

TRAFFICKING IN WOMEN AND CHILDREN

Report of the Human Rights Commission of Malaysia (SUHAKAM)

KUALA LUMPUR, MALAYSIA



LEVEL 29, MENARA TUN RAZAK, JALAN RAJA LAUT
50350 KUALA LUMPUR, MALAYSIA
603-2612 5600 (T)
603-2612 5620 (F)
humanrights@suhakam.org.my (E)

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SURUHANJAYA HAK ASASI MANUSIA MALAYSIA/
HUMAN RIGHTS COMMISSION OF MALAYSIA
Tingkat 29, Menara Tun Razak,
Jalan Raja Laut, 50350 Kuala Lumpur,
E-mel: humanrights@suhakam.org.my
URL: <http://www.suhakam.org.my>

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No. 12, Jalan 4/118C,
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E-mel: phjantan@yahoo.com

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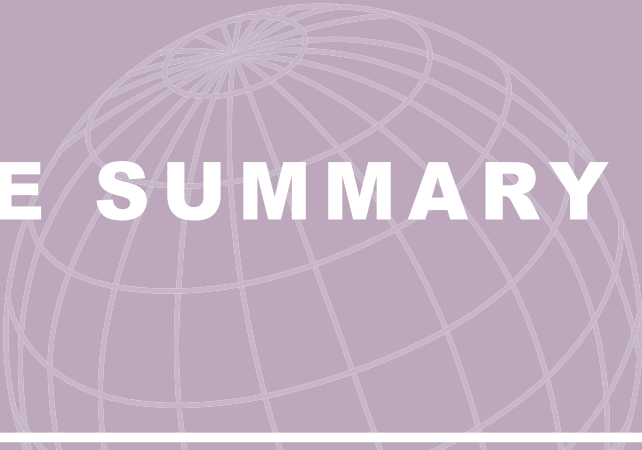
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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

INTRODUCTION

On one of its visits to the Kajang Women s Prison in January 2003, SUHAKAM observed a large number of foreign nationals, mainly young girls, in remand in the prison. During the conversations with some of these girls, SUHAKAM found that many of these girls were tricked and trafficked into the country.

They had been lured and coerced with promises of jobs as home help, in supermarkets or restaurants, with lucrative incomes, but inevitably ended up in the pernicious flesh trade, often against their will.

A sub-committee was then formed to look into this issue of grave importance. Trafficking in women and children is the worst form of violation of the human rights of women and children. It is one of the greatest human rights challenges of our time. Aside from being a cross violation of human rights, trafficking threatens the world community by allowing a safe haven for trafficked syndicates, funding illicit activities and facilitating the spread of sexually transmitted diseases including HIV/AIDS.

A characteristic of trafficking is that the victim is restricted in her freedom of choice. This why it is often called a modern-day slavery. Trafficking has no borders, involving both developing and developed countries and has become an organized, trans-national crime and an increasing booming global business.

A Forum on Trafficking of Women and Children —A Cross Border and Regional Perspective was held on 13 and 14 April 2004 at the Prince Hotel. The Forum was officiated by SUHAKAM Chairman, Tan Sri Abu Talib bin Othman. The Forum was the culmination of SUHAKAM s dialogues with various groups which SUHAKAM has had throughout the year 2003 and in early 2004.

A pre-dialogue meeting was first held on 26.08.03. A roundtable dialogue was then held on 24.09.03 with personnel from the police, immigration, Ministry of home affairs, welfare, prison and the tourism ministry. Subsequently, a dialogue with NGOs was held in January 2004 and on 18.02.04, a dialogue with representatives from the embassy of Indonesia, Russia, Thailand, Cambodia, Vietnam, the Philippines, China and Myanmar was held.

To engage the public at large, SUHAKAM invited members of the diplomatic corps, officers from various law enforcement agencies — the police, the immigration, the prisons, officers from the Ministry of Foreign Affairs, the Welfare Ministry, the Women Development Ministry, and representatives from NGOs; representatives from the American, Russian, Thai, Cambodian and Philippines Embassy, representatives from the Bar Council; academics and human rights practitioners. The response surpassed expectations — testimony of the importance and widespread interest for the rights of women as a shared concern.

Objectives of the Forum

The Forum was held to provide a venue for the exchange of information and ideas on the spectrum of issues which trafficking in person raises. The central aim of the Forum was to facilitate discussion on steps taken/required at national and regional level against the backdrop of developments such as the UN Protocol on Trafficking of Women and Children 2000 and regional initiatives.

In assessing progress in this sphere by the regional experts on Trafficking, the Forum sought to further the debate on the application of a human rights framework to trafficking, including analysis of root causes as well as law enforcement and judicial responses at point of origin, transit and destination.

The experts from the regions concerned with the issue of trafficking presented a view of their respective country's problems and the measures taken to combat and/or reduce this problem.

In particular the Forum sought to identify best practice by states, government and non-governmental actors concerned with trafficking whether from a migration, criminal justice, gender or more general human rights perspective. Another objective of the Forum was to establish a networking of persons concerned with the issue of trafficking in women and children in the Asian region.

Outcome of the Forum

Issues Raised:

A number of Speakers noted that there was a lack of statistical data on the issue and the development of data was complicated by the international character of the crime and the inadequacy of existing national legal provisions in some countries.

Recommendations:

Bilateral and Regional Cooperation to Combat Trafficking

It was suggested at the Forum that there be a Regional Trafficking in Persons Information Centre. This will serve as the repository for information on bilateral agreements, national action plans, cooperative efforts between government agencies and NGOs, NGO activities, anti-trafficking projects, and notices of meetings and conferences.

Currently, there exists a Memorandum Of Understanding between Cambodia and Thailand and one between India and Nepal to combat trafficking.¹ It was suggested that perhaps there could be an MOU between Malaysia and Thailand as a start to reduce the flow of trafficked young girls into Malaysia.

A Memorandum of Understanding such as this would allow for the exchange of information and monitoring the trafficker's action. The formulation of a regional legislative model for the states in the Asia Pacific Region to address more effectively the criminalization of trafficking and the protection of trafficked persons should be embarked on.

The Role of Embassies

Malaysia seems to be an attractive country for foreign women from both near and far — from our ASEAN neighbours to as far as the African and European continent. These women have heard of success stories, displays of wealth and remittance sent back home from relatives and friends working abroad which is a powerful incentive for other girls and women to seek jobs in this country.

SUHAKAM therefore urges the respective embassies to advise their nationals to ensure that their employment agencies are reliable and registered and that they are aware of their rights to engage only in the occupation for which they have mutually agreed to before leaving their country. This is important as international trafficking frequently masquerades as migrant work. With the entry into force of the United Nations Protocol against the Smuggling of Migrants on 28 January 2004, the prosecution of offenders should be made more effective.

Setting Up Of A National Task Force on Trafficking

It was also suggested at the Forum that there should be an Inter-Agency and Multi Sectorial Collaboration and Support for a Comprehensive Programme to Prevent and Control Trafficking and Protect and Repatriate Victims. This calls for the formation of a National Programme of Action and setting up of a National Task Force on Trafficking.

The purpose of such a Task Force is to create an avenue sensitive to cases of trafficking in women and children. The creation of an independent specialized Task Force to hear all trafficking cases is vital as currently there is no official body equipped to deal with such cases. The Task Force would be able to provide trafficked victims with accessible remedies within a reasonable timeframe. It is hoped/ anticipated that the setting up of a Task Force would encourage more victims/ complainants to come forward and will contribute to the overall reduction of trafficking.

¹ See Appendix 4 for MOU between India and Nepal.

This cabinet — level Task Force would set out policies and programs in the fight against trafficking and ensure that the various government agencies and the NGOs work in unison to achieve progress and results.

Officials of the Task Force must be entrusted with not only duties in receiving complaints but must also be able to propose proper guidelines and mechanisms in order that the law may be effectively implemented.

Normal grievance mechanisms seem to fail to take into account the complexities of trafficking cases; especially the tripartite relationship that often exists between the complainant, the alleged trafficker and the management of the premises. In order to respond to the unique needs of trafficked victims, the committee should consist of an equal number of men and women and comprise people from various enforcement agencies, NGOs, embassies and human rights persons deeply concerned with and with experience and expertise relevant to trafficking issues.

The Task Force will review measures taken to promote and create a trafficking — free environment. It is to accept trafficking complaints and to report to the relevant enforcement authorities expeditiously. It is also to assist in the repatriation of victims. The task force can assist the complainant to draft her/ his report.

Ratification of the UN Protocol on Trafficking

Participants were unanimous in urging the Government to ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000.² Ratification would be a big step towards the development of a comprehensive plan of action and strategy involving Government agencies, NGOs, Corporate Sector (Entertainment Outlets) and the Community.

The Trafficking Protocol builds upon existing international treaties incorporating in one comprehensive document all presently conceived aspects of the problem with a human rights

² See Appendix 1 for the UN Trafficking Protocol 2000

and humanitarian approach. The Protocol provides clear norms and standards for all States to work towards the three—fold objective to prevent and combat trafficking and to promote and facilitate a global network of information sharing.

The prevalence of countries in which trafficking takes place in the Asia pacific region amplifies the need for the ratification of the Trafficking Protocol. Ratification would encourage countries of origin, transit and destination to recognize their role in combating the problem and find solutions for action.

Quicker, Proactive and Stringent Action by Enforcement Authorities

Law enforcement plays a key role in shutting down trafficking syndicates. Traffickers must be prosecuted, convicted and punished. Often victims are afraid to testify, traffickers therefore escape prosecution.

An effective law enforcement response addresses the entire spectrum of offences, violations and infractions. While it is vital that the law enforcement response investigates, charges, prosecutes and punishes the most serious offences, where it is impossible to obtain conviction of such serious offences, prosecution of lower level offences or enforcement of non-criminal violations should also be pursued. Such action will disrupt the activity of the trafficker and, if persistent enough, may cause him or her to give up such activity. The diligent investigation of these underlying offences and infractions can also be used as supportive circumstantial evidence of trafficking in the current or future cases.

Role of NGOs and Community Empowerment

NGOs who operate at the grass roots level would be able to provide vital information, motivation and support. There needs to be coordination between NGOs and support given to the NGOs that have developed programmes to assist in the repatriation and/or reintegration of the trafficked.

Local community members, groups and agencies should be proactively engaged. Community members should be encouraged to recognize their personal responsibility to other community members and to value action over inaction.

Role of the Tourism Industry

Worldwide travel has increased more than seven fold since 1960. Item number one in world exports; ahead of petroleum, vehicles and electronic equipment today; is international tourism. Whilst it may be true that the tourism industry cannot be held accountable for the behaviour of its clients, SUHAKAM suggests that the industry be vigilant and recognize situations where children and young women are trafficked for sexual purposes.³ SUHAKAM reiterates that tourism must respect the rights of women and children and wishes to remind tourism and labour agencies that hospitality does not call for the sexual exploitation of women and children.

Decriminalization of Victims of Trafficking

The decriminalization of prostitution will help in creating an environment that is less hostile and more transparent to those victimized by the people trafficking industry. Victims of trafficking need to be identified and encouraged to come forward to report traffickers and cooperate with enforcement agencies as available witnesses. Victims should not be further stigmatized. There needs to be support for victims and survivors of trafficking.

Repatriation and Reintegration of Trafficked Victims

Effective action ought to be taken to ensure the safe return of the trafficked women and children to their home or communities. There needs to be voluntary repatriation as well. Rescued women and children should be treated as victims of crime, not as criminals and every effort should be made to rehabilitate them and to reintegrate them into their family and society. Police and enforcement personnel need to be trained in dealing with victims of trafficking.

³ Estimates put the number of children entering the sex-market every year at well above one million.

The Local Policy

The central weight to the legal running of entertainment outlets is designated in the hands of the municipalities. The municipalities lay down rules in their bye-laws for the establishment, installation and management of entertainment outlets.

