



**9th SAARC Chief Justices' Conference
&
12th SAARCLAW Conference**

**Child Protection and Constitutionalism
*"Securing the Future"***

**24th – 26th May 2013
Thimphu, Bhutan**

SUMMARY REPORT



**Hosted by the Royal Court of Justice, Bhutan
Organized by the SAARCLAW Bhutan Chapter
&
The SAIEVAC Regional Secretariat
Supported by Plan International**

9th SAARC Chief Justices' Conference & 12th SAARCLAW Conference “*Child Protection and Constitutionalism - Securing the Future*”

Summary Report

Background and Context

Building upon a unique opportunity which took place during the previous SAARCLAW Conference held in Bhutan in 2012, where Dr. Rinchen Chopel, the Director General of the South Asia Initiative to End Violence Against Children (SAIEVAC) was invited to attend and present a brief overview on SAIEVAC's work in the region, the 2013 conference has evolved into a full-fledged partnership.

The 9th SAARC Chief Justices' Conference and the 12th SAARCLAW Conference held from the 24-26th of May 2013 in Thimphu, hosted by the Royal Court of Justice, organized in collaboration between SAARCLAW and SAIEVAC, and supported by Plan International and South Asia Coordination Group (SACG), represents both an innovative partnership and a landmark learning event. The Conference with the theme “**Child Protection and Constitutionalism – Securing the Future**”, was attended by over 250 delegates consisting of the Chief Justices members of the judicial, legal fraternity and law students from the SAARC Member States, besides members of SAIEVAC's extensive partner network, including international experts, regional partners and children themselves, to explore and further address continued challenges and close existing gaps related to realizing children's rights to secure the rights of the children of South Asia.

The overarching aim and purpose of the Conference was to:

Provide an opportunity to further strengthen linkages between partners (e.g. SAARCLAW, SAIEVAC and Chief Justices) and generate additional actions to create greater momentum in working together to address legal dimensions and reform – as well as stimulate greater involvement of both government and judiciary – in democratic processes, strengthening judiciary and legal systems and in protecting children of the South Asia region.

The Conference objectives also included the following:

- *Strengthen the understanding/awareness about the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution;*
- *Strengthen Regional / Trilateral linkages of state service providers on the issue of repatriation and reintegration of traffic victims; and,*
- *Strengthen institutional capacity of the SAIEVAC Secretariat to achieve its mission and goals through implementation of the work-plan in fostering collaboration with key partners.*

The Conference had the following Expected Outcomes:

- *Mapping of current/existing legal provisions related to child protection in order to identify gaps and*

challenges and strategies to address initiated or begun;

- *Orient and update on Sexual Abuse and Exploitation, Trafficking/Missing Child Alert provided to SAARCLAW participants;*
- *Existing legal frameworks reviewed and opportunities identified opportunities for harmonization with Child Marriage standards in the region; and,*
- *Existing legal framework for Corporal Punishment reviewed and further regional and national actions identified for future engagement and work.*

Inaugural Session – 24th May 2013

Justice Tshering Wangchuk, President of SAARCLAW Bhutan, initiated the proceedings of the Inaugural Ceremony by extending a warm and hearty welcome to all the distinguished delegates. He stated that SAARCLAW, which was established in 1991, continues with the same spirit and purpose in providing opportunities for interaction and exchange of ideas. He also elaborated that conferences such as this would serve as a platform to understand and further explore values and aspirations, which are invaluable for both appreciating present achievements as well as planning for the future.

Mr. Hemant Batra, the Secretary General of SAARCLAW also offered a very warm welcome to the right hon'ble Chief Justices of SAARC Member States and other distinguished delegates and the guests from the Royal Government of Bhutan. He said that under the most dynamic leadership of the Hon'ble Chief Justice of Bhutan as the President of SAARCLAW, much has been achieved in recent years. He also expressed his appreciation to Dr. Rinchen Chopel, the Director General of SAIEVAC for coming forward to collaborate with SAARCLAW to showcase the focus on Child Protection.

H.E Lyonpo Sonam Tobgye, The Chief Advisor of the Interim Government of Bhutan, as the Chief Guest for the event extended a very warm welcome to all the delegates. He highlighted that the SAARCLAW as a regional institution has taken on a vital role for social and economic development contributing to the core, structural, constitutional and institutional values of South Asian legal systems. He emphasized the need for understanding the dynamism of both the regional and global scenario and to realize that it is critical to remain adaptive and implement proactive measures related to pressing concerns and issues within this changing context.

