to human trafficking. United States Department of State, 'The Trafficking in Persons Report' (Annual Report, 20 June 2019). United Nations Children's Fund,'Timely and accessible birth registration', *UNICEF* (Webpage, 2020) <https://www.unicef.org/bangladesh/en/timely-and-accessible-birth-registration>.

[76] Ministry of Women and Children Affairs, 'National Children Policy 2011' (Policy, 31 December 2011) <https://mowca.gov.bd>.

[77] Ministry of Home Affairs (n 49).

[78] Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).

[79] UN Office of the High Commissioner for Human Rights (OHCHR), 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (Report, The Economic and Social Council, 2002) <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

[80] a. Trafficking Protocol art 9(5)
b. European Convention
c. Optional Protocol to the Convention on the Rights of Child
d. CEDAW
e. Different Human Rights treaty bodies.

Chapter Four confirmed how labour migration and human trafficking are connected. The NPA 2018-2022 includes strategies to ensure safe migration. However, current policies have been insufficient to address demand. To establish the rights of the workers, to ensure development and to maintain the relationship between workers and employers, the Ministry of Labour and Employment adopted a policy known as national labour policy 2012**.** This Policy specifically focuses on the welfare of migrant workers, women workers and their equal opportunity, and abolition of child labour. However, this policy is inadequate when Bangladeshi migrant workers continue to be sexually exploited and tortured in Middle Eastern countries – such as Rubina, whose story of being tortured in Oman was shared in Chapter One.

In 2013 the Ministry of Labour and Employment incorporated occupational health and safety rules to protect the rights of the workers.[81] To protect domestic workers from torture and other forced labour conditions, it also adopted a domestic workers' protection and welfare policy in 2015.[82] Currently, the Bangladesh government is also running decent work country program (DWCP) 2017-2020 with the ILO, targeting various challenges such as high unemployment, poor working conditions, etc. The implementation of these initiatives is questionable, given that torture of domestic workers, and especially child domestic workers, remains common in Bangladesh.[83]

The Bangladesh government is also working with the ILO and Germany to establish a National Employment Injury Protection and Rehabilitation Scheme for workers. With the ILO's assistance, Bangladesh undertook the National Tripartite Plan of Action in Bangladesh Ready Made Garment (RMG) to ensure health, safety, rehabilitation, labour inspection and training to workers. However, the incidents which took thousands of garment workers' lives in Rana Plaza and Taznin fashion, along with existing poor working conditions (highlighted in Chapter Four), evidence the

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[81] *Labour Act 2006* s 51-88. These provisions are about health, hygiene and safety.

[82] Ministry of Labour and Employment, 'Domestic Workers Protection and Welfare Policy, 2015' (Policy, 31 January 2016) <https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/policies/cc746496_6cc9_4553_b433_5d10f7d5be5d/Domestic%20Workers%20Protection%20ad%20Welfare%20Policy,%202016.pdf>.

[83] Taqbir Huda, 'Why child domestic workers are prime victims', *The Daily Star* (Online, 10 July 2017) <https://www.thedailystar.net/opinion/human-rights/why-child-domestic-workers-are-prime-victims-1430632>; Joana Nomrata Mazumder, 'Child domestic workers need more protection', *The Daily Star* (Online, October 07, 2019) <https://www.thedailystar.net/opinion/human-rights/news/child-domestic-workers-need-more-protection-1810366>.

ineffectiveness of the government's plan to ensure workers' health and safety.

While the National Plan of Action on Human Trafficking 2018-2022[84] is silent on the issue of political economy of the labour market and workers' rights, the Labour Policy 2012 is concerned about rights of the workers. Under pressure from retail companies, Bangladesh is focusing on the health and safety of garment workers, however, forced labour conditions in the fishing industry and other industries have been neglected in both policies. Despite having the Labour Policy of 2012 and despite working in partnership with the ILO and other countries, Bangladesh has largely failed to follow international labour standards under the Sustainability Compact in 2017.[85] This means that vulnerable people continue to be exposed to demand for forced or unfree labour, and are therefore vulnerable to human trafficking.

5 *Policy Addressing Corruption and Complicity*

Corruption facilitates human trafficking networks from a country of origin to destination countries. As demonstrated in Chapter Five, corruption makes the criminal justice system ineffective. This was confirmed in my fieldwork. Corrupt officials fuel human trafficking because they receive benefits from this crime.[86]

Several international and regional instruments have recognised the strong link between corruption and human trafficking, and have identified the responsibilities of states to combat corruption.[87] The UN has also expressed concern about police corruption in the human trafficking process.[88] In Bangladesh there is evidence of both active and passive corruption.[89] In this section I argue that

[84] Ministry of Home Affairs (n 49).
[85] Human Rights Watch, 'World Report 2018 (Events of 2017) ' (Report, 9 January 2018) <https://www.hrw.org/world-report/2018>.
[86] Gallagher (n 78).
[87] Ibid.
[88] Martina Vandenberg, 'Complicity, Corruption, and Human Rights: Trafficking in Human Beings' (2002) 34 *Case Western Reserve Journal of International Law* 323.
[89] Active involvement means violating duties, taking bribes, helping in transportation, making false documents and forcing victims to settle cases; while passive involvement means failing to identify victims, ignorance of laws and ignorance of facts that workers are being sexually exploited in Middle Eastern countries. Some scholars have classified these practices as direct and indirect ways of facilitating human trafficking. See M Bashir Uddin, 'Human trafficking in South Asia: Issues of corruption and human security' (2014) 2(1) *International Journal of Social Work and Human Services Practice* 18. One example of active corruption is taking bribes from the criminals, which is

weak enforcement of existing laws and a lack of suitable policy are responsible for the prevalence of corruption in trafficking cases.

One of the most remarkable examples of corrupt conduct by a Bangladeshi official was when a member of the consular corps in the USA was found guilty for violating the trafficking and labour laws of that country, and was ordered by a US court to pay a huge amount of compensation to the victims.[90] It is understood that person is still working in the Bangladesh Foreign Service.[91] In another recent case, a Bangladesh consular officer pleaded guilty to labour trafficking and was ordered to pay AUD10,000 to the victim in 2018.[92] Again, Bangladesh did not take any action against that officer. In another arena, it appears that the Rapid Action Battalion of the Bangladesh Army, which provides security in and around the Rohingya refugee camps, may themselves have facilitated trafficking and accepted bribes from organised criminals, and may even have been directly involved in exploitation of refugees.[93]

There is no data available showing how many corruption cases are pending against government officials. But according to the Trafficking in Persons Report 2018, two government officials were penalised in Bangladesh in 2017.[94] And as summarised in the Trafficking in Persons Report 2019:

> Observers accused officials from district employment and manpower offices of facilitating trafficking and some labour attaches, local politicians, judges, and police of requesting bribes from victims and their families. Observers stated some traffickers in rural areas were politically connected and therefore operated with impunity.[95]

As a member state of the SAARC Convention, Bangladesh has obligations to address public complicity in trafficking. Moreover, Bangladesh has a responsibility under the UN Convention

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also confirmed through my fieldwork. Passive corruption could include non-cooperation by a Bangladesh Embassy to protect rights of migrant workers who are abused while overseas.

[90] United States Department of State, 'Trafficking in Persons Report' (Annual Report, 28 June 2018).

[91] Ibid.

[92] Ibid.

[93] United States Department of State (n 90).

[94] Ibid.

[95] Ibid.

against Corruption[96] to eradicate corruption in both the public and private sectors. Bangladesh does have domestic legal instruments to criminalise corruption,[97] but a lack of implementation makes these instruments ineffective.[98] Further, despite having specific recommendations to eradicate corruption in trafficking under the UN Recommended Principles, Bangladesh has not incorporated these recommendations in its NPA 2018-2022 in order to fight against corruption as a means of preventing trafficking.

To fight against human trafficking effectively, Bangladesh is currently working with both international and local NGOs, and the NPA 2018-2022 highlights the importance of multi-stakeholder partnership. Moreover, Bangladesh has entered into various bilateral agreements with neighbour countries to build up their regional strength to crack down on this crime.[99] Bangladesh also attends conferences about human trafficking.[100]

Thus, the government has adopted a range of policies and plans to combat human trafficking. The Women Development Policy 2011 and National Child Policy 2011 mainly focus on elimination of discrimination against women and children, and empowerment of women, as they are more vulnerable to human trafficking. Another relevant policy is NPA 2018-2022 which highlights the importance of preventing human trafficking. Several organisations and institutions have responsibility to put into effect those aforesaid policies. However, those policies always overlook

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[96] *The United Nations Convention against Corruption (UNCAC)* opened for signature 9 December2003, 41 UNTS 2349 (entered into force 14 December 2005). Bangladesh ratified the United Nations Convention against Corruption on 28 February 2007. This Convention has Implementation Review Mechanism (IRM) which is known as 'Conference of the State Parties' under article 63 and 64 to review the implementation of this Convention. According to the review report of Bangladesh, Bangladesh has Anti-Corruption Commission ("ACC") who is working actively in combating corruption. Bangladesh Bank also works in anti-corruption field through its Financial Intelligence Unit ("FIU"). This Bank has responsibility to collect statistics of money laundering related cases. The Ministry of Public Administration is also working to implement different rules combating corruption. However, the report identifies few gaps in existing measures: the Penal Code does not criminalise the offence of bribery of foreign public officials and officials of public international organisations; there is no specific victims and witness protection measures when accused persons are usually politically, financially or otherwise influential and there is no joint investigation body to ensure international cooperation in investigation of corruption related offences. Conference of the States Parties to the United Nations Convention against Corruption, 'Review of implementation of the United Nations Convention against Corruption' (Review Report, 14-16 November 2012) <https://uncaccoalition.org/files/official-documents/executive-summary-bangladesh.pdf>.

[97] Anti-Corruption Commission Act 2004 (Bangladesh); Money Laundering Act 2012 (Bangladesh); Prevention of Corruption Act 1947 (Bangladesh).

[98] Uddin (n 89).

[99] Ibid.

[100] Ibid.

the issue of supply, demand for human trafficking, forced or unfree labour, corruption and official complexity which are factors commonly driving human trafficking.

The next section covers all protection measures which are available to trafficked victims of Bangladesh.

C *Protection of Trafficked Victims*

Chapters Three and Four set out the rights of victims of human trafficking under international laws. At a domestic level, the *Human Trafficking Act 2012* has confirmed victims' rights in Chapter V (sections 34 – 40),[101] as will be analysed in this section. This section critically examines the rights available to trafficked victims, and demonstrates that the law, policies and institutions of Bangladesh have failed to provide the rights to which trafficked victims are entitled.

1 *Rights to be Identified, Rescued, Repatriated and Rehabilitated*

As noted in the first section of this Chapter, under the *Human Trafficking Act 2012* Bangladesh has a responsibility to make rules for identification, rescue, repatriation and rehabilitation of trafficked victims.[102] To ensure the effective implementation of human trafficking laws, in 2017 Bangladesh adopted three rules: the National Human Trafficking Prevention Organization Rules 2017 the Human Trafficking Prevention Fund Rules 2017, and the Human Trafficking Prevention and Suppression Rules 2017. To ensure a human rights response, and according to the theoretical positions set out in Chapter Two, the welfare and special needs of women and children should be paramount during the whole process of identification, rescue and repatriation. The Ministry of Home Affairs, Ministry of Expatriates' Welfare and Overseas Employment and Bangladesh

[101] These include: Right to be identified, rescued, repatriated and rehabilitated (Section 32); Right to be informed of the action taken against the criminals and the stages of the criminal case at least once in a month (Section 34); Right to be informed about their rights (Section 34); Right to take shelter in protective and shelter homes (Section 35); Right to get medical treatment and legal and psychological counselling (Section 36); Right not to be subjected to conviction or punishment under this Act or in other existing law (Section 37(2)); Right to get Police Protection and other Protective measures (Section 37(3)); Focused on the principle of welfare and the best interest of the child and principle of priority to ensure rights of the child victims and witnesses (Section 38); Right to file a civil suit to get Compensation (Section 39; and Right to get financial support and assistance (Section 40).
[102] The Prevention and Suppression of Human Trafficking Act 2012 (Bangladesh) s 32.

Embassies all have a responsibility to rescue, release and return victims who are victims of human trafficking.[103] Relevant organisations should provide legal assistance and counselling to victims to facilitate access to the criminal justice process, and to ensure repatriation and compensation.[104] This section demonstrates that despite having specific domestic instruments, institutions have failed to ensure victims' rights to be identified, rescued, repatriated and rehabilitated.

Rule 12 of the Human Trafficking Rules sets out strategies to identify trafficked victims.[105] After obtaining relevant information, the first task of law enforcement agencies and NGOs is to rescue the victim as soon as possible, so that traffickers cannot change their place of operation and hide victims.[106] The efficacy of the Rules therefore depends on cooperation and communication between destination and transit countries.[107] When a victim returns to Bangladesh, it is the official duty of Border Guards, Social Welfare and Probation Officers, concerned NGOs, Police or any other authorised person, to receive that victim.[108] There are some ongoing projects and programs of Bangladesh Government to make the border guard and coast Guard more efficient and stronger to prevent human trafficking.[109] As I noted in the first section of this Chapter, under the Ministry of Home Affairs both the Border Guard and Coast Guard are working in rescuing trafficked victims.

Unfortunately, there are many reasons why these agencies fail to fulfil their obligations. Firstly, despite training of some officials (as mentioned earlier in this Chapter), lack of knowledge about human trafficking remains a significant problem. My fieldwork confirmed that victims face misbehaviour (in the form of teasing, verbal abuse, and accusing victims of having freely consented to going) and ill treatment; they experience humiliating treatment upon their arrival, and

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[103] Ibid s 33.
[104] Ibid.
[105] Those strategies include:
1. When traffickers are arrested with victims by the law enforcement organisation
2. Getting information through media, social welfare officer, jail officer and from the statement of the victims
3. Through cooperation of NGO and Interpole
4. Information through relatives, friends and colleagues.

[106] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh). Rule 12.
[107] The Rules also describe the responsibility of Bangladesh to repatriate foreign trafficked victims from Bangladesh. Ibid.
[108] *Human Trafficking Prevention and Suppression Rules 2017* (Bangladesh). See Rule 9.
[109] Ministry of Home Affairs (n 49).

are often even blamed for being trafficked.[110]

Poor service coordination is another problem – as the Government has even accepted as a major challenge facing the implementation of the NPA 2015-2017.[111] According to TIP report 2019, Bangladesh has a Memorandum of Understanding with India which includes coordination for the identification and repatriation of Bangladeshi victims.[112] However, NGOs have claimed that the government sometimes helps in repatriation only by providing victims with travel documents.[113] Most times, the costs of repatriation are paid by the NGOs and victims – which is also confirmed through my field work.[114] In addition, coordination in investigation is also poor, as interviewee claimed that they did not get enough support in investigation from neighbouring countries. Further, the Human Trafficking Rules 2017 pay less attention to the importance of any special measures to identify trafficked children. There is only Rule 18 of Human Trafficking Prevention and Suppression Rules 2017, which outlines the responsibility of private organisations like NGOs to provide shelter to child victims and ensure their care and education in shelter homes.

Table 6.1 presents data prepared by Bangladesh Police on trafficking cases which is a monthly statement of Bangladesh Police. It appears that in 2018 a total of 502 victims were trafficked and 356 victims were rescued. However, the data does not show which authority identified and rescued those trafficked victims. This would be helpful information to have, because it would reveal which particular organisations are active in identifying and rescuing victims, and help in identifying their challenges for that task.

[110] Confirmed through filed work.
[111] Ibid.
[112] United States Department of State (n 75).
[113] Ibid.
[114] Ibid.

Period (month year)	No. of Cases Recorded	No of Victims Trafficked			No of Victims Recovered			Rehabilitation of Recovered Victims		No. of Persons Arrested	No. of Persons Convicted
		Male	Female	Child	Male	Female	Child	Parents	NGO/Govt. Safe Home		
January 18	39	23	9	7	16	7	4	27	0	78	0
February 18	40	15	17	6	11	9	2	22	0	90	0
March 18	35	13	14	8	10	12	7	29	0	65	0
April 18	44	16	16	8	5	12	5	22	0	70	0
May 18	57	33	18	9	17	11	7	35	0	133	4
June.18	52	18	22	4	15	20	4	39	0	135	0
July 18	60	15	24	22	7	22	19	48	0	115	0
August 18	52	18	18	6	10	10	6	25	0	103	2
September 18	55	13	19	3	10	15	2	27	0	163	1
October 18	49	18	15	5	12	14	4	30	0	144	0
November 18	48	17	29	1	11	23	1	35	0	127	1
December 18	30	13	9	1	10	5	1	16	0	87	0

Table 8: Monthly Status of Human Trafficking Cases 2018[115]

The second task – the repatriation process – appears to be quite drawn out: verification of identification and other necessary documents in source and destination countries is slow. It has also taken a long time before countries actively focused on that issue.[116] In the repatriation process

[115] Ibid.
[116] Kuniko Takamatsu and Susu Thatun, Some Reflections on the Repatriation of Trafficked Persons:Case of Myanmar and Thailand Uprooting People for Their Own Good? Human Displacement, Resettlement and

there is a formal mechanism which includes negotiations, formalities, and standard protocols between two countries.[117] It also involves providing legal documentation of the victims. All these processes make the repatriation slow in many cases. For instance, most of the interviewees in my fieldwork who were rescued in India stayed in an Indian shelter home for 3 years before their documents were verified and they were repatriated.

The third task is providing safe accommodation: the Government has a responsibility to establish shelter homes and rehabilitation centres for victims.[118] But there is no provision about the standard of shelter homes in the *Human Trafficking Act 2012*. The Human Trafficking Rules are also silent on this topic. Instead, Rules 18-21 impose a responsibility for ensuring the adequacy of shelter on NGOs, requiring them to submit an annual report to the Government authority about their performance in protecting the rights of victims of human trafficking. Notwithstanding this, shelter homes are often of a poor standard and lack necessary facilities.

There are safe houses in Lebanon, Oman, and Saudi Arabia for female Bangladeshi workers who are tortured by their employers. The government also runs 29 labour offices in embassies and consulates overseas, where migrant workers are entitled to access legal and interpretation services.[119] Bangladesh is also currently running eight Victim Support Centres providing temporary accommodation. I visited one of these in my fieldwork and was advised that their funding was inadequate to ensure their effective operation. These Centres therefore rely on NGOs for longer term shelter requirements.

My fieldwork indicated that Victim Support Centres face many challenges in providing services to victims. They have very poor capacity to provide transport to take victims to the court. They lack qualified counsellors and qualified lawyers, and they have no training manuals. They do not necessarily receive support from male police. They lack interpreters. They lack staff with specialised skills in working with people with disabilities. Their limited access to medical and

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Trafficking in the Greater Mekong Sub-Region, Dang Nguyen Anh and Supang Chantavanich (eds) (Social Science Publishing House, 2004) 1.

[117] Ibid.

[118] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh) s 35.

[119] United States Department of State (n 90).

psychological support is addressed in the next section.

2 *Rights to Medical and Psychological Support*

Victims are entitled to medical and psychological support to help them to enjoy their other human rights and avoid being re-trafficked. Under the *Human Trafficking Act 2012*, trafficked victims who are in shelter homes or rehabilitation centres are entitled to medical and psychological support.[120] As I have noted in Chapters Three and Four, the *Trafficking Protocol* and various human rights treaties make provision for such support.[121] This section evaluates the role of health professionals in protecting victims, and demonstrates that the medical and psychological supports required have been largely overlooked by the law and by institutions.

Victims of trafficking face significant physical and mental health problems.[122] This was confirmed in my fieldwork, as demonstrated in Chapter One. However, there is no research analysing the responsibility of health care professionals to victims in Bangladesh.[123]

Health care professionals play a significant role when they interact with victims, whether the victims are still in captivity or after their rescue.[124] While with their captors, victims rarely have an opportunity to interact with health care workers until their health issues become so serious that they hamper the traffickers' business. Nevertheless, such contact provides an opportunity: training on human trafficking is crucial for physicians and nurses so that they can identify victims and

[120] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh) s 36.
[121] Gallagher (n 78). Regional conventions like *SAARC Convention* of which Bangladesh is a party, also ensures health care and counselling services for victims of human trafficking. *SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution*, opened for signature 5 January 2002 (entered into force 15 November 2015) art ix(3).
[122] Olga Gajic-Veljanoski and Donna E Stewart, 'Women trafficked into prostitution: Determinants, human rights and health needs' (2007) 44(3) *Transcultural Psychiatry* 338.
[123] In the USA, a survey of health care professionals found that many of them are unaware about their role and responsibility to victims of human trafficking. Likewise, in the UK, research has found that National Service Professionals are struggling to identify and provide appropriate services due to their lack of knowledge about human trafficking. Claire Ross et al, 'Human trafficking and health: A cross-sectional survey of NHS professionals' contact with victims of human trafficking' (2015) 5(8) *BMJ Open* 1.
[124] Reena Isaac, Jennifer Solak and Angelo P. Giardino, 'Health care providers' training needs related to human trafficking: Maximizing the opportunity to effectively screen and intervene' (2011) 2(1) *Journal of Applied Research on Children* 8.

provide effective support.[125] According to the American Journal of Ethics:

> the medical education of health care professionals should be grounded in a victim–centred, culturally relevant, evidence based, gender sensitive, trauma-informed perspective and include the essential components of prevention and identification of trafficking and treatment of trafficking related health conditions.[126]

Medical education in Bangladesh does not meet these objectives. The Bangladesh Ministry of Health is silent on the need to provide care and support to victims. The current NPA 2018-2022 does not address this matter.

My fieldwork confirmed that Government Victim Support Centres are completely reliant on NGOs to coordinate medical and counselling services to victims. This demonstrates the government's inadequate response to this issue. Appropriate physical and psychological support is needed to empower victims so that they can them part in criminal proceedings confidently. Health examinations also provide necessary evidence for cases against traffickers. While international law focuses on importance of medical support of trafficked victims, this issue is unaddressed by the current NPA 2018-2022. Earlier scholarship has found that health workers tend to have very limited knowledge on human trafficking and different countries are doing research to increase awareness among health professionals. [127] However, Bangladeshi law and policy overlook the seriousness of this issue for long times and focusing on criminalization of criminals more.

3 *Right to Legal Support and Protection*

The right to legal assistance is one of the most important rights of victims as it helps them to realise

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[125] Ibid.
[126] Hanni Stoklosa, Aimee M. Grace and Nicole Littenberg, 'Medical education on human trafficking' (2015) 17(10) *AMA Journal of Ethics* 914.
[127] Tiffany Dovydaitis, 'Human trafficking: The role of the health care provider' (2010) 55(5) *Journal of Midwifery & Women's Health* 462; Wendy Macias Konstantopoulos et al, 'An international comparative public health analysis of sex trafficking of women and girls in eight cities: Achieving a more effective health sector response' (2013) 90(6) *Journal of Urban Health* 1194; Cathy Zimmerman, Mazeda Hossain and Charlotte Watts, 'Human trafficking and health: A conceptual model to inform policy, intervention and research' (2011) 73(2) *Social Science & Medicine* 327; Baldwin et al (n 41).

and enjoy their other rights.[128] As previously noted, this right is recognised in a range of international instruments.[129] The SAARC Convention (to which Bangladesh is a party) also instructs member states to ensure legal assistance to the women and children who are victims of sexual exploitation.[130] Soft law sources also confirm this right. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[131] provides that a victim is entitled to be informed about their pending cases and access other assistance. However, strictly speaking this Declaration does not impose any legal obligation on Bangladesh. As discussed in Chapter Four, Bangladesh has signed CAT, but with a reservation regarding article 22,[132] and CERD but with a reservation regarding article 14.[133] Such reservations prevent victims from being able to complain individually to each treaty's monitoring body about Bangladesh.

In the absence of any legally enforceable international responsibilities, the rights of victims in Bangladesh are addressed by existing procedural and substantive domestic legal frameworks. This section demonstrates that these measures of protection and legal assistance for victims are not victim-oriented and do not comply with international standards.

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[128] Gallagher (n 78).

[129] The *Trafficking Protocol*, the *European Trafficking Convention* and other soft law instruments address the importance of providing protection and legal assistance to trafficked victims.

[130] *SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution*, opened for signature 5 January 2002, (entered into force 15 November 2015).

[131] United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 40/34, 3 Comm, 40 sess, UN Doc A/C.3/40/L.21 (29 November 1985). According to this Declaration, Trafficked victims fall under the definition of victims provided in principle 1 as trafficked victims also suffer physical and mental harm, economic loss and other violations of human rights. This instrument adopts a human rights-based approach, as it ensures different rights of victims, including the right to access justice where judicial and administrative mechanisms should be expeditious, fair, and inexpensive. Victims are also entitled to know about their role and the scope and the status of their pending cases. Some other rights include a right to privacy; the right to protection from any kinds of intimidation; the right of fair restitution to victims, their families or dependants; access to material, medical, psychological and social assistance; and financial compensation. Thus, this Declaration identifies a range of rights of victims relating to the criminal justice system. The Declaration of Basic of Principles for Victims of Crime and Abuse of Power, Principle 4, 5, 6, 8, 12 and 14.

[132] *The Convention Against Torture*, art 22 (1): A State Party to this Convention may at any time declare under this article that it recognises the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

[133] *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965 UNTS 660 (entered into force 4 January 1969) art 14(1). A State Party may at any time declare that it recognises the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

The criminal justice system of Bangladesh follows the adversarial, common law model, and is strongly focused on the rights of people charged with crime. The Constitution establishes some fundamental rights for all citizens, including victims. As discussed in section 5.C of Chapter Five, one of these rights is to equal protection of law and equal treatment before the law.[134] However these rights have been interpreted as being focused on procedural safeguards for offenders.

The *Code of Criminal Procedure 1898* addresses a range of procedural rights of victims of crime, including the right to file a case,[135] the right to be examined by an investigating officer[136] and magistrate,[137] the right to oppose a petition for bail, the right to appeal, and the right to compensation.[138] In addition, sections 151 and 152 of the *Evidence Act 1872* ensure the protection of witnesses in the courtroom. These sections prohibit indecent, scandalous or insulting questions during cross examination.[139] There are additional special laws which set out the rights of victims and witnesses.[140]

Victims of human trafficking have a right to be informed about their pending cases at least once monthly,[141] and are entitled to be informed about their own rights.[142] They are also entitled to access legal aid services from the government. The NPA 2018-2022 states that the government will develop the capacity of National Legal Aid Services Organisation, and will provide legal aid services to at least 3700 victims by 2020.[143] Notwithstanding these laws and policies, my fieldwork indicates that victims often do not have any information about the progress and status of their pending cases.[144]

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[134] Ibid art 27.
[135] *The Code of Criminal Procedure, 1898* (Bangladesh) s 154.
[136] Ibid s161.
[137] Ibid s 164.
[138] Ibid s 545.
[139] Hussain Mohmmad Fazlul Bari, 'An Appraisal of Victim Protection in Bangladesh' (2016) 61(2) *Journal of the Asiatic Society of Bangladesh (Hum.)* 183.
[140] The Act for Suppression of Cruelty to Woman and Children, Acid Control Act, Domestic Violence Act, Law and Order Disrupting Offence Act, Children Act and Torture and Custodial Death Prevention Act.
[141] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh) s 34.
[142] Ibid.
[143] Ministry of Home Affairs (n 49).
[144] See Chapter Four.