SUHAKAM during its dialogues and interviews with the girls was told that some of these entertainment outlets had secret hidden partitions that served as rooms where women and girls were made and often forced and coerced to entertain clients .

As the municipalities are in a position to monitor and control the activities of the entertainment outlets, these municipalities can therefore play a very vital role. SUHAKAM suggests that local authorities and municipalities adopt stringent measures when issuing licenses to these outlets and that municipalities do not hesitate to shut down such outlets which contravene the building laws.

Further, as the drawing up of policies regarding entertainment outlets in every state is left to individual municipalities, SUHAKAM proposes that there be some uniformity in this. A model regulation could be drawn up to be adopted by the municipalities in their local bye-laws.

SUHAKAM also proposes the adoption of a *enforcement arrangement* between the municipality, the police, the prosecutors, the housing ministry, the fire service and the labour inspectorate which includes measures that each partner will take where it is found that the regulations laid down in their respective fields of control have been infringed. In this way, active enforcement in both the administrative and criminal field is guaranteed.

Review of Laws

a) *Punishment for those who receive services.*

SUHAKAM is concerned that only the victims are punished mainly for not possessing valid stay documents. Currently, there is no law that stipulates punishment for those who receive services from prostitutes. For instance, when police found the 19 buck-naked girls from China in the cubicles on 24 February 2004, there were 261 men/clients at the entertainment outlet. None of these men were charged/ arrested for procuring the services of these women.

There should be provisions of sentencing for procuring services from trafficked women as well as for crimes by organized groups. SUHAKAM strongly recommends that traffickers and their agents as well as owners or employers of entertainment establishments be prosecuted as well. Traffickers exploit the situation when they know there is no risk of prosecution. Embassies and NGOs can work together to uncover information such as traffickers names and addresses from the victims and provide such information to the police and other enforcement authorities.

The Palermo Protocol states that when the crime of trafficking is committed by a group of people and each person has committed a particular offence — for example recruitment, transport, transmission, provision of shelter, purchase, etc, each person will be deemed to have committed the crime of trafficking.

b) *Legal stay for victims of trafficking*

The possibility of providing legal stay in the country to which the women and children have been trafficked could be looked into. Suitable laws providing for such legal stay for the victims of trafficking should be looked into and considered.

c) *Provision for victim protection/legal protection*

During visits to detention centres, SUHAKAM found that the foreign victims especially those from China and Uzbekistan were hesitant to speak to the officials, let alone to seek help from the authorities for fear of deportation. If the government were to provide victims with legal alternatives to their removal to countries where they might face retribution or hardship, and ensure that victims are not penalized solely for unlawful acts that occur as a direct result of being trafficked.

d) *Vicarious Liability of Employers*

SUHAKAM recommends that employers and principals should face vicarious liability for trafficking carried out by their employees, unless they can prove that they took reasonable steps to prevent trafficking and that they took appropriate action when they received the complaint. The employer should be made to assist those who assist them in their complaint.

e) *Victimization of Complainant*

There ought to be provisions in the legislation for the prohibition of the victimization of complainants. Victimization should include subjecting, or threatening to subject someone to harm because they, or someone associated to them, has made a complaint, brought proceedings or given evidence. The prohibition of victimization and emphasis on confidentiality is designed to protect complainants and those who assist them.

Currently, criminal prosecution does not provide any form of redress for the complainant for her injured feelings, humiliation and loss of dignity, not to mention the more tangible losses.

f) *Liability of the Alleged Trafficker*

There ought to be a provision stating that the alleged trafficker must redress any loss or injury suffered by the victim and caused by the alleged trafficker. The Attorney General has said that punishment for pimps would be increased to 30 years.⁴ There should be similar provisions for punishment of traffickers as well.

An Anti - Trafficking Act

The participants felt that there was a need for an Anti-Trafficking Act. Whilst it may be true that currently, there exist sufficient laws pertaining to trafficking, these existing laws are piecemeal. Hence, the need for a comprehensive legislation encompassing provisions adequate to combat trafficking more efficiently.

No comprehensive law exists in Malaysia that penalizes the range of offences involved in trafficking. Currently, instances of trafficking are often punished under laws which also apply to lesser offences, and traffickers typically escape the full punishment they deserve. The existing piece-meal provisions are weakened by overlapping jurisdictions. They do not provide for the protection of victims. Currently, victims are viewed through the prism of the Penal Code.

The Anti-Trafficking legislation should provide a comprehensive approach to eliminating trafficking in persons through a three-pronged strategy: prevention of trafficking, prosecution of traffickers, and protection of victims.

Firstly, there needs to be a definition of trafficking — that includes the definition of recruiter transporter, buyer, seller, harbourer, brothel owner and manager.

⁴ New Straits Report on 16 April 2004

Second, there needs to be increased penalties of up to 30 years imprisonment. This is important to send the message to traffickers that trafficking is taken seriously and that the penalties will commensurate with the crime.

Thirdly, the legislation should have a victim-centred approach that includes visa and temporary stay for victims of trafficking; as well as the establishment of shelters and services. In this regard, the law could also create an Office to combat and monitor Trafficking in Persons, which would support prevention efforts through public awareness campaigns and economic alternative programmes for the vulnerable.

The Need to Raise Awareness

SUHAKAM recommends that local vigilance or watch groups be set up to assist authorities in rescuing young women and children and nabbing traffickers or their agents. Religious and community leaders can help to educate children, women and their families on the dangers of trafficking. In this regard, a nationwide public awareness campaign on this issue is suggested.

Young people especially girls and their family should be the focus. There should be provision of education and/or training and/or employment/ assistance to the trafficked women/ children so as to prevent re-trafficking.

Those seeking jobs/labour in neighbouring countries / abroad should be furnished with accurate information about the dangers of working abroad and concrete steps taken to work aboard safely.

Best Practices of Other Countries

SUHAKAM feels that we can learn from the good practices of some countries. The government of Gambia for instance asks visitors to give information to the police on sex tourists and those who sexually exploit children through a special tip-system.

In some jurisdictions, there is a 30-year imprisonment for those dealing with trafficking. In Andhra Pradesh, law enforcement officers performance appraisal is linked to his or her efforts to apprehend and investigate human traffickers.

In Thailand the revised law of 1996,⁵ proscribes imprisonment and a fine for procurers, pimps, owners and managers of brothels, mama-sans and includes penalties for a father or mother or guardian who colludes with procurers. It also includes provisions for assistance to the victims, as well as provisions for the NGOs to set up shelters and other supportive programs.

In the Netherlands, Immigration Law Circular B-9 [the B-9 regulation] offers aliens who are possible victims of trafficking and aliens who are witnesses to cases of trafficking, the possibility of making use of certain facilities when they report trafficking —like temporary residence in the Netherlands, reception and shelter, medical assistance and legal aid.

When during a police raid an alien is found who is possibly a victim of trafficking, and also when an alien who does not have a valid residence permit and who is or has been working in prostitution in the Netherlands contacts the police herself, even if there is only little indication of trafficking, the police must bring to the notice of the alien of the rights described in the B-9 regulation.

In order to be able to make the estimate whether or not the person found could be considered to be a possible victim of trafficking, the police have a list of indicators of trafficking.⁶

⁵ The Prostitution Prevention and Suppression Act of 1960 was amended in 1996.

Under the B-9 regulation, the possible victim is then offered a maximum period of 3 months, within which she must take a decision as to whether or not she wishes to report trafficking. During this reflection period her deportation from the Netherlands is suspended.

If the possible victim decides to report the offence, this report is officially regarded as an application to grant a residence permit for a certain time. The application is honoured in the case of a criminal investigation or prosecution investigation (already underway or to be brought).

In principle, a decision on the application for a residence permit must be taken within 24 hours. If the alien does not wish to report an offence, she is issued a notification to depart and must leave the Netherlands. Residence permits based on the B-9 regulation are issued for a maximum of one year and may be extended. The permit is valid for as long as criminal investigations or prosecution continues.

In the United States, as a response to circumvent this problem of foreign victims being afraid to come forward for fear of deportation, a special visa was created to allow those freed from trafficking to remain in the United States for up to 3 years. Up until April 2004, 448 victims in the United States had received these special visas.⁷

⁶ This indicative but not limitative list contains twenty five factors that may play a part in the establishment of whether THB may be involved. The list contains points such as: not having travel documents, having an exorbitant debt, having to hand over the major part of the earnings, signs of maltreatment, restriction of freedom of movement.

In the US there exists a new legislation that allows enforcement officers to prosecute Americans who travel abroad for illegal sexual conduct with minors. American ex tourists are now subject to domestic exploitation laws even when their crimes are committed abroad. They face up to 30 years in prison if convicted and a fine of up to US\$ 250,000.00

The need for Political Will

The commitment to fight trafficking must come from the highest level of government. SUHAKAM feels that to tackle trafficking effectively and at its root causes, political will of the government and social will of the people/civil society is necessary.

When regional governments extend their responsibility to protect foreign victims of trafficking, it will encourage these victims to assist in the investigation and prosecution of the traffickers. The state must reach out to victims and send the message that human freedom and dignity will be protected.

Conclusion

Measures that are introduced to combat trafficking must take into account the securing and promoting of human rights of trafficked persons. It is important to ensure that victims are not re-victimised. SUHAKAM believes this report will pave the way for future action and collaboration in restoring the rights and dignity of these innocent children and women, and prevent the escalation of such heinous and inhumane crimes.

Trafficking in women and children can only be defeated by the joint efforts of legislators, law enforcement officers, prosecutors and NGOs working together with their counterparts regionally and internationally.

***Note :** Though the raids conducted by the police is not for trafficking but mainly for prostitution and illegal immigrants, the statistics provided by the police is used in this report as the question lies as to how many of these girls arrested are in fact trafficked into the country .

⁷ Paper presented by Her Excellency Marie T. Huhtala, Ambassador of the United States to Malaysia at the Forum on Trafficking of Women and Children organized by the Human Rights Commission of Malaysia on 13.04.2004

Appreciation

SUHAKAM would like to record its sincere appreciation to the government agencies — the police, the Attorney General's office, the immigration, the prisons department, the welfare department, the ministry of tourism, the ministry of foreign affairs; the embassies of Russia, America, Thailand, China, Indonesia, Myanmar, Vietnam, Cambodia and the Philippines; the National Human Rights Commission of Mongolia; the various NGOs; the Bar Council; the academics and all who attended the dialogues and the forum and rendered invaluable assistance in discussing this issue of importance. SUHAKAM sincerely hopes that all parties will continue to give due priority and attention to the trafficking of women and children in Malaysia.

CHAPTER 1



CHAPTER 1

1. INTRODUCTION

*E, K, R, A and D [not their real names] 5 girls from **Pontianak in Indonesia** who SUHAKAM team spoke to narrated how they had been brought from their homeland to Malaysia. They had been promised jobs as house helps and upon arrival at KLIA, had been taken to an apartment in Cheras and found themselves locked in the apartment. The next day they were forced to entertain men from 12 p.m. to 6 a.m the following morning. Food was brought to them twice a day. A week later, they were taken from Cheras to Pahang. They were sold to another agent in Pahang who then took them to a housing estate in Sungai Buluh, where construction work was in progress. Here they were handed over to a Bangladeshi whom they had to call Captain who brought Bangladeshi, Nepalese and Chinese men to be entertained by them. When they complained of being tired, they were beaten.*

They were then passed on to another agent who put them in a hotel in Subang Jaya. They endured their plight for 7 months. They received no payment whatsoever. One day the agent told them to run as there was a police raid. They were arrested and were sent to the Semenyih Detention Centre.

The story above illustrates clearly how these 5 women fell victims to syndicates which trafficked them into prostitution.

1.1 What is trafficking in persons?

Trafficking is the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economics in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the traffickers, such as forced domestic labour, false marriages, clandestine employment and false adoption.