The Hon'ble Chief Guest expressed his most sincere appreciation and gratitude to all the Chief Justices for their most august presence in this most important landmark conference. He extended a special welcome to the delegation from Afghanistan led by Chief Justice Abdul Salam Azimi who was in attendance for the first time.

Following his Inaugural Address the Hon'ble Chief Guest released the Report of the Trilateral Convention of Stakeholders on the Missing Child Alert System, jointly produced by SAIEVAC and Plan International. **He also released the**

Following this, the Chief Justices' delivered their keynote addresses highlighting the following issues and concerns:

Chief Justice of Afghanistan, Hon'ble Abdul Salam Azimi, who spoke on “Observing the Rights of Delinquent Juveniles in the Justice System of Afghanistan” and provided a review of existing legislation and its application with regard to children in conflict with the law. He also highlighted continued challenges due to the continued conflict in the country but reaffirmed the Government's commitment in working to protect children in this context.

Chief Justice of Bangladesh, Hon'ble Md. Muzammel Hossain, highlighted that Bangladesh was one of the earliest signatories to the CRC and discussed juvenile justice reform along with new national social policies related to care models for children in conflict with the law.

Chief Justice of India, Hon'ble Altamas Kabir, made a presentation entitled, “Child Protection and Constitutionalism” which discussed the vulnerability of children and reviewed international Conventions and India's application of these along with recommendations for improvement.

Chief Justice of the Maldives, Hon'ble Faiz Ahmed Hussain, reviewed articles within the country's Constitution related to child protection and the introduction of new legislation in support of care and protection for children in the country.

Acting Chief Justice of Nepal, Hon'ble Damodar Prasad Sharma, delivered an address which highlighted the judiciary's eagerness to uphold Constitutional responsibilities and that child protection was a core concern in the region for all.

Chief Justice of Sri Lanka, Honorable Mohan Peiris (NEED THIS!)

Judge Pelden Wangmo, Secretary General of SAARCLAW Bhutan offered the Vote of Thanks

Opening of Conference Working Sessions - Saturday, 25th May 2013

Working Sessions for the Conference explored a number of thematic areas through panel discussions and a variety of presentations executed through plenary as well as through concurrent sessions.

The Sessions were preceded by opening remarks from **Dr. Rinchen Chopel, Director General, SAIEVAC**, and **Mr. Mark Pierce, Regional Director, Plan International, Asia Regional Office – Bangkok**. In his statement, Dr. Chopel emphasized that such a historical collaboration which brings together all the Chief Justices (attending from Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal and Sri Lanka) from South Asia together with the wider SAARCLAW community will contribute to strengthening fulfillment of duty-bearer's roles and responsibilities as related to Member States commitment to children. While Mr. Mark Pierce emphasized the importance of the event as a means to reinforce formal cooperation between the two apex bodies of SAARC (SAIEVAC and SAARCLAW) and join forces to combat priority issues of child protection in South Asia - Child Marriage, Corporal Punishment, Child Labor, Child Sexual Abuse and Child Trafficking. Additionally, Mr. Pierce called to attention the fact that social problems do not exist in isolation and that each problem has its roots in different kinds of violations of universal human rights, which are indivisible. Poverty, lack of education, lack of livelihood, illiteracy, unsafe migration and different forms of discriminations are intrinsically linked with each other, Mr. Pierce went on to explain, and therefore, a holistic, integrated approach must be at the core of every intervention that aims to address barriers in the realization of children's rights.

Thematic Area:

Child Protection Issues and Challenges in South Asia Mapping of Legal Provisions Related to Child Protection with special focus on Sexual Abuse / Exploitation, Trafficking and Missing Children.

Chairpersons:

Mr. Mehmood Y. Mandviwalla, Pakistan

Dr. Rinchen Chopel – Director General, SAIEVAC, Kathmandu, Nepal

Technical Referral:

Mr. Rasa Sekulovic, Regional Advisor, Child Protection, Plan International, Asia Regional Office – Bangkok, Thailand and Mr. Ron Pouwels, Regional Child Protection Chief, UNICEF Regional Office for South Asia (ROSA), Kathmandu, Nepal

Technical Presentations -

Ms. Roshni Sen, Indian Administrative Service (IAS), Secretary, Department of Social Welfare, Women and Child Development, Government of West Bengal opened with the presentation, “Legal Prevention Recommendations to Protection in India: Gaps and Challenges” where she highlighted that more than half a billion children live in SAARC countries with India being home to almost 19% of the world’s children. She went on to describe vulnerable children within the Indian context and monitoring activities at national, regional and international levels while also describing major gaps in India’s legislative framework.