Sections 503 and 506 of the Penal Code protect victims and witnesses by penalising intimidation of witnesses. In order to protect the privacy of victims, courts can conduct trials in camera.[145] Under the *Human Trafficking Act 2012*, the court has authority to examine a witness either individually or through the Commission[146] at any place and record the statement of the victim. Examination can also be done directly or electronically.[147] Section 38 of that Act highlights the rights of child victims and witnesses. Victims and witnesses who are under threat or at risk are entitled to apply for police protection and for other protective measures to be taken.[148]

However, none of the people I interviewed had applied for police protection, even though they had frequently received threats from criminals. And while the court has jurisdiction to send trafficked victims to safe custody, this has been criticised on the basis that a safe custody order might see the victim ending up in jail.[149] As such their freedom of movement and right to liberty are under at risk, and that custody could be classified as arbitrary detention under article 9 of the *ICCPR*.[150]

Only limited research has been done on the issue of protecting victims and witnesses.[151] In 2007 the Bangladesh Law Commission proposed a draft law relating to compensation for victims of crime. Unfortunately, that draft has still not been approved by the government.[152]

To sum up, the Bangladesh criminal justice system is largely concerned with the rights of

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[145] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh) s 25.
[146] *The Code of Criminal Procedure, 1898* (Bangladesh). Section 503(1): Whenever in the course of an inquiry , a trial or any other proceeding under this Code, it appears to a Metropolitan Magistrate, a Chief Judicial Magistrate, a court of Session or the High Court Division that the examination of a witness is necessary for the ends of justice , and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which , under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate, Chief Metropolitan Magistrate or Chief Judicial Magistrate , within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.
[147] Ibid s 22.
[148] Ibid s 37. It is confirmed through my field work that victim received continuous threat by the criminals which also illustrated in Chapter One.
[149] Md Abdul Halim and Farhana Helal Mehtab, *Human Trafficking: International and Bangladesh Perspective* (CCB Foundation, 2014).
[150] *ICCPR* article 9 provides: 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.'
[151] Bari (n 139).
[152] Fhameda Qudder, 'Crime Victims' Right to Compensation in Bangladesh: A Comparative Approach' (2015) 11(31) *European Scientific Journal* 305.

offenders. Victims find themselves in an essentially passive position, where their rights are usually neglected and unaddressed. There is no framework for restorative justice in Bangladesh. The absence of comprehensive victim and witness protection instruments is one of the obstacles to implement trafficking related laws.[153] The criminal procedural system is affected by corruption, continuous threats to victims and family members by criminals, ignorance of the laws among officials, weak protection measures that are not victim-oriented, and a failure to comply with international standards.

4 *Right to Diplomatic Protection*

The term diplomatic protection generally refers to protection of diplomats or consular officials. However, it can extend beyond the immunities and privileges of diplomats to the provision of benefits and other supports to citizens whose rights are violated abroad.

There is a considerable volume of scholarship relating to the diplomatic immunity of traffickers, as the incidence of human trafficking of domestic workers in diplomatic households is not uncommon.[154] In contrast, there is no literature showing how diplomatic protection has been extended to Bangladeshi trafficked victims. The aim of this section is to articulate the term diplomatic protection of trafficked victims and outline the responsibilities of Bangladesh and destination countries.

Customary international law also sets out rights of states with respect to their citizens abroad.[155] In addition, as a signatory state of the Vienna Convention on Diplomatic Protection 1961 and 1963, Bangladesh has a responsibility to provide diplomatic protection to its citizens abroad. There are three legal relationships that help to determine diplomatic protection: between a state to its citizens,

[153] Ministry of Home Affairs (n 49).
[154] Kevin Bales and Ron Soodalter, *The slave next door: Human trafficking and slavery in America today* (University of California Press, 2010); European Commission, 'Guidelines for the identification of victims of trafficking in human beings ' (Guideline, , Migration and Home Affairs, 27 Sep 2013) <https://ec.europa.eu/home-affairs/e-library/multimedia/publications/guidelines-for-the-identification-of-victims-of-trafficking-in-human-beings_en>.
[155] Edwin M Borchard, 'Basic elements of diplomatic protection of citizens abroad' (1913) 7(3) *American Journal of International Law* 497.

states to alien residents, and states to states.[156] According to the principle of diplomatic protection, firstly Bangladesh has a relationship with its own citizens who are victimised abroad, such as in different Middle Eastern Countries or in detention centres of destination and transit countries. Secondly, it has distinct responsibilities towards Rohingya and other foreigners who are aliens in Bangladesh.[157] Thus, Bangladesh has an obligation to ensure protection of its citizens.

Chapter One confirmed how Bangladeshi women have been sexually exploited in various Middle Eastern countries as domestic workers. When Bangladeshi workers leave the territory of Bangladesh, they enter the jurisdiction of international law. The obligation of destination countries towards foreign labourers is also a matter of international law. These workers are also entitled to protection in destination countries.

In particular, in Middle Eastern countries, alien workers have social and legal rights consistent with their status under the Kafala System (as defined in Chapter Four), and under other bilateral agreements and Memoranda of Understandings (MoUs) as highlighted in Chapter Five. It was previously demonstrated, in Chapter One, that Saudi Arabia and other Middle Eastern countries have failed to abide by international labour standards, or to extend appropriate diplomatic protection to poor Bangladeshi women.

In such circumstances, Bangladesh is authorised by international law to place diplomatic pressure on those countries. In Chapter Five, I demonstrated how the domestic law of Bangladesh works to protect the rights of workers overseas. However, in practice, according to Hanif Alam, the Bangladesh embassies are not undertaking that work properly (as confirmed by my fieldwork, shown in Chapter One). It has been strongly alleged that embassies even work for recruitment agencies rather than for victims.[158] Yet it is the responsibility of embassies to protect the rights of domestic workers and other Bangladeshi labourers via the principle of diplomatic protection.

As previously observed in Chapter Three, it is common for trafficked victims to experience

[156] Ibid.
[157] See Chapter Five - Rohingya Refugees and their protection from Trafficking in Bangladesh.
[158] Interviewee from NGO.

detention in transit and destination countries. Many are treated as illegal migrants. There are a number of significant responsibilities to consider. First, Bangladesh has a responsibility to ensure the rights of Bangladeshi victims who are in detention centres of India, Thailand, Malaysia, Indonesia and other countries. Second, as noted previously in this Chapter, the *Human Trafficking Act 2012* highlights the right of victims to repatriation. In the case of *Abdul Gafur v Bangladesh*,[159] the Supreme Court categorised this right of repatriation as a fundamental right. Yet, very few of the people I interviewed in my fieldwork expressed satisfaction with the repatriation process, which was often beset by delays, or their treatment, particularly the facilities in the shelter homes in India.

Like the diplomatic protection of trafficked victims, the detention of trafficked victim is an unaddressed issue under international and regional conventions. Detention tends to be regulated by the domestic law, particularly the immigration law, of particular states. Sometimes, victims are detained as illegal migrants or trespassers without being identified as trafficked victims. Chapter One confirmed that trafficked victims can be left alone at sea, by both transit and destination countries. Anne T Gallagher has also identified that destination and transit countries sometimes ignore the fact that they have trafficked victims, in order to absolve themselves of liability under international law.[160]

In the absence of any specific international law relating to the detention of trafficked victims, the UN Trafficking Principles and Guidelines, and the Explanatory Report of European Convention highlight the importance of non-criminalisation of trafficked victims, and have discouraged any types of detention for victims of human trafficking.[161] According to the UN Trafficking Principles and Guidelines,

Trafficked persons shall not be detained, charged or prosecuted for their illegal entry or residence in countries of transit or destination, or for their movement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.[162]

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[159] *Abdul Gafur v Bangladesh* (1997) 17 Bangladesh Legal Decisions 560 (High Court Division).
[160] Gallagher (n 78).
[161] Ibid.
[162] UN Office of the High Commissioner for Human Rights (OHCHR) (n 79).

Moreover, arbitrary detention of victims may constitute a violation of freedom of movement, the right to liberty,[163] or arbitrary detention.

The right to liberty and the right to be free from arbitrary detention are fundamental human rights identified by international human rights law.[164] According to article 9 of ICCPR:

> 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Migrants, refugees and asylum seekers and trafficked victims are entitled to enjoy those rights.[165] In Chapter Four I also identified the grounds where trafficking victims can claim refugee status. It is very common that trafficked victims are misidentified and sent to detention centres, where they have to stay indefinitely, unless they are repatriated by their country of origin. Gallagher argues that detention is arbitrary when it is imposed for prolonged, unspecified, and for an indefinite period of time, and is also unjust, unpredictable and disproportionate and its legality has not been confirmed through judicial or administrative review.[166] As such lengthy immigration detention falls under the definition of arbitrary detention. Thus, Malaysia, Indonesia, Thailand, India and other transit and destination countries are violating the *ICCPR* and other human rights treaties by sending trafficked persons to detention centres without identifying them as trafficked.[167]

Transit and destination countries are also violating article 10(1) of the *ICCPR*, which declares that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'[168] Bangladeshi and Rohingya from Bangladesh have been treated as

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[163] Gallagher (n 78).
[164] Bridget Kessler, 'In Jail, No Notice, No Hearing... No Problem - A Closer Look at Immigration Detention and the Due Process Standards of the International Covenant on Civil and Political Rights' (2008) 24(3) *American University International Law Review* 571.
[165] Eleanor Acer and Jake Goodman, 'Reaffirming rights: Human rights protections of migrants, asylum seekers, and refugees in immigration detention' (2009) 24 *Georgetown Immigration Law Journal* 507.
[166] Gallagher (n 78).
[167] Staff Correspondent,'Malaysia: Investigate Human Trafficking and Deaths in Immigration Detention Centers, Prosecute Human Traffickers; End Protracted Detention of Refugee, Migrants', *Fortify Rights* (News Release, 4 April 2017) <https://www.fortifyrights.org/publication-20170404.html>.
[168] *ICCPR* art 10.

illegal migrants and prosecuted for status-related offences, contrary to international law.[169] They also face torture and inhuman treatment in detention centres. For example, a report of National Human Rights Commission of Malaysia confirmed that the immigration detention centres of Malaysia have very poor sanitation, insufficient food, inadequate health care and other facilities.[170] In 2016 it was reported that 325 Rohingya and 65 Bangladeshi trafficking victims were detained in Malaysia, in shocking conditions.[171] As Amnesty International Researcher Khairunisssa Dhala has stated, 'these people who have been through this horrific journey are still being punished, rather than being treated as victims of human trafficking.'[172]

According to a Guardian report, deprivation of basic necessities including food, water and medical care, and poor living conditions, are very common in Malaysian detention centres.[173] The National Human Rights Commission of Malaysia also reported that 118 foreigners died in immigration detention centres in Malaysia in 2015 and 2016, and it is believed that many of them were Rohingya and Bangladeshi.[174] Frustratingly, there is no more recent data available about trafficked victims in Malaysia, let alone other countries. It does not appear that the Bangladesh Government has taken any steps to pressure foreign governments for the provision of such data.

As previously discussed, trafficked victims have the right to be rescued, repatriated and rehabilitated if they have been arrested or detained overseas.[175] However, the NPA 2018-2022 does not focus on the rights of trafficked victims in detention centres, and the correlative obligations of Bangladesh to ensure their human rights. When destination and transit countries have failed to protect the rights of victims, it is the responsibility of Bangladesh to take positive

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[169] Forty Rights,'Government of Malaysia should investigate Human Trafficking and Deaths in Immigration Detention Centers, Prosecute Human Traffickers and end Protracted Detention of Refugee and Migrants' (News Release, 1 May 2017) <https://rightsinexile.tumblr.com/post/160207008172/government-of-malaysia-should-investigate-deaths>.
[170] Ibid.
[171] Patrick Kingsley, 'Rohingya Trafficking victims stuck in captivity, one year on', *The Guardian* (Online, 27 May 2016) <https://www.theguardian.com/world/2016/may/27/rohingya-refugees-stuck-in-captivity-one-year-on>. At the time of writing, there is no more recent data available on this issue.
[172] Ibid
[173] Laignee Barron, 'Refugees describe death and despair in Malaysian detention centres', *The Guardian* (Online, 16 May 2017) <https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals>.
[174] Ibid.
[175] *The Prevention and Suppression of Human Trafficking Act 2012* (Bangladesh) s 33(2).

steps to ensure diplomatic protection for its citizens.

5 *Remedies for Victims*

Trafficked victims are entitled to a range of administrative, civil and criminal remedies.[176] Administrative remedies include realising the rights to repatriation, rehabilitation, and restoration of human rights. Generally, civil remedies refer to compensation and other financial assistance. Criminal remedies include the right to access justice, as illustrated in the right to legal support section, above. As administrative and criminal justice remedies have been addressed elsewhere, in this section I focus on the availability of civil remedies for victims in Bangladesh.

The purpose of civil litigation in this context is to enable victims to use private rights of action in order to hold criminals directly and financially accountable for the suffering caused by the traffickers.[177] As Kathleen Kim and Kusia Hreshchyshyn have observed:

> Civil action, in contrast to the prosecutorial approach, can provide more appropriate compensation to people who have suffered unconscionable exploitation, while allowing the trafficked person to control and direct the legal process.[178]

In a civil suit the victim controls their case without waiting for prosecution of the criminals.[179] Civil litigation can lead to awards of both compensatory and punitive damages. It also has a lower burden of proof compared to criminal prosecution.

In this section of the thesis I briefly summarise the international law relating to civil litigation rights of trafficked victims. I then consider the availability of civil remedies in Bangladesh. I

[176] United Nations Office of the High Commissioner for Human Rights (OHCHR) (n 3).
[177] Shannon Lack, 'Civil Rights for Trafficked Persons: Recommendations for a More Effective Federal Civil Remedy' (2006) 26 *Journal of Law and Commerce* 151.
[178] Kathleen Kim and Kusia Hreshchyshyn, 'Human trafficking private right of action: Civil rights for trafficked persons in the United States' (2004) 16 *Hastings Women's Law Journal* 1.
[179] Jennifer S. Nam, 'The case of the missing case: Examining the civil right of action for human trafficking victims' (2007) 107 *Columbia Law Review* 1655.

demonstrate that civil remedies are, practically speaking, unavailable, even though there are instruments in the Bangladeshi legal system that address civil remedies.

The most comprehensive lists of civil remedies for victims are set out in the European Trafficking Convention (which ensures compensation for all types of losses that a victim has suffered in the whole process of trafficking, including both material and non-material losses)[180] and the UNODC Model Law (which has a list of civil remedies and provides for the formation of a special fund for compensation).[181] Another non-binding instrument, the UN Recommended Principles on Human Rights and Human Trafficking 2002, highlights the importance of freezing and confiscating the assets which are involved in trafficking and suggests supporting and compensating victims through those confiscated assets and property.[182] The *Trafficking Protocol* identifies the right of compensation in article 6(6),[183] however, this provision has been criticised for not imposing any mandatory obligations (as illustrated in Chapter Three).

At the outset it should be observed that the concept of victims using civil litigation to be compensated by criminals is not widely known or understood in the Bangladeshi legal system. Bangladesh takes a (limited) criminal justice-oriented approach to human trafficking, focusing on the punishment of traffickers. There are some provisions that contemplate compensation for victims.[184] *The Human Trafficking Act 2012* confers rights to civil remedies to victims under

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[180] Gallagher (n 78).

[181] United Nations Office on Drugs and Crime, 'UNODC Model Law Against Trafficking in Persons ' (Model Law, UNODC, 2010) <https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf>.
The lists of court-ordered compensation include:
(1) Costs of medical, physical, psychological or psychiatric treatment required by the victim;
(2) Costs of physical and occupational therapy or rehabilitation required by the victim;
(3) Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
(4) Lost income and due wages according to national law and regulations regarding wages;
(5) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
(6) Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and
(7) Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by the court.

[182] UN Office of the High Commissioner for Human Rights (OHCHR) (n 79).

[183] *Trafficking Protocol* s 6(6). Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

[184] *Women and Children Repression Prevention Act (amended 2003) 2000* (Bangladesh) s 15; *Environmental Court*

sections 28, 39 and 40.[185]

Under section 28 of the *Human Trafficking Act*, the special tribunal has jurisdiction to order reasonable compensation to trafficked victims. It can also impose fines and compensation together, and it has authority to recover compensation from an offender. The special tribunal also has power to provide the whole or any part of the fine to victims.[186] The *Human Trafficking Act 2012* clarifies the circumstances which the tribunal must consider before making a compensation order,[187] which is discretionary. Section 28 sets out a list of possible costs to be compensated (including the costs of physical and mental treatment of the affected person; costs of necessary transportation; costs of temporary housing, lost income; sufferance; costs of actual or emotional injury and the gravity of the distress), which is similar to the list in the UNODC Model Law. In addition, section 39 of the *Human Trafficking Act* entitles victims to file a civil suit for compensation in a civil court.[188] Victims can sue for compensation in a civil court for their suffering and legal injury, besides their criminal proceeding. However, in practice filing a civil suit for compensation is rare – as confirmed in my fieldwork.

In addition to these civil remedies, the government has a responsibility to provide financial support to victims through the establishment and activation of a National Fund.[189] As mentioned earlier in this Chapter, in 2017 the government introduced the Human Trafficking Prevention Fund Rules 2017, to constitute a National Human Trafficking Prevention Fund for providing financial

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Act 2010 (Bangladesh) s 15; *Domestic Violence (Prevention and Protection) Act 2010* (Bangladesh) s16.

[185] 'Aftercare for survivors of human trafficking' (2012) 39(4) *Social Work and Christianity* 370.

Section 28 states that: Order of compensation by the Tribunal. Where an accused person is convicted of an offence of committed under this Act, the Tribunal may pass an order to the accused to pay the victim of the offence of human trafficking a reasonable amount of compensation in addition to fine imposed by it, and, any such compensation shall be recovered by the tribunal directly or, if necessary, in accordance with the provisions of the *Public Demands Recovery Act, 1913*.

Section 39 states: Right to institute civil suit for compensation.-Without prejudice to the right to institute criminal proceedings, and besides any criminal proceeding initiated, the victim or the victim of human trafficking may sue for compensation in any civil court for his actual sufferance or legal injury resulting from the offence committed under this Act or for the breach of any contract concerned to the offence.

Section 40 states: Financial assistance to the victim of human trafficking - Without prejudice to the right or opportunity to receive legal aid from any non-government organisation or under the *Legal Aid Services Act 2000*, the Government may provide financial assistance to the victim of human trafficking or to the victim from the fund established under this act.

[186] Ibid s 28.

[187] Ibid.

[188] Ibid s 39.

[189] Ibid s 40.

assistance to the trafficked victims. However, there is no information available showing that Human Trafficking Prevention Fund has been started working.

While it appears from the legislation that existing law is following international law on paper, the effectiveness of its implementation can be questioned when the national data on human trafficking prepared by the Monitoring Cell of Bangladesh Police is considered. This data does not show anyone receiving compensation or garnishing fines.[190] The absence of any case law on the topic indicates that civil remedies under the *Human Trafficking Act* are infrequently utilised by victims. This conclusion is reinforced by the finding from my fieldwork, considered earlier in this thesis, that victims are not kept appraised of developments in their cases.[191] For these victims, receiving compensation was far away from their thoughts.

My fieldwork also confirmed that while trafficked victims may receive short term financial support and training from international and local NGOs, few (and none in my sample) received any support from the Government. In addition, civil remedies for victims was not addressed at all in the new NPA 2018-2022, although it does include a plan to create a national authority and national fund to give financial assistance to victims. That said, at the time of writing it is not yet in operation. NGOs are the most active in this space. I consider their work now.

D *International and Local NGOs; Why they are More Effective than Government*

1 *The Status of NGOs in Bangladesh*

For the purposes of my analysis, an NGO is defined as an organisation that is self-governing and non-for-profit, that mainly focuses on the well-being of social groups.[192] The main task of NGOs

[190] See Chapter Five
[191] Ibid.
[192] Rob Gray, Jan Bebbington and David Collison, 'NGOs, civil society and accountability: Making the people accountable to capital' (2006) 19(3) *Accounting, Auditing & Accountability Journal* 319. “Civil Society” is a well-known phrase which became more familiar in the 1980s, though still there are problems in defining this term. The World Bank uses the term Civil Society Organisations (CSOs), which includes non-governmental and non-profit organisations, labour unions, charitable organisations, associations and foundations. Rob Gray and Jan Bebbington have described NGOs as service organisations who are controlled and funded by their donors.

in this context is to fill service gaps. They also provide a vital service of advocacy, working as a 'watchdog' to help ensure that state laws, policies, and institutions work effectively to combat human trafficking and provide assistance to victims.[193]

Bangladesh has a number of NGOs that work actively to strengthen the state and to foster democratic development,[194] and in doing so have become a significant part of the culture of Bangladesh.[195] While some scholars argue that NGOs are responsible for weakening the state and civil society, White has argued that in Bangladesh the presence of NGOs is responsible for undermining state legitimacy.[196] In contrast, I argue that it is not a matter of threatening state legitimacy, but a matter to make Bangladesh more active to perform its responsibilities. To combat human trafficking and to put government laws and policies into effect both the government and NGOs are working together

The International Organization of Migration (IOM) is a well-known international organisation that has been working since 1951 to address illegal migration and human trafficking. In Bangladesh it started its activities in 1990, when Bangladesh joined the IOM. Another significant international NGO is the UNODC, which has been working with the Bangladesh Ministry of Home Affairs to combat trafficking.[197] The Bangladesh government also has partnerships with 10 other NGOs[198] to fight against human trafficking.

In the course of my fieldwork I had the opportunity to observe three NGOs working in this area, and I also interviewed a lawyer working at one of them who is directly involved in combating this

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[193] Henrik Secher Marcussen, 'NGOs, the state and civil society' (1996) 23(69) *Review of African Political Economy* 405.
[194] Claire Mercer, 'NGOs, civil society and democratisation: A critical review of the literature' (2002) 2(1) *Progress in Development Studies* 5.
[195] Geoffrey D. Wood, Bangladesh: Whose ideas, whose interests? (Practical Action Publishing, 1994) 541-556. Soñia Arellano-Lopez, 'Non-Government Organisations and Poverty Alleviation in Bolivia' in H. Veltmeyer, J. Petras and S. Vieux (eds), Neoliberalism and Class Conflict in Latin America (Palgrave MacMillan, 1997) 165-177.
[196] Sarah C. White, 'NGOs, civil society, and the state in Bangladesh: The politics of representing the poor' (Pt Wiley Online Library) (1999) 30(2) *Development and change* 307.
[197] Government of the People's Republic of Bangladesh (n 5).
[198] 1) Bangladesh National Women Lawyers Association (BNWLA); 2) The Centre for Women and Children Studies (CWCS); 3) The Dhaka AHSANIA Mission (DAM); 4) Rights Jessore (RJ) SAVIOUR; 5) UDDIPAN; 6) Khan Foundation; 7) UNICEF; 8) Winrock International; 9) The International Organisation of Migration (IOM); 10) World Vision.

crime. To understand the role of NGOs in combating human trafficking, this section discusses the various activities of three NGOs and demonstrates that NGOs are working more actively than the government through their strong human rights approach.

2 *Winrock International*

Winrock International[199] is working effectively to implement the 3 Ps framework (Prevention, Protection and Prosecution) to fight against trafficking of human beings. It runs several programs in different countries where people are more vulnerable to being trafficked. Winrock often works in partnership with other NGOs, governments and other stakeholders to prevent the situations such as poverty, gender discrimination, and violence against women and children which are responsible for this crime. It also advocates for the strengthening of law enforcement to ensure criminalisation of traffickers. Before the passage of the *Human Trafficking Act 2012*, Winrock International appears to have been the only NGO conducting research on the operation of Bangladesh laws related to human trafficking.[200] It also took a leading role in identifying and empowering survivors to reintegrate into society. Currently, this NGO is working in 20 districts of Bangladesh where the risk of human trafficking is higher.[201] It runs the Bangladesh Counter Trafficking in Persons (BC/TIP) Program, which from 24 October 2014 to 30 November 2020 is funded by the US Agency for International Development (USAID). In this section, I consider the work of this NGO in this area, focusing on the last five years in particular.

The BC/TIP Program is made up of a number of projects. One is to create awareness and provide knowledge about trafficking to students, local leaders and the community. Another provides training to different government organisations, including the police, judiciary and lawyers, about

[199] Winrock International started working in Bangladesh since 1980. At the outset, the primary focus of this INGO was the agriculture sector. Since then its activities have been expanded in different areas including climate change, energy, poverty reduction, women empowerment, combating human trafficking and preventing forced labour.
[200] Winrock International, 'Review of Laws against Human Trafficking in Bangladesh prepared for Winrock International's Actions for Combating Trafficking-in-Persons (ACT) Program' (Project, Winrock International, 2011) <http://www.academia.edu/9498745/Review_of_Laws_against_Human_Trafficking_in_Bangladesh_prepared_for_Winrock_Internationals_Actions_for_Combating_Trafficking-in-Persons_ACT_Program>.
[201]Winrock International, 'Bangladesh Counter Trafficking-in-Persons Booklet' (Booklet, December 2016) <https://www.winrock.org/document/bangladesh-counter-trafficking-in-persons-booklet/>.

human trafficking and safe migration. Like other NGOs, Winrock International conducts meetings to raise community awareness, but it also engages in innovative educational approaches including videos, radio programs, rallies, seminars, workshops, and even puppet shows and street drama.