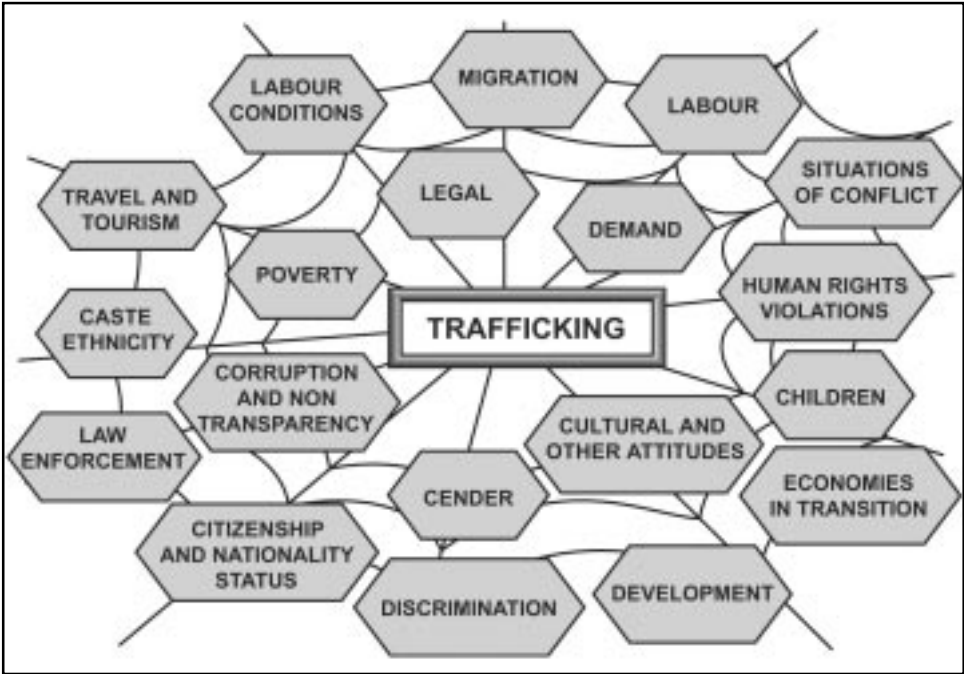
It has also been defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation includes 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.¹

Trafficking has no borders, involving both developing and developed countries and has become an organized, trans-national crime and an increasing booming global business. Women and children (young girls and boys) are trafficked, marketed, transported and sold by traffickers to be exploited in prostitution, pornography and forced, bonded labour, for sex tourism, domestic and construction work and to work in factories and other sites of work, in the formal and informal economy. Children are often trafficked for begging, for organ trade, drug peddling, camel jockeying and adoption as well.

¹ Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000)

Criminal activities linked to Trafficking are document fraud, money laundering and migrant smuggling, corruption and drugs and arms trafficking. This trade has deeply corrupting influence on government and other institutions and can contribute to a corrosive, self-reinforcing cycle of expanding corruption and increased trafficking in persons and illicit materials.² Trafficking of women and children is a societal problem — not merely womens problem.

WEB OF TRAFFICKING



² Paper presented by Her Excellency Marie T. Huhtala, Ambassador of the United States to Malaysia at the Forum on Trafficking of Women and Children organized by the Human Rights Commission of Malaysia on 13 and 14 April 2004

1.2 Why is SUHAKAM concerned about the issue of Trafficking?

Trafficking in women and children is the worst form of violation of the human rights of women and children. Trafficking in women and children is one of the greatest human rights challenges of our time. Trafficking is a human rights violation. Traffickers violate the universal rights of all persons to life, liberty and freedom. It is an obstacle to the achievement of the objectives of equality and development. Trafficking of women and children impairs or nullifies the enjoyment by women and children of their basic human rights and fundamental freedoms.

A characteristic of trafficking is that the victim is restricted in her freedom of choice. The exploitation and the circumstances under which this restriction occurs are reasons why trafficking is often called a modern-day slavery, as it involves forced labour of the women and children.

Once the victim ends up in prostitution, the victim is kept under control — often by violence and kept in a situation of dependency. Taking the income generated, imposing debt-bondage that is so high that it is virtually impossible to pay off and limiting the victim's freedom of movement by taking away travel and identity papers or observing the victim's every movement, are all human rights abuses. For traffickers, profits and material gain is the main reason for exploiting these vulnerable women and children.

1.3 Trafficking as a Human Rights Issue

Trafficking of children affronts the basic need of a child to grow up in a safe and protective environment and free from exploitation and abuse. It is a human rights violation that deserves an urgent response. Sex trafficking is an affront to human dignity and a profound assault on human values. Aside from being a gross violation of human rights, trafficking threatens the world community by allowing a safe haven for trafficked syndicates, funding illicit activities and facilitating the spread of sexually transmitted diseases including HIV/AIDS.¹

SUHAKAM was informed by Prison officials that a 16 year old Thai girl had died of HIV/AIDS in early 2003. She had been sold by her parents when she was aged 9 and then had been trafficked into Malaysia. She was arrested on one of the anti-vice raids and sentenced to jail. All she had asked for during her last days was grapes and chocolates and the prison wardens had kindly granted her wishes

1.4 This Report

This report is the result of a series of dialogues with various sectors and stakeholders — the government agencies, non-governmental organizations, individuals and selected embassies which SUHAKAM has had and consulted with over the year 2003 and 2004; visitations to detention centers and interviews with some victims of trafficking in these centres; and the Forum on Trafficking of Women and Children —A Cross Border and Regional Perspective organized by SUHAKAM and held on 13 and 14 April 2004 in Kuala Lumpur.

¹ Paper presented by Her Excellency Marie T. Huhtala, Ambassador of the United States to Malaysia at the Forum on Trafficking of Women and Children organized by the Human Rights Commission of Malaysia on 13 and 14 April 2004

CHAPTER 2



CHAPTER 2

SUHAKAM S WORK ON TRAFFICKING

2.1 Introduction

During one of the visits by SUHAKAM to the women s prison in Kajang in January 2003, SUHAKAM observed a large number of foreign nationals, mainly young girls, in remand in the prison. During the conversations with some of these girls, SUHAKAM observed that while the majority were held because their social visit visas had expired, there were girls who had escaped after being held against their will and were then caught by the authorities.

These girls had been lured and coerced with promises of jobs as home help, in supermarkets or restaurants, with lucrative incomes, but inevitably ended up in the pernicious flesh trade, often against their will. Some of these girls narrated how they were subjected to brutal beatings by their agents or bosses when they refused to abide to the demands of these unscrupulous peddlers.

May, Wa Wa and Kensi from Myanmar [not their real names] were lured to Malaysia with promises of jobs as cooks but were forced to work at Karaoke Lounges in Kuala Lumpur. They worked for 8 months — as masseuses without any salary and when they could endure no more, they escaped and whilst trying to escape were arrested by the police.

Based on these findings, SUHAKAM decided to give this issue urgent attention and thus began SUHAKAM s background research and dialogues to get further insights into the issue. This is one of the proactive initiatives that SUHAKAM is undertaking.

SUHAKAM found that one reason victims were reluctant to tell immigration and police officers that they had been tricked and trafficked and forced into vice was the fear that once they were sent home they might be arrested in their home country for engaging in vice activities and sentenced to jail. They also feared the lack of confidentiality and a blame-the-victim mentality amongst enforcement officers. Moreover, some of these victims were married with young children and did not want their husbands or their families to find out.

Yevgenia and Alisa [not their real names] from Uzbekistan aged 16 and 20 respectively followed their boyfriends to Malaysia and stayed with them. When their visas expired, they found their boyfriends missing as well.

A pre-dialogue meeting was first held on 26.08.03 wherein information was exchanged with personnel from the police. SUHAKAM was encouraged by the policy of zero tolerance stated to be adopted by the police. A roundtable dialogue was then held on 24.09.03 with representatives from the police, immigration, welfare, prison and tourism ministry. Subsequently, a dialogue with NGOs in January 2004 was held and on 18.02.04, a dialogue with representatives from the embassy of Indonesia, Russia, Thailand, Cambodia, Vietnam, the Philippines, China and Myanmar was held.



Pre-Dialogue Meeting with Police on 26.08.03

*The Human Rights Commission of Mongolia had sought the assistance of the Asia Pacific Forum (APF) regarding 5 Mongolian girls who had been tricked and trafficked into Malaysia with promises of high salaries but were forced to do sex work. SUHAKAM managed to trace these girls and has informed the APF of their whereabouts. One of them Togtohbar, [not her real name] said she was brought to Malaysia by a Chinese man. She informed the Investigation Officer from SUHAKAM that her friends **Gerelmaa and Altah Che Cheg** (not their real names) were still at the Kajang Prison at the moment of time.*



Representative from the Human Rights Commission of Mongolia

At the dialogue on 18.02.04, with representatives of the embassies of China, Thailand, Cambodia, the Philippines, Russia, Indonesia and Myanmar held at SUHAKAM, the official from Thailand informed SUHAKAM that the Embassy had rescued a 13 year old girl who had been trafficked across the border. The official from Myanmar narrated an incident when the Embassy had had information that four girls from Myanmar had been trafficked into Malaysia and were forced into prostitution at a pub in Johor Bharu. When officials from the Embassy arrived at the pub, they were informed there were no Myanmar citizens at the pub. A few calls were made by the accompanying enforcement official and within an hour two girls were dropped off at the entrance of the pub.

On 29.10.03, on SUHAKAM's second visit to the Kajang Women's Prison to interview these women and determine the reasons, ways and methods on how they were trafficked into Malaysia, SUHAKAM found that there were 1810 inmates out of which only 325 were Malaysians and the remaining 1485 were foreigners. The breakdown of the foreign inmates were Republic of Indonesia: 939; Republic of China 250; Thailand: 137, Cambodia: 85; Vietnam 27; Myanmar: 22; Philippines: 16; Uzbekistan: 9. SUHAKAM found that Prison Officials had problems communicating with the inmates, especially those from Thailand, Vietnam and China as these inmates do not communicate in English.

From January 2003 to April 2004, SUHAKAM interviewed 59 women at detention centers in Macap Umboo, Malacca; Semenyih, Selangor; Langkap, Perak; Belantek, Sik, Kedah and the Kajang Women's Prison. 28 women narrated how they were trafficked into the country.

If Malaysia is often referred to as a destination country, then it is due to the attracting or drawing circumstances that prevail. As SUHAKAM has observed, the push factor is the urge to earn a lot of money quickly — to improve the living situation of themselves and their immediate family and underestimating what abuses the malicious can subject them to.

2.2 Character and Scale of the Problem

Trafficking is, as the International Labour Organization (ILO) points out, the underside of globalization. No country is immune from trafficking. It has become a transnational crime of which women and children are the most vulnerable. UN estimates indicate that trafficking in persons generates US\$7 to US\$10 billion annually for traffickers. Trafficking in human beings [THB] has become the third most important source of revenue for criminal syndicates after narcotics and arms.

Transactions worldwide by organized crime reach US \$ 2 trillion (RM7.6 trillion) every year, according to the United Nations Drugs and Crime Watchdog. That amount is equivalent to about five per cent of global economic output. Drug trafficking accounts for between US \$ 300 billion and US \$ 400 billion globally as does the illegal arms trade. US \$ 1 trillion goes to corruption and the rest comes from smuggling, theft and trafficking of people. These are the consensus figures by specialists according to Giovanni Quaglia, head of the UN Office on Drugs and Crime in the Southern Cone region of Latin America. — NST 2.09.04

Trafficking thrives because of its profitability and the continuing high demand for sexual services. Due to the clandestine nature of this crime — underground and often under — acknowledged, it is almost near impossible to determine the precise number of people who are victimized by traffickers. The numbers given are virtually always estimates, the actual figures will presumably be higher. Some estimates show that every year 1 to 2 million people are trafficked worldwide, of which 225,000 are from South Asia.

