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WOMEN TRAFFICKING FOR SEX PURPOSES IN NEPAL. HOW SOME  
INTERNATIONAL TREATIES HELP AND CONTRIBUTE IN THE COMBAT  
TOWARDS WOMEN TRAFFICKING

ТРГОВИЈА СО ЖЕНИ ЗА СЕКСУАЛНИ ЦЕЛИ ВО НЕПАЛ. КАКО НЕКОИ  
МЕЃУНАРОДНИ ДОГОВОРИ ПОМАГААТ И ПРИДОНЕСУВААТ ВО  
БОРБАТА ПРОТИВ ТРГОВИЈАТА СО ЖЕНИ

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ABSTRACT

Human trafficking is one of the most rapidly increasing world problems and pre-dominant crimes and South East Asia is one of the biggest hubs. Over the past decade, throughout South East Asia, trafficking in women and children received a lot of attention. Nowadays, women are trafficked for lots of purposes and on many ways, but especially for sex exploitation. As one of the least developed countries worldwide, Nepal is especially important in this region because it represents the country of origin for human trafficking, mostly women trafficking for sex exploitation. Due to the period of transition, Nepal has poor handled law regulations and many gaps that should be improved in order to combat sex trafficking. The International law and the relevant bodies continuously help and contribute in fighting against this problem on national and international level. The current efforts, both from Nepal and from the International community aim to build and bring back the basic human rights, improve and strengthen the law regulations, mechanisms and frameworks for protection and legal assistance against human trafficking in sex exploitation. In this paper the focus would be put on the national and international policies and laws, relevant conventions and legislations that deal with this problem. Henceforth, the weaknesses of the legal frameworks would be examined and possible solutions for the future would be outlined. This paper would be divided in three sections, introduction where the problem would be outlined and presented, the main part that includes the relevant laws and violation of rights and in the end comes the conclusion with the possible recommendations for the future. The rationale behind the selection of the topic and this region in particular are due to the political and economic circumstances in this country.

Keywords: Women trafficking, Nepal, sex exploitation, international law, human rights

### АПСТРАКТ

Трговијата со луѓе е еден од најбрзо растечките светски проблеми, а Југоисточна Азија се смета за еден од најголемите центри. Во овој регион денес, особено во последната декада, жените се жртви на различни модели на трговија, а посебно изразена е трговијата за сексуална експлоатација. Непал е една од најмалку развиените земји во светот. Таа претставува земја на потекло на трговијата со луѓе за различна намена, а посебно е нагласена трговијата со жени за сексуална експлоатација. Поради периодот на транзиција, Непал има слаби законски регулативи и празнини кои што треба да се подобрат со цел да се помогне и придонесе во борбата против трговијата со луѓе. Меѓународното право и останатите релевантни тела исто така работат во континуитет во однос на помогање и градење на соодветни механизми за решавање на овој сериозен проблем на национално и интернационално ниво. Тековните напори, како од страна на Непал така и од меѓународната заедница имаат за цел да ги изградат и вратат основните човекови права, да ги подобрат и зајакнат законските регулативи, механизми и рамки за заштита, да дадат правна помош за намалување на трговијата со луѓе и сексуалната експлоатација на жените.

Во овој труд фокусот ќе биде ставен на националните и меѓународните политики и закони, релевантни конвенции и легислативи кои се занимаваат со овој проблем. Понатаму, ќе се проучат слабостите на законската регулатива, ќе бидат дадени и образложени можните решенија за иднината. Овој труд ќе биде поделен во три секции, вовед, каде проблемот ќе биде наведен и презентираан, главниот дел кој ги вклучува релевантните закони и одредена повреда на човековите права, на крајот доаѓа заклучок со можни препораки за во иднина. Причините за изборот на темата и овој регион особено се должи на политичката и економската ситуација во оваа земја.

Клучни зборови: трговија со жени, Непал, сексуална експлоатација, меѓународно право, човекови права.