Under the BC/TIP Program, Winrock International also provides training to community peer leaders and survivors. According to the 2016Country Report, 1,577 people were identified as at risk of human trafficking by peer leaders, who have referred survivors to different services like training and job opportunities.[202] The most recently available report on the Program indicates that this NGO has provided training and livelihood support to some 4,034 people who are at risk of trafficking.[203]

Winrock International also provides protection to victims. It operates shelter homes that provide accommodation for victims, counselling, life skills training, legal support and livelihood support. For example, within the BC/TIP, Winrock conducted two Trauma Counseling Workshops in 2016.[204] Most recently, it has been running a project known as 'For men and women who have escaped Trafficking in Bangladesh – SDC Bangladesh CTIP Ashshash', which is funded by the Swiss Agency for Development and Cooperation. The project started on 18 November2019 and will wind up in October 2022. Thus, Winrock International helps trafficked survivors to reintegrate into society.

Winrock International, along with other partners, has also developed informative materials about human trafficking. It has published a booklet – the 'Bangladesh Counter Trafficking in Persons Booklet' – which contains both detailed information and guidelines to combat this crime.[205] About 4,105 registered migrants have received training on safe migration through this NGO.[206] Winrock International has also organised two divisional conferences, where 203 CTC members participated and addressed the challenges that they have faced.[207] In these conferences, Winrock recommended

[202] Government of the People's Republic of Bangladesh (n 5).
[203] Winrock International, 'Think Global, Act Local: Combating Human Trafficking in Bangladesh' (Bangladesh Counter Trafficking-in-Persons Project (BC/TIP), 24 October 2014) <https://www.winrock.org/project/think-global-act-local-combatting-human-trafficking-in-bangladesh/>.
[204] Ibid.
[205] Ibid.
[206] Ibid.
[207] Government of the People's Republic of Bangladesh (n 5).

active participation of CTC to prevent human trafficking, and highlighted the importance of criminalisation of traffickers.

To advance efforts to criminalise trafficking, Winrock International has also focused on the development of prosecutorial practices. In particular, it has provided training to people who are responsible to ensure justice to the victims. According to Bangladesh's 2016 Country Report, Winrock International provided training to 86 public prosecutors, 26 District Legal Aid Officers, 51 Police Officers, and 140 District Legal Aid Panel Lawyers.[208] It has also taken initiatives to develop training modules to assist the Judicial Administration Training Centre. Winrock International also works with other partner NGOs and government organisations, such as Law and Justice Division of the Ministry of Law.[209] In addition, it is part of the NPA Implementation Committee, and assisted the Ministry of Home Affairs to organise a national conference on human trafficking.[210] It also has significant partnerships with Dhaka Ahsania Mission and Rights Jessore, that have been very effective. Given the significance of these partnerships, the next two sections address the activities of DAM and Rights Jessore to fight against trafficking.

3 *Dhaka Ahsania Mission*

Dhaka Ahsania Mission (DAM) is one of the two active NGOs specifically combatting human trafficking in Bangladesh, and works with a range of national, international, regional organisations. It has also relationships with NGOs in different destination countries, and it has organised inter-country workshops with India, Nepal, Pakistan, and other destination and transit countries.[211] DAM adopts a human rights-based approach to its work in rescuing, repatriating and rehabilitating trafficked victims.

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[208] Ibid.
[209] This NGO focuses on to build capacity of all prosecution related organisations who are directly engaged in criminal justice systems. It conducted training of public prosecutors. It also maintains relationship with Judicial Administration Training Centre (JATI) and Solicitors Wing under Law and Justice Division. There is no training module for train up the judges and magistrates on human trafficking in JATI, however, it agreed to start up a training module on this crime. In addition, it signed Memorandum of Understanding (MoU) with Legal Aid Services, which is also part of Law and Justice Division.
[210] Ibid.
[211] Ibid.

According to an official report of the Bangladesh Government, DAM rescued 159 trafficked victims in 2016.[212] DAM operates a shelter home in Jessore known as 'Thikana', which provides support to victims of crime including trafficked victims. Established in 1998, Thikana has capacity to provide accommodation to 60 victims. During my fieldwork I visited this shelter home and interviewed the manager and the counsellor. In Dhaka city, DAM also have a drop-in centre working with street children. In addition, to these two sites, they have another shelter home known as 'children's city' at Panchagarh. They also provide counselling services to children.

DAM is running an ongoing project known as 'Home for Children & Women Victims and Survivors' which is funded by UNODC and World Vision. The main objective of this project is to protect victims and help them to start their normal life through providing training and economic empowerment.[213] In addition, in order to empower trafficking survivors, DAM is involved in the Bangladesh Counter Trafficking in Persons (BC/TIP) program, where they provide various beneficial and essential services to trafficked victims.[214]

Figure 16: Dhaka Ahsania Mission, Shelter Home
(Photo taken by author, May 2017, Jessore District, Bangladesh)

Victims' rehabilitation and reintegration process starts when they move into Thikana, which provides victims safe accommodation, food, clothing and other important services including

[212] Government of the People's Republic of Bangladesh (n 5).
[213] Khawja Shamsul Huda,'Home for Children & Women Victims and Survivors', *Dhaka Ahsania Mission* (Webpage, n.d.) <http://www.ahsaniamission.org.bd/shdam/>.
[214] This BC/TIP program was funded by USAID and operated by Winrock International between 2015 and 2017.

medical and psychological support, opportunities to learn vocational and life skills, entertainment and recreational activities (such as playing, dancing, singing, watching television) and weekly outings. My interviewees also confirmed that they received different kinds of training in the Ahsania Mission home (see Figure 16). Data in government reports also show the number of trafficked victims who have received training through this NGO.[215]

Figure 17: Victims socialising in the recreational room, Dhaka Ahsania Mission, Shelter Home (Photo taken by author, May 2017, Jessore District, Bangladesh). Faces have been blurred.

Figure 18: Poster in counselling room, Dhaka Ahsania Mission, Shelter Home

[215] Government of the People's Republic of Bangladesh (n 5).

(Photo taken by author, May 2017, Jessore District, Bangladesh)

Counsellors also provide psychological support to victims in these shelter homes. They assess victims' mental health along with their medical health and overall situation. They want to know the stories of the victims, for example, whether they have experienced torture, or whether relatives are missing them, etc. From their arrival at Thikana victims also receive medical attention, as Thikana has paramedics among their 13 staff and medical professionals visit twice a week (and are also "on call" if needed). Medical staff make referrals that are followed by Thikana. Thikana also has a lawyer who visits and consults with survivors, provides legal counsel and runs cases on victims' behalf.

Figure 19: A paramedic visits, Dhaka Ahsania Mission, Shelter Home
(Photo taken by author, May 2017, Jessore District, Bangladesh)

DAM provides occupational training to victims in beauty parlour skills, computer use and sewing. Upon completion of training, they also provide support. If victims prefer to reunite with their families, DAM can arrange for this, and can also share business contacts in Jessore or Dhaka to assist victims in finding work. DAM has good business relationships in coffee shops and in the garment industry in Dhaka and provides follow-up support for up to a year after they have assisted a victim back into the workforce. They meet the victim in person after 2-3 months, and then provide further follow-up support over the phone.

Many local NGOs (including Rights Jessore and World Vision) refer victims to DAM. DAM also maintains communication with different NGOs and shelter homes in India. In addition, it has repatriated many trafficked victims through the RRRI Task Force. DAM is continuously working with Upazila Parishad (Sub-district) chairman and other influential members of society to activate the Counter Trafficking Committee. As mentioned in first section of this Chapter, there are CTCs in most districts, working at a local level to prevent human trafficking. It has also created a survivors' advocacy group, known as ANIRBAN, to raise awareness on human trafficking in the community.

I now turn to consider the important work undertaken by Rights Jessore in combatting human trafficking.

4 *Rights Jessore*

Rights Jessore is actively working in combating human trafficking in ground level. It has been successfully using a human rights based-approach to prevent human trafficking, protect survivors and to ease the prosecution of trafficking cases since 1991.[216] This includes a range of projects, such as creating awareness, providing training and shelter to the victims, legal and psychological support. They were significant stakeholders in the implementation of the NPA 2015-2017 and in the development of the *Human Trafficking Act 2012*. Rights Jessore has undertaken a number of different projects to combat trafficking. They are funded by a number of different international organisations and donor agencies.[217]

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[216] Rights Jessore,'Home', *Rights Jessore* (2020) <https://rightsjessore.org/>.
The activities of Rights Jessore include: a. Distributing leaflets, posters, stickers and billboards on human trafficking to raise awareness. b. Conducting community meeting about human trafficking and safe migration. c. Conducting school orientation sessions on trafficking of human beings and illegal migration. d. Capacity building training for members of the Counter Trafficking Committee (CTC) e. To review the progress of the CTC, conduct Review meetings and prepare a half yearly plan. f. Training for girl students to make them aware of this crime g. Presenting stage drama on human trafficking and safe migration. h. Conducting training session for Volunteers and peer leaders at Union Level. i. Arranging Review meetings with Volunteers and peer leaders to review their progress. j. Arranging training for those who are interested to go abroad. k. Developing referral mechanisms and partnerships in order to work effectively with other organisations.
[217] The Royal Danish Embassy, Dhaka, International Organisation for Migration IOM, The British Council, Dhaka, South Asia Regional Initiative/Equity Support Program, USAID, Academy for Educational Development, AED, USAID, Asian Development Bank (ADB), The British Council, Dhaka, The Australian High Commission, Dhaka, NORAD, Group Development/EC/ECPAT Luxembourg, Care Bangladesh/ Big Lottery Fund UK, Winrock International, KIOS (The Finnish Ngo Foundation for Human Rights), Government of Canada.

Rights Jessore runs many trafficking awareness activities, such as school orientations with parents, stage dramas, and Bazaar meetings to prevent this crime. It also provides psychological counselling to survivors of trafficking. It has a mobile hotline service that enables victims and their family members to communicate with Rights Jessore at any time. Many of my interviewees had communicated with Rights Jessore through this hotline.

Up to March 2020, Rights Jessore has rescued 321 victims, repatriated 1075 victims and rehabilitated 353 victims.[218] It also runs different prosecution-related activities which help lawyers, judges, magistrates and police officers to understand human trafficking and the rights of victims appropriately. This NGO also provides legal support to 33 trafficked victims in 2016.[219]

More broadly, both international and local NGOs are working at the ground level to protect people who have no food, clothing, education or access to health facilities.[220] NGOs are working to promote social, economic and cultural development in society, including in poverty reduction.[221] For example, to address social inequality and power imbalances in society, NGOs have developed micro-credit programs. Micro-credit is a loan system designed to assist poor and disadvantaged people. The Grameen Bank, Bangladesh Rural Advancement Committee ('BRAC') and Association for Social Advancement (ASA) are leading organisations aiming to alleviate poverty and create entrepreneurship opportunities through using micro-credit.[222] Generally, micro-credit has enhanced the empowerment of women in the patriarchal society of Bangladesh. A significant study found that, overall, micro-credit programs can and do improve the social and economic status of vulnerable people.[223] Notably, there has been criticism of micro-credit as providing leverage for loan defaulters to become victims of organ trafficking in the Joypurhat district of Bangladesh. This

[218] Rights Jessore (n 215).
[219] A) Advocacy meeting with police investigation officers in order to establish victim-oriented prosecution system; B) Meeting with lawyers and public prosecutors; C) Meeting with journalists about importance of report on investigation and confidentiality of victims; D) Meeting with Judiciary for effective implementation of Human Trafficking Act.
[220] Syeda Feroza Begum, Sawlat Hilmi Zaman and Mohammad Shahin Khan, 'Role of NGOs in rural poverty eradication: A Bangladesh observation' (2004) 1(1) *BRAC University Journal* 13.
[221] Ibid.
[222] Taylor N. Scheffing, 'Non-Governmental Organisations' Involvement in Poverty Alleviation in Bangladesh' (2017) 8(1) *Pursuit-The Journal of Undergraduate Research at the University of Tennessee* 15.
[223] Ibid.

is not a defect of micro-credit per se, but more a comment on the opportunism of the criminals who engage in trafficking.

The material above and my own fieldwork demonstrates that a number of NGOs are working effectively to combat trafficking. While the Government has specific accountability under international and national legal frameworks to protect its citizens from human trafficking, on the basis of the data available, NGOs have been more effective in preventing human trafficking and protecting the rights of trafficked victims. Despite the fact that NGOs often face numerous challenges – such as a shortage of funds, a lack of coordination from government, lack of knowledge and training on human trafficking – a range of international and local NGOs are still fighting effectively against human trafficking.

E *Conclusion*

In its three Parts, Chapter Six has considered both preventive and protection measures, outlining what is ostensibly an incomplete patchwork of human rights-based responses that government institutions and NGOs have taken in Bangladesh to combat human trafficking. Part One addressed the work of the government and considered its effectiveness. The Ministry of Home Affairs (MOHA) and its law enforcement agencies, and the Ministry of Shipping and Ministry of Fisheries and Livestock, are relying on control mechanisms and focusing on criminalisation of trafficking-related activity, but ignorance of the law, failure to tackle the crime seriously and corruption are undermining the work of these institutions.

Other institutions and organisations – such as the Ministry of Women and Children Affairs, the Ministry of Expatriates' Welfare and Overseas Employment, and the Ministry of Labour and Employment – have developed policies that are consistent with a human rights approach, feminist theory, critical race theory and the imperial theory of forced or unfree labour, as they purport to focus on the rights of vulnerable people. However, the analysis above indicates that the Ministry of Law and the Health Ministry are not performing their obligations as effectively as they could be. For instance, the Ministry of Law has only recently established a special tribunal to dispose of trafficking cases; that is, 8 years after the passing of the *Human Trafficking Act 2012*. In addition,

the medical and psychological needs of trafficked victims still seem to be largely overlooked by the Ministry of Health.

The overarching policy that has been followed by Government institutions, international and local NGOs has been the National Plan of Action (NPA). But the effectiveness of the current policy, the NPA 2018-2022, depends on proper implementation. The NPA 2015-2017 was not properly implemented because of funding shortages and other challenges,[224] as mentioned earlier in this Chapter. The NPA 2015-2017 was criticised on a number of grounds, including poor standards of care and support, non-cooperation of different ministries, and a lack of high-quality data about human trafficking. The Bangladesh Government has adopted the new policy with new hope. Nevertheless, as I demonstrated in this Chapter, the NPA 2018-2022 is a long way short of adequate.

Part Two highlights institutional responses to the rights of trafficked victims, starting with the right of identification. The NPA 2018-2022 addresses the need for identification and rescue of cross border trafficked victims. However, internal trafficking is also a major issue in Bangladesh, where victims are trafficked and sold to brothels and forced to work as prostitutes. Despite this, there is no data available data showing the number of identified trafficked victims working in involuntary sex work. As far as repatriation of victims is concerned, the government is working with international and local NGOs. But it is not clear who bears the cost of repatriation. While the Government provides identity and travel documents, it appears that the cost of repatriation is often borne by the victim's family. This was also confirmed through my fieldwork.[225]

After repatriating victims, the government only provides temporary shelter to trafficked victims. It has been reported that the Government has failed to ensure the care of victims after repatriation.[226] In its current policy, the government claimed that different shelter homes and service centres have enough facilities to support trafficked victims. However, just as the Government identified a number of service gaps in its earlier policy (NPA 2015-2017), much still

[224] Challenges include: Inadequate and improper process to raise awareness, Lack of coordination in identifying victims and vulnerable people of trafficking, Funding and resources issues in running CTCs and other programs.
[225] Rubina, Trafficked Victim.
[226] Ibid.

needs to be done to ensure proper standards for care and support, availability of adequate information, and to improve the coordination process.[227] Weak standards and ineffective implementation of policy creates vulnerability to re-trafficking.

Once a trafficked victim has been repatriated and she commences legal proceedings, her rights of access to justice depend on receiving protection from threats and intimidation. This is addressed by the *Human Trafficking Act 2012* and the Human Trafficking Rules. However, in practice the police do not protect victims from intimidation and threats. As observed in this Chapter, claiming civil remedies and compensation, and having diplomatic protection, are infrequent.

Bangladesh also faces challenges to provide shelter and financial support to victims and NGOs have come forward, at least to some extent, to deal with those challenges. In preventing and prosecuting human trafficking, and protecting trafficked victims, international and local NGOs are working in systematic ways. The long-term shelter and other facilities and training are mostly provided to victims by NGOs. However, it is evident that some local NGOs have a shortage of funds.

The next and final Chapter of this thesis lists a series of recommendations for Bangladesh to follow, to better protect people from human trafficking.

[227] Ministry of Home Affairs (n 49).

CHAPTER 7: CONCLUSION

A *Findings*

This thesis has demonstrated an in-depth case study of trafficked victims, focusing on their experiences throughout the whole journey of trafficking. These experiences have been analysed applying a multi-stranded theoretical framework. At the outset this study introduced the story of trafficked victim Rubina and showed how poorly-educated women and children living in poverty in a highly patriarchal system are deceived by unscrupulous traffickers and their agents. A brief literature review outlined how the circumstances of those trafficked victims have been largely unaddressed by scholars and institutions.

Chapter One outlined the methodology of this research. Focusing on the experiences of trafficked victims, this Chapter identified different categories of traffickers, who could even be a victim's friend or family member. It also addressed strategies which criminals mostly use to trap vulnerable people. Chapter One found that traffickers often use those routes which are risky, where border protection is very poor. Due to geographical location Bangladesh works as a hotspot of human trafficking, as it shares borders with India and Myanmar. There are different causes and forms of trafficking in Bangladesh, and women and children in particular are more vulnerable to be trafficked because of their social status. This Chapter also explored that physical and mental torture and poor working conditions are very common in trafficking. After repatriation, victims also face social isolation and humiliation. Finally, this Chapter demonstrated how a faulty criminal justice system and limited human rights create challenges for trafficked victims to get justice and start their lives again.

Chapter Two demonstrated the theoretical approach of this study. Traffickers target those victims whose economic and social conditions are worse. The data indicates that women and children are most at risk, as they are vulnerable, and traffickers seek them out to profit from their vulnerability. In Bangladesh, socio-cultural and economic conditions tend to put women in a less favourable position. The fieldwork reflected the subjugation of women. As such, feminist theory has been

used in this study. This Chapter also identified critical race theory as relevant to the analysis, as some people in Bangladesh become victims of trafficking because of their ethnicity. Rohingya refugees and Indigenous people are particularly vulnerable. My fieldwork and the literature available confirmed this. This Chapter also outlined the applicability of Marxist theory on forced or unfree labour, as many people in Bangladesh are poor and their engagement with the labour market is determined by their very limited options. The available literature and my fieldwork demonstrated that poverty and other related economic conditions also make people vulnerable to trafficking. Finally, this Chapter addressed the importance of *both* a human rights-based response and effective criminal justice system to combat human trafficking effectively.

Chapter Three addressed international criminal law relating to human trafficking. The early response to human trafficking was criticised due to its limited scope. The two early agreements – the International Agreement for the Suppression of the White Slave Traffic 1904 and the International Convention for the Suppression of the White Slave Traffic 1910 – were racialised, as their main focus was Caucasian women and girls. The third and fourth instruments – the International Convention for the Suppression of the Traffic in Women and Children 1921 and the International Convention for the Suppression of the Traffic in Women and Children 1933 – extended the scope through including women and children of any race and colour. Chapter Three also illustrated that another anti-prostitution instrument, namely the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), had a limited approach as it only addressed prohibition of prostitution. One of the positive aspects of this Convection is that it identified different human rights of the victims, which were absent in early instruments. This Chapter also argued that the Slavery Convention addresses earlier definitional limitations and influenced the definition of human trafficking found in the later *Trafficking Protocol*.

In addition, Chapter Three explored the limited human rights approach that was characteristic of the early instruments of human trafficking. However, the *Trafficking Protocol* acknowledges extensive rights of the victims. It also addresses the importance of the effective criminalisation. This Chapter identified several gaps in this Protocol, including: the absence of a definition of exploitation and sexual exploitation; failure to provide solutions to the debate of voluntary and

involuntary sex work;, non-application to internal trafficking; absence of mandatory provision of protecting victims; and absence of a dedicated monitoring body. Finally, this Chapter confirmed that while other regional conventions – such as the European Convention and the ASEAN Convention – are compatible with *Trafficking Protocol*, the *SAARC Convention on Trafficking* has some conflicts with the Protocol. Poor enforcement mechanisms also renders the *SAARC Convention on Trafficking* ineffective.

Chapter Four identified different human rights which are under threat because of human trafficking. Despite not having any enforcement mechanism, as a soft law instrument the Universal Declaration of Human Rights has influenced subsequent human rights treaties. The ICCPR is another human rights instrument which focuses on the responsibility of states to address human rights which will prevent the vulnerability to human trafficking. The ICESCR also highlights relevant economic and social rights, including an adequate standard of living, unfree labour, and right to enjoyment of just and favourable working conditions. CEDAW has specific provisions on human trafficking, and addresses discriminations which create vulnerability to trafficking. However, the reservation and existing conflict between CEDAW and personal law prevent women in Bangladesh from enjoying their full rights. The Convention on the Rights of the Child has also provided a definition of child trafficking – an issue which had been unaddressed by early instruments.

Chapter Four also identified different grounds whereby trafficked victims may be able to claim refugee status. These grounds include well-founded fear of persecution; fear of persecution on the ground of race, religion, nationality, membership in a particular social group; and a country of origin that fails to provide protection. However, it is very difficult for victims to get refugee status by providing evidence on those grounds. The Racial Discrimination Convention also adopts human rights-based approaches and focus on racial discrimination which fosters human trafficking.

Chapter Four presented that the *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* is also applicable in human trafficking, as corruption of public officials is a great factor in expanding human trafficking. What is more, trafficked victims have often experienced severe pain and suffering, including both physical and psychological

torture, and traffickers typically exercise excessive power and control over victims. Key international labour instruments were also shown to be important, as they have made a link between trafficking and forced labour and prohibit child labour. In addition, Chapter Four demonstrated that the International Convention on the Protection of the Rights of all Migrant Workers and Member of Their Families follows a human rights-based approach to ensure rights of migrant workers. Finally, Chapter Four identified that all the aforesaid human rights instruments have specific monitoring bodies to review implementation. However, the absence of sanctions, and non-binding nature of those Conventions, do not impose any strict responsibility on member states to ensure human rights.

Chapter Five demonstrated both substantive and procedural laws of Bangladesh which criminalise human trafficking. All the legislations which preceded the *Prevention and Suppression of Human Trafficking Act 2012* had definitional limitations and limited scope. Among those frameworks, only the *Women and Children Repression Prevention Act 2000* had specific provisions on human trafficking. And none of those instruments address the rights of trafficked victims.

The Constitution of the Peoples' Republic of Bangladesh reflects both a feminist approach and human rights approach, as it highlights different human rights, especially rights of women and children, who are vulnerable to human trafficking. Other instruments, including the Penal Code and passport-related laws, also penalise different offences related to human trafficking. Although human trafficking is extraditable offence, it is very unusual for Bangladesh to bring perpetrators from any foreign countries. This Chapter also identified that the *Labour Act 2006* does not define human trafficking and forced or unfree labour, but it penalises child labour. The *Children Act 2013* adopts both a human rights approach and criminal justice approach. It identifies a range of services for child victims, including rehabilitation, financial assistance, counselling and psychological supports.

The third section of Chapter Five examined the current instruments combating human trafficking. The *Overseas Employment and Migrants Act 2013* purports to protect migrant workers abroad. However, this instrument is not effective when we consider that a large number of Bangladeshi domestic workers are returning home having endured horrid experiences of torture and sexual

exploitation. The most relevant instrument to the crime of human trafficking is the *Prevention and Suppression of Human Trafficking Act 2012*, which ensures punishment of this crime while acknowledging different rights of trafficked victims. Nevertheless, there are some issues which undermine effective implementation of this national legislation. Among these, lengthy procedural delays, faulty and backdated investigations and corruptions are very common.

This Chapter also highlighted that there is no specific legislation to protect the rights of Rohingya refugees, despite their vulnerability to human trafficking. However, upon close interpretation of the legislative provisions, even non-citizens are entitled to protection if there is any violation under *Human Trafficking Act 2012*. In addition, the *Money Laundering Prevention Act 2012* cannot contribute effectively due to lack of coordination and procedural defects. Finally, this chapter addressed that there is very limited case law on human trafficking in Bangladesh, as the apex courts overlook the seriousness of this crime. Thus, Chapter Five argues that weak enforcement and implementation are responsible for the failure of these laws to effectively address this crime.

Chapter Six mapped the institutional response towards human trafficking. The Ministry of Home Affairs has a leading role in fighting against this crime as it has set up the RRRI Task Force and a Standard Operating Procedure to work effectively with neighbouring countries. In addition, this Ministry has adopted the current National Plan of Action 2018-2022, and three different Rules relating to human trafficking. Various law enforcement agencies – such as the Police, Border Guard, and Coastal Guard – are working under this Ministry, but there are ongoing allegations of corruption among law enforcement agencies. There are several other Ministries who also undertake policies to address poverty, discrimination and other vulnerabilities which operate as push factors for human trafficking. This Chapter argued that the NPA 2018-2022 is compatible with human rights approach as it follows the Sustainable Development Goals (SDGs) and focuses prevention of this crime. This policy is also working with the Women Development Policy and National Children Policy to ensure rights of women and children who are vulnerable in Bangladesh.

According to this Chapter the current NPA 2018-2022 does not follow Marxist theory of forced or unfree labour, as it overlooks the issue of demand and supply of forced or unfree labour. Moreover,

the policy is silent on economic discrepancies among different countries which facilitate forced or unfree labour. This Chapter also identified that the Labour Policy 2012 is not adequate to address the supply or demand of forced or unfree labour, while unfree labour and poor working conditions are common in Bangladesh's textile and fishing industries.

In addition, Chapter Six demonstrated how both laws and institutions fail to protect the rights of trafficked victims. The rescuing authority has poor knowledge about this crime, and poor service coordination is another problem. The repatriation process is very slow, and the government is not funding victims' repatriation. Furthermore, Bangladeshi law and policy overlook the importance of medical support for trafficked victims. Chapter Six illustrated that the available protection and legal assistance for victims are not victim-oriented, and there is no victim and witness protection legislation in Bangladesh. Safe custody and lengthy immigration detention of trafficked victims could be considered arbitrary detention, according to the findings of this Chapter. Diplomatic protection of trafficked victims, and the detention of trafficked victims in other countries, are always overlooked both by international and domestic laws. There are also allegations that the Bangladesh Embassy is not helping victims overseas. Getting compensation and applying for civil remedies are very unusual rights for Bangladeshi trafficked victims. Finally, this Chapter argued that human trafficking law does not have any provision relating to standard shelter homes. Rather, the government is relying on NGOs for the provision of longer-term shelter and other facilities. Both in prevention of this crime and protecting the rights of victims, NGOs are working more effectively than the government.

B *Recommendations*

Addressing all the limitations and gaps which have been confirmed through my study, I recommend the following measures to combat human trafficking and protect the rights of the victims.