Other estimates show that over the last 30 years, trafficking for sexual exploitation alone has victimized some 30 million women and children of Asia. It is also estimated that world-wide, more than 200 million human beings live under one form of slavery or another; the number of people world-wide that live under slavery-like conditions as a result of trafficking in human beings is estimated at 9 million. ¹

The Special Rapporteur of the United Nations High Commissioner for Human Rights (UNHCHR) stated in 2000 that every year four million women are trafficked all over the world ². According to the Central Intelligence Agency (CIA) 45,000 — 50,000 women and girls are trafficked into the United States every year. Media reports have indicated that 17,000 people have been trafficked into the US from Malaysia.⁶



¹ UN estimate, quoted in Combating Trafficking in Human Beings; Cornerstones of an EU Strategy to establish efficient judicial and law enforcement cooperation; ministry of Justice Sweden, 22 January 2001, available via www.eu.2001.se

² National Human Rights Commission of Mongolia's Report on The Crime of Trafficking of Women and Children in Mongolia: The Current Situation Ulaanbaatar, November 2002

The International Organization of Migration has estimated that 500,000 women from independent countries that were formerly part of the USSR are trafficked into Western European countries each year. Southern parts of Russia and West Siberian frontiers have become outlets for the trafficking of women.⁷

Every year thousands of women and girls from the poor frontiers of China are recruited and trafficked to Thailand, Taiwan, Japan, Canada, the USA and England. Women from Vietnam, Laos, Russia and the Ukraine are brought into China⁸.

Every year 5,000 to 11,000 Nepalese women and girls are trafficked to India and over the last 10 years over 30,000 women and girls from Bangkok have been trafficked to the same destination.

The sexual exploitation of children, often couched as socially acceptable practices such as child marriage has reached alarming levels in Asia and other parts of the world. Estimates put the number of children entering the sex-market every year at well above one million. These child victims see little of life before they see the worst of life.

⁶ New Straits Times May 2004

⁷ IREX International Organization web/2.11.2002 / <http://www.irex.org/programs/anti-trafficking/>.

ESTIMATES PUT THE NUMBER OF CHILDREN ENTERING THE SEX-MARKET EVERY YEAR AT WELL ABOVE 1 MILLION

12-year-old Malaysian girl forced into vice by 'well-wishers'

A 12-YEAR-OLD Malaysian girl was brought here to serve prostitutes in her well-wishers' and forced to prostitute herself in the underworld.

The girl, now 12, was brought here by her stepmother, Sarah Manasseh, 31, and David Joseph, 31, an Indian resident in Malacca state.

Manasseh had told the girl's family she was to be married off to a 17-year-old boy in Malacca.

All three were charged and the girl's father, Tang, 40, 17, A resident in the evening of the girl's abduction, said he had no idea of the girl's whereabouts.

Tang tried to get the girl to work as a cleaning lady but she told him she would not do that.

The next evening, Manasseh and Joseph told her she had to go to a job as a prostitute and that she would have to prostitute herself as they had no one else to take care of her. She was shocked but they threatened to send her to a mental hospital if she refused.

Manasseh, who had her parents' approval, said she was not a prostitute but she had to work as one to support her family.

She said she had to work as a prostitute because she had to support her family and she was not a prostitute.

On the 12th of January, the girl was taken to a hotel in Malacca and she was forced to prostitute herself there.

Manasseh and Joseph were charged with trafficking and prostitution.

The girl is now in the State Children's Home and is expected to be 12 in 10 days which has to be 12 days in the State Home.

Twelve —year old Malaysian Girl Sold in Singapore

ENCAPT Report based on data collected in 73 countries estimates that of the US\$20 billion generated annually by prostitution worldwide, more than US\$5 billion comes from selling children in the sex trade.



Children for sale

One of a group of abducted children is shown with a mark made on the back of his body while he is being interrogated at an orphanage in Myanmar. Children, mostly from China and Thailand, are marked down on the shoulders and arms and 10 billion spent between last month and now on the sex trade. Children are being sold for as little as \$100 for being prostituted in places such as Myanmar, Cambodia and Thailand.

Asia 29

Children Are Marked For Sale

Bangkok - based advocates Ecpat (End Child Prostitution, Child Pornography and Trafficking) warned underage male prostitution was on the rise in South Asia, child marriages were rampant in Asia and Africa and teenage domestic labourers in Latin America face an overwhelming threat of sexual abuse ⁹.

⁹ New Straits Times Report, Wednesday 22 January 2003

Ecpat released its *Report on the Implementation of the Agenda for Action Against the Commercial Sexual Exploitation of Children*. The Report was based on data collected in 73 countries. According to estimates, of the US \$ 20 billion generated annually by prostitution worldwide, more than US \$ 5 billion comes from selling children in the sex trade.

Some of Ecpat's harshest criticism has been leveled at child marriages in which girls may be married to men who are possibly 40 years their senior and who are able to pay adequate dowries. Early marriage rates were highest in sub-Saharan African nations such as Mali, Niger and Uganda and in South Asia's Nepal and Bangladesh, where roughly half of all girls aged 15-19 were married.

As a consequence of unemployment and poverty, many children leave home, drop out of school and become street children. Research shows that the link is often family members or someone whom the girls know. Sometimes it is former prostitutes who now become traffickers themselves.

In Mongolia more than half the girls were between the ages of 13 — 16. 12 out of 16 girls aged between 10 — 22 stated they turned to prostitution against their will. In Ulaanbaatar alone — there were between 200-250 girls engaged in prostitution. Trafficking in children across borders is often done by pretending that the children are to be given for adoption to foreigners. In Mongolia, for instance, in 1999, special rules were formulated in 1999 allowing the Office of Foreign Citizens and Citizenship Issues to allow for adoption of children from Mongolia.

On 1.09.04 Thai Police arrested three Myanmar women while they were allegedly buying a four-day-old girl from her mother, a Myanmar refugee. According to police Capt. Patompong Kawparapirom, the mother was arrested in an operation which may have exposed a major child trafficking ring connected to Malaysia. Detectives acting on a tip-off caught the 23-year-old mother selling the baby for 5,000 bhat (RM456) to the three women in the western Thai town of Mae Sot. — NST 2.09.04

2.3 The Scale of Trafficking in Malaysia

In Malaysia too it is difficult to ascertain the exact or even an estimated number who are trafficked into or trafficked out of the country. Whilst the volume of trafficking in Malaysia is relatively small in comparison to its neighbours, nevertheless it is growing. If left unchecked, it would escalate and bring forth antecedent social repercussions. On 24 February 2004, there was a news report that the police allegedly found 19 young women from China displayed in a glass cubicle in the centre of a budget hotel in Selangor. These nude women, each carrying a nametag, were paraded on a three-tiered stage for clients to make their pick.¹⁰ It is totally unacceptable to subject these women to shame, indignity and human misery. These enslaved women suffer in silence from abuse and exploitation.



Girls from China found in glass cubicles in Selangor in February 2004

¹⁰ New Straits Times, 24th February 2004

Due to the geographical location of Malaysia, it has become an ideal transit point for trafficking activities. Malaysia is therefore faced with the necessity of preventing the trafficking of people across borders.

On 16 January 2003, the then Deputy Home Minister Datuk Chor Chee Heung had said that over the past three years 12,888 tourists and foreign students had been detained in that time for vice, with 5,149 of them caught for prostitution and deported in the year 2002.

- NST Report dated 16.01.03

For the year 2002 those deported included 2,155 Indonesians, 1,230 Chinese, 946 Thais, 298 Vietnamese, 189 Filipinos, 138 Uzbeks and 125 Cambodians. The others were from Russia, India, Laos, Bangladesh, Poland, Kazakhstan and Sri Lanka. In 2001, 4,132 tourists and foreign students were caught for illegal activities and 3,607 in 2000 had been arrested.

On 26 February 2003, police detained six foreign women in a raid at a hotel's spa center. They were among the 28 women who were taken in by the police. Out of the six, four were Cambodians, a Thai and an Indonesian.

When the Complaints and Inquiries Working Group of SUHAKAM visited the Kajang Women's Prison on 16 January 2003 they found that out of the many women who were arrested, most of them were foreigners and hailed from countries like Indonesia, Thailand, Vietnam, Laos, Cambodia and the Philippines. Though the reports do not state that these women were trafficked, there remains the possibility that these women could have fallen victims to trafficking syndicates.

In 2003 SUHAKAM sub-committee on Trafficking in Women and Children visited detention centres in Macap Umboo in Malacca, Semenyih, in Selangor, Langkap in Perak and Belantek in Sik, Kedah. Out of the 54 women interviewed, SUHAKAM was able to ascertain that 27 girls had been trafficked into Malaysia.

In order to get an estimate of girls and women trafficked into the country, the sub-committee of SUHAKAM together with the Kajang Women s prison, devised a questionnaire which is now used to differentiate those trafficked from those who come into the country voluntarily and get involved in sex work.¹¹

On 8.04.2004, based on a newspaper report that young girls, including one 14 year old had been detained by the police for vice activities in Subang, Selangor, the Sub-committee visited the Macap Umboo detention centre in Malacca, where these girls had been sent whilst awaiting deportation. Out of the 7 girls interviewed, 3 were again ascertained to have been lured and trafficked into the country with promises of jobs as home helps.

*Children, mostly babies are trafficked from neighbouring countries for sale to childless couples in Malaysia. It is reported that fairer babies fetch a higher price. In 2003, police foiled an attempt to smuggle two babies in a Styrofoam box in Sungai, Rengit, Kota Tinggi, Johor. It was believed that an international syndicate was behind the attempt to bring in the two-month old boy and two-week —old girl. The babies, who had been fed with sleeping pill-laced milk in Batam, Indonesia, were brought in from Batam by boat across the South China Sea to Sungai Rengit. It was reported that the syndicate was active in supplying babies for sale and women for prostitution*¹²

SUHAKAM through its study has found that though Malaysia is considered primarily a destination country for trafficking victims, there are women and girls trafficked out of the country, mainly to Australia, America and Japan.

¹¹ See Appendix 1

¹² The Star 22 January 2004



Police Raids

Girls from China often came to Malaysia voluntarily as tourists to meet up their Malaysian boyfriends whom they had met in China. These men, mainly businessmen, sent the airfares and met them at the KLIA airport. These girls stayed with their boyfriends in apartments, were taken shopping and sight-seeing but end up being arrested for overstaying. When detained, most often, they do not hear from their boyfriends again. There are also another group of girls from China who come as tourists but end up working in entertainment centres and are caught during police raids.

Media reports indicate that there are girls who come to Malaysia as students but are actually trafficked by syndicates which use them as sex workers.

Zhao Yin from Ji Ling in China were promised jobs as supermarket sales girls but alleged that upon arrival were locked in rooms and forced to do sex work. They were not paid any money and were locked in a house in Klang for 8 months. They finally managed to escape from the house but were arrested by the police and sentenced to three months jail.

Xiang Xi from Nan, China came to Malaysia on a social visit pass and met a man in Genting Highlands. She went shopping with him but he left her alone to visit someone and never came back. She was arrested by police for not possessing valid documents. She delivered a baby at the Kajang Prison on 14.03.03

Ressanne and Jamy [not their real names], both aged 20 from Uzbekistan were brought to Malaysia by agents through KLIA. They were taken to Seremban where they stayed in a hotel for 8 months and told by their agents to entertain men. They know the agent received RM 1,200.00 for every hour. They informed SUHAKAM that some of the men they had to attend to were foreigners. They escaped from the hotel without their passport when they received no payment and were arrested by police.

Huang, 23 years, from Vietnam but residing in **Cambodia** had been trafficked into Malaysia through the Thai border.