## INTRODUCTION

Even though Nepal is well-known as the Himalayan paradise, prowling behind the wonderful scenery is the industry of woman trafficking for sex exploitation (sharedhope.org). Although human trafficking happens all around the world, Southeast Asia is known as the prime center for women sexual exploitation (McGregor & McEwing, 2013: 139). Nepal is the poorest country in Southeast Asia where the crime and poverty reign and the woman trafficking for sex exploitation is seen as an increasing concern. In a search for a better life and economic security lots of women are given fake promises for a well -paid work (Doezema, 2004: 230). Every year it is estimated that 5.000 - 15.000 women and girls are trafficked for sex exploitation from Nepal to India, Middle East and worldwide, which makes the problem global (Human trafficking assessment report, 2011: 15). This country is in the process of transition because of the eliminated monarchy system and the trafficking is the priority issue, therefore many efforts are made from the Nepal Government and the International Community through legal assessments, conventions and legislations relevant to human trafficking to combat these vast issues that happen within the country and beyond its borders (Responses to Human Trafficking, 2011: 44). Even though women trafficking for sex purposes is not a new phenomenon in Nepal, it started being discussed from the 1990's (Newman, 2008: 227). Although Nepal is making international commitments, it has also made efforts for implementing international concerns and standards into national policies and laws (National Report on trafficking, 2006/7: xxi)<sup>8\*</sup>. A major concern in terms of human rights in Nepal is the country's delay in establishing a permanent constitution and lacking transitional justice mechanisms (Nepal Human Rights Report, 2013: 1). As the Nepalese law regarding woman trafficking for sex exploitation is deemed insufficient according to international standards, this country has been the subject of a number of international treaties, conventions and declarations for years/decades now (Tameshnie,2010)

Although the situation in Nepal raises different judicial issues, this paper will be focused on one central question: "How the International treaties help and contribute in the combat towards women trafficking". Through the exploration of the major treaties undertaken in the past century this paper will demonstrate the role of international aid in solving this pressing global issue. In order to do so, this paper will shed light on the domestic law of Nepal and the international legal standards that contribute in building protection and prevention. Henceforth, the weaknesses of the legal frameworks and ways how certain problems could

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\*In order not to make confusion, the Roman numerals in the reference are placed as in the National Report 2006/07

be treated in future will be explored. By using normative and analytical methods, this essay will examine the use of the Convention on elimination of all forms of Discrimination against Women 1979 (CeDaW), The United Nations Universal Declaration for Human Rights; SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002, Slavery Convention, 1963. In conclusion, this essay would investigate the possibility of these women taking back the control over their lives and enjoying their basic human rights, as well as explore whether the Nepal and international law are sufficient for combating the trafficking of women for sex exploitation. The rationale behind the selection of the topic and this region in particular are due to the political and economic circumstances in this country.

#### DEFINITION OF WOMAN TRAFFICKING

Under Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations 177 Convention against Transnational Organized Crime, 2000, it is defined that trafficking is “the recruitment, transportation, transfer, harboring or receipt of persons, by means of 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”(Responses to Human Trafficking, 2011: 48). As mentioned in the introduction, the focus of this essay is women trafficking for sex exploitation which includes: “brothel and non-brothel based-sex work and the adult entertainment industry in neighboring India, Middle East, Malaysia, Hong Kong, South Korea and worldwide as well as non-brothel based-sex work within the country” (National Report on trafficking, 2012: 12; National Report on trafficking, 2006/7: 22). In addition, even though the human trafficking covers many groups and activities, The Government of Nepal is putting the focus clearly to the trafficking of women and children in sex exploitation, because the biggest percentage from the girls and women that are trafficked end up in sex prostitution and sex slavery (Chaulagai, 2009). Thus, the importance of and the need for a universal and precise definition of women/human trafficking has been acknowledged by the international community. The main confusion in the existing definition is that there is no strict distinction between the migration, prostitution, mobility and sex work in the trafficking in person category (Kapur and Sanghera, 2000: 15). This is what makes this problem even more challenging and complex.