- A regional Convention among South Asian and South East Asian and Pacific Countries
- Ensure basic human rights and social security of individual.
- Address the rights of Rohingya refugees and ensure their safety

- Improve the status of women and children
- Improve victims' identification and control forged documents
- Focus on the issue of demand and supply, to address the issue of forced or unfree labour
- Increase awareness through education and training, both in institutions and the community
- Establish a Regional Court to trial trafficking cases
- Update procedural laws relating to trafficking crimes
- Introduce a Witness and Victim Protection Act
- Address delays in the criminal justice system
- Provide compensation and civil remedies to victims
- Take action against Gulf States and ensure protection of domestic workers abroad
- Criminalise prostitution, as in the Bangladesh context it fuels this crime
- Build up strong partnerships with NGOs
- Train up law enforcement agencies and judges, and include human trafficking in training modules
- Enhance effectiveness of border agencies
- Train medical professionals appropriately
- Address corruption strongly and ensure punishment of those officials who are involved in this crime
- Ensure more reliable and up to date data on human trafficking
- Further in-depth research on human trafficking

As a major violation of human rights, the crime of human trafficking clearly needs more international and national attention and effective action.

C *Limitations and Challenges*

Shortage of reliable data is a very common feature in trafficking cases. Although the monitoring cell creates a monthly statement of trafficking cases, this report is not adequate. Firstly, there is no data about Rohingya trafficked victims. Secondly, the data has no information on whether victims receive any compensation. Finally, the monthly statement represents the status of criminal cases, but there is no information on civil litigation. NGOs, international organisations, and governments of both destination and source countries can collect data and statistical information on trafficking. This can include both qualitative and quantitative data on victims, traffickers, routes and patterns of exploitation of their region, which can then inform steps to combat human trafficking.

Scarcity of literature on human trafficking in Bangladesh is another limitation which I found while completing this study. There is no literature addressing the issue of trafficking in men, or organ trafficking, or ethnic Rohingya refugees. I found very limited scholarship offering theoretical analysis of human trafficking. There are, however, some publications which are largely descriptive and difficult to rely on. In Bangladesh prostitution facilitates human trafficking, however, there is no thorough studies on debate of voluntary and involuntary prostitution. Another form of trafficking from Bangladesh is organ trafficking, and that this is not easily separated from human trafficking given that organ removal can take place in a destination or third country. However, it has not been analysed in detail in the thesis due to space constraints. Instead, the thesis focuses on sex trafficking and labour trafficking.

Another obstacle was insufficient information in government official websites. My study requires thorough analysis of relevant policies and responsibilities of different government institutions. In 2016 the government published a Country Report describing the activities of different institutions, but at the time of writing this research, there was no more recent report available. Moreover, there is no research analysing the performance of Bangladesh. I use that report and compare their information with different government Ministries. The Ministry of Home Affairs does not have any official data on their website – and does not even have the NPA 2018-2022 in its database. In contrast, the databases of NGOs have proven helpful in working out the roles and responsibilities of different actors.

NGOs who are highly organised can work actively in transnational arena through making strong connections with different countries. When developed countries are committed to fight against human trafficking, NGOs of developing countries rely on funds from donor organisations of those countries to carry out work at the ground level. However, it has been confirmed that local NGOs of Bangladesh, including Rights Jessore and Ahsania Mission, face the problem of shortage of funds.

D *Concluding Remarks*

The lack of implementation and monitoring mechanisms impede effective application of international criminal law, and it has paved the way of human rights approach towards trafficking. However, human rights instruments are often non-binding in nature, and lack enforcement mechanisms. While the gaps in international criminal law can be addressed through the application of human rights law, the gaps in compliance with international human rights instruments can be mitigated through the reviewing and monitoring process of monitoring bodies. Such bodies can also explain any interpretive issues which need clarifying and suggest guidelines to implement conventions more effectively.

An effective criminal justice approach can work actively to combat this organised crime. However, the effectiveness of a criminal justice approach depends on proper implementation and application. Through my research I have revealed how Bangladeshi laws and institutions fail to protect victims' rights and fulfil their needs, in the absence of e victim-oriented criminal justice system.

After the adoption of the *Trafficking Protocol* 2000, different states have incorporated domestic legislation to criminalise human trafficking. It is a good sign that the number of prosecutions of offenders has grown globally, according to the most recent UNODC Report.[1494] Nevertheless, that prosecution number is increasing very slowly in Bangladesh. The main objectives of the criminal justice system are not only to end impunity for traffickers but to secure justice for victims. The agony and frustration of Bangladeshi trafficked victims towards their legal system is the evidence that the criminal justice system is not adequately protecting the rights and interests of the trafficked victims. Further research is required on the essential elements of an effective justice system in this context.

The crime of human trafficking cannot be stopped by the criminal justice approach alone. An effective human rights approach is another key mechanism, which also requires a fair and efficient justice system. Whereas victims' rights and interests are overlooked by both procedural and substantive laws, victims and their rights are the first priority of a human rights approach. Human rights obligations are outlined by soft law instruments, which are non-binding. The obligation to

[1494] United Nations Office on Drugs and Crime, 'Global report on trafficking in persons' (Annual Report, UNODC, 17 December 2018) < https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

apply and implement a human rights framework therefore relies on states. At a national level, the primary obligation depends on both laws and institutions to follow human rights standards. How victims are neglected in existing law enforcement has been highlighted in Chapter Five. However, there are existing policies which focus on the needs of vulnerable groups, such as women and children.

Like a criminal justice response, the effectiveness of human rights depends on proper implementation. The reporting system is the only process to evaluate the human rights-based response of laws and policies. However, such a reporting system is not enough for proper application of related laws and policies. Binding obligations and sanctions for non-compliance would force member states to apply international human rights norms and principles effectively, which would help to prevent trafficking as well as ensuring the rights of trafficked victims and resettling them in society. Both NGOs and government can work actively in implementation of a human rights framework.

Transnational activities are also required for appropriate implementation of both criminal justice approach and human rights approach. As a global human security issue, human trafficking needs to be addressed by destination, transit and source countries simultaneously. While South Asian countries have a regional instrument – the *SAARC Convention on Trafficking* – South East Asian countries have a separate ASEAN Convention. Effective Transnational efforts need a regional instrument among South Asian, South East Asian and Pacific countries to combat human trafficking successfully. This initiative can help to control organised crime in these regions and keep balance between supply and demand of trafficking. Developed countries like the USA, European states and Australia are emphasising border protection and expecting people from poor countries will stop coming to their countries. However, they pay less attention to the economic discrepancies and inequalities between rich and poor countries, which are ultimately responsible for human trafficking.

Effective transnational efforts depend on collaboration, cooperation and coordination among states, NGOs and other organisations. Lack of coordination is a problem which facilitates human

trafficking. Effective transnational activism can place pressure on states to comply with non-binding obligations of international human rights. Ultimately, combating trafficking involves the combined efforts of law enforcement agencies, prosecutors, lawyers, NGO workers and other service providers of both destination and source countries.

Bangladesh is a member state of many of these international instruments, and it just recently ratified the *Trafficking Protocol*, in September 2019. It is apparent that the Bangladeshi legal system focuses mainly on a criminal justice approach rather than a victim-oriented, human rights-based approach. Poor implementation and application of existing laws and policies are responsible for the failure of laws and institutions of Bangladesh to protect these victims. To combat human trafficking successfully will require future research and resources to strengthen *both* an effective criminal justice response as well as establishing a human rights-based response, alongside effective transnational efforts.

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APPENDICES

A *Appendix One*

Participant Information Statement

Project Title: HUMAN AND ORGAN TRAFFICKING: EVALUATING THE RESPONSE OF THE GOVERNMENT OF BANGLADESH COMPARED WITH INTERNATIONAL LAW

Application Reference Number: HEC16-135

This study is being carried out by the following researchers to fulfil the requirements of a Doctor of Philosophy:

Graduate Researcher:

Mst Kanij Fatima (La Trobe University)

Supervisors:

Prof Patrick Keyzer (La Trobe University)

Dr Laura Griffin (La Trobe University)

What is the aim of this study?

This study explores whether or not Bangladeshi laws against human trafficking are effective, and whether they comply with international laws. The project will look at what challenges the Government of Bangladesh faces to implement effective laws against trafficking, and outline the problems with existing measures. The findings will be used to make appropriate policy recommendations.

What are the requirements to take part in this study?

Participants must be the victims of trafficking, workers of the NGOs and/or other officials who are working to combat trafficking. Furthermore, they must be of sound mind to express their consent and their participation in the study is entirely voluntary.

What are the procedures to collect data, and are there any risks involved?

The researcher will follow three methods to collect data: focus groups, qualitative interviews and participant observation. Small focus groups and individual interviews will be held with victims of

trafficking, depending on the free consent of each participant. Interviews will also be held with police personnel, other officials and NGO workers.

The researcher will also observe the behaviour and attitudes of victims as well as their broader situation, including the facilities of the shelter homes and other services provided by the Government and NGOs.

Research participants are free to withdraw their consent at any time and there are no consequences for doing so. Interviews will be from between 30 minutes to one hour and audio recorded. *At the time of interviews, if any participant reports feeling diminishment of self-esteem, embarrassment or regret, the researcher will discontinue the interview. Participants are entitled to get free counselling services in such circumstances, available at the relevant NGO involved.*

How the collected data will be used?

All the information including the field-notes, audio recordings, photographs, transcripts of interviews and other data may be used to solve the research questions and may also be used in published articles, books or in conference presentations. In every publication and presentation a fake name will be used to ensure a participant's involvement in the data collection process doesn't affect his or her social respect and position.

After each interview, if a participant wants to change, add to, or take back something they have said, they can do so by contacting the student researcher on the details provided below. They may do this within four weeks of participating in the study. Participants can also ask to be provided the results of the research once the project is finished.

What are the possible benefits of participation?

This study will investigate the complex social problems that contribute to human trafficking. Victims may become more aware of their rights and about existing laws which can prevent them from becoming victims once again. The results of this project will more generally help to improve the situation of trafficking survivors in society.

This study will also be used to frame the appropriate policy recommendations. New and appropriate strategies will help local NGOs, International NGOs and other officials to better deal with victims of trafficking, and to work towards ending human trafficking

What should I do if I have further questions about my involvement in the research?

Any questions about this project can be made to the student researcher, Mst Kanij Fatima, School of Law of La Trobe University or her supervisors, **Prof Patrick Keyzer** and **Dr Laura Griffin**, whose contact details are below.

What if I have a complaint or any concerns about the research study?

If you have any complaints or concerns about your participation in the study that the researcher has not been able to answer to your satisfaction, you may contact the Senior Human Ethics Officer, Ethics and Integrity, Research Office, La Trobe University, Victoria, 3086 (Phone:

+61394791443, Email: humanethics@latrobe.edu.au). Please quote the application reference number HEC16-135.

You can communicate with the Ethics and Integrity Office through the help of the NGO which first informed you about the research. You can also take the help of a Victim Support Centre.

What if I want to withdraw from the research study?

If any participant wants to stop participating in this project, they can do so at any time by completing a "Withdrawal of Consent Form''. They can also tell the researcher by email or phone or through the help of their NGO that they no longer consent for their information to be used in this research project. They may do this within four weeks of participating.

Contact Details

Name	**Position**	**Email address**	**Phone Number**
Prof Patrick Keyzer	**Principal Supervisor**	p.keyzer@latrobe.edu.au	+61394792423
Dr Laura Griffin	**Secondary Supervisor**	l.griffin@latrobe.edu.au	+61394795891
Mst Kanij Fatima	**Graduate Researcher**	18598216@students.latrobe.edu.au	+61451006471

Consent Form

Project Title: HUMAN AND ORGAN TRAFFICKING: EVALUATING THE RESPONSE OF THE GOVERNMENT OF BANGLADESH COMPARED WITH INTERNATIONAL LAW

Application Reference Number: HEC16-135

I _____ have read (or, where appropriate, have had read to me) and understood the **participant information statement and consent form**, and any questions I have asked have been answered to my satisfaction.

I understand that even though I agree to be involved in this project, I can withdraw from the study at any time, and can withdraw my data up to four weeks following the completion of my participation in the research. Further, in withdrawing from the study, I can request that no information from my involvement be used.

I agree that research data provided by me or with my permission during the project may be included in a thesis, presented at conferences and published in journals on the condition that neither my name nor any other identifying information is used.

I give my permission (if applicable) for interviews that I participate in to be audio recorded (please tick and initial): ☐

(Optional) I give my permission to be included in photographs taken as a part of this research (please tick and initial): ☐

_____ _____/_____/_____

Name of Participant (block letters) Date

_____

Signature

La Trobe University

University Human Ethics Committee

Withdrawal of Consent for Use of Data Form

Project Title: HUMAN AND ORGAN TRAFFICKING: EVALUATING THE RESPONSE OF THE GOVERNMENT OF BANGLADESH COMPARED WITH INTERNATIONAL LAW

Application Reference Number: HEC16-135

I, _____ wish to withdraw my consent to the use of data arising from my participation. Data arising from my participation must NOT be used in this research project as described in the Information and Consent Form. I understand that data arising from my participation will be destroyed provided this request is received within four weeks of the completion of my participation in this project. I understand that this notification will be retained together with my consent form as evidence of the withdrawal of my consent to use the data I have provided specifically for this research project.

_____ _____/_____/_____

Name of Participant (block letters) Date

_____

Signature

B *Appendix Two*

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in

Have agreed as follows :

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring 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. 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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring 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) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State

Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such rafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to

prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance

with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the

Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

CONVENTION ON THE RIGHTS OF THE CHILD

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child

adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or

beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for

by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such

information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special

protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian

instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial

authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known,

by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.1/ The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to

the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-

General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

1/ The General Assembly, in its resolution 50/155 of 21 December 1995 , approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

C *Appendix Three*

A facsimile copy of

The Prevention and Suppression of Human Trafficking Act 2012 (Bangladesh)

is provided on the following pages.

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

রবিবার, আগস্ট ৪, ২০১৩

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়

লেজিসলেটিভ ও সংসদ বিষয়ক বিভাগ

প্রজ্ঞাপন

তারিখ, ২১ জুলাই ২০১৩

নং ১০(আঃম)(লেঃস)(মুঃপ্রঃ)-আইন-অনুবাদ-২০১৩—সরকারি কার্যবিধিমালা, ১৯৯৬ এর প্রথম তফসিল (বিভিন্ন মন্ত্রণালয় এবং বিভাগের মধ্যে কার্যবন্টন) এর আইটেম ২৯(খ) এর ক্রমিক ৫ এবং মন্ত্রিপরিষদ বিভাগের বিগত ৩-৭-২০০০ইং তারিখের সভায় গৃহীত সিদ্ধান্ত বাস্তবায়নের নিমিত্ত The Prevention and Suppression of Human Trafficking Act, 2012 এর ইংরেজী অনুবাদ সর্বসাধারণের জ্ঞাতার্থে প্রকাশ করিল।

মোঃ দেলোয়ার হোসেন
সহকারী সচিব (চঃদাঃ)।

The Prevention and Suppression of Human Trafficking Act, 2012

(Act No. 3 of 2012)

[20 February, 2012]

An Act to make provisions to prevent and suppress human trafficking, to ensure the protection of victims of the offence of human trafficking and their rights, and to ensure safe migration.

WHEREAS it is necessary to make provisions to prevent and suppress human trafficking and to ensure the protection of victims of the offence of human trafficking and their rights and to ensure safe migration; and

WHEREAS it is expedient and necessary to make provisions, keeping conformity with the international standards, to prevent and suppress the transnational organised crimes relating to human trafficking;

THEREFORE it is hereby enacted as follows: —

Chapter I
Preliminary

1. Short title and commencement.—(1) This Act may be called the Prevention and Suppression of Human Trafficking Act, 2012.

(2) It shall come into force at once.

2. **Definition.**—In this Act, unless there is anything repugnant in the subject or context—

(1) "protective home", by whatever name called, means an institution except a prison which is established for the reception, shelter and rehabilitation of the victims of human trafficking or of the persons rescued from human trafficking;

(2) "sheltering" or "harbouring" means to harbour, provide with shelter to or assist in any other means, any person in order to sell or traffic that person inside or outside of the country, and shall also include the meanings for which the term 'harbour' has been used in section 52A of the Penal Code, 1860 (Act No. 45 of 1860);

(3) "debt-bondage" means the condition that arises from a pledge by a person of his personal service or labour as security for a debt actually owed or unlawfully claimed to be owed by that person, but the value of the service or labour is not deemed to be paid the debt, or the service or labour is unlimited;

(4) "forced labour or service" means any work or service that is exacted from any person under the threat to loss or damage to life, liberty, right, property or reputation of the person;

(5) "Tribunal" means the Anti-Human Trafficking Offence Tribunal established under this Act, or any other Tribunal assigned or empowered as the Anti-Human Trafficking Offence Tribunal;

(6) "slavery" means the reduction of status and position of any person to a condition in which he is controlled or treated as property by another person and shall also include a condition arising from a debt or a contract made by that person;

(7) "Embassy" means any Mission or Embassy, High Commission, Deputy High Commission, or Assistant High Commission of Bangladesh situated in a foreign country and shall also include the Consulate General and consulate and Visa Offices situated in such countries;

(8) "Prostitution" means the sexual exploitation or abuse of any person for commercial purpose or for consideration in money or kind;

(9) "brothel" means any house, place or structure used for the purpose of prostitution;

(10) "victim of human trafficking" or "victim" means a person against whom the offence of human trafficking has been committed under this Act and shall also include the legal guardians and heirs of the person;

(11) "fraud" means to defraud or induce others, whether willingly or recklessly, by any words or conduct or any written contract or document as to facts or the law and a deception as to the intent of the person deceiving or any other person, and shall also include the meaning for which the expression 'fraud' has been used in section 17 of the Contract Act, 1872 (Act No. 9 of 1872);

(12) "coercion" means the use of force or intimidation or psychological pressure and shall also include the threat of doing harm or of physical confinement, torture or any threat or psychological pressure of using the official or legal status of a person against another person;

(13) "person" means a natural person including any company, firm, or association or group of persons, whether incorporated or not;

(14) "child" means a person who has not completed the age of eighteen years;

(15) "exploitation" or "oppression" means, but shall not be limited to, the following actions done against any person with or without his or her consent:

(a) exploitation or oppression of any person through prostitution or sexual exploitation or oppression;

(b) taking benefits from any person engaging the person in the prostitution or production or distribution of pornographic materials;

(c) receiving forced labour or service;

(d) debt-bondage, slavery or servitude, practices similar to slavery, or servitude in household;

(e) exploitation or oppression through fraudulent marriage;

(f) forcibly engaging any person in the amusement trade;

(g) forcibly engaging any person in begging; and

(h) maiming any person or the removal of organs for the purpose of trade;

(16) "organized criminal group" means an organization of a group of two or more persons, irrespective of their nationality and where ever they are, which exists for a specific period and the member of it acts together with a view to committing offences under this Act;

(17) "consent" means the consent of a person which is given freely and consciously and is not influenced by his or her weak position arising out of his or her age, sex and socio-economic backwardness;

(18) "public servant/official" means a public servant mentioned in section 21 of the Penal Code,1860 (Act No. 45 of 1860) or a person appointed in the service of the Republic as defined in article 152 of the constitution of the people's Republic of Bangladesh who is performing or carrying out a legal duty under this Act;

(19) "servitude" means the conditions or the obligations to work or to render services from which the person cannot escape and which he cannot prevent or alter.

3. **Human Trafficking**—(1) "human trafficking" means the selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring either inside or outside of the territory of Bangladesh of any person for the purpose of sexual exploitation or oppression, labour exploitation or any other form of exploitation or oppression by means of—

(a) threat or use of force; or

(b) deception, or abuse of his or her socio-economic or environmental or other types of vulnerability; or

(c) giving or receiving money or benefit to procure the consent of a person having control over him or her.

(2) If the victim of trafficking is a child, it shall be immaterial whether any of the means of committing the offence mentioned in clause (a) to (c) of sub-section (1) is used or not.

Explanation.—For the purposes of this section, if any person induces or assists any other person through deception and for bad intention to move, migrate or emigrate for work or service, either inside or outside of the territory of Bangladesh, though he knows that such other person would be put into exploitative labour conditions similar to practices of servitude or forced labour or into any other form of exploitation or oppression as mentioned in sub-section (15) of section 2, such act of the person shall be included as an act within the meaning of "human trafficking" as defined in sub-section (1).

4. **Act to override and the applicability of the Code of Criminal Procedure, 1898, etc.**—(1) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall have effect:

Provided that, the provisions of any other law for the time being in force containing better standard concerning the protection of victims and witnesses shall, subject to not being inconsistent with this Act, be applicable.

(2) In the event of deficiency of any provision in this Act regarding the filing of any case or complaint, investigation and trial of the offences and any other matters relating to trail under this Act, the provisions of the Code of Criminal Procedure, 1898 (Act No. 5 of 1898) and, as the case may be, the Evidence Act, 1872 (Act No. 1 of 1872) shall be applicable.

(3) The provisions of chapter III of the Penal Code, 1860 (Act No. 45 of 1860) shall be applicable to determine the responsibilities in respect of the offences and penalties under this Act.

(4) Offences under this Act shall be deemed to be offences of 'extradition' within the meaning defined in section 2(1) (a) of the Extradition Act, 1974 (Act No. 58 of 1974).

(5) This Act shall be complementary to other existing laws concerning emigration and immigration and shall not be used in derogation to the same.

5. **Extraterritorial application of this Act.**—(1) If any offence under this Act is committed by any person against a Bangladeshi national outside the territory of Bangladesh or on board in aircraft or ship, the provisions of this Act shall be applicable.

(2) If any person commits any offence under this Act from outside of Bangladesh into the territory of Bangladesh or from inside of Bangladesh to the outside of Bangladesh, the offence and the whole process of its commission shall be deemed to have been committed and taken place in Bangladesh, and the provisions of this Act shall be applicable to the person and the offence.

Chapter II

Human trafficking and ancillary offences and penalties

6. **Prohibition of human trafficking and penalty**.—(1) If any person commits any act mentioned in section 3, such act shall be deemed to be the offence of human trafficking.

(2)) The person committing the offence of human trafficking shall be punished with an imprisonment not exceeding imprisonment for life but not less than 5 (five) years of rigorous imprisonment and with fine not less than taka 50 (fifty) thousand.

7. **Penalty for the organized offence of human trafficking**.—Where an offence under this Act is committed by several members of any organized group for their common intention of acquiring financial or other material or immaterial benefit, each member of the group shall be responsible for the offence and the person committed the offence shall be punished with death or an imprisonment for life or a rigorous imprisonment for a term not less than 7 (seven) years and with fine not less than taka 5 (five) lac.

8. **Penalty for instigating, conspiring or attempting to commit an offence**.—(1) Where any person by instigating, conspiring or attempting to commit an offence of human trafficking or by knowingly allowing his property to be used in the commission of, or facilitation of committing any such offence, or by receiving, canceling, concealing, removing, destroying or taking possession of any document engages himself in the offence he shall be punished with rigorous imprisonment for a term not exceeding 7 (seven) years but not less than 3 (three) years and with fine not less than taka 20 (twenty) thousand.

(2) The person who abets in the commission of any offence under this Act shall be punished with the equal punishment provided for the concerned offence.

9. **Penalty for forced or bonded labour or service.**—If any person unlawfully forces any other person to work against his will or compels to provide labour or service or holds in debt-bondage or to exact from the person any work or service by using force or other means of pressure of by threat to do such, he shall be deemed to have committed an offence and shall for the offence be punished with rigorous imprisonment for a term not exceeding 12 (twelve) years but not less than 5 (five) years and with fine not less than taka 50 (fifty) thousand.

10. **Penalty for kidnapping, stealing and confining with intent to commit the offence of human trafficking.**—(1) If any person kidnaps, conceals or confines any other person with intent to commit the offence of human trafficking or to put that person into a state of sexual or other exploitation or oppression as mentioned in section 2 (15), he shall be deemed to have committed an offence and shall for the offence be punished with rigorous imprisonment for a term not exceeding 10 (ten) years but not less than 5 (five) years and with fine not less than taka 20 (twenty) thousand.

(2) If any person steals or kidnaps a new-born baby from any hospital, nursing home, maternity clinic, child-care centre, or the custody of parents of the new-born baby with intent to commit the offence of human trafficking, he shall be deemed to have committed an offence and shall for the offence be punished with imprisonment for life or with rigorous imprisonment for a term not less than 5 (five) years and with fine not less than taka 50 (fifty) thousand.

11. **Penalty for importing or transferring for prostitution or any other form of sexual exploitation or oppression.**—If any person brings any other person into Bangladesh or transfers the person inside the territory of Bangladesh with a view to engaging in prostitution or any other form of sexual exploitation or oppression by means of force of fraud or seduction, he shall be deemed to have committed an offence and shall for the offence be punished with rigorous imprisonment for a term not exceeding 7 (seven) years but not less than 5 (five) years and with fine not less than taka 50 (fifty) thousand.

12. **Penalty for keeping a brothel or allowing any place to be used as a brothel.**—(1) If any person keeps or manages or assists or participates actively in the keeping or management of a brothel shall be deemed to have committed an offence and he shall for the offence be punished with rigorous imprisonment for a term not exceeding 5 (five) years but not less 3 (three) years and with fine not less than taka 20 (twenty) thousand.

(2) Any person, who—

(a) being the tenant, lessee, occupier or person in charge of any place, knowingly permits such place or any part thereof to be used as a brothel, or

(b) being the owner of any house, lessor or owner of any land or the agent of such owner or lessor lets the house or land, with the knowledge that the house or any part thereof shall be used as a brothel,

shall be deemed to have committed an offence and for the offence be punished with rigorous imprisonment for a term not exceeding 5 (five) years but not less than 3 (three) years and with fine not less than taka 20 (twenty) thousand.

13. **Penalty for soliciting for the purpose of prostitution.**—If any person in any street or public place or from within any house or building, by words, gestures, or indecent personal exposure attracts the attention of any other person for the purpose of prostitution he shall be deemed to have committed an offence and shall, for the offence, be punished with rigorous imprisonment for a term not exceeding 3 (three) years or with fine not exceeding taka 20 (twenty) thousand or with both.

14. **Penalty for threatening the victim or witnesses.**—If any person threatens, intimidates, or uses force against the victims of trafficking or witnesses of any proceedings or any member of his family and thereby seriously obstructs the investigation or trial of any case initiated under this Act, he shall be deemed to have committed an offence and shall for the offence be punished with rigorous imprisonment for a term not exceeding 7 (seven) years but not less than 3 (three) years and with fine not less than taka 20 (twenty) thousand.