**ARREST OF FOREIGN NATIONALS INVOLVED IN
PROSTITUTION (November 2003 - Mac 2004)**

COUNTRY	NOV	DIS	JAN	FEB	MAC	TOTAL
INDONESIA	89	107	170	200	229	795
CHINA	94	165	150	210	168	787
THAILAND	60	57	75	156	159	507
PHILLIIPINES	0	8	69	11	13	101
CAMBODIA	1	19	5	14	13	52
VIETNAM	0	0	5	30	11	46
UZBEKISTAN	0	1	4	12	3	20
OTHERS	2	8	9	10	3	32
TOTALS	246	365	487	643	599	2340

Courtesy of PDRM, Bukit Aman

SUHAKAM found that trafficking in women and children is not confined to West Malaysia, but is also rampant in East Malaysia — in Sabah and Sarawak. On 24.01.04, police in Kota Kinabalu, Sabah held 20 Filipinas aged between 20 and 35 believed to be prostitutes in a vice raid at a hotel in the city centre. The police found 4 women in a room on the 5th floor and 10 more on the 8th floor.¹³

¹³ The Borneo Times, Tuesday, 27 January 2004

1.6. 1 Origin

Who are the victims and where do they come from? How have they fallen prey to traffickers?

SUHAKAM found that the victims of trafficking cannot be described as one homogenous group, with fixed characteristics. Behind each victim interviewed was a different story.

The main countries of origin are Indonesia, Thailand, China, Myanmar, Russia, Uzbekistan, Cambodia, Vietnam and to a slighter degree, the Philippines. A great increase can be observed from China.



Prison

Tarikh : 28 / 10 / 2003

COUNTRY	NUMBER
INDONESIA	939
THAILAND	137
MYANMAR	22
REPUBLIC OF CHINA	250
COLOMBIA	1
BANGLADESH	1
PHILLIPINES	16
CAMBODIA	75
VIETNAM	27
UZBEKISTAN	9
INDIA	4
AFRICA	1
IRAN	1
NIGERIA	2
TOTAL	1485*

<p>* Young Persons (Below 18 Years Old) = 274</p>
<p>* HIV Positive = 23</p>
<p>* Pregnant = 31</p>

23 Cheated / Trafficked

Courtesy of Prison Department

Female Prisoners Detained At Kajang Womens s Prison For Prostitution

NATIONALITIES	NO.	AGE		REMARKS
Republic Of China	4	Under 20	1	<ul style="list-style-type: none"> 3 Voluntarily Came To Malaysia. 1 Came To Work At An Entertainment Outlet And Forced Into Prostitution.
		21 - 30	2	
		31 - 40	1	
		Above 40		
Thailand	15	Under 20	1	<ul style="list-style-type: none"> 1 Voluntarily Came To Work As Sex Worker 1 Came To Help Her Husband To Rent Room For Sex Workers.
		21 - 30	11	
		31 - 40	2	
		Above 40	1	
Indonesia	8	Under 20	2	<ul style="list-style-type: none"> 2 Voluntarily Came To Work As Sex Worker. 1 Was Sponsored To Come To Malaysia To Work As A Maid But Instead Forced To Work As Sex Worker. 5 Were Cheated, Locked - Up In Room And Forced To Work As Sex Worker.
		21 - 30	6	
		31 - 40		
		Above 40		
Malaysia	2	30	1	<ul style="list-style-type: none"> 1 Was Sold By Her Boyfriend 1 Was Sold A "Isukeh"
		19	1	

Female Prisoners detained at Kajang Womens s Prison

1.6.2 Age

SUHAKAM found that whilst most of the girls were young and aged between 19 — 25, there were also 14 year and 17 year old girls who had been trafficked as well.

1.6.3 Recruitment, transport and exploitation

SUHAKAM found that the process of trafficking in practice usually consisted of three phases: recruitment, transport and exploitation. Often it is a gradual process, in which the victim is pushed little by little in the direction of prostitution.

SUHAKAM also found that the person who recruits, transports and exploits is often not the same person. For instance, on 8.04.04 SUHAKAM visited and interviewed 7 girls who had all been detained during police raids in Subang and sent to the Macap Umboo detention centre in Malacca. SUHAKAM found that Tina [not her real name]aged 20, had come from Kalimantan, Indonesia via Pontianak and then through Kuching and brought to KLIA by an agent who had promised her a job as a house help. Tina narrated how she was taken to an empty house and forced to have sex with men. When she refused, she was threatened and intimidated with physical violence.

Rita [not her real name] aged 14 had in fact been working as a house-help for a couple of weeks. One day, when she was standing outside the employer s house, a well dressed lady drove past and asked her if she was unhappy with her employer and when Rita replied that she was indeed unhappy, the lady offered to help. She told Rita to pack and sent her to the same house in Subang where police later arrested all of them.

Neela,[not her real name] aged 20 also found in the same premises, narrated how she had come to Malaysia for a holiday with her Indonesian friend and had eventually been sent to this same house by her friend s Malaysian husband.

Roma [not her real name] aged 19 had come to Kuching for a holiday and then to Kuala Lumpur for sightseeing. She took a taxi and on the way the taxi driver asked if she had a place to stay and brought her to this house in Subang.

SUHAKAM found that the whole process of recruitment up to and including exploitation was carried out within the context of organized networks. This increased the efficiency and control of the whole process and at the same time reduced the risks.



In practice, recruitment is usually carried out by offering study or work abroad, most often by word of mouth from friends or personal recruitment, these young women are offered an attractive and lucrative job or study abroad. Although in these cases, the facilitating person from the outset has the intention of exploiting and taking advantage of the young woman in question, that only becomes clear to the woman involved at a much later stage. Lies are told about the earnings, the share of them for the trafficker and at times about the residential status of the woman in the destination country. Unwittingly, these women cooperate in their transfer.

When an individual becomes a victim of trafficking, the Nation State also becomes a victim.

SUHAKAM also found that girls from China were deceived by their lover boys with promises of marriage. These lover boys would pay for their tickets from China and meet them on arrival at KLIA. They would then set them up in apartments or rented homes and live as husband and wife. These girls were taken shopping to department stores and bought fine clothes. Once their visas expired, the lover boys disappeared. The girls were arrested for non-possession of documents or for over-staying and at times sentenced.

SUHAKAM found a number of such girls from China in the Semenyih detention centre in Selangor and two from Uzbekistan at the Macap Umboo detention centre in Malacca. One girl from China even had a two-month old baby boy with her at the detention centre in Semenyih. Whilst the man she had lived with refused to come and see her, his mother and sisters were trying to take her home.

Trafficking in women and children is not confined to West Malaysia, but is also rampant in East Malaysia — in Sabah and Sarawak. On 24.01.04, police in Kota Kinabalu, Sabah held 20 Filipinas aged between 20 and 35 believed to be prostitutes in a vice raid at a hotel in the city centre. The police found 4 women in a room on the 5th floor and 10 more on the 8th floor. ¹⁴

1.6.4 Methods of Control

SUHAKAM found that traffickers used various methods of control of the victims. Frequently used methods of control are:

- taking away personal documents and travel documents;
- demanding or taking a disproportionately large part of the proceeds of prostitution;
- selling — or threatening to do so — the victim to another pimp;
- withholding food;
- isolation of the victim from friends, family and colleagues;
- instilling fear of police, and the justice system;
- blackmail;
- debt bondage;
- mistreatment, beatings, rape, intimidation, violence or threat of this against the victim;

¹⁴ The Borneo Times, Tuesday, 27 January 2004

- threat of violence against victim s family;
- isolation of the victim by confinement, permanent surveillance or constant accompaniment;

1.7 Media Reports

There are fragment media reports of young girls being rescued from entertainment outlets during police raids. Most are trapped into the sex industry.

Being part of the trafficking nexus questions our dedication to Justice and Equality , words that seem to hold very little meaning for the most vulnerable citizens-women and children.

CHAPTER 3



CHAPTER 3

SUHAKAM S FORUM ON TRAFFICKING IN WOMEN AND CHILDREN —A CROSS BORDER AND REGIONAL PERSPECTIVE

3.1 Introduction

The Forum organized and held by SUHAKAM on 13 and 14 April 2004, themed Trafficking in Women and Children —A Cross Border and Regional Perspective was the culmination of the various dialogues held prior to the Forum with government agencies, non-government agencies and the representatives of selected embassies. The Forum was a crucial step taken by SUHAKAM to forge a national and regional collaborative response to trafficking.

3.2 Objective of the Forum

The Forum was held to provide a venue for the exchange of information and ideas on the spectrum of issues which trafficking in person raises. The central aim of the Forum was to facilitate discussion on steps taken/required at national and regional level against the backdrop of developments such as the Trafficking Protocol and regional initiatives.

In assessing progress in this sphere by the regional experts on Trafficking, the Forum sought to further the debate on the application of a human rights framework to trafficking, including analysis of root causes as well as law enforcement and judicial responses at point of origin, transit and destination.

In particular the Forum sought to identify best practice by states, government and non-governmental actors concerned with trafficking whether from a migration, criminal justice, gender or more general human rights perspective. Another objective of the Forum was to establish a networking of persons concerned with the issue of trafficking in women and children in the Asian region.

3.3 Forum Speakers

Speakers were invited from the region and from UN bodies to give their views on the problem of trafficking in the region.¹⁵ The experts from the regions concerned with the issue of trafficking presented a view of their respective country s problems and the measures taken to combat and/or reduce this problem.

¹⁵ Please see Appendix 7 for list of Speakers and moderators.



Speakers at the Forum

3.4 Forum Participants

To engage the public at large, SUHAKAM invited members of the diplomatic corps, officers from various law enforcement agencies — the police, the immigration, the prisons, officers from the Ministry of Foreign Affairs, the Welfare Ministry, the Women Development Ministry, representatives from the American, Russian, Thai, Cambodian, Philippines Myanmar and Vietnamese Embassy, representatives from the NGOs; the Bar Council; academics and human rights practitioners.¹⁶ The response surpassed expectations — testimony of the importance and widespread interest for the rights of women as a shared concern.

¹⁶ See Appendix 7 for list of Participants.



Some of the participants at the Forum

3.5 Issues Raised at the Forum/ Key problems and points for attention.

Some key concerns were raised at the Forum by presenters and participants. Below is a summary of the key concerns noted :-

3.5.1 *There is lack of hard statistical data on the size of trafficking.*

A number of Speakers noted that there was a lack of statistical data on the issue and the development of data was complicated by the international character of the crime and the inadequacy of existing national legal provisions in some countries. There is also no reliable national overview of the number of victims of trafficking. The increasing impersonality and facelessness of the crime has made investigations difficult.

3.5.2 *Lack of dissemination of information*

There is lack of dissemination of information about the crime of trafficking. General public information, in order to create a form of awareness among the general public on the existence and characteristic of trafficking of women and children, is completely lacking at present.

3.5.3 *Insufficient preventive measures*

It was agreed that trafficking is on the rise in the Asian region — including in Malaysia. It was stated that insufficient attention was being paid by the authorities to preventive measures and information. This concerns, firstly specific prevention measures aimed at the potential target groups of traffickers, in the countries of origin, receiving and/or transit ones.

3.5.4 *Difficulty in identifying those trafficked*

The enforcement agencies, in particular the police stated that it was not easy to establish whether the girls detained during the raids could be regarded as victims of trafficking. Albeit the fact that there are signs that indicate a possible victim of trafficking, there exists a grey area between those forced/coerced/ under threat and those working absolutely on free choice. Some of these girls know what is expected of them and choose such a life over the life they may suffer in their homeland.

3.5.5 *Lack of know-how and experience among agencies*

The know-how and experience among the agencies entrusted with enforcement is also a major concern. There is a lack of understanding of the issue of trafficking.

3.5.6 *Reluctance of Witnesses*

The readiness of victims and witnesses to report that they have been trafficked or come forward to make a statement is another problem that hinders prosecution.