“Human trafficking especially trafficking in women is an extreme form of human

rights violation as it denies the fundamental rights of mobility, freedom, dignity and integrity of the people". It is also acknowledged by the Nepal Government as a serious crime and violation of humanity and human rights (National Report on trafficking, 2006/7: xvii).

In addition, slavery takes the position of *jus cogens* in the international law which means that is legally binding without a possibility of overriding by states by the means of any other forms of law (Vienna Convention on the Law of Treaties, Art. 53). Slavery is generally accepted as a vast crime to humanity but still not universally defined in the treaties, conventions and agreements. That can possibly lead to confusion for combating modern slavery (Bales & Robbins, 2001: 20).

#### NEPAL'S COMMITMENTS IN INTERNATIONAL TREATIES, CONVENTIONS AND PROTOCOLS

Nepal is one of the countries in Southeast Asia that has a growing number of women trafficked for sexual exploitation frequently in India, the Middle East and beyond. In order to fight against trafficking, prevent and protect human rights of women, Nepal is constantly making commitments in international conferences, protocols and legal treaties. In order to make a better approach towards answering the question, a selection of these commitments will be analyzed. The analysis of these commitments will be conducted with regards to how Nepal can fight against these problems, the protection of victims, the help and role of the International Law and the gaps that should be improved. Thus, this essay will be centered on the important ones: The United Nations Universal Declaration for Human Rights; Declaration on the elimination of violence against Women of 1993 (the Declaration), Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949; Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW), Protocol to Prevent, Suppress and Punish Trafficking in Persons, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984 and many others (National Report on trafficking, 2006/7: xxi, xxiv, xxv). In addition we must mention that even though many international conventions and documents are signed, some of them are still not ratified.

## DOMESTIC LAW OF NEPAL

In order to grasp the problem better, understand and answer the given question, it is essential to take a look and analyze the domestic law of Nepal. Nepal has an Interim Constitution, 2007 that promises the basic human rights of its citizens like freedom, equality, freedom from human trafficking, slavery, exploitation, forced labor, prevention of discrimination of women etc. In the Article 29 it is placed the prohibition of all forms of trafficking against human beings. (Responses to Human Trafficking, 2011: 44, 45; Nepal human trafficking assessment, 2011: 29). Three domestic laws also exist concerning girl trafficking and forced child labor. These include: the Labor Act of 1992, the Human Trafficking Control Act of Nepal of 1986, and the National Human Rights Commission Act of 1993 (Tameshnie, 2010). Therefore, it is estimated that these legal instruments can contribute in the agenda of addressing and helping victims. The Human Trafficking and Transportation (Control) Act though it is gender neutral and strongly prohibits the internal and international trafficking, it has many gaps in practice as many observed (Human Trafficking Assessment Report, 2011: 2).

Nepal has still not signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (Nepal human trafficking assessment, 2011, pg. 27). Additionally, the Country Code Muluki Ain contains a special part on human trafficking in persons which is critiqued for lack of adequacy (Report on Anti-Human Trafficking, 2013: 3). The National Human Rights Commission (NHRC), the National Women Commission, Nepalese Ministry of Women and Social Welfare deal with issues especially related with trafficking of women and children in sex exploitation and actively make action plans and national reports on a yearly basis.

## WEAKNESSES IN THE LEGAL FRAMEWORKS AND HUMAN RIGHTS INSTRUMENTS FOR WOMEN TRAFFICKING IN NEPAL

It is evident that Nepal has signed and ratified numerous relevant international legal instruments that have the idea of preventing, suppressing and punishing human trafficking. It has applied international rights and obligations in the domestic law but there are still additional measures to be implemented so the enjoyment of human rights, keeping out human trafficking, especially women in sex exploitation can be guaranteed. Moreover, the history, culture, politics and the economy factors directly affect how laws are perceived and implemented and the trafficking in South Asia and Nepal in this case is deeply rooted in the society (Chaulagai, 2009: 17). The Human trafficking problems increased fast throughout the so called Panchayat period (1960-1990) in Nepal because of mistreatment of the political