15. **Penalty for filing false case or complaint.**—(1) If any person files any false or frivolous case or complaint to harm any other person under this Act or, abuses the legal process or compels any other person to do so, he shall be deemed to have committed an offence and shall, for the offence, be punished with rigorous imprisonment for a term not exceeding 5 (five) years but not less than 2 (two) years and with fine not less than taka 20 (twenty) thousand.

(2) The Tribunal established under this Act may, upon a written complaint or on its own motion, take cognizance of the offence mentioned in sub-section (1) and proceed to try the offence, and, if necessary, by recording the reasons, stay the original case.

16. **Cognizability, Compoundability and bailability of offences.**—The offences under this Act shall be cognizable, non-bailable, and non-compoundable.

Chapter III

Filing of complaints and investigation

17. **Filing of complaints**.—(1) In case of commission of any offence under this Act, any person may file a complaint regarding the offence to the police or to the Tribunal, and the police shall provide with necessary security to such complaint and conceal his identity unless otherwise required for the purpose of any legal proceeding.

(2) The Government may, if it thinks fit, appoint one or more Special Prosecutors (Public Prosecutors) to conduct cases before the Tribunal.

(3) If the Tribunal submits any report to the Government against a Special Prosecutor appointed under sub-section (2) regarding any serious negligence of his duty, the Government shall remove or replace the Public Prosecutor.

18. **Legal presumption as to commission of offence**.—Where any victim of trafficking or any material used for the commission of the offence of trafficking is rescued or recovered from the custody or a place under the direct control of any person and if such person reasonably doubts to be, or is identified by the victim to be the trafficker, the person may be me presumed, unless the contrary is proved, to have committed the offence of human trafficking under this Act.

19. **Investigation**.—(1) Where an offence committed under this Act is reported to the police, or upon a reference of Investigation by the Tribunal, a police officer of the concerned police station not below the rank of Sub-Inspector shall conclude the Investigation under this Act.

(2) In the likelihood of commission of any offence under this Act, the police may conduct a proactive inquire before the filing of the first information report regarding the commission of the offence.

(3) Subject to the provisions of section 20, the Investigation under sub-section (1) shall be concluded within 90 (ninety) working days from the date on which the case is filed or the reference from the Tribunal is received.

(4) If the Investigation is not concluded within the time mentioned in sub-section (3), the Investigation officer shall, before at least three days prior to the end of the time limit apply in writing to his controlling officer or, in case of receiving a reference of investigation from the Tribunal, to the Tribunal for an extension of the period, and the controlling officer or the Tribunal, as the case may be, may, upon being satisfied regarding the reasons shown for the failure to

conclude the investigation, extend the period of investigation by another 30 (thirty) working days :

Provided that, in case of a transnational investigation, only the Tribunal may extend the period of such investigation and in this case the Tribunal may extend a reasonable period of investigation by its own discretion.

(5) In case of any investigation of a transnational offence under this Act, if it is required to travel a foreign country to examine foreign evidence, the police authority shall, with approval of the Tribunal, constitute a special investigation team to conclude the investigation within a time fixed by the Tribunal, and shall in so far as possible provide with administrative and financial assistance to the investigation team.

(6) With a view to coordinating and monitoring the investigation, rendering of security by and preventive functions and duties of the police under this Act, the Government shall, by notification in the official Gazette, establish a central monitoring cell at the police headquarters.

20. **Preventive search and seizure**.—(1) With a view to preventing the commission of any offence of human trafficking, a police officer not below the rank of a Sub-Inspector, being directed or authorized by his superior officer, shall have power to conduct preventive search, to enter into any premises and to seize any equipment or proof or document used or likely to be used in the commission of any offence under this Act.

(2) The search under sub-section (1) May be undertaken without a warrant if there is a reasonable ground to believe that there are equipments or materials for the commission of any offence under this Act with any person or at any place, and that the delay in obtaining a search warrant would lead to the actual commission of such an offence or to the loss of evidence; and before such search, the police officer ready to conduct the search shall ask two or more respectable persons of the locality in which search is to be conducted to remain present during the search and to be witnesses thereto and the search shall be conducted in presence of these witnesses and the police officer shall prepare a list of all articles found in the search and of places in which the search has been conducted and shall obtain signatures of the witnesses thereon.

(3) The search under sub-section (1) shall be conducted in compliance with the provisions provided in section 103 of the Code of Criminal Procedure, 1898 and with due respect being paid to human rights and dignity of the person whose body or property is being searched, and, in particular, when the search is conducted against any woman there shall be a female officer or a female probation officer with the search team.

(4) The officer conducting the search, shall prepare a report describing reasons and results of the search within 72 (seventy-two) hours of the search concluded and shall send a copy of the same to the concerned magistrate and to the Tribunal having jurisdiction to try the relevant offence through electronic or any other means, which shall be preserved in the custody of the Tribunal and a copy of the report shall also be given to the superior officer of the concerned officer and so the person against whom the search is conducted.

Chapter IV

The Anti-Human Trafficking Offence Tribunal and the Trial of Offences

21. Establishment of Anti-Human Trafficking Offence Tribunals.—(1) For the purpose of speedy trial of offences under this Act, the Government may, by notification in the official Gazette, establish an Anti-Human Trafficking Offence Tribunal consisting of a judge of the rank of a Sessions Judge or Additional Sessions Judge in any district.

(2) Until such Tribunals are established in accordance with sub-section (1), the Government may, assign and empower the Nari O Shishu Nirjaton Daman Tribunal in each district as the Anti-Human Trafficking Offence Tribunal of the district.

(3) The offences under this Act shall be tried only by a Tribunal established under this Act.

(4) The offence may be tried by the Tribunal under whose territorial jurisdiction any offence or any part thereof is committed or the victim of the offence of human trafficking is rescued.

(5) If any offence under this Act is committed outside the territory of Bangladesh by any Bangladeshi citizen or company or by a habitually resident in Bangladesh, the Tribunal, under whose territorial jurisdiction he was a resident or, in case of a company, its registered office was located, may try the offence.

22. Powers of the Tribunal.—(1) Subject to the provisions of this Act, the Tribunal shall have all the powers of a Court of Sessions, and, for the interest of justice, the Tribunal may issue any protective order and direct any person or institution to submit any report, document or register to the Tribunal under the control or disposal of the person or institution.

(2) For the interest of speedy trial of the offences under this Act or for the security of any victim or witness, the Tribunal may, by itself or through any Commission, record the statement of any witness or examine him at any place directly or though any electronic means, and the Tribunal may accept any official statement or report of any public officer or employee as evidence under this Act, exempting him to depose before the Tribunal.

(3) During the period of trial or before the prosecution of an offence under this Act, the Tribunal may, upon an Application by any person or on its own motion refer any victim of human trafficking under the custody of any public or private protective home or under the custody of any competent person or organization including the Social Welfare Department for such time and subject to such conditions as may be determined and, if the victim is a woman or a child, the Tribunal, while passing an order under this sub-section, may consider the opinion of such victim.

(4) A magistrate having necessary jurisdiction may, in any case before framing charge, exercise the power conferred under sub-section (3) with necessary adaptation.

(5) The Tribunal may, upon hearing the prosecution and by recording the reasons, grant bail to a person accused under this Act and, when exercising the discretion to grant bail under this sub-section, the tribunal shall take into consideration, among other things, the gravity of the offence committed, the security and injury of the victim and witness, and the previous record of criminality of the accused.

(6) While granting bail to an accused, the Tribunal may attach to the bail a control order including the instructions of attendance of such bailed person before the police or any officer of the Tribunal on such days as it may determine.

23. Tribunal's Power to direct further investigation.—The Tribunal may, upon application of any person or of its own motion, direct any further investigation of any case and to submit report within such time as it may determine.

24. Time-limit to conclude the trial.—(1) The Tribunal shall conclude the trial within 180 (one hundred and eighty) working days from the date on which a charge for an offence under this Act has been framed.

(2) Despite the provision of sub-section (1), the failure to conclude the trial within such time-limit shall not cancel the trial, but the Tribunal shall, within 10 (ten) working days send a report to the High Court Division of the Supreme Court of Bangladesh explaining the reasons for not being able to conclude the trial within the time.

25. Trail in-camera.—For the interest of justice and to protect the child and woman victim, the Tribunal may, by stating the reasons, direct that the trial of an offence under this Act be conducted in-camera with the presence only of the parties to the case and their advocates or other representatives as the Tribunal may permit.

26. Appointment of interpreters.—The victim of trafficking or any other witness may, at any stage of the trial of an offence under this Act, request for a translator or interpreter including any sign-language interpreter, and the Tribunal may issue an appropriate order to that effect.

27. Seizure, freeze and confiscation of property and extra-territorial injunction.—(1) The Tribunal may, upon an application by any person or of its own motion, at any stage of the trial pass an order to seize. freeze or confiscate any movable or immovable property which has been acquired by the accused person through the commission of an offence under this Act.

(2) The Tribunal may, pass an order to attach any house, land or vehicle if it has reasons to believe that such house, land or vehicle has been or is being used for committing or attempting any offence under this Act.

(3) If any person is convicted of an offence under this Act, the Tribunal may confiscate the property acquired by the convict through the commission of the offence, and the property so confiscated shall be deposited to the Human Trafficking Prevention Fund.

(4) For the interest of the trial of any offence committed under this Act, the Tribunal may issue an order to freeze and attach the proceeds of crime located in a foreign country and any property subsequently acquired by the accused person through such property and if the order is violated, the accused shall be punished with rigorous imprisonment for a term not exceeding 5 (five) years and with fine not less than taka 20 (twenty) thousand.

(5) In specifying the property to be frozen or attached under this section, the Government and the concerned Bangladesh Embassy situated abroad shall, duly cooperate the Tribunal, and if any order under sub-section (4) is issued, the Government shall inform the competent authority of the country in which the concerned property is located about the orders of the Tribunal.

28. Order of compensation by the Tribunal.—(1) Where an accused person is convicted of an offence of committed under this Act, the Tribunal may pass an order to the accused to pay the victim of the offence of human trafficking a reasonable amount of compensation in addition to fine imposed by it, and, any such compensation shall be recovered by the tribunal directly or, if necessary, in accordance with the provisions of the Public Demands Recovery Act, 1913 (Bengal Act No. III of 1913).

(2) If the Tribunal only passes an order of fine, without passing the order of compensation under sub-section (1) it may order that the whole or any part of the fine so imposed be provided to the victim of trafficking or to the victim.

(3) The amount of compensation passed under sub-section (1) shall be determined at the discretion of the Tribunal, and, while awarding compensation, it shall take into consideration the matters regarding the costs of physical and mental treatment of the affected person, costs of necessary transportation or temporary housing, lost income, sufferance, the actual or emotional injury and the gravity of the distress.

29. Admissibility of foreign documents, written proofs or materials.—(1) Notwithstanding anything contained in any other law for the time being in force, any foreign written document, order or judgement of the court, report of investigation or declaration of government, if duly sent, signed and authenticated by a competent authority, shall be admissible as evidence before the Tribunal upon attestation by the concerned country's Embassy in Bangladesh or, in absence of its Embassy in Bangladesh, by the authority assigned as such Embassy.

(2) Any document including powers of attorney generated abroad by any Bangladeshi shall not be admissible as evidence in a proceeding under this Act unless it is attested and authenticated by the Ministry of Foreign Affairs in accordance with the existing rules relating thereto.

(3) The Ministry of Foreign Affairs or any Bangladesh Embassy shall not be liable for the genuineness of the contents of any document attested and authenticated by it.

30. Admissibility of electronic proofs.—Any evidence held in audio-visual instruments or through any electronic communication shall, subject to the satisfaction of the Tribunal, be admissible as evidence.

31. Appeals.—An appeal against any order, judgment or sentence of a Tribunal may be preferred to the High Court Division of the Supreme Court of Bangladesh within 30 (thirty) days from the date of the order passed or the judgment or sentence declared.

Chapter V

Assistance, protection and rehabilitation of the victims of human trafficking and witnesses

32. Identification and rescue the victims of human trafficking or the victims.—(1) The Government shall make procedures by rules for identification, rescue, repatriation and rehabilitation of the victims of human trafficking and act by partnership with concerned government and non-government organizations.

(2) The processes of identification, rescue, repatriation and rehabilitation of the affected persons, shall be conducted with special regard being paid to the welfare and special needs of women and children and in a victims-friendly manner.

33. Repatriation and return of the victims of human trafficking.—(1) If any Bangladeshi national is identified as a victim of human trafficking in a foreign country, the Government shall, in cooperation with the concerned Bangladesh Embassy in the country and, if necessary, with the Ministry of Foreign Affairs or the Ministry of Expatriates' Welfare and Overseas Employment, initiate the process to return the person in Bangladesh.

(2) Notwithstanding anything contained in sub-section (1), if any Bangladesh Embassy in a foreign country comes to know that a victim of human trafficking being a citizen of Bangladesh is detained or arrested in the country, the Embassy shall initiate the process to rescue, release and return of the affected person to Bangladesh.

(3) If any victim of human trafficking is compelled to stay in a foreign country for any case, the Bangladesh Embassy shall take measures to provide him with legal counseling or assistance.

(4) When a foreign national has been identified as a victim of human trafficking in Bangladesh, the Government, in cooperation with the Embassy of the concerned country in Bangladesh shall, after concluding due legal process and recording the statement of the victim, initiate the process to repatriate such person to his home country through proper diplomatic channel.

34. Providing with information to the victims and to the public generally.—(1) The Victim of human trafficking shall be entitled to be informed by the Government or police or, as the case may be, non-government organizations of the actions taken against the traffickers and of the stages of the concerned criminal case at least once in a month.

(2) The investigating officer or the person or organization identifying and rescuing the victim of human trafficking shall at once inform the affected person of his rights to compensation and legal aid and of other benefits available under this Act.

(3) With due regard being paid to the right of privacy of the victims of the offence of human trafficking, the competent authority of the Government shall, in order to effectively carry out the functions of identification, rescue, transfer, return, repatriation and rehabilitation of the victims of human trafficking, maintain a comprehensive data-storage including necessary data to provide with necessary information to the relevant professionals, journalists or to the public.

35. Establishment of protective homes and rehabilitation centre.—(1) With a view to facilitating physical and psychological treatment, rehabilitation and family reconciliation of the victims of trafficking, the Government shall, establish adequate numbers of protective home and rehabilitation centre throughout the country.

(2) After the commencement of this Act, every person or organizaton willing to establish any such protective home or rehabilitation centre shall not conduct any activities without obtaining the license or temporary permission from the Government by such manner and under such contitions as may be prescribed by rules:

Provided that any protective home or rehabilitation centre already established, shall obtain such license or permit within 6 (six) months from the commencement of this Act.

36. Protection, rehabilitation and social integration.—(1) The victim of human trafficking shall, upon being rescued, if not returned to his own family, be sent to any government or non-government protective home or rehabilitation centre and all information relating thereto shall be sent at once to the Government or to the competent authority.

(2) Every victim of human trafficking residing in a protective home or rehabilitation centre shall be entitled to give consent to the concerned matter and to get medical treatment and legal and psychological counseling service including sustainable rehabilitation and social integration facilities.

37. Provisions regarding the protection of victims or affected persons and witnesses in criminal trail.—(1) Any person or agency dealing with the subject-matter of this Act shall endeavor to ensure that any victim of the offence of human trafficking is not subjected to conviction or punishment under this Act or any other existing law.

(2) No body shall publish or broadcast the name, photograph or any information or identity of a victim of human trafficking or of any member of his family without the permission of the Tribunal, and who contravenes the provision shall be punished with imprisonment for a term not exceeding 6(six) months or with fine not exceeding taka 1 (one) lac or with both.

(3) If any victim of human trafficking or witness is threatened or apprehended by any threat or risk of any kind shall be entitled to receive police protection and other protective measures to be provided by the Government, and the security being provided to the victim of the offence of human trafficking or to the witness during travel to the court or other prosecutorial institutions or residing in a protective home shall also be included to those government protective measures.

38. **Protection of the rights of child victims and witnesses.**—(1) Without prejudice to the generality of the provisions of this Act regarding the protection of the victims and witnesses, any person including the Tribunal dealing with a child victim or witness shall apply the principle of welfare and the best interest of the child and the principle of priority and follow the provisions of any other law for the time being in force as well as the principles in different international instruments, and take necessary measure to avoid the child victims to be convicted or the stigmatization and social marginalization of the child victim and the child witness.

(2) No child coming in contact or conflict with this Act shall be dealt with by the police or the Government or any other person dealing with the subject matters of this act otherwise than through the intervention of a child-friendly officer and processes, and , no child victim of human trafficking or victim child shall be sent or detained in any development center or in a remand home.

39. **Right to institute civil suit for compensation.**—Without prejudice to the right to institute criminal proceedings, and besides any criminal proceeding initiated, the victim or the victim of human trafficking may sue for compensation in any civil court for his actual sufferance or legal injury resulting from the offence committed under this Act or for the breach of any contract concerned to the offence.

40. **Financial assistance to the victim of human trafficking.**— Without prejudice to the right or opportunity to receive legal aid from any non-government organization or under the Legal Aid Services Act, 2000 (Act No. VI of 2000), the Government may provide financial assistance to the victim of human trafficking or to the victim from the fund established under this act.

Chapter VI

Joint or mutual legal assistance to suppress and prevent human trafficking

41. **Joint or mutual legal assistance and cooperation to suppress and prevent human trafficking.**—(1) With a view to facilitating joint or mutual legal assistance in investigations, trail and judicial proceedings regarding offences under this Act, the Government shall sign memorandum of understanding or agreements with other States in which the victims, witnesses, proceeds, instrumentalities, evidence or defendants or abettor of offences under this Act are located or are likely to be located:

Provided that, unless the memorandum of understanding and the agreements are signed under this sub-section, nothing of this act shall prevent the Government to take administrative measures for receiving or rendering of such joint or mutual legal assistance.

(2) The Government may by the memorandum of understanding or agreement signed under sub-section (1) provide for joint or mutual legal assistance in the following matters, namely :—

(a) investigation of the offence of human trafficking, conducting of searches and seizures and the matters regarding legal assistance to the victims of human trafficking;

(b) examination of the witness under oaths, and exchange of the statement of the witness, government report and evidence submitted in the court;

(c) mutual exchange of the victim of human trafficking and the persons committed the offence of human trafficking or the persons sentenced for committing such offence;

(d) necessary legal, diplomatic and administrative assistance for the purpose of enforcing court orders relating to confiscation of proceeds of crime or property or fines or attachment;

(e) Sustainable rehabilitation of the victims of human trafficking and their social reintegration in home countries.

Chapter VII
Miscellaneous

42. **The Human Trafficking Prevention Fund**.—(1) After the coming into force of this act, the Government shall, by notification in the official Gazette, establish a fund to be called "The Human Trafficking Prevention Fund" and the fund shall be used and operated in accordance with the manner prescribed by rules.

(2) The money received from the following sources shall be deposited to the Human Trafficking Prevention Fund, namely :—

(a) grants or sanction from the Government;

(b) grants from any local authority; or

(c) grants from any person or institution; and

(d) money received from any other source to prevent and suppress human trafficking.

43. **National Anti-Human Trafficking Authority**.—For the purposes of this Act, the Government may, establish a body to be called the National Anti-Human Trafficking Authority in the manner prescribed by rules.

44. **Offences by companies or firms.**—Where any offence under this Act is committed by a company or firm, whether incorporated or not in Bangladesh, the persons who were the proprietors, directors, managers, secretaries or agents of the company or firm at the time of the commission of the offence, shall be deemed to have committed the offence, unless the accused may prove that the offence has been committed beyond his knowledge and has tried his best to prevent it.

45. **The application of the principle of equality and the provision to prevent abuse of power**.—(1) In dealing with the accused, victims and witnesses under this act, the principle of equality shall be followed, and no body shall be discriminated against.

(2) If any complain against any public officer or employee for abusing public power or failing in discharging his legal duties under this Act is proved, the employing authority shall, at the recommendation of the Tribunal, take disciplinary punitive actions against him in accordance with the service rules and the Tribunal may also pass order against such person for paying adequate compensation.

(3) If any disciplinary punitive action is taken under sub-section (2), the employing authority shall report it to the Tribunal within one month of such action taken.

46. **Power to make rules**.—(1) For the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

(2) Without prejudice to the generality of the power conferred under sub-section (1), such rules may provide for all or any of the following matters, namely :—

(1) sources of the Human Trafficking Prevention Fund;

(2) operations of the Fund;

(3) method and criteria for obtaining grant from the Fund;

(4) the amount and divisions of the grants from the fund; and

(5) any other functions prescribed by rules.

47. **Repeal and savings**.—(1) The Suppression of Immoral Traffic Act, 1933 (Act No. VI of 1933) and sections 5 and 6 of the Nari O Shishu Nirjaton Daman Ain, 2000 (Act No. VIII of 2000), are hereby repealed.

(2) Notwithstanding such repeal, any order issued , direction given or acts done or any case filed under or in pursuance of the repealed acts shall, from the date of the commencement of this Act, be deemed to have been made, issued, taken, done or filed under this Act and shall continue accordingly.

48. **Publication of an Authentic English Text**.—(1) After the commencement of this Act, the Government shall, as soon as possible, by notification in the official Gazette, publish an Authentic English text of this Act.

(2) In case of any conflict between the Bangla Text and the English Text, the Bangla Text shall prevail.

আবদুর রশিদ (উপ সচিব), উপ পরিচালক (অতিরিক্ত দায়িত্ব), বাংলাদেশ সরকারি মুদ্রণালয়, তেজগাঁও, ঢাকা কর্তৃক মুদ্রিত।
আবদুর রশিদ (উপ সচিব), উপ পরিচালক, বাংলাদেশ ফরম ও প্রকাশনা অফিস,
তেজগাঁও, ঢাকা কর্তৃক প্রকাশিত। web site:www.bgpress.gov.bd.

D *Appendix Four*

1 *Part 01: Victim of Human Trafficking:*

Number of Victim	Pseudonym	Interviews	Coding Theme
1	Rubina	<Internals\\Interviews\\Rubina > - § 1 reference coded [1.86% Coverage] Reference 1 - 1.86% Coverage Q. How were you trafficked? R. My husband had no property. It was difficult to live with his income. We have been lived in a rented house for 19 years. I knew, most of the women in our locality are going abroad and earn lots of money. <Internals\\Interviews\\ Rubina > - § 1 reference coded [0.70% Coverage] Reference 1 - 0.70% Coverage Did you get any help from government? R. No, I didn't get any help from government. <Internals\\Interviews\\ Rubina > - § 1 reference coded [0.41% Coverage] Reference 1 - 0.41% Coverage Q. You get help from Ahsania Mission. R. Yes.	Reasons of Trafficking Government Response NGO's response

		<Internals\\Interviews\\ Rubina > - § 4 references coded [16.80% Coverage] Reference 1 - 1.81% Coverage Q. Did you file any case against those people? R. Yes, after reaching my country, I filed a case, police arrested them. They were detained in jail for two month. Providing 2 lakh taka, they got bail and were released from jail. Reference 2 - 1.68% Coverage Q. What is the present situation of case? R. I don't know much about it. If any information came to brothers, he would call to advocate. Advocate wouldn't receive call, at all, there is no progress of the case. Reference 3 - 6.89% Coverage Q. What is your expectation about you case? R. My expectation is that such type of incident should never be happened with other women, women spend a miserable life. The culprits should be penalized so that they dare not to do it again with other women. Q. Do you know the penalty according to our current law? R. Madam, I didn't get any verdict against the culprits. They are now out of jail, they get bail easily by dint of 1 lakh taka. They lead a normal life without any punishment. They're cutting	Number of filling Cases Status of pending cases

		crops, planting paddy and doing all sorts of household jobs too. They have destroyed my life but what happened to them? Nothing happened to them madam. Q. do you think, the administration and police are more favorable to them? R. Yes. I think, they get support from police due to the money. They have money but I don't have. That makes a different between me and them. Reference 4 - 6.42% Coverage Q. Did you go court for the case? R. Yes, I went, but my lawyer didn't call for judgment. Q. When did you file case? R. We came in middle of the 2015. And filed case in the last of the 2015. Q. Did anyone inform you about your case? R. No, nobody informs me, even nobody calls me. Q. You don't have any idea whether it is being investigated or not? R. Yes, I don't know about the investigation officer of my case. I have no idea yet. I came to brother and asked him to know about case. Then brother called lawyer, sometimes, the lawyer received call, sometimes not. Q. Did someone contact you from police station for investigation? R. No, nobody contacted me for investigation	

		purposes. <Internals\\Interviews\\ Rubina > - § 1 reference coded [0.91% Coverage] Reference 1 - 0.91% Coverage Q. Did your husband accept you as he would do before? R. No, he doesn't take me as before, he misbehaves with me. <Internals\\Interviews\\ Rubina > - § 2 references coded [4.63% Coverage] Reference 1 - 1.71% Coverage Q. What is your present condition? R. In terms of health, I am not so good, I have to spend lots of money for my treatment. I have problem in my head. They hurt in my head and cut off my hair which was long before. Reference 2 - 2.93% Coverage Q. Are you physically sick now? You are taking treatment now. Did doctor ask you to know your previous experience? R. My personal doctor take care of me. My Local doctor said, "I have been suffering from cervical infection." I had been in hospital for two weeks for my treatment. I needed 500 to 600 taka per week for medicine which was not	

		possible to bear for my husband <Internals\\Interviews\\ Rubina > - § 1 reference coded [2.71% Coverage] Reference 1 - 2.71% Coverage Q. Who did force you to settle the case? R. The local people especially local leaders forced to settle the case and compromise with the criminals. They created pressure on us to compromise with them. They also said if we don't compromise with them they will create problem by keeping illegal material in my shop and manage to jail my husband. <Internals\\Interviews\\ Rubina > - § 2 references coded [6.75% Coverage] Reference 1 - 2.31% Coverage They said that- if you want to stay here you have to do such work what we want. Two men tied my hand and one remained with me. After that another man came. After three men, I became senseless. When I woke up at midnight, one man took me in wash room and got me drunk. They oppressed me 17 days. Reference 2 - 4.44% Coverage Q. If you wouldn't agree to intercourse with them what would happen with you? R. They tortured me so much. My physical condition was so weak. I couldn't move without	Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		help. When I landed in airport, man helped me to get into car. In home, my husband helped to get into and get down to rickshaw for going to take treatment. Q. Do they provide sufficient food to eat? R. No, they wouldn't provide any solid food. They only provide saline water. In 17 days, they provided bread loaf for two days and noodles for one day. I survived by drinking water, madam. <Internals\\Interviews\\ Rubina > - § 3 references coded [4.98% Coverage] Reference 1 - 2.70% Coverage After reaching airport, we completed all necessary activities in airport, then they took my passport visa and other documents. They took us in empty building by a car. There were five men, among them they kept me in a separate room. After a few moments, one man came and asked me to take two tablet saying it is pain removing medicine. Reference 2 - 0.96% Coverage The middle man demanded 2 lakh Taka for me. He said- if you provide such money only then you can take her to Bangladesh. Reference 3 - 1.32% Coverage Q. Was the middleman from Bangladesh or	Working Condition and Environment: Torture Unpaid work Methods of Trafficking

		abroad? R. Two were from Bangladesh and others from abroad. One woman was there who would live in Brunei and doing business.	
2	Helena	<Internals\\Interviews\\Helena> - § 1 reference coded [13.22% Coverage] Reference 1 - 13.22% Coverage My husband was unemployed. I stayed at my parent's house. We don't have cultivable land. I would work hard in fields, roads. My husband would thought dirty about me if I would talk to anyone. He would beat me. I tried to suicide twice or thrice. My daughter's age was 8 years. My daughter said that I should go somewhere else so that she'd at least call me Mom. So, I thought, I won't die. I'd find a way out. One day, I went to market and met the lady. She said- baby, you you're struggling so much. Let's go to India. If you go there, you'd earn 300-400 taka daily. So, I thought, I'm unable to do anything here, so, if I go' I'd be able to do something for my child. For this, I went there. Then, the lady kept me at her house for 17days. (As you're talking to me, I'm also talking to you freely. I don't have any objection to tell you everything).	Reason of Trafficking