3.5.7 *Lack of Access to Assistance*

Another key problem raised was the fact that there was no access to assistance for victims. Victims do not have even temporary residence permits. Although some NGOs and victim support organizations do offer these victims some form of help in a number of cases, this is not being done in a structural way. The position of these victims is marginalized as a result.

3.5.8 *Victims are treated as illegal migrants*

In principle, Malaysia considers and treats victims of trafficking as illegal migrants and in the first instance they are treated as unwanted aliens and deported as an undocumented migrant before they are identified as a victim. This frustrates investigation and prosecution of possible perpetrators of trafficking. This also means that only in the second instance are they identified as possible victims.

3.5.9 *Lack of adequate legal and institutional framework at regional level for border control*

There is inadequate legal and institutional framework to prevent trafficking, protect victims and survivors and penalize traffickers at national and regional levels. At the national level, existing laws are piece-meal. Trafficking is further facilitated by the porous borders marked by an absence of effective regulations and border controls.

3.5.10 *Trafficking has lead to a rise in communicable diseases*

The escalation in human trafficking has lead to a rise in HIV and other communicable diseases. These women and children are exposed to life threatening risks.

3.5.11 *Trafficking has become highly sophisticated*

Trafficking in women and children maybe in the form of wired trafficking , the internet being the latest trend. Catalogues of mail order brides , commercial sex tours , live strip shows have become common.

CHAPTER 4



CHAPTER 4

INTERNATIONAL CONVENTIONS AND LEGISLATION ON TRAFFICKING

4.1 Definition of Trafficking

Trafficking has been defined as the forcible procurement of women and children. Another definition of Trafficking is:

the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the traffickers, such as forced domestic labour, false marriages, clandestine employment and false adoption.

Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (2000) ¹⁷ defines Trafficking as:

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 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.

¹⁷ Article 3 of the Trafficking Protocol

4.2 Conventions on Trafficking

Article 4 of the Universal Declaration of Human Rights (UDHR) provides:

that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 10 (3) of the International Covenant on Economic, Social and Cultural Rights provides:

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

The Global Alliance against Trafficking in Women (GAATW) has formulated the Human Rights Standards for the Treatment of Trafficked Persons, which is a comprehensive guide for state and judicial authorities, as well as non-governmental agencies at all levels on the rights of victims of trafficking, and how they should treat them with respect for these rights. This document is similar to the Standard Minimum Rules for the Treatment of Prisoners, which is endorsed by the United Nations.¹⁸

At the fifty-fifth session of the General Assembly of the United Nations on 15 December 2000, the United Nations adopted the *Convention Against Transnational Organized Crime*. This was supplemented by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. To date 109 countries have signed this Protocol.

¹⁸ See Appendix 2

The provisions of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* are wider. It provides that anyone who enslaves a person, forces the practice of prostitution, uses organs, places a person in slave-like conditions by way of threat, force intimidation or deceit, has somebody in one's power, exploits as vulnerability, transports within borders or abroad, migrates, refugees or receives a person will be considered as having committed the crime of trafficking.

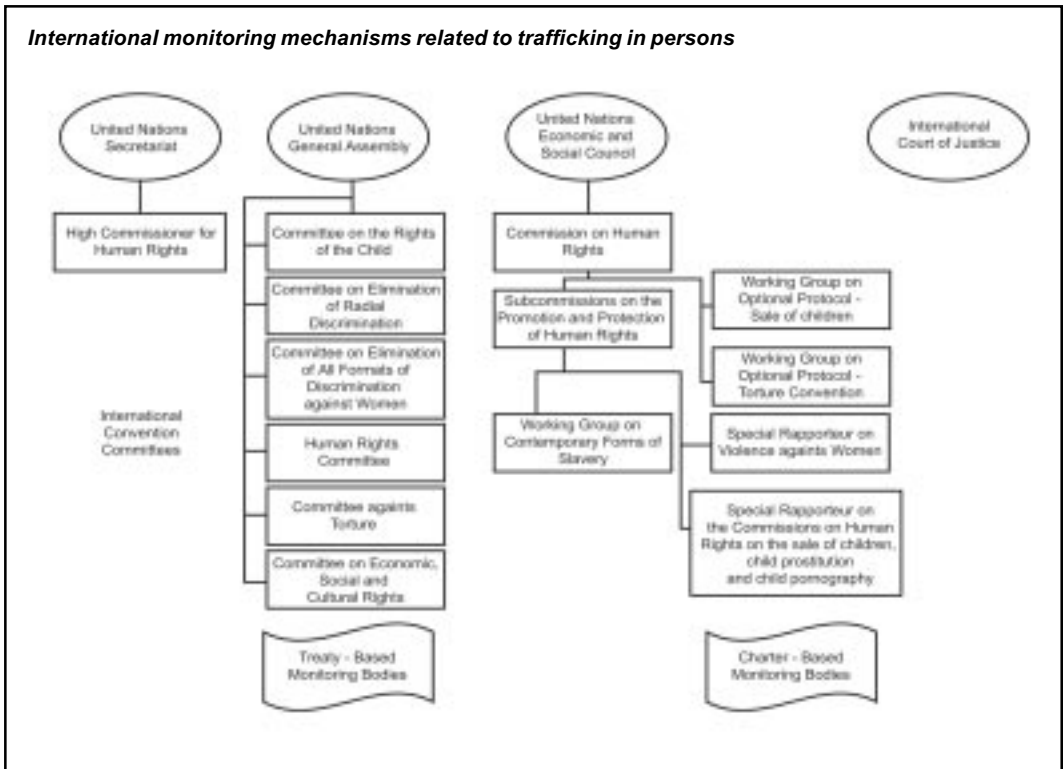
Other international instruments which have imposed a legal obligation on all their member countries to provide protection against trafficking are:-

1. UN Convention on the Rights of the Child (1989)
2. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1957)
3. International Covenant on Economic, Social and Cultural Rights (1966)
4. International Covenant on Civil and Political Rights (1966)
5. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Numerous declarations adopted in international conferences have supplemented these covenants and have reinforced the spirit of dignity and respect for children's rights. Amongst them:-

- 1) The Stockholm Congress on Commercial Sexual Exploitation of Children held in August, 1966.
- 2) World Summit for Children and the World Declaration on the Survival, Protection and Development of Children, 1990.
- 3) The Beijing Declaration and the Platform for Action of the Fourth World Conference on Women held in Beijing (1995)
- 4) The International Conference on Population and Development, Cairo, 1994
- 5) The World Conference on Human Rights, Vienna, 1993.
- 6) The SAARC SUMMITS, 1991, 1996 and 2002 have also convened conferences on trafficking.

International monitoring mechanisms related to trafficking in persons



The Beijing Platform for Action on improving conditions for women, ILO Convention 182 on the elimination of child labour and the IPEC Program on the elimination of child labour are agencies of the United Nations which carry out activities to stop the crime of trafficking.

Equally noteworthy are the developments such as:-

- i) the 2000 Palermo Trafficking Protocol;*
- ii) the formation of the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution;*
- iii) the 1999 Bangkok Declaration on Irregular Migration;*
- iv) and a joint project between the United Nations High Commission on Human Rights and His Majesty's Government of Nepal ¹⁹*

¹⁹ United Nations Press Release, High
 —Level Conference on UN Convention Against Transnational Organized Crime held at Palermo, Italy —http://www.un.org/News/Press/docs_2000/200018.It_4348.doc.html.

Other documents concerning the legality of trafficking include:

- i) the 1996 Workshop on trafficking in women and children, organized by the Bangladeshi NGO UBINIG — which produced an 1 page outline of international and national conventions, constitutional provisions and legal instruments dealing with trafficking;
- ii) the Technical Consultative Meeting on Anti-Trafficking Programs in South Asia, held in Kathmandu in September 2001 which resulted in 6 reports addressing different legal aspects of trafficking, which was later published by the United states Agency for International Development; and
- iii) the Asian Development Bank s exhaustive study that included legal mechanisms that are available to those who wish to combat trafficking.

It should be noted that this is merely a list of compilations of pertinent legal materials. International, regional and country specific information is available to interested individuals and organizations on the internet and in print form.

CHAPTER 5



CHAPTER 5

TRAFFICKING LEGISLATIONS AND REGULATIONS IN MALAYSIA

Some of the laws and regulations which protect women and children from being trafficked are:

5.1 Article 6 of the Federal Constitution

Article 6 of the Federal Constitution of Malaysia stipulates that all forms of forced labour are prohibited.

5.2 Section 371 of the Penal Code

The most important provision as regards the criminal approach to trafficking in Malaysia is Section 371 of the Penal Code. Section 371 makes the habitual dealing in slaves an offence. The aim of this provision is to criminalize on the one hand the involuntary placing or holding in prostitution, and on the other hand profiting from this. Hence the amendment to the Penal Code by way of Section 371 provides much avenue for the prosecution of traffickers as well as perpetrators. The tenor of section 371 is such that the crime of slave trading in any way includes trafficking in human beings. Running of prostitution is punishable. The intention to place someone, irrespective of their age in prostitution in another country should also be stamped as trafficking. This would be consistent with the provisions in the Geneva Conventions.

Repeat offences carry a liability of whipping of not more than 10 strokes and not less than 6 but not more than 10 strokes. That the person has committed these offences outside Malaysia is not an excuse or a defence, as Section 3 of the Penal Code provides for the punishment of offences committed beyond, but which by law may be tried within Malaysia. Section 3 of the Penal Code specifically provides that any person liable by law to be tried for an offence committed beyond the limits of Malaysia, is to be dealt with according to the provisions of this Code for any act committed beyond Malaysia, in the same manner as if such act has been committed within Malaysia. Section 4 of the Penal Code extends the application of the Code to extra territorial offences.

5.3 The Child Act 2001 (Act 611)

The Child Act 2001 [Act 611] incorporates some of the principles of the U.N. Convention on the Rights of the Child which Malaysia ratified in 1995 and makes trafficking in children an offence. The entry into force of this new legislation repealed three other laws concerning child prostitution — Women and Girls Protection Act, the Juvenile Courts Act and the Child Protection Act 1991. The Child Act 2001 in effect stipulates heavier punishments for child exploitation as compared with the Child Protection Act 1991. Whereas the Child Protection Act 1991 only provided for trafficking as an offence, Part III of the Child Act 2001 extends it to trafficking in and abduction of children.

The Child Act 2001 sets out stiffer penalty for procuring a child for purposes of prostitution/the purposes of sexual intercourse with any other person either within/outside Malaysia.

The penalty under the Act now is fifty thousand ringgit or imprisonment for a term not exceeding 15 years/ both. Offences for acting as an intermediary on behalf of a child or exercising control/ influence over the movements of a child in such a manner as to show that the person is aiding/ abetting/controlling the prostitution of that child; or engages/ hires for any valuable consideration, a child to provide services for that person s sexual gratification, is not only liable to a fine not exceeding fifty thousand ringgit and to imprisonment for a term of not less than 3 years but not more than 15 years, but also be punished with whipping of not more than 6 strokes.

5.4 Section 8 of the Immigration Act 1959 (Revised 1963)

In particular, domestic immigration law does not make any distinction between prohibited immigrants or any other category of vulnerable persons worthy of protection and assistance under international law. The definition of prohibited immigrants in Section 8 of the Immigration Act 1959 ²⁰ does not take into consideration the factors prompting the illegal entry of non-citizens into Malaysia. Therefore, steps should be taken to create uniformity between domestic law and Malaysia s obligations under international law incurred by virtue of accession to the CEDAW and the CRC.

²⁰ Section 8 of the Immigration Act 1959 (Revised 1963)

The law in Malaysia punishes these offences as criminal offences or administrative infractions of irregular entry, entry without valid documents or engaging in prostitution, including forced prostitution. Victims of trafficking are thus often detained and deported without regard for their victimization and without consideration for the risks they may be exposed to if returned to their country of origin. The victims' needs for specific medical, psychological or legal assistance are often not taken into account.