Ms. Malati Das, President, LAWASIA, spoke on “LAWASIA’s Initiatives in the Promotion of Rights of Children in Asia” and provided information related to LAWASIA’s history, membership and engagement with various UN agencies. Her presentation also highlighted work related to promotion of children’s rights and the organization of Children and Law Conferences and the development of LAWASIA’s Declaration on Children’s Rights.

Mr. Avishkar Singhvi, Advocate, Supreme Court of India, addressed, “Mapping of Current / Existing Legal Provisions Related to Child Protection: Gaps and Challenges”. Highlighting that laws in abstract cannot realize child protection, he went on to elaborate the need for services, community action, strengthening of home protection practices as part of a holistic approach as well as addressing capacity building for police and other professionals who engage with children in conflict with the law.

Mr. Balaji Harish Iyer, 3rd year law student from the National Law University Delhi, delivered, “Analysis of Existing Legal Framework on Trafficking for Commercial Sex Exploitation of Children (CSEC)” presenting a regional scenario and reasons for this, reviewed existing legal frameworks including SAARC Conventions and discussed prevention options including the need for rehabilitation of trafficking victims.

Ms. Alipha Khan, Law Student from Bangladesh, presented “Ensuring the Protection of Children in Bangladesh” and **Mr. Russel Haque, Law Student in International and Comparative Law from Bangladesh**, delivered his paper entitled, “Sexual Abuse and Exploitation: Trafficking / Missing Child Alert – A Bangladesh Perspective” which discussed the current situation, reasons or causes and provided specific recommendations for the government, the judiciary and the police.

The final morning presentation was made by **Mr. Ashish Damle, Regional Project Manager, MCA, Plan International, Dhaka, Bangladesh**, who spoke on the positive use of technology to recover children who have gone missing but also on the growing negative dimensions and the need to enact legislation that protects children in both the actual and virtual world.

Thematic Area:

Defining and Addressing Harmful Practices Affecting Children based on Tradition, Culture, Religion and Superstition

Technical Presentation -

Mr. Rasa Sekulovic, Regional Advisor, Child Protection, Plan International – Asia Regional Office, presented an excellent overview on “Defining and Addressing Harmful Practices Affecting Children based on Tradition, Culture, Religion and Superstition.” Highlighting the global technical consultation, which took in Africa in 2012 and plans for a regional Technical Consultation to be held in South Asia in September 2013, the presentation provided definitions, background and areas for action as a foundation in exploring this complex topic.

Concluding Observations and Way Forward

Mr. Ron Pouwels, Regional Child Protection Advisor, UNICEF ROSA, summarized session findings, conclusions and recommendations highlighting that presentations elaborated progress and achievements while also identifying the need for further harmonization of laws and continued efforts required to addressing gaps through proposed strategies or solutions. He also mentioned that many of the presentations also reinforced the served significance and importance of the Convention on the Rights of the Child (CRC) which has been ratified by all countries in the South Asia region and the fact that the region cannot afford to deny the existence of violence against children, and the need to also address social tolerance of it while listing out a number of key follow-up recommendations.

Working Sessions – Sunday, 26 May 2013

Thematic Area:

Physical and Humiliating Punishment (Corporal Punishment) – Current Legal Settings and Challenges, Regional and National Actions for Achieving Exclusive Ban in South Asia

Chairpersons:

Dr. Amber Pant, Vice-President, SAARCLAW

Mr. Peter Newell, Global Initiative to End Corporal Punishment, London, UK

Technical Presentations -

Dr. Ranbir Singh, Vice-Chancellor, National Law University of Delhi, presented, “Corporal Punishment to Children and Human Rights”, which reviewed major events related to child rights in India and Constitutional provisions along with law related to Corporal Punishment and proposals for reforming these.

Mr. Laxman Belbase, Regional Advisor on Gender and Masculinities, Save the Children – Asia, Kathmandu, Nepal made a presentation on “Prohibiting and Eliminating Corporal Punishment and Other Cruel and Degrading Forms of Punishment of Children” which explored the definition of Corporal Punishment, SAARC Conventions related to this, perspectives from South Asian children, prohibition and elimination and country status on this and the final push needed for banning all forms.

Mr. Babu Mathew, Faculty Member, National Law University Delhi (NEED THIS!)