		<Internals\\Interviews\\Helena> - § 1 reference coded [1.42% Coverage] Reference 1 - 1.42% Coverage Q: Have you seen any person like police or border guard while crossing the border? H: No. <Internals\\Interviews\\Helena> - § 2 references coded [8.94% Coverage] Reference 1 - 2.11% Coverage Q: Have you received any help? From government? H: Yes, received support from here, NGO. Not from government. They've bought me a cow. Reference 2 - 6.83% Coverage Do you receive any help from your area's member or chairman? H: Chairman gave a 40 days' work. I won't seek anything from anyone. If I need anything, I'll go to Jessor and let the Apa (sister) know. They'll help me. I won't go to member/chairman. I'd rather implore you. That'd be enough for me. Even, if you don't give me anything, you'd at least talk to me nicely. I'm happy with that. Because, you're doing what my parents couldn't do.	Border Protection Government response and NGO's response

		<Internals\\Interviews\\Helena> - § 1 reference coded [0.65% Coverage] Reference 1 - 0.65% Coverage Q: Have you filed any lawsuit? H: No. <Internals\\Interviews\\Helena> - § 1 reference coded [6.20% Coverage] Reference 1 - 6.20% Coverage Q: How did your family or relatives accept you when you came back? How's their reaction? H: I didn't return to my husband. Because, he married twice after me. So, I didn't return. So, I am staying with my brother. Brothers know that I have been in jail for 3 years in Calcutta. After 3 years, they've brought me back communicating with them. Brothers know that I left home for hardship. So, they accepted. <Internals\\Interviews\\Helena> - § 1 reference coded [1.09% Coverage] Reference 1 - 1.09% Coverage Q: How's others' attitude towards you? H: Good. No one bullies me. <Internals\\Interviews\\Helena> - § 1 reference coded [2.88% Coverage]	Number of Filing cases Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		Reference 1 - 2.88% Coverage Did you suffer from any sexual diseases? H: No. Just simple fever-cough etc. Q: Would they provide food properly? H: Yes. No problem with food. Q: Have you had pregnancy? H: No. <Internals\\Interviews\\Helena> - § 1 reference coded [3.36% Coverage] Reference 1 - 3.36% Coverage No. At first, I was just trying to understand the place and she's trying to persuade me in a nice manner. I thought- I've come, I'll work in a house. But, I didn't understand that she'd send me in such a dirty place. <Internals\\Interviews\\Helena> - § 1 reference coded [1.25% Coverage] Reference 1 - 1.25% Coverage : Did you receive any money? H: I've not received much, she'd eaten my money. <Internals\\Interviews\\Helena> - § 1 reference coded [2.10% Coverage] Reference 1 - 2.10% Coverage	Working Condition and Environment Torture Unpaid work

		Q: How many brokers were there? H: The lady alone crossed us. We're 9. She crossed us altogether. She crosses the border frequently. <Internals\\Interviews\\Helena> - § 1 reference coded [7.22% Coverage] Reference 1 - 7.22% Coverage H: Police put me in Kandiali, I stayed there one month and nine days. Then I gave them my maternal uncle's address. My uncle's home is in India. Q: Calcutta? H: Yes. Then after coming to Calcutta, I said that my home is in Bangladesh, because I didn't have my uncle's number. I thought, it'd be a matter of disgrace if I go to uncle's home. I told them that I'd go to Bangladesh. Then they contacted with this Dada and I came back. I had been in India for 3 years.	Method of Trafficking Life in Shelter Home
3	Lolita	<Internals\\Interviews\\Lolita> - § 1 reference coded [4.29% Coverage] Reference 1 - 4.29% Coverage Q: How did you become the victim of trafficking? How were you trafficked?	Reason of Trafficking

		L: We have 5 members in our family. We would go through hardship. In my uncle's house, there's a tenant. My elder sister Sonia was trafficked. They said they'd give her a job in Dhaka. <Internals\\Interviews\\Lolita> - § 1 reference coded [2.79% Coverage] Reference 1 - 2.79% Coverage Q: So, do you do anything now? Have you received any support? L: No. When we returned, we're bought a 14,000 Taka cow. But, the cow caught disease. So, my Mom sold it. <Internals\\Interviews\\Lolita> - § 1 reference coded [0.64% Coverage] Reference 1 - 0.64% Coverage Q: Have you filed any lawsuit? L: yes. <Internals\\Interviews\\Lolita> - § 1 reference coded [13.96% Coverage] Reference 1 - 13.96% Coverage Q: What's the status? L: No progress. Q: When did you file the lawsuit? Can you	Government Response Number of Filing Cases

		remember? L: Yes. In 2010. Q: Have anyone from police station contacted you? L: Yes. Q: Have you ever gone to court? L: Yes, many times. Q: Have you witnessed against them? L: Yes. A few days ago, my maternal uncles give witness against them. We're waiting for "hearing" or something like that. They are telling that accused is dead. Judge said that – the accused is dead, how to run the lawsuit. We said- there's rule that if the accused dies, his dead body shall be showed in police station or court. Then, the Judge laughed. The judge said- yes, you've told the right. We've not followed the instructions and neither you. A few days ago, accused phone my aunty and told to withdraw the lawsuit. Then, I've informed Azhar Vai and Shaoli Apa at Right Jessore.	Status of pending cases
		<Internals\\Interviews\\Lolita> - § 1 reference coded [5.63% Coverage] Reference 1 - 5.63% Coverage Q: So, you could return after 6 months. After returning, how did your family accept you? L: there's trouble in our family. Neighbors	Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		talked dirty. We couldn't make them understand. Even after marriage, we endure bad-mouthing. There's not a good relation with my husband. They didn't know before marriage. They've come to know after marriage. <Internals\\Interviews\\Lolita> - § 1 reference coded [5.72% Coverage] Reference 1 - 5.72% Coverage Q: Then how did you cross the border? L: They send crossed us the river by boat, 1-2 girls at once via broker. They sent us in a boat and my sister in another. So, we cried loudly. So, the broker's wife slapped me. Then snatched our cloths. They thought that it'd be Ok. Then we got suspicious that why they're slapping us, we're to go to Dhaka. Q: Still then, didn't you understand that you're being trafficked? L: No. When we crossed to India, they put us in a Hindu house. Then a girl asked us- where are you going? We said- we're told to take us to Dhaka. Then she said, it's not Dhaka. There is Hindi written in everywhere. We don't know how to read Hindi. The girl then said- Mom, its India. We've come in India. Then another	Method of Trafficking

		woman from next house came and in name of wandering took us to police station. Then they heard everything from us.	
4	Laiju	<Internals\\Interviews\\Laiju> - § 1 reference coded [1.88% Coverage] Reference 1 - 1.88% Coverage L: We have paucity in our family. Due to paucity, My husband and I went. <Internals\\Interviews\\Laiju> - § 1 reference coded [2.50% Coverage] Reference 1 - 2.50% Coverage Did you see any person like from administration, Bangladeshi or Indian police on your way? L: No. <Internals\\Interviews\\Laiju> - § 1 reference coded [2.52% Coverage] Reference 1 - 2.52% Coverage Q: Have you received any financial help? Does NGOs help you? L: Yes, they gave us a cow from here. <Internals\\Interviews\\Laiju> - § 1 reference	Reason of Trafficking Border Protection NGO's Response

		coded [3.31% Coverage] Reference 1 - 3.31% Coverage Q: Have you filed any lawsuit? L: No. I didn't. My husband did. Q: Against whom? L: The brokers he knew. He sued against them. <Internals\\Interviews\\Laiju> - § 1 reference coded [1.43% Coverage] Reference 1 - 1.43% Coverage Q: What's the status of the lawsuit? L: I don't know. <Internals\\Interviews\\Laiju> - § 1 reference coded [3.34% Coverage] Reference 1 - 3.34% Coverage Q: Have you faced any trouble after returning home-country? I mean, did your family, relatives accepted you properly? L: They did. <Internals\\Interviews\\Laiju> - § 1 reference coded [3.16% Coverage]	Number of filing cases Status of pending cases Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		Reference 1 - 3.16% Coverage Q: Ok. Is your family running well? L: No that well. We live from hand and mouth. We don't have a place to live on our own. <Internals\\Interviews\\Laiju> - § 1 reference coded [1.09% Coverage] Reference 1 - 1.09% Coverage Did they torture you physically? L: No. <Internals\\Interviews\\Laiju> - § 1 reference coded [1.78% Coverage] Reference 1 - 1.78% Coverage : I stayed 15 days at Bengaluru, 10 months at Calcutta, around 11 months.	Working Condition and Environment: Torture Unpaid work Life in Shelter Home
5	Nila	<Internals\\Interviews\\Nila> - § 2 references coded [8.30% Coverage] Reference 1 - 1.79% Coverage We'd lack of money. She persuaded my Mom as my Mom is illiterate. She said- good job, nice	Reason of Trafficking

		homestead job, and brought me. Reference 2 - 6.51% Coverage Your blood related aunty. N: No, I don't know my own parents. They sold me to my current guardian at the age of 3. Since then I'm with her. Q: You parents sold you to this aunty? N: At Khulna, I have my foster parent, they brought me up. They love me very much. I have an elder brother, studying engineering and a younger brother at class 4. My Mom said to my aunty that if she gets a good homestead job for me, she's willing to send me there. <Internals\\Interviews\\Nila> - § 1 reference coded [1.29% Coverage] Reference 1 - 1.29% Coverage When you crossed the border, wasn't there anyone like Bangladeshi police, BGB? N: No. <Internals\\Interviews\\Nila> - § 1 reference coded [2.73% Coverage] Reference 1 - 2.73% Coverage	Border Protection

		Q: Have you sued against your Aunty? N: I told about Aunty, but she hasn't returned home yet. Q: you haven't sued either. When you were at dirty business, did your parents know? N: No. <Internals\\Interviews\\Nila> - § 1 reference coded [1.19% Coverage] Reference 1 - 1.19% Coverage Q: How was everyone's behavior at you? Did your parents accept you well? N: Yes. <Internals\\Interviews\\Nila> - § 1 reference coded [2.15% Coverage] Reference 1 - 2.15% Coverage Q: People of your area? N: They still don't admire me well. I have a neighbor who treats me very bad. But, I don't say anything. She talks dirty. <Internals\\Interviews\\Nila> - § 1 reference coded [73.89% Coverage] Reference 1 - 73.89% Coverage They provide support with training e.g. for	Number of Filing Cases Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		garments, tailoring, parlor, mobile servicing. We've taken training for tailoring and garments machine operator. They've trained us and they'll employ us. They'll take the first month's salary for our residence and food. From the next month, salary is ours. That means they'll completely settle us and then give salary. <Internals\\Interviews\\Nila> - § 1 reference coded [1.27% Coverage] Reference 1 - 1.27% Coverage They sent me from Mumbai to Delhi. After two months, I couldn't work. I was crying a lot <Internals\\Interviews\\Nila> - § 1 reference coded [1.14% Coverage] Reference 1 - 1.14% Coverage You worked, who did you sent money? N: I haven't received any money at hand. <Internals\\Interviews\\Nila> - § 1 reference coded [5.09% Coverage] Reference 1 - 5.09% Coverage Very bad. People who are in this line are not human being. After then, I flew from Delhi,	NGO's Response Working Condition and Environment: Torture Unpaid work

		went to my uncle's house? After six days, I flew to an aunty. She showed nice behavior, but later she did the same. I told a man that please send me to Bangladesh, I'll pay you as much money you need once I'm home. He said Ok, but again sold me at Bengaluru. <Internals\\Interviews\\Nila> - § 1 reference coded [4.30% Coverage] Reference 1 - 4.30% Coverage Q: Then what happened when police arrested you? N: They told me to give them 25,000 tk. But I told them that I've lost all number and I don't have a penny even. I actually deleted all numbers. Then they sent me to CWC Girls home that night. Q: How many days you were there? N: Three years.	Life in Shelter Home
6	Reba	<Internals\\Interviews\\Reba> - § 1 reference coded [2.99% Coverage] Reference 1 - 2.99% Coverage When I was at home, then he married another woman. My elder son was in class 9 and younger son was in class 3. I am helpless and a daughter of a very poor family. But I was happy	Reason of Trafficking

		with my husband. After marriage, he would not look after us, our sons. My mother worked in other's house. She would work very hard and would feed us. While I was in India, he divorced me and never looked after my sons. My husband is very bad.	
		<Internals\\Interviews\\Reba> - § 2 references coded [0.64% Coverage] Reference 1 - 0.20% Coverage We stayed 3 years at Jail. Reference 2 - 0.44% Coverage Are there any Bengali girl? R: Yes. So many Bengali girls.	Life in Shelter Home
		<Internals\\Interviews\\Reba> - § 1 reference coded [0.57% Coverage] Reference 1 - 0.57% Coverage Q: while trespassing the border, did you meet or see any police or BGB? R: No.	Border Protection
		<Internals\\Interviews\\Reba> - § 1 reference coded [1.57% Coverage]	NGO's Response

		Reference 1 - 1.57% Coverage After returning home, they (Right Jessore) kept us for 15 days and trained us. We're 15 girls. Then, after training, they took our photos and sent us to our family. And, Toufik vai bought me a cow. I'm rearing that cow. <Internals\\Interviews\\Reba> - § 1 reference coded [0.54% Coverage] Reference 1 - 0.54% Coverage Yes, they gave me a cow. Now, I am rearing the cow and she looks beautiful. <Internals\\Interviews\\Reba> - § 2 references coded [1.12% Coverage] Reference 1 - 0.60% Coverage No. Because, the village people don't know about it. There is question of prestige. Reference 2 - 0.52% Coverage You never went to the police station for filing a lawsuit, right? R: Yes. <Internals\\Interviews\\Reba> - § 1 reference	Number of Filing Cases

		coded [1.28% Coverage] Reference 1 - 1.28% Coverage Q: With how many people you had to sex in a day? R: 8-9 Q: Didn't you fall sick? R: Yes. They provided medicine. Q: Did they feed you? R: Yes. They gave rice and curry only. <Internals\\Interviews\\Reba> - § 4 references coded [5.81% Coverage] Reference 1 - 2.76% Coverage In the meantime, I went to the adown and saw, there were no girl. All girls were at upper floor. And the girls and men were coming down. Then I tried to escape and I understood, this place is not good. I told myself that Allah where have I come. Then I noticed that girls were dressed well and got down through the stairs. When I understand, I tried to escape, they caught me and beat me. Reference 2 - 0.59% Coverage They beat me with a forceps, which is used to catch the crockeries made of steel.	Working Condition and Environment: Torture Unpaid work

		Reference 3 - 1.60% Coverage Yes, they tortured me brutally when I refused to work. But it is a matter shame that, I worked there for 1 month. When I would refuse to work, they would beat me brutally, they would threaten me. After 1 month, I was caught. Reference 4 - 0.86% Coverage : When you did not want to do the job, did they force you? R: Yes, they would beat me, threatened me, and tortured me. <Internals\\Interviews\\Reba> - § 1 reference coded [0.27% Coverage] Reference 1 - 0.27% Coverage They didn't give me a single penny. <Internals\\Interviews\\Reba> - § 1 reference coded [1.37% Coverage] Reference 1 - 1.37% Coverage Q: When you went there, was the person same or different? R: No, there were two persons. After crossing	Method of Trafficking

		India, there was another middleman, his name was Zia. Those two persons took me there.	
7	Sila	<Internals\\Interviews\\Sila> - § 2 references coded [22.91% Coverage] Reference 1 - 15.24% Coverage No one. There was a girl beside my room. That girl's friend lives in India. So, she said she's going to visit her and if I want to go. That girl sticks to me for 2 months. She said- let's go, you're poor people, you'd get money. My husband works one day and misses the other day. I have a daughter. She told me about working in household. I told my family, but no one nodded. My husband said that he'd rather starve, but won't let me go. That girl would visit me every day. She also has two sons. After 2 months, I said Ok. Also said that- I don't have money. She said- you don't need money, my friend will carry all cost. Reference 2 - 7.67% Coverage That dirty work. I didn't do that at the beginning. She tried to persuade me that- if I work at home, I won't get enough money etc. Then I said that, no, I'd only work at home. I did nothing for 15 days. The ladies behaved	Reason of Trafficking

		bad. Then, I went for that work. I have a child. She'd pneumonia since her birth. At that time, she's of severe condition. So, I got phone call and they said that my child need treatment. So, I had to work.	
		<Internals\\Interviews\\Sila> - § 1 reference coded [3.63% Coverage] Reference 1 - 3.63% Coverage Have you seen any person like police or border guard while crossing the border? S: No. They told us to hide inside the Banana garden. They'd crossed us the river, when BDR went away patrolling the area.	Border Protection
		<Internals\\Interviews\\Sila> - § 1 reference coded [1.67% Coverage] Reference 1 - 1.67% Coverage Q: Have you received any help from government? NGO? S: No, I haven't received any support.	Government Response
		<Internals\\Interviews\\Sila> - § 1 reference coded [1.67% Coverage] Reference 1 - 1.67% Coverage	NGO's Response

		Q: Have you received any help from government? NGO? S: No, I haven't received any support. <Internals\\Interviews\\Sila> - § 1 reference coded [0.77% Coverage] Reference 1 - 0.77% Coverage : Have you filed any lawsuit? S: No.	Number of Filing Cases
		<Internals\\Interviews\\Sila> - § 1 reference coded [3.28% Coverage] Reference 1 - 3.28% Coverage Q: How did your family or accept you when you came back? S: My husband accepted me well. He said that-what happened, so happened; I don't mind, why you'd mind; forget what happened. <Internals\\Interviews\\Sila> - § 1 reference coded [1.47% Coverage] Reference 1 - 1.47% Coverage Q: How's others' attitude towards you?	Victim's Position after Trafficking: Social Interaction Victim Protection Health Issue Economic Status

		S: Good. No one knows that I was there. <Internals\\Interviews\\Sila> - § 2 references coded [4.26% Coverage] Reference 1 - 1.56% Coverage Q: Wouldn't you become sick? S: They'd give us medicine that would vanish the pain. Reference 2 - 2.70% Coverage Q: Have you suffered from any sexual diseases as you'd to sex with other guys? Physical problem? Pregnancy? S: No. because, I'm sick. I won't conceive. <Internals\\Interviews\\Sila> - § 3 references coded [9.14% Coverage] Reference 1 - 1.09% Coverage Q: You'd to sex that 9 months? S: Yes, otherwise they'd beat. Reference 2 - 3.58% Coverage Q: How would they beat?	Working Condition and Environment: Torture Unpaid work

		S: With hand. Sometimes, they brought sticks to threat. That lady's husband was good, from Maharastra, Marathi. He would say- she's your neighbor, why don't you behave nicely?? Reference 3 - 4.47% Coverage	
		<Internals\\Interviews\\Sila> - § 1 reference coded [1.56% Coverage] Reference 1 - 1.56% Coverage Q: For how many days you're there? S: I was there for 9 months and in jail for 3 years.	Life in Shelter Home
		<Internals\\Interviews\\Sila> - § 1 reference coded [5.47% Coverage] Reference 1 - 5.47% Coverage She said- you don't need money, my friend will carry all cost. Then, I went with her with only 200 taka. We're told to go to Benapole, from there, brokers will take us. I didn't know where did she phoned. They took us on bike. Broker kept us in his house for the night, on next morning, crossed us the border.	Method of Trafficking
8	Sobnom	<Internals\\Interviews\\Sobnom> - § 1 reference coded [7.22% Coverage]	Reason of Trafficking

		Reference 1 - 7.22% Coverage During my first marriage, husband would beat me very much and that was out of tolerance. I would live with my husband in rented house where they also lived. My mother asked to leave him, but I waited for my husband's change. Meantime, one day a woman came to me and offered me to go India for job. She said if you go, you can manage yourself with freedom and you didn't have to put up with your husband's oppression. I agreed with her without thinking.	
		<Internals\\Interviews\\Sobnom> - § 1 reference coded [0.62% Coverage] Reference 1 - 0.62% Coverage I didn't see any police in the border.	Border Protection
		<Internals\\Interviews\\Sobnom> - § 1 reference coded [0.71% Coverage] Reference 1 - 0.71% Coverage No, I didn't get anything from Government.	Government Response
		<Internals\\Interviews\\Sobnom> - § 1 reference coded [3.56% Coverage]	NGO's Response

		Reference 1 - 3.56% Coverage You are satisfied on the work of NGO's, right? They helped you very much. S: Yes, I am very much pleased with them. They sometimes visit my house. They gather women and discuss about trafficking for awareness building. <Internals\\Interviews\\Sobnom> - § 2 references coded [3.67% Coverage] Reference 1 - 1.57% Coverage Did you filed any case? S: No, I didn't. I didn't want to involve with case related problems. Reference 2 - 2.10% Coverage For afraid of relative you didn't file case? S: Yes, I afraid of it. As I went from my family, I didn't share it. <Internals\\Interviews\\Sobnom> - § 2 references coded [7.97% Coverage] Reference 1 - 4.16% Coverage	Number of Filing Cases Victim's Position after Trafficking: Social Interaction Victim Protection

		I can't express their feelings. We four daughter of my mother are everything for her. She cried and almost fainted. All time she appalled for me to take me back to country. After coming, my mother insisted to me on not going anywhere without her company. Reference 2 - 3.80% Coverage No, I didn't communicate with my ex-husband. After 2 to 3 months of coming back, my family managed marriage for me for the second time. Now I am staying with my husband. 3 month ago I gave birth a baby boy and leading a peaceful life. <Internals\\Interviews\\Sobnom> - § 1 reference coded [2.41% Coverage] Reference 1 - 2.41% Coverage What is the attitude of relatives and society toward you? S: At the beginning, there was normal situation, but at present their attitude is good. <Internals\\Interviews\\Sobnom> - § 1 reference coded [1.70% Coverage] Reference 1 - 1.70% Coverage	Health Issue Economic Status Number of Filing Cases

		How many days did you spend in safe-home? S: First time, it was about 1 and half month in safe home. <Internals\\Interviews\\Sobnom> - § 1 reference coded [3.37% Coverage] Reference 1 - 3.37% Coverage Yes, they trained us. There were different types of training such as trailering, embroidering, making ring etc. Q: Do you use your trained knowledge here? S: No, there is no facility to use my knowledge. <Internals\\Interviews\\Sobnom> - § 1 reference coded [1.38% Coverage] Reference 1 - 1.38% Coverage Yes, they oppressed me very much. As I didn't go to do such work they forced to do. <Internals\\Interviews\\Sobnom> - § 1 reference coded [2.06% Coverage]	Life in Shelter Home

		Reference 1 - 2.06% Coverage Who received money? S: Head of prostitution camp. Q: Didn't they pay money or monthly payment? S: No. <Internals\\Interviews\\Sobnom> - § 3 references coded [15.07% Coverage] Reference 1 - 2.36% Coverage They took me through the help of their middleman. I didn't see any police in the border. I met only two middlemen who helped to cross the border. Reference 2 - 8.14% Coverage At first, I stayed in there/India for one night, and then they took me to Bombay from Haora station. I stayed for 5 days in the apartment of women who trafficked me in Bombay. After 5 days she took me to two persons- one was male and other was female. She handed me over to them. She said to me that- now you will stay with them and they will pay you so that you send money to family. Thinking good, I	Working Condition and Environment: Torture Unpaid work Method of Trafficking

		remained with them. I didn't notice their exchange of money as they detached me from them. Reference 3 - 4.57% Coverage Yes, she sold me. I knew she sold me only for 30 thousand taka. I went with them and asked them to call my family as it was for the first time I was living without family. They said that she sells you to us, you didn't go back your country and family, you can't call your family.	
9	Mimi	<Internals\\Interviews\\Mimi> - § 1 reference coded [4.24% Coverage] Reference 1 - 4.24% Coverage : How did you cross the border with him? Did you see any Bangladeshi police, border guard at the border? M: He said his original home is at Delhi and he has a business there. And, took me there. May be, they have some broker, they crossed us the border. I don't know.	Border Protection

		<Internals\\Interviews\\Mimi> - § 1 reference coded [2.40% Coverage] Reference 1 - 2.40% Coverage : From government? Has Bangladesh government helped you? I mean Chairman or Member? M: No. I don't know if BD Govt. helped. Chairman or members- didn't.	Government Response
		<Internals\\Interviews\\Mimi> - § 1 reference coded [1.52% Coverage] Reference 1 - 1.52% Coverage Q: Have you received any support from NGO's here after returning home? M: Yes, I have got help.	NGO's Response
		<Internals\\Interviews\\Mimi> - § 2 references coded [12.88% Coverage] Reference 1 - 3.90% Coverage Q: Have you filed any lawsuit after returning home? M: Yes, I did.	Number of Filing Cases
		Q: What's its status?	Status of Pending Cases