These victims who had suffered physical and sexual abuse suffer traumas when they are arrested and detained as irregular migrants after managing to escape from their exploiters, suffering further traumas. Further, due to the fear of being deported or criminalized, often victims of trafficking do not denounce their traffickers and do not seek protection from local authorities against their abusers.

CHAPTER 6



CHAPTER 6 *

ISSUES IN THE LEGAL DIMENSION: EXTRA TERRITORIALITY

The adoption of extraterritorial criminal laws against human trafficking is one of the measures required to effectively combat trafficking. These laws are not a panacea. There is a need to be transparent and self-critical about investigations and prosecutions based upon such laws: at times, they are very long-winded and time-consuming.

Extensive extraterritorial provisions require extensive cooperation and the scope of mutual cooperation is limitless. The shape of such cooperation may range from formal arrangements such as extradition treaties, to mutual cooperation agreements to exchange evidence and find witnesses, and field visits by personnel between different countries to trace and track the evidence and the offenders.

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.

*-Recommended Principles and Guidelines, Recommended
Guideline 4*

6.1 Extraterritorial Legislation and Universal Jurisdiction

The national criminal legislation of a State applies only to crimes committed within the territory of that State.

Extraterritorial legislation comprise:

- 1) laws that regulate the conduct of nationals while abroad (extra legislation) and

- 2) laws that are applicable to the conduct of non-nationals outside the territory of the legislating State (universal jurisdiction) ²¹

6.2 Existing Extraterritorial Criminal Legislation

ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) has identified approximately 30 countries with extraterritorial criminal laws. ²² These laws are:

- Laws specifically targeting child sex tourism, based upon the premise that traveling abroad with the intent of abusing a child is punishable,²³
- Laws targeting child abuse²⁴ and
- Laws applicable to all serious offences against children.²⁵

A number of countries are now adopting new laws against trafficking in persons. These laws contain more severe sanctions against perpetrators, and often have extraterritorial scope applicable to persons within the jurisdiction of the prosecuting country, even though the offenses took place in another country.

One recent national law with extraterritorial jurisdiction is the United States Victims of Trafficking and Violence Protection Act of 2000 (the TVPA) which covers severe forms of trafficking in persons encompassing:

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person included to perform such act has not attained 18 years of age or
- the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

²¹ [http://www.law.unimelb.edu.au/mjil/issues/archive/2001\(1\)/04-Senz.pdf](http://www.law.unimelb.edu.au/mjil/issues/archive/2001(1)/04-Senz.pdf).

²² ECPAT Child Sex Tourism Action Survey, 2001

²³ Canada, United States, Australia, Ireland and the United Kingdom

²⁴ Mexico, Norway, Sweden, Finland, Denmark, Switzerland, Austria, Slovenia, Cyprus, Germany, France, Portugal, Spain, Italy, Morocco, Algeria, Ethiopia, New Zealand, Iceland, Taiwan and Japan

²⁵ China, Laos and Thailand.

Section 111 of the TVPA provides for extraterritorial jurisdiction over significant traffickers . Sanctions may be imposed against any foreign person that (i) plays a major role in trafficking, directly or indirectly in the United States, (ii) provides assistance, financial or technological support or goods and services in support of activities by a significant trafficker; or (iii) is owned or controlled by a significant trafficker.

In terms of international instruments, the United Nations Trafficking Protocol opens the door to extraterritorial legislation at the national level as one of the necessary interventions. Extraterritorial legislation is also facilitated by the Original Protocol to the Convention on the Rights of the Child.

6.3 Issues to Consider When Drafting Extraterritorial Criminal Legislation

A. *Integration into national laws*

Extraterritorial provisions can be integrated into specific laws on trafficking in persons or other forms of abuse and exploitation. ²⁶ Extraterritorial provisions can also be integrated into more general laws such as the criminal penal code. ²⁷

B. *Definition of Child*

Laws with extraterritorial provisions should use the age of 18 as the age threshold between childhood and adulthood so as to protect the child (a person under 18 years of age) absolutely from sexual exploitation, i.e. child prostitution, child pornography and trafficking of children for sexual purposes. This means that a child cannot be considered to consent to such acts; the protection afforded to the child is irrespective of the issue of sexual consent. In practice, however, it should be recognized that several countries use a lower age for protecting the child and that confusion exists with respect to the age of sexual consent at the national level.

²⁶ In the case

²⁷ For example the criminal penal codes of several continental European countries, such as France, Belgium, Sweden and Germany.

C. *Scope of jurisdiction/ universal jurisdiction*

The issue of whether extraterritorial provisions should only have jurisdiction over nationals of a State, or whether extraterritorial jurisdiction should also extend to others such as residents in a State's territory or even non-residents passing through a State's territory. For instance, Belgian criminal law covers not only the misconduct of its nationals but also residents and people's passing through Belgium. Switzerland's and Denmark's laws cover not only nationals but also residents.

The concept of universal jurisdiction reflects the reality that the gravity of certain crimes warrants a universal mandate for the prosecution of these crimes. While surrendering a small amount of sovereignty, States acknowledge the necessity of allowing their nationals to be prosecuted under foreign criminal law because the acts committed are of such grave nature as to offend a sense of justice common to all legal systems. Most of the crimes commonly accepted as demanding universal jurisdiction centre around crimes against humanity, including genocide, torture and other crimes of an equally serious nature.

Trafficking in persons does not always form part of this category of offenses and only occasionally triggers universal jurisdiction, for example, in Germany. Most national legal systems still require nationality as a necessary link between offender and power of prosecution.

In terms of policy, however, if it is advocated that human trafficking is an international crime calling for international, universal jurisdiction, it is inconsistent to condition jurisdiction on the nationality of the offender. This is influenced by the advocacy that a crime anywhere should be considered a crime everywhere; extraterritorial criminal laws should thus cover all offenders irrespective of their nationality.

D. *Double Criminality*

Double criminality requires that an offence be a crime in both the country in which it took place as well as in the country in which the crime is prosecuted.

The 1997 Sex Offenders Act of the United Kingdom illustrates the principle of double criminality. Any act done by a person in a country or territory outside the United Kingdom which —

- (a) constituted an offence under the law in force in that country or territory; and
- (b) would constitute a sexual offence to which this section applies if it had been done in England and Wales, or in Northern Ireland, shall constitute that sexual offence under the law of that part of the United Kingdom. (1997 Sex Offenders Act, Section 7 (1))

In practice, the double criminality rule often impedes rather than promotes justice from the perspective of the victim's disadvantaged position. For instance, in the case of the sexual exploitation of a child, a judicial problem may exist where the law of the country where the offence takes place protects persons under 15 years of age from sexual exploitation, while the law of the country where the prosecution takes place protects those under 18 years of age. If the child victim is 16 years of age and if the country where the prosecution is taking place abides by the double criminality rule, this would not be satisfied and the trial of the accused would not be able to proceed, because the victim would not be covered by the law of the prosecuting country.

The international trend is now in favour of discarding the double criminality rule, at least in relation to the sexual exploitation of children. This is evident in the position of the European Union which called for review of the principle in its 1997 Joint Action to combat trafficking in humans, and the process of legislative reform in Sweden.

E. *Double Jeopardy*

Double jeopardy provides that a person who has been acquitted or convicted of an offence cannot be prosecuted again for the same offence. Many countries adopt this rule, but others are more open to reinterpretation of the rule.²⁸

²⁸ For instance, Canada's 1997 law to amend the Criminal Code does not prohibit re-prosecution for the same offence in the country of origin (Canada), even though the accused has already been acquitted or convicted in the destination country.

Double jeopardy also involves the question of whether the accused has served the full sentence imposed by a court of law in the country where the conviction occurred. In some jurisdictions, the door remains open to re-prosecute the offender in his or her country of origin if the full sentence has not been served in the destination country (for example, where the offender escapes from prison and returns to the country of origin before serving his or her time). This trend is exemplified by the 1970 European Convention on the International Validity of Criminal Judgments which does not call for the application of the double jeopardy rule if the offender fails to serve his or her time.

* **Note:** This chapter is condensed from the report of the United Nations Economic and Social Committee for Asia and the Pacific on Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices.

CHAPTER 7



CHAPTER 7

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

The human rights of trafficked persons must be the centre of all efforts to combat trafficking. The human rights of trafficked persons must be protected at all stages of the trafficking spectrum. Combating trafficking in human beings requires a rights-based approach supported by the State s criminal justice system. This blended approach will be multidisciplinary, incorporating a criminal justice response to prevent crime and deter offenders and a human rights response to protect and defend the rights and integrity of the trafficked persons.

7.1 Bilateral and Regional Cooperation to Combat Trafficking

It was suggested at the Forum held on 13 and 14 April 2004, that there be a Regional Trafficking in Persons Information Centre. This will serve as the repository for information on bilateral agreements, national action plans, cooperative efforts between government agencies and NGOs, NGO activities, anti-trafficking projects, and notices of meetings and conferences.

Currently, there exists a Memorandum Of Understanding between Cambodia and Thailand and one between India and Nepal to combat trafficking.²⁹ It was suggested that perhaps there could be an MOU between Malaysia and Thailand as a start to reduce the flow of trafficked young girls into Malaysia.

A Memorandum of Understanding such as this would allow for the exchange of information and monitoring the trafficker s action. The formulation of a regional legislative model for the states in the Asia Pacific Region to address more effectively the criminalization of trafficking and the protection of trafficked persons should be embarked on.

²⁹ See Appendix 5 for MOU between India and Nepal.

7.2. The Role of Embassies

Malaysia seems to be an attractive country for foreign women from both near and far — from our ASEAN neighbours to as far as the African and European continent. These women have heard of success stories, displays of wealth and remittance sent back home from relatives and friends working abroad which is a powerful incentive for other girls and women to seek jobs in this country.

SUHAKAM therefore urges the respective embassies to advise their nationals to ensure that their employment agencies are reliable and registered and that they are aware of their rights to engage only in the occupation for which they have mutually agreed to before leaving their country. This is important as international trafficking frequently masquerades as migrant work. With the entry into force of the United Nations Protocol against the Smuggling of Migrants on 28 January 2004, the prosecution of offenders should be made more effective.

7.3. Setting Up Of A National Task Force on Trafficking

It was also suggested at the Forum that there should be an Inter-Agency and Multi Sectorial Collaboration and Support for a Comprehensive Programme to Prevent and Control Trafficking and Protect and Repatriate Victims. This calls for the formation of a National Programme of Action and setting up of a National Task Force on Trafficking.

The purpose of such a Task Force is to create an avenue sensitive to cases of trafficking in women and children. The creation of an independent specialized Task Force to hear all trafficking cases is vital as currently there is no official body equipped to deal with such cases. The Task Force would be able to provide trafficked victims with accessible remedies within a reasonable timeframe. It is hoped/ anticipated that the setting up of a Task Force would encourage more victims/ complainants to come forward and will contribute to the overall reduction of trafficking.

This cabinet — level Task Force would set out policies and programs in the fight against trafficking and ensure that the various government agencies and the NGOs work in unison to achieve progress and results.

Officials of the Task Force must be entrusted with not only duties in receiving complaints but must also be able to propose proper guidelines and mechanisms in order that the law may be effectively implemented.

Normal grievance mechanisms seem to fail to take into account the complexities of trafficking cases; especially the tripartite relationship that often exists between the complainant, the alleged trafficker and the management of the premises. In order to respond to the unique needs of trafficked victims, the committee should consist of an equal number of men and women and comprise people from various enforcement agencies, NGOs, embassies and human rights persons deeply concerned with and with experience and expertise relevant to trafficking issues.