Concluding Observations and Way Forward

Mr. Peter Newell, from the Global Initiative to End Corporal Punishment, highlighted that first of all he felt it was important to say that corporal punishment is not just a regional or South Asian issue but that violence against children is common in all regions and globally. And that despite claims from people of all regions that corporal punishment is part of parenting culture, it is our job - through awareness raising, education, further legislation and partnership engagement - to address and change this. **Dr. Pant** also commented that each South Asia country has proposed laws for improvements against corporal punishment but that improvement of existing laws is not enough; there is also need for specialized laws banning corporal punishment and by doing this we will fulfill our commitment and also comply with our obligations. And in conclusion, mentioned that the time has come to improve laws and to also rethink roles and legal actions to make legal reform more active – transforming into actual actions while at the same time changing people’s perspectives in order for laws to become effective and that legislative education should address and ensure that people are sensitized and aware.

Thematic Area:

Child Marriage, Child Rights and Legal Aid in India, Constitutional Guarantees to Children of SAARC and Judicial Action, and Child Labor

Chairpersons:

Justice Kalyan Shrestha, Supreme Court, Kathmandu, Nepal

Ms. Bhagyashri Dengle, Country Director, Plan India

Opening Remarks

Country Director, Plan International India, Ms. Bhagyashri Dengle opened the session by highlighting that child marriage continues to be one of South Asia’s most pressing problems. She highlighted that in Asia 46% of girls are married before the age of 18 and that it is the most prevalent and serious Child Rights violation of our region and contributes to series deprivations and consequences related to health, development, education and well-being of girls in the region. She further reiterated that research and studies have also shown that girls who marry before age 18 are twice as likely to experience violence at home from either their husbands or families.

Technical Presentations -

Dr. Bharti, Assistant Professor, National Law University Delhi (NEED THIS).

Ms. Isha Mehta, 4th Year, BA, LLB, University Institute of Legal Studies, Punjab University, Chandigarh, spoke on “Law Against Child Marriage” where she reviewed existing legislation on child marriage across the region and efforts to combat this.

Ms. Yashita Munjal, Final Year Student, Faculty of Law, University of Delhi, delivered her presentation entitled, “The “Wanted” Child – Identifying the Gaps and Challenges In Commercial Surrogacy in India”, which explored gaps and pending issues related to this emerging issue based on rights of the surrogate mother, “donors”, commissioning couples or intended parents and the best of interest of the child.

Ms. Roshni Gurung, from the Nepal Law Campus, Mr. Subin Lal Mulmi and Mr. Harish Prashad Bhatta, both from the Kathmandu School of Law, delivered a joint presentation on “Child Labor in Nepal: Law and Reality”, which explored forms of child labor, civil code and national laws on child labor and Government plans and initiatives.

Ms. Sapana Pradhan Malla, Secretary General, SAARCLAW Nepal made a presentation on: NEED THIS!

Final presentations were given by Law Students from Bangladesh, **Ms. Kaniz Fatema,** who’s paper was entitled, “Legal Framework for Child Marriage” highlighting the country’s high rate and consequences of this both direct and indirect and **Mr. Rizwan Mannan,** who presented on “Child Labor: Judiciary Must Serve as an Effective Branch of Social Service”, which discussed legal frameworks in Bangladesh, judiciary implementation and social responsibilities.

Concluding Observations and Way Forward

Justice Kalyan Shrestha stated that when reflecting upon the conference and issues related to child protection, it is easy to see that countries are neatly connected. He congratulated Bhutan for bringing out these connections between the various countries and child protection and appreciated SAIEVAC as an excellent partner in the bid for human rights. He also mentioned that when we consider violence suffered by children, what they are really suffering is injustice and these have been going together for a long time and now it is the time to halt it.

He also highlighted that when we discuss constitutions, the future of our constitutions lies in the hands of children and if children face injustice, there will be no support or positive engagement or connection. And finally, he shared recommendations related to the following: development of a regional resolution or regional framework to guide actions and a law mechanism at the regional level to address problems of a cross-border nature, need to further share or exchange information, human and financial resources at the regional level, also a collection of best practices.

Valedictory Session – Closing Programme – Sunday, 26th May 2013

Chief Justices' Recommendations – The Thimphu Declaration

Closing remarks were provided by **Mr. Hemant Batra, Secretary General, SAARCLAW**, who highlighted that in keeping up with the theme of this conference – Child Protection and Constitutionalism – Securing the Future – there are two dimensions and we can definitely see the bridge between the two as they are closely connected. Furthermore, as an outcome from conference activities, a list of recommendations has been generated by the Chief Justices' and these now form "The Thimphu Declaration" (which is included as an annex to the fuller report document) which highlights commitment to further support the development of child protection systems (including juvenile justice systems and structures, provision of adequate rehabilitation measures for children in conflict with the law, further sensitizing and increasing awareness across multiple levels of society) and to institutionalize the SAARCLAW Chief Justices' Conference ensuring that it is held annually.