power (Chaulagai, 2009: 13). However, the duty of guaranteed human rights stands in both international law as well as customary international law. Hence, it has been suggested for Nepal to implement the international rights in the national law (International Commission of Jurists, 2013: 25). Nepal was placed on the Tier 2 in 2011 and even though there are efforts to control and combat trafficking on national and international level, the problems still remain. This essay will examine the gaps and illustrate a case in order to show where Nepal fails to prevent and react (TIP, 2011). It is important to stress that trafficking is a human rights problem (FWLD and UNIFEM, 2005: 21-20). One of the biggest problems that occur is that there is no concrete division made in the law documents between trafficking of women and children. It is argued that "the definitions of women trafficking should comprise the component of deception and/or coercion or the absence of informed consent" (Trafficking and Human Rights in Nepal, 2001: 3). Moreover, the reforms in the well explained more precise definition would help in addressing the problems better and more efficient.

#### Case study

Goma, is a 25 year old and she says: "I don't know what the motive was behind my trafficking, but when I heard that I was sold to a brothel, and the brothel owner forced me for sexual exploitation then I became sure that I was trafficked for prostitution". This girl was forced to work and had high restrictions for going out. She was told by a woman that she needs to prepare for the prostitution and that she must do the work, so she broke down in tears refusing to do so. She did not have a choice. She was bought for 50,000 Indian currencies and if she wanted to be released from the brothel she must return the money and that was impossible. Her first contact was with an NGO that helped her and gave support services. This is a shortened story of a woman trafficked for prostitution In India. The Nepalese women are often HIV infected and that makes them even more marginalized in the Nepalese society (Chaulagai, 2009: 62).

#### Relevant Laws and Violations of rights

First of all, it can be noticed that Goma's basic rights were violated. Under Article 1 of the Universal Declaration of Human Rights it is clearly stated: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". Article 3, that guarantees the right to life and liberty, and Article 4 that prohibits any form of slavery (UNDHR, Article, 1,3,4,) have also been violated. In Goma's case, she was restricted all these rights, her liberty and dignity, the right to life and she was held in slavery for sex work and served in a brothel which means

her basic rights were denied. Not only this case, but also many other girls experience gross human rights violations, physical and psychological abuses, threats and torture.

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

In addition, Goma also has the right for free choice for profession and employment, the right for protection of the health Under the Articles 11(c) and 12 (FWLD and UNIFEM, 2005: 13) from the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In this Convention, "without reservation, recognition of the concept of land and resource rights for women, granting them a separate legal status or degree of autonomy is not seen in practice". There are still cases that happen to be ignored and unresolved. As stated in the CEDAW the challenges that remain unresolved, such as the case of Goma "are considered to be failure of the authorities to respond to criminal cases in the manner prescribed by law, including through the resort to 'mediation' processes outside the criminal justice system". In the report for CEDAW, Nepal has also stressed "that there is still absence of comprehensive legal framework and integrated response for the victims..." (Nepal's Implementation Status on CEDAW, 2011: 8). Moreover, the continuous discrimination against women makes them more vulnerable to trafficking. According to Newman (2008: 234), in order to satisfy the international obligations, to protect women and prevent sex trafficking, the discriminatory laws should be modified.