		M: I don't know. But, against whom I sued, he is not in this country now. He's gone to India or somewhere else. He wasn't found. The lawsuit is running. Reference 2 - 8.98% Coverage <Internals\\Interviews\\Mimi> - § 1 reference coded [2.15% Coverage] Reference 1 - 2.15% Coverage Q: After returning home, how did your parents accept you? How's their behavior? M: They behaved well. But, neighbors talked about it. <Internals\\Interviews\\Mimi> - § 1 reference coded [3.75% Coverage] Reference 1 - 3.75% Coverage Q: Did you suffer from any disease during your staying there as you'd to sex with others? M: Yes. I got pregnant. After returning home, I told everything to Saholi Apu (sister). Shaoli apu took me to Nova Hospital and I had my abortion. <Internals\\Interviews\\Mimi> - § 1 reference coded [7.15% Coverage]	Victim's Position after Trafficking: Social Interaction Victim Protection Health Issue Economic Status

		Reference 1 - 7.15% Coverage Q: Do you have any personal comment? You want to say. M: I'm staying with my parent. It'd be better if I could do something on my own. I have a life, I can't stay with my parent lifelong. Q: Are you taking any vocational training? M: No, I am not. I'm staying at home. Q: Talk to these NGO's. They are here to help. M: I asked them. They gave some money for business purpose- to buy cloth. But, I sold on credit and all money has gone. No profit.	
		<Internals\\Interviews\\Mimi> - § 1 reference coded [3.02% Coverage] Reference 1 - 3.02% Coverage Q: Do they torture you? M: Yes, I was forced to do if I wasn't willing to do. Q: Would they beat you? M: No, they didn't. They'd force to work as they'd spent the money for me.	Working Condition and Environment: Torture Unpaid work
10	Arju	<Internals\\Interviews\\Arju> - § 1 reference coded [3.35% Coverage]	Government Response

		Reference 1 - 3.35% Coverage Q: Have you received any financial help after coming here? Any help from government? A: No. <Internals\\Interviews\\Arju> - § 1 reference coded [1.93% Coverage] Reference 1 - 1.93% Coverage Q: Have you filed any lawsuit against broker? A: No. <Internals\\Interviews\\Arju> - § 1 reference coded [5.67% Coverage] Reference 1 - 5.67% Coverage Q: What did they do then? A: They took us in the police station for one night and sent us to home next day. Q: For how many day you were in home? A: One year. Q: Who did traffic you? A: Parvin. Q: How did you meet her? A: We worked in a factory, from there we met. <Internals\\Interviews\\Arju> - § 2 references coded [16.48% Coverage]	Number of Filing Cases Life in Shelter Home Life in Shelter Home Method of Trafficking

		Reference 1 - 7.35% Coverage : How much time it took? A: Around two hours. Q: Did only one person took you to there, or she handed you to anyone else? A: We crossed by boat. I don't know who else was with her. I just went with her. Reference 2 - 9.13% Coverage They took me to a house and kept us there. Next morning, they took us in a car and kept us in another house. Then, they were taking us in a Bus. Bus driver started running and then stopped in front of a police station. Then police got us out of the bus.	
11	Ajmi	<Internals\\Interviews\\Ajmi> - § 2 references coded [7.03% Coverage] Reference 1 - 4.87% Coverage Q: Our country has a human trafficking law or there are international laws. You have some right to receive compensation. Do you know that? Have you received any compensation from government? A: Yes, I've received. 15,000 taka from here.	Government Response and NGO's Response

		Reference 2 - 2.16% Coverage Q: From anywhere else? A: Dhaka Ahsania Mission, they provided us training. I've a shop, I work there. <Internals\\Interviews\\Ajmi> - § 2 references coded [16.45% Coverage] Reference 1 - 5.24% Coverage Q: Have you filed any lawsuit? What's its status? A: Yes. 3 months after my arrival, I sued against them. Police arrested my brother-in-law. After one and half a month, he got bail spending money. We don't come for case, I also don't know if they come. Reference 2 - 11.21% Coverage Q: You filed lawsuit. What do you expect from that? A: I expect that they'd get punishment as I've been punished. Why have they done this harm? Q: Have you gone to court after filing lawsuit? A: I went there 3-4 days. Q: Have you spent any money? Talked to lawyer? A: No.	Number of Filing Cases and Status of Pending Cases

		Q: When did you filed lawsuit? A: After I came back, almost 2 years. Then I sued. In 2015. Q: Does anyone contact you from police station? A: Dada has said that, they will do. They haven't called us yet. Q: Where are the accused? A: In the village, in their home. <Internals\\Interviews\\Ajmi> - § 1 reference coded [9.19% Coverage] Reference 1 - 9.19% Coverage Q: How did your family accept you? A: My family didn't accept me well. I stay with my husband in a rented house. Q: Your parents-in-law didn't accept you well. A: I can't go to my father's home. They haven't accepted me yet. I don't have my father. My brother forbade me to go. But, I didn't pay heed. He said- good people don't go abroad, you don't need to go. After my returning, it's been two years, I couldn't go to my paternal home yet. <Internals\\Interviews\\Ajmi> - § 1 reference coded [2.34% Coverage] Reference 1 - 2.34% Coverage	Victim's Position after Trafficking: Social Interaction Victim Protection Health Issue Economic Status

		Q: How's your neighbor's attitude towards you? A: They think that, I've come from abroad. I'm not good person. Internals\\Interviews\\Ajmi> - § 1 reference coded [3.32% Coverage] Reference 1 - 3.32% Coverage : Have you received any threat from the accused? A: They threatened us, still they threat us. But, they couldn't do anything and won't be able to do anything. <Internals\\Interviews\\Ajmi> - § 2 references coded [9.54% Coverage] Reference 1 - 6.11% Coverage Q: How's their behavior towards you who detained you? A: They behaved very badly. They'd beat if we didn't follow their words. Q: How did they beat? A: They beat with hand or leg, not with any stick. Q: Did they provide food properly? A: No.	Working Condition and Environment: Torture Unpaid work

		Q: Did anyone sex with you forcefully? A: Yes. Reference 2 - 3.42% Coverage A: No, I couldn't go out of room. I also didn't know their language. I was told that- you don't need to learn the language, if you go you'll learn it in a few days. <Internals\\Interviews\\Ajmi> - § 1 reference coded [0.84% Coverage] Reference 1 - 0.84% Coverage Q: Did they give you any money? A: No. Q: How did you become a victim of trafficking? Who did traffic you? A: He's my brother-in-law. The broker sent me from here to Oman. My husband didn't want me to go there. I went there forcefully. I rent a house from my brother-in-law. S, I thought, I could go there. My sister-in-law assured me to go there. She said it'd be good for me. Then, I didn't pay heed to my husband's words. I went there. They give me a visa saying that that's for working in household. But, they didn't give work in household. They captivated me and then sold me. They persecuted me. I found a	Method of Trafficking

		Bengali, from him I took the phone and called home. Informed my husband. Then my husband came to Right Jessore and they created pressure on brokers. Then they sent me back.	
12	Kalam	<Internals\\Interviews\\Kalam> - § 1 reference coded [0.44% Coverage] Reference 1 - 0.44% Coverage I have received some money from here and from government. <Internals\\Interviews\\Kalam> - § 1 reference coded [1.25% Coverage] Reference 1 - 1.25% Coverage I stayed there 3 months. After 3 months, through human rights organizations, I came to Bangladesh on plane. Coming here, I filed a lawsuit against the traffickers. <Internals\\Interviews\\Kalam> - § 1 reference coded [2.20% Coverage] Reference 1 - 2.20% Coverage I contacted OC's of two police stations and got the trafficker arrested in Atmail, Dhonar. They bribed police SI Morshed. They use this lady in	Government and NGO's Response Life in Shelter Home Help from Police

		various halls like modhumita, Purobi etc. and earn millions of taka. I'm still running the case... it's not finished yet because.	
		<Internals\\Interviews\\Kalam> - § 1 reference coded [0.62% Coverage] Reference 1 - 0.62% Coverage After filing the case, I couldn't even move to Court. Traffickers stressed me.	Status of Pending Cases
		<Internals\\Interviews\\Kalam> - § 1 reference coded [0.77% Coverage] Reference 1 - 0.77% Coverage I don't have the money to start business. If they give me some money, I'll open my business again.	Victim's Position after Trafficking: Social Interaction Victim Protection Health Issue Economic Status
		<Internals\\Interviews\\Kalam> - § 3 references coded [7.32% Coverage] Reference 1 - 1.35% Coverage They kidnapped me and took me to Dokkhinchara Hill in a CNG vehicle. They roped me with a tree and persecuted me and demanded Taka 4,00,000 (four lac). There was a broker Hassan.	Method of Trafficking

		Reference 2 - 3.45% Coverage There were more 5-6 ships each containing 500-2000 people. There's a big ship with more people. That's the main. When food, water is finished, they bring from the big ship. They would give us rice with dry chili at around 12 pm and at night. Many suffer from diarrhea, many die from stroke. We had 36 women in our ship. They made all women pregnant. A child was crying, they threw the child into sea. We had nothing to do. We're weak, they'd arms. Reference 3 - 2.52% Coverage There's no phone network. When they demand money, they take us near to the hills to receive network and ask us to talk to our relative. They threatened us- if we don't give them money, they'll kill us. In 2015, there was news in newspapers. Then they receive the news through wireless and fled in a speedboat leaving us isolated. <Internals\\Interviews\\Kalam> - § 3 references coded [6.36% Coverage] Reference 1 - 1.54% Coverage Whatever, I understood that, there's a liaison	

		with the upper level administration. Then, I stayed at the police station for 2 days. I gave Tk 800 to officer Kibria and requested him to go to my home. Reference 2 - 2.99% Coverage Then, he took me at court at 4:30 pm. But the court was closed. He took me to a Judge. I told him the matter. He asked if I had any money. I said- yes, I have. The judge gave me 1000 Taka and told me to go home. But, I didn't take it. Then he called a police and told him to take me to bus terminal. Then police took me out and asked for 5000 taka. I said- I won't be able to give you taka. Reference 3 - 1.83% Coverage <Internals\\Interviews\\Kalam> - § 2 references coded [4.70% Coverage] Reference 1 - 3.35% Coverage They kidnapped me using a micro-bus with a logo shuvo-Bibah (Happy marriage). No administrative staff signals micro-buses with a logo shuvo-Bibah (Happy marriage). They took me via Norail ferry transport. From there, they snatched my phone and money. They sold me at Cox's Bazar. There were some other men I	

		could recognize. Then, they fed us in a hotel and then took us in Teknaf. Then, detained us in the second floor of a building.	

2 *Part 02: NGO Workers*

No of NGO Worker	Pseudonym	Interviews	Coding Theme
1	Monira	<Internals\\NGO workers\\Monira> - § 1 reference coded [3.83% Coverage] Reference 1 - 3.83% Coverage For what reason they became victims of trafficking? Is it poverty? M. Main reason is scarcity especially poverty, second is also lack of awareness. People think outside Bangladesh there is ample of job opportunity. Trafficking sometime occurs in the presence of husband. Husband goes with Wife besides with his two sisters. Then husband sells these 3 women. Two of them came back but elder sister can't come yet.	Reason of Trafficking

		Husband said he sells her other middleman, if you paid money she can came back. When I know their experience like change of hand, different rape oppression, how they used for a night etc. after came back their excitement is that they come back in country, when they came they face problem from roads. Rescuer police comments bad comment. <Internals\\NGO workers\\Monira> - § 1 reference coded [2.16% Coverage] Reference 1 - 2.16% Coverage Q. But how would they escape as the passport was kept to family owner? M. They don't have scope to escape; we find that experience from women sent by government agencies. They phoned their husband and family member describing their worse condition in abroad. Then their family members contacted with. They spent hours after hours to our human resource department day after day, but they didn't get any solution. <Internals\\NGO workers\\Monira> - § 1 reference coded [1.49% Coverage] Reference 1 - 1.49% Coverage Q. You are providing counselling, training and other support to the victims. Would you like to tell me that Bangladesh government's role in	Government Response

		this regards? Does Bangladesh government help to get fund from INGO. M. No, from my part, I don't know of any help by government of Bangladesh in this regards. <Internals\\NGO workers\\Rahela Begum> - § 3 references coded [9.05% Coverage] Reference 1 - 6.56% Coverage As a counsellor, what do you do with the victims? What's the job? M. Our main job is that we have a shelter room in Jessor and basically, we provide support to traffic victims. Apart from traffic victims, we work with family violence, missing children etc. up to a certain period. In Dhaka city, we have a dropping centre that works with street children. In addition to these two places, we have children city at Panchagarh where a city has been built for 0-8 years of male children. They are sheltered there till their 18 years age. For different projects like shelter room, home, children city there are separate counsellors for counselling the children. I am here in the core, the head office to train up counsellors, handle issues etc. Q. So, you told about training. As a counsellor, do you have the opportunity to get trains abroad or as an NGO do you provide	NGO's Response

		training at government institutions? M. We haven't had that opportunity with government yet. But, through MOA with victim support centre, we provide psychosocial/counselling support, and for training, we provide need based support as we receive any request. Besides, we have NGO in Pabna, such as our donor. If they arrange any joint training session, there I train psychosocial support. Reference 2 - 1.67% Coverage Listening from you, I feel uneasy and worry. I don't know what will happen if I heard from them directly? M. Yes, we hear from them each and every day. We go to them; we talk with their husband, to their family. We monitor their business setup, now they are well enough. Some of them are doing business with parlors. Reference 3 - 0.82% Coverage Q. Does NGO play any roles for compensation? M. Yes, different NGO works on trafficking, human trafficking. I think NGO plays vital roles in this regards <Internals\\NGO workers\\Monira> - § 1	

		reference coded [3.15% Coverage] Reference 1 - 3.15% Coverage How much time it takes to bring the victim back to normal life? M. In that case it is not easy to say for their recovery, their worse memory remain long time, we try to send them to their family but most of time family don't show positive attitude, even the family member didn't come to meet her and that time we keep them here, we trained them with their interest like boutique, computer and sewing etc. and we manage job placement too. We send these survivors to some women related department of government- Café, Mukti. We also sent them to many organizations. Even in our organization, these survivors are also working. <Internals\\NGO workers\\Monira> - § 2 references coded [3.31% Coverage] Reference 1 - 1.34% Coverage In this case, did they file any lawsuit against recruitment agency? M. Yes, some of them suit case against agency. I know so far they don't do anything. A NGO supports them with the help of donor but case failed. And the numbers of such cases are more.	

		Reference 2 - 1.97% Coverage Q. You said that some victim's suit in this case was unfruitful. What is your opinion about proceedings? M. Yes, proceedings should be more effective and strong. I think it should take under rapid tribunal jurisdiction. A female victim come without any money and ran a long time a case and but finally she failed to getting her money from agencies. It is so much suffering. <Internals\\Interviews\\Monira> - § 1 reference coded [3.12% Coverage] Reference 1 - 3.12% Coverage Do you face any problem during counselling? M. Basically, I feel sorry for them. When they come back to country after 5 years they want to get touch of family members, they ask to contact their family, in this case we call their family members but that time they reject the proposal even they deny to disclose their identity that the victims come back after a long time. This behaviour shocked me very much. We assured that their family would contact them later for sure, although we know that this will never happen. I got astonished! I know the false assurance is not right decision in my profession. And that case I felt guilty. <Internals\\NGO workers\\Monira> - § 2	

		references coded [6.03% Coverage] Reference 1 - 4.92% Coverage Q. What is the experience of internal trafficking? M. The experience of internal trafficking is that one child was rescued from Narayangonj by Jessore raid group. The child was sent to a family for housekeeping, but the family sold her to Paturia-duladiya prostitution camp, the head of whore complied her to use cream for enlarging breast. After rescue, we find her while she was screaming with irritation that was bad experience for her. She showed interest to go to her mother, we called her mother by phone. That time her mother said us she'd suicide if we took the child to her, but her child was worried to go to her mother. We also inform through community, every one tried to bring back the child but her mother refused to accept the child and threatened to suicide repeatedly. Her mother knew that her child stayed long time in Duladiya. Finally we failed to send the child to her family and we managed a job for her in garment. Reference 2 - 1.11% Coverage Parents, family don't want to accept them. Are they? R. Parents, family don't want to accept them,	Status of Pending Cases

		thinking that if there other girl in family how will they manage to marry her, which makes trouble for family. <Internals\\NGO workers\\Monira> - § 2 references coded [7.59% Coverage] Reference 1 - 2.45% Coverage The border police don't show soft or supportive behaviour? M. Yes, they comment badly even they said we waited for long time for these women who went for their own interest. They come with various diseases too, and when they go for treatment, they face difficulty from doctor's behaviour too. After coming from hospital, they share their experience. Knowing it, I think that are they doctor or not? For that worse experience, they lose their interest to go to doctor, even their illness become severe. Reference 2 - 5.13% Coverage Why they don't want to go to Doctor? M. When doctor knows that one came from prostitution. Doctor wants to touch sensibly and want to put off cloth what is unnecessary. Human know what is good and what is bad. If they refuse to do so, doctor use bad language what is another type of oppression.	Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		Q. Mentally they become weak. What is your opinion in term of improvement of all level of society? M. Yes, it is important to improve. In seminars, we raise voice to stop trafficking, victims are not responsible, and survivors are not accused. The traffickers are main culprit. The victims are facing problems from their house to everywhere. In training, I have to learn that they said- madam, would you marry your child with victims. In that case what should we say? Especially during training? It is embarrassing situation. The victim women have right to survive in the society with freedom and dignity. How you manage job for that women who already accustomed in bad habit and my husband raise question to work with her in same office. <Internals\\NGO workers\\Monira> - § 1 reference coded [3.57% Coverage] Reference 1 - 3.57% Coverage Q. Do they get any help? M. When they come back after 7 or 8 months they become traumatized and fainted. The problem which starts after coming, we try to tackle it. We train them, provide help for shop keeping, tailoring and all other furnishing job by the help of ASSAS project. But the main problem is that when they try to live with	

		family member, basically, want to go to husband, they felt guilty reminding the worse experience of intercourse with 10 -8 people in abroad what she disclosed with her husband before. Husbands behave wrong way, sometime keep silent, or oppress her in front of their children. Family peace destroys. And they starts suffering miserable days here too. <Internals\\NGO workers\\Monira> - § 1 reference coded [2.67% Coverage] Reference 1 - 2.67% Coverage Would you like to tell me about their motivation to lead a normal life? M. At the very beginning, they didn't have any decision-making capacity, after applying different therapy they recovered and returned to normal life. We have so many success story that from the first time most of them come round and established them in good position even though that is not so good. They also themselves made team as a survival, they take support from USAID. They also take part in campaign to aware people against trafficking in different places. <Internals\\Interviews\\Monira> - § 1 reference coded [1.38% Coverage] Reference 1 - 1.38% Coverage	

		They remain drug addicted as they stayed in brothel. They attempt to suicide, After coming, the problem they face is withdrawal symptom. So, they attempt to suicide, set fire into house. Then they are provided with doctor and consultation support to handle withdrawal symptoms. <Internals\\NGO workers\\Monira> - § 1 reference coded [9.42% Coverage] Reference 1 - 9.42% Coverage We have to take preventive measures and besides taking rehabilitation programs too. What is your advice? M. We do that type of program, rehabilitation and preventive measures; we think it would not be possible to go their family. Sometimes, they go to family and same time family resend them in same place again India, the victim women considered that she never will come in country and abusive behaviour to her will increase, also the demand of money will be double. We try to provide them vocational training, so that they can acquire self-confidence for self-income. We also provide facility to further education and something else. We talk only female trafficking. Men trafficking are also dangerous. We have a project named "ASSAS" which conducted to	

		find out the trafficking by government agencies. The people who went in Saudi Arabia, Dubai, Malaysia, Brunei etc. as house worker by Government, I worked with them and have opportunity to provide mental support. The women were from Jessore and Dhaka. Their husbands managed everything from collecting money to send them abroad. Some women went abroad keeping her little baby and her husband support her knowing that she will send money after joining work in abroad as she went legal way by means of Government help. But when they reached in airport they were taken in a building, there was another building where also there were some women who went before the previous group, they heard, they're screaming and saying- don't go to work. And when a few women were sent to work it was observed that they faced sexual harassment. In Saudi Arabia, main work is entertainment, they are accustomed to amuse themselves with trafficked women. At night, 8 to 10 people of that family would use her continuously. If she denied to go there, wife and husband of family tortured her seriously and such scenarios continues day after day. Sometime victims escape. <Internals\\NGO workers\\Monira> - § 4 references coded [11.65% Coverage]	

		Reference 1 - 2.90% Coverage Q. Would you think government should increase their responsibility? M. Government should increase responsibility, should be careful about their assigned jobs. They should monitor the work of them but in all cases it would not be possible by government. We find some women who worked in Jordan. They were said to work for house work. But in Jordan, they had to cut big fish. During that time, they were pushed injection and medicine in their food to reduce the sex power without their consent. Most of the time, they came back to home within one month. Reference 2 - 3.33% Coverage Q. I know, so far, there was no case against government agencies? M. In this case, government initiative is so good, but they should emphasize on follow-up activities- taking measures for effective surveillance and monitoring the total activities, so that they can know about what they do after landing in airport, and about their assigned work like house work etc. the case is that, the victims were not allowed to do house-work, she was send to husband/house-owner directly. Every night she had to serve her husband and other persons too. If she denied,	

		the housewife argued to go and oppressed her saying why don't go to his room. Reference 3 - 3.43% Coverage Q. As you are working as a counsellor, your opinion is that to strengthen the prosecution, establish special tribunal, increase government initiatives, and also increase government surveillance capacity? M. Yes, we think they can go. Female and male person can go abroad and the way should be proper and legal way. The government of Bangladesh should have records where they go and what their duties etc. and in which family they go. In Bangladesh domestic worker reports are sent to local police station. In that case, the new workers who are going to abroad should have database on where they go, their recruiter family, their activities and their protection. Reference 4 - 2.00% Coverage Do you think the training facility should be increased according to international rules and regulation? R. Of course, we should increase international training, we should report on what they do in abroad after learning their processes. Q. Do you work with outsiders of other	Recommendation

		countries who were trafficked? R. Yes, we have another project working on international trafficking.	
2	Rashed	<Internals\\NGO workers\\Rashed> - § 2 references coded [11.02% Coverage] Reference 1 - 5.64% Coverage Q: What's your remark? What's the reason for human trafficking? B: The main reason is poverty. And, then the polygamy, familial conflict etc. Lack of money is the prime reason. If they can't maintain, they become vulnerable. There are also some ultra-poor family with polygamy, they can't feed properly. Financial crisis is the main reason from every aspect. If we talk about better life, that also falls under financial reason. If we talk about fake marriage, that's also for a hope, a temptation, falls under financial reason. Whatever we say e.g. marriage, alluring for job etc. everything falls under financial reason. For this poor financial condition, trafficking is happening. Reference 2 - 5.38% Coverage Understood that micro financing is an exploitation. Anyone who's taking loan today, he'd to pay the instalment next week even though he's not earned any money. When I	Reason of Trafficking

		understood that they're taking interest of three times of what the lent, then I thought that, I'll talk about human rights and on the other side I'll exploit? That shouldn't continue. I've omitted that from my organizations constitution. Q: It's been in many research paper that microcredit is one of the cause of trafficking. B: Some have committed suicide, some have sold their kidneys. You know, there was a news that around 200 people sold their kidneys just to repay microcredit debt. Q: What kind of proposals girls receive? B: For girls- they are told for good job, marriage, and honeymoon. Girls don't know that what wil happen. When a 15-16 year's girl get married and if she's told to go for a visit abroad, she'd normally be agreed. For this reason, 15-16 years old girl, even school going girls are being trafficked. And, from garments, they are being told for good work and then being trafficked via border. And, for domestic trafficking, government agencies are taking or recruiting them for household jobs. But, after taking, they are being oppressed. When, agencies are made informed, they don't take any action. They're fleeing from houses. <Internals\\NGO_workers\\Rashed> - § 3	Government Response

		references coded [10.01% Coverage] Reference 1 - 6.29% Coverage Q: How did your NGO work to prevent trafficking? B: We have many trafficking awareness activities. For say, school orientation with parents, stage drama, Bazar meeting, strengthening CTC (Counter Trafficking Committee). You know that CTC is under State Ministry. Q: Is CTC active? B: Yes, in State Ministry it is active, but not that active in District level. Jessore district's meeting is arranged regularly, but, Unions' are not regular. It is reality that, Upazilla meetings somewhat send some reports. But, in fact, we're working in Unions. But, the fund donors allocate us, is not proper. If there are 93 unions, they tell us that work in 3 Unions. This doesn't work. For example, we've fund from 5 projects, then we work for 20 union or 30 unions with that fund. Reference 2 - 1.39% Coverage Q: Is your AC-DC meeting called regularly? B: Yes, Jessore's. But, it's absent in other districts. But, interestingly, they send the monthly report to home ministry.	