SAIEVAC – SAARCLAW Recommendations

Additionally, **Dr. Rinchen Chopel, Director General, SAIEVAC**, in closing also provided thanks to the Chief Justices' and reiterated that through their engagement, we have created history in South Asia. We now count on the Chief Justices' – as enshrined in their declaration – to take forward this commitment and help us make a difference for the children of South Asia. In addition, he shared the following recommendations related to keeping the SAIEVAC – SAARCLAW partnership strong and to serve as guidelines for future and continued collaboration:

- There is need to complete a comprehensive mapping exercise of existing legal framework for child rights and protection in South Asia – identifying both gaps and challenges, opportunities for harmonization in relation to international instruments, norms and standards;
- Need to ensure a proper mechanism to monitor implementation of actions by the judiciary in order to ensure activation of laws and legislation (and contribute to further strengthening of this) related to child protection;
- The issue of missing children is an area of great concern for South Asia and there is a pressing need to undertake a review with special reference to technology and crimes in cyberspace so that children can be protected in both actual and virtual world.
- Countries in South Asia should move to fulfill their commitments to explicitly prohibit the legal and socio-cultural acceptance of physical and humiliating punishment of children in the region - each country should develop / implement a plan on moving from prohibition to elimination of physical and humiliating punishment of children in all settings;
- Need to develop an action plan which moves from "one-off" or ad hoc activities to continuous and inter-related actions around child protection issues for the region;
- With regard to Child Marriage, Child Labor and protection for children, during the conference, these issues are often deeply rooted in poverty and affecting marginalized communities so the need for wider partnerships and additional action which complements the passing of legislation is also required and we hope that this is also an area we can work together to address;

- Cross-national partnerships are also of highest importance for regional learning, sharing of best practices and for sourcing expertise at the regional level and this can be done through conferences such as this and other means;
- We also call for SAIEVAC and SAARCLAW to expand and further strengthen their partnership into a meaningful commitment in order to address issues together and also be able to report tangible progress at our next gathering / meeting.

In closing he reaffirmed commitment and support to provide assistance in order to implement and address the recommendations. He thanked the President of SAARCLAW, the Chief Advisor of the Interim Government for the opportunity provided to collaborate in this momentous event. He also thanked the by the South Asia Coordination Group (SACG) and in particular Plan and SAVE for the support. He also extended a special thanks to the Child Governing Board Members from Afghanistan and Bangladesh and to all others who contributed to and been part of the conference experience over the last two days. He offered a very special appreciation to the Royal Court of Justice Bhutan for their most dedicated support to host the conference with such success.

Valedictory Closing Address

Justice Tshering Wangchuk, Hon'able President, SAARCLAW Bhutan, delivered the Valedictory Closing Address, once again highlighting the very important nature of the event. He expressed his thanks and appreciation to the presenters, speakers, chairpersons and technical experts who provided many excellent suggestions and recommendations. He also disclosed his confidence that these recommendations will not only be implemented but also serve as the basis for national policy development, decision-making and court-related verdicts. In closing, quoting a figure from the animated movie, Kung Fu Panda, requested that Conference participants and delegates demand from themselves the same distinction in body politic – in the professions that we practice, in the leadership of our nations and in the fulfilling of needs and aspirations of the people of South Asia.

Vote of Thanks

Judge Pelden Wangmo, SAARCLAW Bhutan provided the Vote of Thanks. She acknowledged and thanked all the Hon'ble Chief Justices and international delegates who travelled to attend the Conference and for their passion and commitment which has made the Conference a success. She also thanked SAARCLAW's partner for the seminar, Dr. Rinchen Chopel, Director General, SAIEVAC and his team for their collaboration. Thanks were also given to the Ministry of Foreign Affairs, The Royal Bhutan Police, the Department of National Properties, Ministry of Health, Druk Air, the Immigration Division, and staff of the Convention Centre and Chef Kesang for the wonderful food and the media for covering the event.

She also expressed a sincere gratitude to all the Justices, Judges, Registrar Generals and officers of the Royal Courts of Justice and organizations and individuals whose names cannot be mentioned for logistical support.

In closing, she highlighted deepest gratitude to the Hon'ble Lyonpo Sonam Tobgye, President of SAARCLAW and Chief Advisor of the Interim Government of Bhutan, for his leadership.