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for prostitution 2002

This is a Convention where the Southeast Asian Association for Regional Cooperation agreed that "the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honor of human beings and is a violation of basic human rights"; They also recalled "the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women" (SAARC, 2002). However, the weakness in this Convention is that it does not have a wide definition of trafficking in relation to prostitution and ignores the importance of locating the country that should go through some prevention, rehabilitation and rescuing the victims and the responsibilities of the certain country where the victims come from (FWLD and UNIFEM, 2005: 19). In this case, Goma did not experienced appropriate treatment from both countries. In addition, the friendly relations between India and Nepal and the Peace Treaty guaranty for equal treatment



of the citizens (Newman, 2008: 242). Furthermore, in the treaties between Nepal and India the procedures for the regulation of the concept of the border between them have not been discussed. That can produce additional problems because particular sexual activities that are prohibited in Nepal may be permissible in India. This kind of incompatibilities can negatively affect the fight against women trafficking, allowing the traffickers liberty to operate. Therefore, universal international law between these countries is deemed as essential (Tameshnie, 2010). The Government of Nepal in collaboration with the countries in the region and with the help of the International community and organizations should commit in appropriate aid of the victims and suitable penalties for the traffickers.

#### Other laws and documents

In continuation, it should be added that the Article 13 of the Constitution contains the right to equality for all citizens by stating that: "All citizens are equal before the law. No person can be denied the equal protection of laws. No discrimination can be made against sex" (Interim Constitution, Article 13). It is also guaranteed that "Traffic in human beings, slavery, serfdom or forced labors in any form are prohibited by article 29 of the Constitution." In the Treaty Act 1991 ratified by the Parliament of Nepal in Article 9 it is explicitly stated that "it recognizes all international human rights mechanisms to which Nepal is a state party as national law" (Newman, 2008: 242). In all these articles that I mentioned, we can notice that the human trafficking is an immense violation of the human rights, and that these articles are superseding the domestic law. The human trafficking crime is controlled also from HTTCA and the Chapter on Human Trafficking of the Country Code and some of the provisions from these two laws collide and cause confusion (UNFPA, 2013: 77). Moreover, UN has concluded that women are considered as less valued in Nepal, living in a patriarchic social order, they are subordinated to men in a manner of knowledge, economic resources, and autonomy in decision making, as well as restricted overall opportunities. Therefore, many studies show that the reasons for the trafficking of women and girls are the low cultural and economic status (Tameshnie, 2010). In addition, in the Human Trafficking Control Act of 1986 it is stated that: "transporting a person to a foreign country with the intention of selling and forcing a woman into prostitution are offences punishable with imprisonment for up to 20 years". The Conventions for the Suppression of the Traffic in Persons and the Elimination of All Forms of Discrimination against Women require that the countries that signed these Conventions need to make certain efforts for defeating the trafficking in women sex exploitation. Nevertheless, it doesn't requires the State to eliminate prostitution (Kapur and Sanghera, 2000: 1,3,4).

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children helps accomplishing in the national legislation, standardizing national laws and harmonizing regional legislation for combating trafficking in women and children (FWLD and UNIFEM, 2005). Goma's case is one of many stories that are common for Nepalese women. Every year, some of them manage to save their lives but others don't. The fast growing sex industry especially in India makes the Nepalese girls and women exposed and vulnerable to trafficking and sex exploitation, while their basic human rights are being violated. It is argued that certain traditional systems like "Deuki, Jhuma and Badi"(in general they discriminate women) in Nepal also contributed to the promotion of women's trafficking. It is important to mention that in the Southeast Asia including Nepal, women are discriminated by being treated like second class citizens. "Women trafficking is recognized as the result of socio-cultural structures, gender roles and in particular gendered power differentials, poverty and lack of economic opportunities. Generally, economic status and gender inequality are the underlying factors of trafficking in Nepal" (Chaulagai, 2009: 4, 13). Even though the victims of trafficking for sexual exploitation are protected by many international and national legal provisions, there are still many measures that should be strengthened (Responses in Human Trafficking, 2011: 54,55). As part of all these treaties and conventions that were mentioned above, Nepal must collaborate internationally, regionally and bilaterally and fight against the women sex exploitation.