		Reference 3 - 2.33% Coverage Q: Anything about Embassy? B: Embassies don't work properly. They do a few but advertise much. They are there for work. Why any bad thing will happen? They are in a unwritten consent with recruiting agencies Q: There's a connection between embassy and recruiting agency. B: Yes. <Internals\\NGO workers\\Rashed> - § 1 reference coded [10.96% Coverage] Reference 1 - 10.96% Coverage Q: How else trafficking can be prevented effectively? B: Laws must be implemented. Though judge witnesses a murder, he can't give the witness. Advocates are bringing the culprits to safety. Trafficking has laws, there are bails too. Q: All the victims I have talked to had filed lawsuit. How many lawsuits are being successful and how many of them are getting punishment? B: We have the data. Q: are you satisfied with the prosecution? B: Yes, we're satisfied! We're not receiving	Status of Pending Cases

		the justice? How can we be satisfied? There's a case, the alleged would have been punished. I had our witnesses. But, they settled the case with the victim. What can we do? They say- I'll have to live here; will you defend if anyone harms us? They may have given some money. Q: If they had got punishment, it would have been stopped. What you think, if criminals were to pay big amount as compensation? B: Yes, that's acceptable. That'd have been a punishment too. We're bringing them back from India. They are giving punishment. We've received up to 1, 50,000 - 3, 00, 00 Taka compensation. We received such 4-5 cases. But, Bangladesh government couldn't implement that. We've become unethical. If I become uncompromising in case of ethical perspective, then I'm facing lawsuits, my family members get lawsuits. <Internals\\NGO workers\\Rashed> - § 2 references coded [6.80% Coverage] Reference 1 - 4.32% Coverage Q: Is any of the local representative or personnel from other authorities involved in preventive activities other than donor agencies? From government? B: No. we must take government's help. We're providing training for law enforcement,	

		we also work on judiciary activities- worked as a law representative, monitored whether the law has been gazette or not etc. We received support for these works. So, police, judge, locally elected representative, civil society- everybody is stakeholder here. We're working with everyone. Reference 2 - 2.48% Coverage Q: Do you provide any training to survivors to steer up? B: Yes, we provide some trainings. Also, Ahsania mission provides some training. They have some fund for that. We had also given money to Ahsania Mission. But, that project has ended. They provide training from their projects to our victims. <Internals\\NGO workers\Rashed> - § 1 reference coded [1.61% Coverage] Reference 1 - 1.61% Coverage Q: What do you see as a biggest challenge? B: Every challenge is matter of ethics. Unless police remains good, public becomes conscious, elected representative become good, it will never stop. <Internals\\NGO workers\\Rashed> - § 2 references coded [6.50% Coverage] Reference 1 - 3.29% Coverage	Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		Q: Do your programs become hamper by any government policies? B: Not by policies, rather hampered by government people/administration/enforcement people. Q: What do you think, what should be government's role? B: Government's role is alright. Once I talked to a Secretary of a ministry. He asked us to become activists. But, I said- when we become activist, show activity, then we face lawsuit. Reference 2 - 3.21% Coverage	
		: Is there any collaboration with other organizations? B: If someone's suffering from HIV AIDS, we contact Mukto Akash. Then for shelter Home, we do not have shelter home. So, we work with Dhaka Ahsania Mission. They don't have repatriation facility. Most of their repatriation victims are ours. And, the other rescued victims by police etc. are in their shelter home. <Internals\\NGO workers\\Rashed> - § 2 references coded [4.14% Coverage] Reference 1 - 2.79% Coverage Q: Do you think that Bangladeshi laws are sufficient?	Collaboration Challenges

		B: Enough. It just need the implementation. Now the main barriers are the political parties. They win elections without competition. We do not have democracy, we don't have the right to talk. We, the defenders, become harassed, arrested. I have been arrested by our SP(Police Super). Reference 2 - 1.35% Coverage Q: Do you have further comment? B: I'm saying the thing again- implementation of laws. If police and political figures take good initiatives, then it's possible.	Recommendation
3	Shahanara	<Internals\\NGO_workers\\Shahanara> - § 1 reference coded [3.89% Coverage] Reference 1 - 3.89% Coverage Is there any change you notice among survivors? How they got victimized, the variations among the reasons of being the victim? What kind of reasons? S: Most of them are same. They have come from garment, eloped, tempted for good job, destitute condition. Currently, love matter is major. Previously trafficked by husband was observed less. Nowadays, its bit increased. Being tempted for marriage, etc. increased, for say, girls of honours' level also became a victim.	Reason of Trafficking

		<Internals\\NGO_workers\\Shahanara> - § 8 references coded [46.57% Coverage] Reference 1 - 5.04% Coverage What kind of support does this shelter provide to victims? S: Our safe shelter provides safety, shelter, food, clothes, personal hygiene, counselling everything. From their entering to their exit, we work according to our exit plan. In our exit plan we have 15 days observation period for first 15 days. From the very first day of 15 days work on survival observation and from next day counselling continues. Besides counselling our counsellor (I am doing the job) keeps all under observation. Basically, our home mother keeps the victims under observation. Home mother reports us about her activities daily. Reference 2 - 27.68% Coverage Home mother who mother directly text care of them? S: According to their condition, we provide mental support. We assess their mental condition. We fill out a profile. We assess their physical and overall situation. After that we try to know about how she came here, is she a victim of trafficking or torture or missing etc. Sometimes it's found that the girl was	NGO's Response

		missing victim, but someone has brought her here. From the very beginning we start our medical service. We also have the system if anyone needs advance medical assistance. S: We have our paramedics and 13 staffs. They visit here twice a week and whenever we call them they come here. If they refer somewhere else, we follow the recommendation. We have a lawyer who comes here and conducts sessions with survivals for services and runs the cases and provides legal counselling to Survivals. S: There's some trafficked survivals who don't want to sue against traffickers. So, his duty is to counsel how to run a lawsuit. In that case we provide legal counselling support. S: After 15 days, we arrange a session with survivors, home mother and home manager. At that day we get an overall assessment on if she is willing to return to his family or she wants to stay here and get trained. Their case management is done that day. Before that, we had sessions daily and we try to find their life skills. We provide life skill session for 15 member group. This session very helpful for them to take decision and get settled. We try to provide this session before that 15 days. I want to know what they want. If they want to go to family, we identify the family and provide family counselling. After that, if we	

		see that everything is normal, then we arrange the get together in presence of Union Chairman or Commissioner. And, for survivors who want to stay here and get training, we tell them/her about the training that we provide. If she thinks that she wants to get training on tailoring, we describe the tailoring to her, its challenges, pros and cons. After that, she takes the decision what she wants to do. S: If you see that she can take decision herself, then we withhold the assessment for that week and talk to her family that she cannot take her decision herself, so come here and help her to decide. If she says that she's willing on tailoring, we directly go to market to show her the environment to know if she'll be able to work there. Besides, we maintain similar process for who want to do micro-business. After that we provide training. There's a vocational training institute just right beside ours. If they take 3000-3500 Tk from others, they take less from us, and thus we provide training. S: Upon completion of training, we provide support. It also comes then if she wants to join family or join work. If she prefers to join family, send her to family and if she wants to work in Jessor or Dhaka, then send her to different business organizations. We have	

		some known coffee shop, garments industries in Dhaka. We send them to garments who have been trained on garment machine operation. As they are trained, they get god job and good salary. After getting her into job, a good job, we continue the follow up till a year. We follow up at 2-3 months interval physically for first few months and then rest over phone. This is how we are continuing our program. Reference 3 - 3.02% Coverage Tell me something about food quality, dress-up/clothing, entertainment. S: We provide food routine-wise. For say, on Fridays- vegetable and rice at breakfast, Chicken at lunch and vegetable and lentils which is at all times at night. On Saturday- Egg at lunch, Lotpoti at breakfast, on Monday- khichuri at breakfast, mutton at lunch/supper, On Tuesday- chicken…! Reference 4 - 2.06% Coverage Do they usually want to stay here? S: As they stayed abroad crossing for two or three years, so they remain very keen to go to home. If they want to get support, after returning from home, they take support. Our goal is to settle her into family.	

		Reference 5 - 2.59% Coverage What about entertainment? S: We have TVs. For playing, we've stuffs. We've dance master who comes weekly to teach them dance-song. We go for outing weekly. According to routine we've session from 3-3:45 pm. After that they learn handy-crafts, needle weaving. In the afternoon, they go for dancing and singing. Reference 6 - 1.12% Coverage You provide entertainment and vocational training. S: yes, vocational training in the morning hours and others are in the afternoon. Reference 7 - 2.73% Coverage Do you think that through your hard work victims are getting back into normal life? S: Yes, we're successful. Such happened that we normalized a fully dumb, and traumatized victim. At first, she couldn't recognize her family, but after our hard work she could recognize and we integrated her into the family. We're successful. Reference 8 - 2.33% Coverage Do you provide and compensation to victims?	

		S: We don't that way, but we provide training, for say tailoring, we provide them with a tailoring machine and dresses etc. Previously, we would give sufficiently, but now, as we're running with low fund, we provide fewer accessories. <Internals\\NGO workers\\Shahanara> - § 1 reference coded [5.44% Coverage Reference 1 - 5.44% Coverage How is the attitude of family members and other members to the victims who come here? S: I've faced such challenge that family said that they will not take the girl home. We requested them a lot and even we visited the home, but the guardian sneaked so that I couldn't meet them. They said, don't talk to me if you want to talk about the girl. I phoned many times, but failed. We planned and get the girl into work. Get the girl to take home is rare. Even I took a girl into her house, the used abusive language. God has given me the patience to do the job and I met community members and responded appropriately, described about the girl and placed her. <Internals\\NGO workers\\Shahanara> - § 1 reference coded [8.63% Coverage] Reference 1 - 8.63% Coverage	

		Q: Do they attack you or what is their attitude? S: Most of the victims gets used to into sex and get drug addicted from sex trafficked. They are the most risky victims as they try to cut their hand, and body etc. It becomes tough for us to deal with as we are just try through counselling. Even, sometimes they directly asked me to get their demand fulfilled. They say it's hard for them without this sex. In that case, it becomes a challenge, and we use all possible ways and therapies to get her cured. They may look normal when I talk, but in my absence, their desire may arise and they do great chaos with other girls. This happens sometimes. But currently, in the last couple years, such case is very few. Before that, we brought some survivals from brothel. They were not only sexual victims but also drug victims. They would keep blade with them. They were very tough to deal with. But, by the grace of almighty, I tried hard and I build my position among themselves. <Internals\\NGO_workers\\Shahanara> - § 5 references coded [12.58% Coverage] Reference 1 - 3.38% Coverage Do you struggle to accumulate the fund to run this organization? Or it comes easily? S: Obviously we struggle to run and provide all costs for survivors. We don't have that	Victim's position after trafficking- Social Interaction Victim Protection Health Issue Economic Status

		much sufficient fund to run currently. For example, UNODC is giving to trafficked girls and WinRock is also giving traffic victims. But, for missing girls, violence victims, Ahsania Mission is providing fund. Reference 2 - 1.90% Coverage How do the recover from their bad experience or traumatization? How much time they take to recover? S: It takes quite a long time. For survivors, it requires medicine and mental support and therapy. 1-2 months are not sufficient. Reference 3 - 3.68% Coverage You are here for 13 years. What sort of challenges have you face? S: Yes, 13 years. Challenge like survivor couldn't recognize her family, but we'd to work hard to normalize her. And, survivor recognizes her parents but parents couldn't recognize her daughter. Other challenges are for sexual habit by traffic victims. This is a challenge and it takes time to settle them. There are also possibilities of dropping-out after getting employed. Reference 4 - 0.98% Coverage Do you have any opportunity of getting trained abroad?	

		S: Currently, very few. At first, I received some training. Reference 5 - 2.65% Coverage Did you get any training about that? S: No. We just learned from different meetings. But, we don't have proper knowledge we should have about that as we deal with them. Q: NO proper guideline how to treat with the girls? S: No proper training material about that. We know what we learned from books and meetings. <Internals\\NGO_workers\\Shahanara> - § 1 reference coded [3.33% Coverage] Reference 1 - 3.33% Coverage Do you have any collaboration with any other organization? S: Sure. For rescuing survivors, we don't rescue them directly. Other NGOs like Right Jessor, Asia World Vision, Justin & Care, Jagoroni Chokro etc. rescue the survivors and send them here. We also have strong relation with police station, if they find any survivor, they inform us. But, most of the cases, Right Jessor rescues the survivors. <Internals\\NGO_workers\\Shahanara> - § 2	Challenges

		references coded [9.62% Coverage] Reference 1 - 6.23% Coverage Q: Do you have any personal recommendation as there are laws for trafficking and trafficking is not decreasing? S: Our Jessor's lawsuit processes are very protracted. Even some cases, I have kept a survivor even for 2 years only for delaying in court decision. Sometimes, administrative staffs are traffickers. We kept her for 2 years so that law is properly implemented. Actually, after 2 years, girls become impatient. They don't want to stay anymore. If we handover her to their family, traffickers negotiate with family and nothing happens. I feel bad about that as I deal with it from the very beginning if they don't get punished. I feel hearty when traffickers get punished. I try to understand their situation putting myself on that situation. Reference 2 - 3.39% Coverage Do you know how to deal this according to international law? S: Yes, we need to know. Q: Did you get any training about that? S: No. We just learned from different meetings. But, we don't have proper knowledge we should have about that as we	

		deal with them. Q: No proper guideline how to treat with the girls? S: No proper training material about that. We know what we learned from books and meetings.	Collaboration

			Collaboration Recommendation
4		<Internals\\NGO_workers\\Shahanur> - § 1 reference coded [6.10% Coverage] Reference 1 - 6.10% Coverage Q: Do you have any idea about labor	Government Response

		trafficking occurred because of neglecting of the Embassy, or whether embassies are involved in it? S: Still now, govt. doesn't confess that labor trafficking can happen. When we raise our voice over labor trafficking, then Expatriate or Labor ministry deny that, and mention that, it is the issue for Home ministry. There is a lack of cooperation. We can see that Embassy's has negligence for preventing labor trafficking. They never realize that which is trafficking and which is not. Most of them aren't aware of this. They think that, labors have passport, visa. So how it is called trafficking! <Internals\\NGO_workers\\Shahanur> - § 3 references coded [19.77% Coverage] Reference 1 - 3.05% Coverage Do you think this anti-trafficking laws and policies are sufficient? S: According to my two years of experience, I observe that this anti-trafficking law is a very good law which is a copy of UN protocol and we can have many things using this law for preventing human trafficking. But, till now policy is not passed. Reference 2 - 14.67% Coverage What were your jobs for last two years? S: I did various jobs. First, I trained police	Challenges

		about this law and trained on how they should investigate, search, run operation, submit charge sheet for a trafficking case. Especially, we can see that, stakeholders get final disposal without conviction. So, I strengthen the police capacity to increase the conviction. In most cases, most of the judges has no knowledge about the law. They know that a law was passed but they never go through what is in there. I help them to know about that law. A prosecutor does a great work to prove the lawsuit. But, a matter of great sorrow that, most of cases, they are not capable of running the case, they don't know how to prosecute the case, how to provide evidence to Judges. So, we make them aware of the law and enrich their skill. You know that Govt. has legal aid service in every district. Their job is to support helpless, poor people. But, the panel also does not have any knowledge about the law. So, I can help them to gather knowledge that they can help people. Q: Have there been any initiative taken for compensating victims? S: Yes. You know that, Bangladesh Govt. have implementation plan and national Plan of Action committee under the lead of Home	

		Ministry. There, we always inform them about the compensation plan. And most importantly, we try to convince the Judges, before read the judgement, that, beside the punishment please do something about the victim's compensation. Reference 3 - 2.05% Coverage I understand that they don't know difference of trafficking, smuggling. S: Yes. They mix with trafficking and smuggling. Rather that they don't understand the smuggling, they assume that it is illegal migration. <Internals\\NGO_workers\\Shahanur> - § 1 reference coded [4.80% Coverage] Reference 1 - 4.80% Coverage Q: Is there any govt. policy that stand up against your NGO activities? S: Actually, govt has not a policy like that, but national plan of action has 5 components, one of that component is partnership, where clearly instructs that, Govt. and NGO works in partnership. But in the real world, the higher level instructs to help NGOs but at lower level, they don't support so much but never create barrier. Because, in the context of our country, to prevent human trafficking is most prioritized area.	

		<Internals\\NGO_workers\\Shahanur> - § 4 references coded [22.26% Coverage] Reference 1 - 8.24% Coverage : What is your personal opinion to prevent this trafficking? S: To prevent trafficking, we have to develop our socio-economic condition. When you see that, a man doesn't get a job, he has no earning source, he can't conduct business, what will he do that time? Then he noticed that, his neighbour has gone abroad and he is making money. So, he thinks that, he has to go abroad by hook and crock. So, we have to develop our socio-economic condition. Secondly, we have to create social awareness. From root level, we must create this awareness to the mass people. Not only our govt employee, law-enforcement, judicial people who are engaged must know which one is trafficking and which one is not. Also, we should make them conscious about that. They are not capable of investigating. They don't have the capacity. So, we must make them well-trained, capable. Reference 2 - 3.06% Coverage What do you think about Governments' role on human trafficking? S: Govt assures that it is their most priority,	Recommendation

		but they are not serious. When we visit root level officials to turn on the service, then Govt thinks, it is NGO's job, not theirs. Unless Govt wakes up, we can't impact deeply. Reference 3 - 4.47% Coverage Should there be any change in legal system? S: It's a must. What I said, we must build capacity for police to increase conviction. They don't know which one is trafficking and which one not. They must be trained well. Secondly, when it comes to court, judges get confused. They don't have the clear understanding about which one is trafficking. Then, prosecutors who will help to prove the lawsuit, don't understand anything. Their capacity building should be done. Reference 4 - 6.49% Coverage Ok. Another thing- in Thailand a graveyard of Bangladeshis have been found. Has any NGO or international organization taken any initiative to identify the bodies? S: Actually, our local NGOs do not have any involvement. But, we've some network and such initiatives are being taken in some cases. Basically, since, it's an inter-country crime, its government's responsibility. We can just provide support and technical assistance. But, Government needs to do most of the work.	

		NGOs do not have the ability to rescue internationally. They can't even do so for internal trafficking. Law enforcement authority will do that. We can provide only support and technical assistance.	

3 *Part 03: Government Officials*

Number of Government official	Pseudonym	Interviews	Coding Theme
1	Sonia Ahmed	<Internals\\Government Officials\\Government officials Sonia Ahmed> - § 4 references coded [38.86% Coverage] Reference 1 - 13.76% Coverage : What does your shelter home provide? How many victims do you currently have staying here? S: We are running government victim support centre where a number of trafficked victims is relatively poor. Trafficking	Government response Government shelter home Task of organisation

		victims stay here for a short period of time. Then different NGOs take them. Mainly we provide basic needs to the victims including fundamental counselling rights. Reference 2 - 11.75% Coverage Q: How long does it takes for women to recover from the bad experiences they have gone through? S: We have training how to deal with the victims. When victims become very frustrated we take help from the counsellor. Sometimes victims assaulted us as they don't want to trust anymore. It needs a long time to pacify them. Reference 3 - 6.33% Coverage Q: Tell me something about the food quality, dress up and entertainment. S: We have a library, journals, playgrounds, for kids and we provide all victims proper clothing. Reference 4 - 7.02% Coverage Q: What kind of training you give to women to develop their skills? S: Victims stay here for one month only. We provide them short-term training. Victims said, "Keep us otherwise kill us".	

		<Internals\\Government Officials\\Government officials Sonia Ahmed> - § 1 reference coded [4.59% Coverage] Reference 1 - 4.59% Coverage Q: With which organization do you have collaboration? S: We are working jointly with 10 NGOs such as BNWLA, AHSANIA MISSION. <Internals\\Government Officials\\Government officials Sonia Ahmed> - § 1 reference coded [15.68% Coverage] Reference 1 - 15.68% Coverage Q: How do other people treat the survivor? S: We don't run permanent support centre. Victims don't want to leave our centre. We have many victims who have been sexually assaulted. Most of the families do not want to accept them. NGO Provides doctor, counsellor and lawyers to the victims. NGOs have no interest to take poor and disable victims. We create pressure on the local representative to come and take back the victims. <Internals\\Government	Jointly working , collaboration

		Officials\\Government officials Sonia Ahmed> - § 2 references coded [29.44% Coverage] Reference 1 - 14.96% Coverage Q: Who is funding this shelter home? Is funding secure, or is it a struggle to obtain? S: Government has provided us funding and other facilities are provided by Bangladesh Police. We have 12 beds in a room. Our current funding is not enough to cover this. Present transport service to take victims to the court is very poor. Budget for our centre is very limited. We have total 8 victim support centre. Reference 2 - 14.48% Coverage Q: Do you feel it challenging to work with survivors? What kind of challenges do you find working with them in reintegrating? S: We don't have any legal foundation to support victims. If anything wrong happened with victims who will take liability. They stay here temporarily. We don't have any interpreters to communicate with victims are non-Bengali. Even male police support is very limited. <Internals\\Government Officials\\Government officials Sonia Ahmed> - § 1 reference coded [5.82% Coverage]	Behavior of families Challenges

		Reference 1 - 5.82% Coverage Q: Do you have any recommendation to solve the challenges? S: To ensure responsibility in taking care of victims and To strong preventive measures.	

			Recommendation
2	Amira Hossain	<Internals\\Government Officials\\Amira Hossain> - § 1 reference coded [89.87% Coverage] Reference 1 - 89.87% Coverage How does your organisation work? A: The main task of the monitoring cell is to monitor all of those grievous cases where conviction can be declared. We monitor all kinds of trafficking cases and keep up to date. We send two reports to the Home Ministry in a month. We don't have any work with foreign countries. We are trained up on trafficking issue. There is no case against government officials. But there are some cases against recruitment agencies. It takes 4/5 years to dispose of the cases. If we consider prior reports, it is true that conviction rate is very low. It is very tough for us to collect information from field/ground level. We have limited manpower to run this cell.	Government response Government shelter home Task of organisation
3	Ashraful Bari	<Internals\\Government Officials\\Ashraful Bari> - § 2 references coded [22.40%	Government response

		Coverage] Reference 1 - 4.89% Coverage Q: What technique are you using to detect trafficking and identify victims of trafficking? S: We use six kinds of charts to investigate trafficking cases and these are – a. Money Flow b. Commodity Flow c. Link Chart d. Activity Chart e. Event Chart f. Chart of Evidence Reference 2 - 17.51% Coverage Q: Have you got any training on human trafficking issue? S: We have 8 Victim support centres. They are all well trained up. UNICEF also gave us training. I have attended training in and outside of Bangladesh. Q: How would you treat them specially child victims at the time of rescue or identification? S: We have separate Manuel and rules to	Government shelter home Task of organisation

		deal with Child victims. NGO of Bangladesh and India are working on that. Q: Do you provide any support and protection to the victims at the time of prosecution? S: We don't have victim protection Act but our new law has some provisions. Q: How you keep up to date about progress of court cases? S: We don't have any responsibility to inform the victims about the progress of their cases. Sometimes, victims don't do compromise. If we perfectly monitor the case, the public prosecutor will be active. Q: How long have you been involved in this kind of work? A: From 2003. <Internals\\Government Officials\\Ashraful Bari> - § 1 reference coded [15.27% Coverage] Reference 1 - 15.27% Coverage Q: Do you have any effective cooperation with NGO's and other countries to tackle human trafficking? A: Mostly, child and female trafficked	

		victims are from land border area. It is quiet tough to control it. We have collaboration with local NGOs and other countries NGOs. But their cooperation is not significant enough as they push their own people in our country. They have mixed up trafficking with illegal migration. They used to send back unwilling victims. Destination countries and border countries don't help to get arrested traffickers rather they have interest to send victims. Individually police officer may be involved in trafficking. When I was working in Immigration police, I have arrested some police officers who were connected with smuggling. Many of them have lost their job after proceeding. <Internals\\Government Officials\\Ashraful Bari> - § 1 reference coded [9.15% Coverage] Reference 1 - 9.15% Coverage Q: Whether the victims cooperate with criminal justice systems? A: One female victim from Middle East came into my room and she was bleeding. I told her to come later on. She was threatened by the traffickers. She has been isolated and pressurized by the local people to compromise the case. There are many	

		trafficking cases pending before the court. After coming back to country, victims do not want to help to run the cases as they and their families receive threat from the criminals. <Internals\\Government Officials\ Ashraful Bari> - § 2 references coded [59.41% Coverage] Reference 1 - 44.14% Coverage Q: Could you please share your experience? A: At the time of creating new Act on trafficking, recruitment agencies made trouble. Still they are against this law. Different hospitals are facilitating organ trafficking. A dead body of boy aged 12 years had been found in the dustbin of hospital and many organs of that boy were missing. Both the investigation and trail were questionable. We asked for reinvestigation but the counter party was so powerful. Organ trafficking cases are meet up through money. There is no law to fight against crime of stealing organ from the dead body. Recently stealing dead body has been increased. Most of the domestic workers who are sent	

		to the Saudi Arabia and other Middle East countries are victims of sexual exploitation. There is no brothel in Saudi Arabia as prostitution is illegal there. Many countries have stopped sending women worker to Saudi Arabia. But Saudi Arabia creates pressure on us. There is a contract between Saudi Arabia and Bangladesh that If Bangladesh sent three women, Saudi Arabia will give one work permit visa for male worker. We rescued one girl and she informed that there are many Bangladeshi Girl in Saudi Arabia. Bangladeshi Embassy doesn't take care about the rights of the labour. They care about recruitment agencies. Recruitment agencies created pressure on our government to sign that treaty. Actually Embassy facilitates traffickers. Victims from Iran and other Middle East countries have been trafficked to reach European countries. Sometimes criminals use Oman as route of trafficking and they torture the victims and claim huge ransoms from their families. We caught agent in Bangladesh through mobile tracking. Mobile financing and technology support this crime also. Embassy doesn't help to	Jointly working , collaboration

		locate the victims. There are about 1000 victims in Iraq. We are also using technology to find out the chain of trafficking. There are many trafficking cases pending before the court. After coming back to country, victims do not want to help to run the cases as they and their families receive threat from the criminals. Criminals have great backings. They are able to stop their cases in the higher court. We don't have any police representative in other countries. Our country is facing problem. Money laundering has close connection with human trafficking. Reference 2 - 15.27% Coverage <Internals\\Government Officials\\ Ashraful Bari> - § 1 reference coded [4.01% Coverage] Reference 1 - 4.01% Coverage Q: How do you think things could be improved? A: To train up the field officers To set up non-conventional investigation system	

		To train up the SP in every ranges. To provide training in outside.	

			Victim's co-operation in criminal justice

			Recommendation
4	Sabina Banu	<Internals\\Government Officials\\ Sabina Banu> - § 1 reference coded [23.35% Coverage] Reference 1 - 23.35% Coverage Q: How does your organisation work? S: Human trafficking is in the schedule	Government response Government shelter home Task of organisation

		crime of CID. Normally investigation period is 30 days but sometimes it extends to 2 years. Some countries help to investigate. Every month we have a meeting on human trafficking at our Home Ministry. NGO helps us more. <Internals\\Government Officials\\Sabina Banu> - § 1 reference coded [27.46% Coverage] Reference 1 - 27.46% Coverage Q: Whether the victims cooperate with criminal justice systems? S: Victims feel shame and hesitate to speak before the society. At first we take their statement. Before coming to the country traffickers took their signature that they were not being tortured. Victims do compromise because of money. When victims are threatened we try to help them. <Internals\\Government Officials\\Sabina Banu> - § 1 reference coded [22.03% Coverage] Reference 1 - 22.03% Coverage : What do you see are the main challenges of this work? S: Traffickers and their groups are so strong. When we file a case against recruitment agencies we remain under pressure.	Victim's co-operation in criminal justice Challenges

		Recruitment agencies give false promises to the victims and they use wrong information about their age. <Internals\\Government Officials\\Sabina Banu> - § 1 reference coded [12.41% Coverage] Reference 1 - 12.41% Coverage Do you have any recommendation? S: We need a special officer in immigration department. Frequent transfer of officers hamper smooth or speedy investigation.	Recommendation
5	Md Fazle Elahi	<Internals\\Government Officials\\ Md Fazle Elahi> - § 1 reference coded [76.83% Coverage] Reference 1 - 76.83% Coverage Could you please tell something about case status of trafficking? M: We haven't yet reached at the root of human trafficking. Every case should be filed with money laundering case. In reality, it doesn't happen. Human trafficking is closely connected with money laundering. We are only taking cases under 270. There is no collaboration in investigation from neighbour and destination countries.	Recommendation