#### POSSIBLE SOLUTIONS AND RECOMMENDATIONS, WHAT CAN BE DONE IN FUTURE?

It is undeniably true that the Government of Nepal is making efforts in the combat against women trafficking for sex exploitation. Indeed, well-structured policies have been created, but good mechanisms for implementing the national and international commitments as well as institutionalized reporting system are lacking (Joshi, 2010). In order to help Nepal build a better, qualitative mechanisms and anti-trafficking policies, there are many recommendations and initiatives that are given from the international community and relevant NGO's. The most pressing issue in the Nepalese community is the way women are treated, as they are stigmatized and their reintegration in the society after being trafficked for sex exploitation is seen as dishonorable. (Chaulagai, 2010: 20). This is considered as a crucial challenge for the fight against women trafficking. As a possible solution, making "gender sensitive programs" and changing the discriminatory laws is considered as a good start (Chaulagai,

2010: 93).

Even though there are many action plans and laws that are targeting this particular problem, the positive outcomes remain poor because of numerous reasons. The transition period of this country plays a big role together with the fragile political and economic situation. The potential remedies as recommended by the UNODC, UN Women and UN GIFT include the following: law enforcement and building stronger international cooperation for women trafficking with shared legal assistance. Bilateral agreements and raising the awareness of the citizens should also be established. Moreover, "cases must be taken up in designated courts", "trafficking must be seen as an organized crime in criminal procedure and substantive criminal law". What is more, the UNTOC and the Protocols should be ratified for complete legal frameworks (Responses in Human Trafficking, 2011: 55).

The Government of Nepal, according to the last report from the US Department of State was not fully engaged in the efforts for helping the victims. In addition, they warned that Nepal prohibits not all forms of trafficking in persons from the 2007 Human Trafficking and Transportation (Control) Act (HTTCA) and the 2008 Regulation. "While the HTTCA criminalizes slavery, bonded labor, and the buying and selling of a person, it does not criminalize the recruitment, transportation, harboring, or receipt of persons by force, fraud, or coercion for the purpose of forced labor or services" (TIP, 2013). Thus, despite the generally strong legal framework and mechanisms, their implementation remains weak. Because of the reasons outlined throughout this essay, the patriarchal society and the perception for women as second class citizens, many cases are "solved" as compromise that is imposed from the society, reaching non court decisions to avoid suffering and stigma (UNFPA, 2013: 40).

## CONCLUSION

Even though Nepal is in a fragile transition period and many factors like poverty and patriarchal society affect this situation, the Government of Nepal is giving a high priority to the problem of women trafficking for sex exploitation and human trafficking in general. Simultaneously, this problem is the main focus of many International agencies and UN bodies (Report on Anti-Human Trafficking, 2013: 1,2). With regards to the central question, this essay managed to successfully outline and discuss the efficiency of the international aid in Nepal. Although there are many International Conventions and Treaties that were signed, ratified and applied, this essay asserts that the victims are still here, many of them not having the opportunity to enjoy their basic human rights. As many argued, there are no effective legal

and practical measures adopted in order to protect the violence against women in this case of sexual exploitation. The possible legal solutions can be only provided by strengthening the domestic law and building anti trafficking policies that for now are poorly handled. Moreover, this analysis confirms that “the problem is that if there is no real commitment to implement the laws or no increase of international pressure, then trafficking in women will continue to be on the increase”. The problem is global, so it cannot be treated only on national level (UNIFEM and FWLD, 2013: 111). In addition, this essay suggests that even more pressing issue is the question whether victims of trafficking for sex exploitation can be reintegrated in their societies again. Unfortunately, many of the victims complain about their status in the society, unable to restore their social status as a consequence of many affecting factors such as beating, trafficking and sexual harassment (UNFPA,2013: 58). This is a long standing problem in Nepal and will remain prevalent unless the recommended measures are implemented. Once these effective law changes and action plans are made, it will bring positive improvement.

Abbreviations:

- CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984  
CEDAW Convention on the Elimination of All Forms of Discrimination Against Women 1979  
HTTCA Human Trafficking and Transportation (Control) Act  
MoWCSW Nepalese Ministry of Women and Social Welfare  
NHRC The National Human Rights Commission  
SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002  
UNDHR The United Nations Universal Declaration for Human Rights

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