The Task Force will review measures taken to promote and create a trafficking — free environment. It is to accept trafficking complaints and to report to the relevant enforcement authorities expeditiously. It is also to assist in the repatriation of victims. The task force can assist the complainant to draft her/ his report.

7.4. Ratification of the UN Protocol on Trafficking

Participants were unanimous in urging the Government to ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000.³⁰ Ratification would be a big step towards the development of a comprehensive plan of action and strategy involving Government agencies, NGOs, Corporate Sector (Entertainment Outlets) and the Community.

The Trafficking Protocol builds upon existing international treaties incorporating in one comprehensive document all presently conceived aspects of the problem with a human rights and humanitarian approach. The Protocol provides clear norms and standards for all States to work towards the three—fold objective to prevent and combat trafficking and to promote and facilitate a global network of information sharing.

³⁰ See Appendix 1 for the UN Trafficking Protocol 2000

The prevalence of countries in which trafficking takes place in the Asia Pacific region amplifies the need for the ratification of the Trafficking Protocol. Ratification would encourage countries of origin, transit and destination to recognize their role in combating the problem and find solutions for action.

7.5. Quicker, Proactive and Stringent Action by Enforcement Authorities

Law enforcement plays a key role in shutting down trafficking syndicates. Traffickers must be prosecuted, convicted and punished. Often victims are afraid to testify, traffickers therefore escape prosecution.

An effective law enforcement response addresses the entire spectrum of offences, violations and infractions. While it is vital that the law enforcement response investigates, charges, prosecutes and punishes the most serious offences, where it is impossible to obtain conviction of such serious offences, prosecution of lower level offences or enforcement of non-criminal violations should also be pursued. Such action will disrupt the activity of the trafficker and, if persistent enough, may cause him or her to give up such activity. The diligent investigation of these underlying offences and infractions can also be used as supportive circumstantial evidence of trafficking in the current or future cases.



Encouraging moves by the enforcement



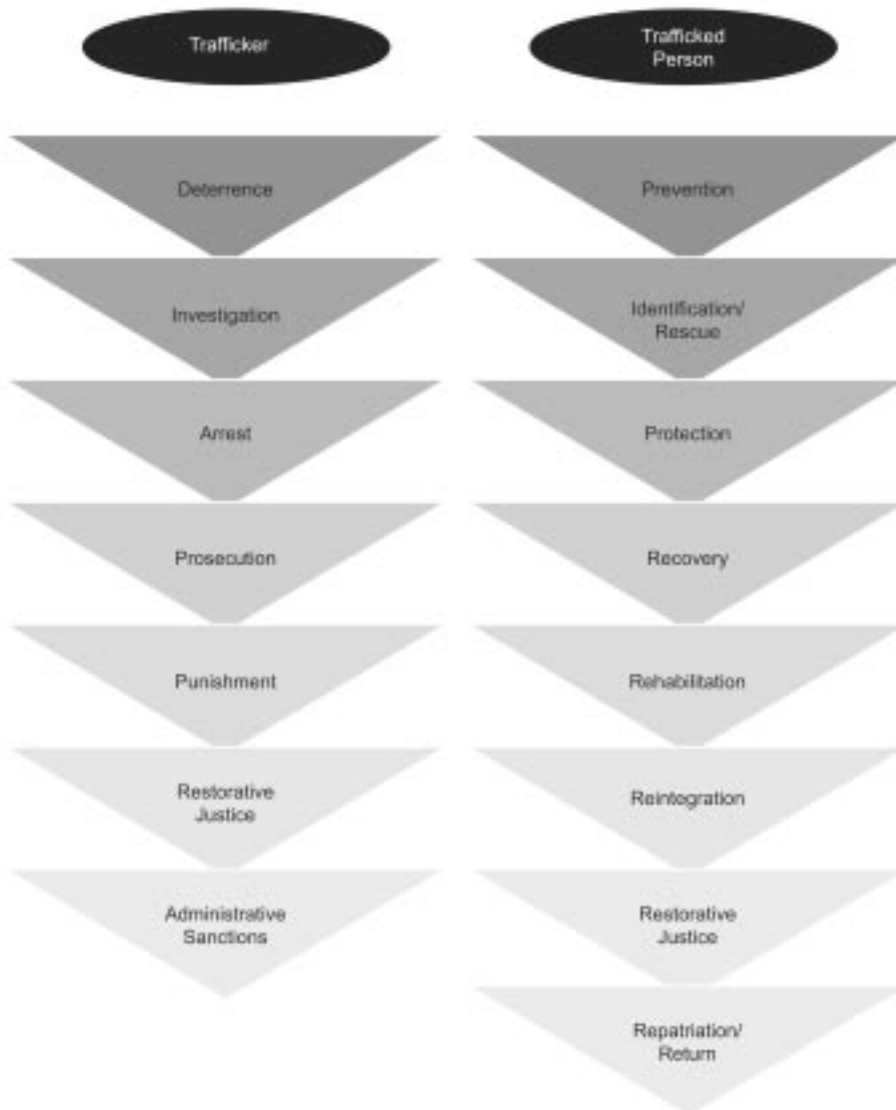
The police, immigration and prison officials could take a few minutes to question these girls as to how they entered into the country. Trafficked victims should be sent back immediately with the help of the embassies and not penalized.

Victims of trafficking need to be identified and encouraged to come forward to report traffickers. Law enforcement should not merely emphasis on investigation, but should look into prevention as well.

SUHAKAM urges law enforcement authorities to develop proactive mechanisms and processes which decrease their reliance on victim or witness testimony. Video-taped testimony of victims as evidence in trials could decrease their personal trauma. SUHAKAM suggests that where there is clear evidence that the girls have been trafficked, smuggled or cheated into prostitution, these girls be sent back to their home country as soon as possible instead of being detained for indefinite periods of time and made to languish in prisons or detention centres.³¹

³¹ Paper presented by Tan Sri Abu Talib Othman, Chairman of SUHAKAM at the forum on Trafficking of Women and Children —A Cross Border and Regional Perspective on 13 and 14 April 2004

Innovative ways need to be derived to identify victims of trafficking, encourage them to come forward to report traffickers, and to cooperate with enforcement agencies as available witnesses. There are examples of good work that is being done by NGOs in this region. SUHAKAM therefore calls for and encourages for the coordination between NGOs and the enforcement agencies. Former victims could work with officials to identify potential victims and traffickers at key crossing points.



7.6 Setting Up of a Trafficking Unit at the Police Headquarters

SUHAKAM recommends that it is vital to set up a Trafficking Unit at the Police Headquarters. This Unit can help in the proper identification of trafficked persons and traffickers which is an essential part of the law enforcement response to trafficking. The personnel in this Unit could be trained in the detection, reception and processing of irregular migrants. It is necessary to rapidly and accurately identify trafficked persons, especially children. This Unit should be responsible for skilled, diligent investigation of trafficking and its component offences.

7.7 Education and Training

There should be education and training programme for border control officials, law enforcement personnel, labour inspectors, the judiciary, and all other relevant government officials. Through education, anti-trafficking campaigns, research and lobbying much light can be cast on this topic.

7.8 Role of NGOs and Community Empowerment

NGOs who operate at the grass roots level would be able to provide vital information, motivation and support. There needs to be coordination between NGOs and support given to the NGOs that have developed programmes to assist in the repatriation and/or reintegration of the trafficked.

Local community members, groups and agencies should be proactively engaged. Community members should be encouraged to recognize their personal responsibility to other community members and to value action over inaction.

7.9 Role of the Tourism Industry

Worldwide travel has increased more than seven fold since 1960. Item number one in world exports; ahead of petroleum, vehicles and electronic equipment today; is international tourism. Whilst it may be true that the tourism industry cannot be held accountable for the behaviour of

its clients, SUHAKAM suggests that the industry be vigilant and recognize situations where children and young women are trafficked for sexual purposes.³² SUHAKAM reiterates that tourism must respect the rights of women and children and wishes to remind tourism and labour agencies that hospitality does not call for the sexual exploitation of women and children.

7.10 Decriminalization of Victims of Trafficking

The decriminalization of prostitution will help in creating an environment that is less hostile and more transparent to those victimized by the people trafficking industry. Victims of trafficking need to be identified and encouraged to come forward to report traffickers and cooperate with enforcement agencies as available witnesses. Victims should not be further stigmatized. There needs to be support for victims and survivors of trafficking.

7.11 Repatriation and Reintegration of Trafficked Victims

Effective action ought to be taken to ensure the safe return of the trafficked women and children to their home or communities. There needs to be voluntary repatriation as well. Rescued women and children should be treated as victims of crime, not as criminals and every effort should be made to rehabilitate them and to reintegrate them into their family and society. Police and enforcement personnel need to be trained in dealing with victims of trafficking.

7.12 The Local Policy

The central weight to the legal running of entertainment outlets is designated in the hands of the municipalities. The municipalities lay down rules in their bye-laws for the establishment, installation and management of entertainment outlets.

SUHAKAM during its dialogues and interviews with the girls was told that some of these entertainment outlets had secret hidden partitions that served as rooms where women and girls were made and often forced and coerced to entertain clients .

³² Estimates put the number of children entering the sex-market every year at well above one million.

As the municipalities are in a position to monitor and control the activities of the entertainment outlets, these municipalities can therefore play a very vital role. SUHAKAM suggests that local authorities and municipalities adopt stringent measures when issuing licenses to these outlets and that municipalities do not hesitate to shut down such outlets which contravene the building laws.

Further, as the drawing up of policies regarding entertainment outlets in every state is left to individual municipalities, SUHAKAM proposes that there be some uniformity in this. A model regulation could be drawn up to be adopted by the municipalities in their local bye-laws.

SUHAKAM also proposes the adoption of a *enforcement arrangement* between the municipality, the police, the prosecutors, the housing ministry, the fire service and the labour inspectorate which includes measures that each partner will take where it is found that the regulations laid down in their respective fields of control have been infringed. In this way, active enforcement in both the administrative and criminal field is guaranteed.

7.13 Review of Laws

a) *Punishment for those who receive services.*

SUHAKAM is concerned that only the victims are punished mainly for not possessing valid stay documents. Currently, there is no law that stipulates punishment for those who receive services from prostitutes. For instance, when police found the 19 buck-naked girls from China in the cubicles on 24 February 2004, there were 261 men/clients at the entertainment outlet. None of these men were charged/ arrested for procuring the services of these women.

There should be provisions of sentencing for procuring services from trafficked women as well as for crimes by organized groups. SUHAKAM strongly recommends that traffickers and their agents as well as owners or employers of entertainment establishments be prosecuted as well. Traffickers exploit the situation when they know there is no risk of prosecution. Embassies and NGOs can work together to uncover information such as traffickers names and addresses from the victims and provide such information to the police and other enforcement authorities.

The Palermo Protocol states that when the crime of trafficking is committed by a group of people and each person has committed a particular offence — for example recruitment, transport, transmission, provision of shelter, purchase, etc, each person will be deemed to have committed the crime of trafficking.

b) *Legal stay for victims of trafficking*

The possibility of providing legal stay in the country to which the women and children have been trafficked could be looked into. Suitable laws providing for such legal stay for the victims of trafficking should be looked into and considered.

c) *Provision for victim protection/legal protection*

During visits to detention centres, SUHAKAM found that the foreign victims especially those from China and Uzbekistan were hesitant to speak to the officials, let alone to seek help from the authorities for fear of deportation. If the government were to provide victims with legal alternatives to their removal to countries where they might face retribution or hardship, and ensure that victims are not penalized solely for unlawful acts that occur as a direct result of being trafficked.

d) *Vicarious Liability of Employers*

SUHAKAM recommends that employers and principals should face vicarious liability for trafficking carried out by their employees, unless they can prove that they took reasonable steps to prevent trafficking and that they took appropriate action when they received the complaint. The employer should be made to assist those who assist them in their complaint.

e) *Victimization of Complainant*

There ought to be provisions in the legislation for the prohibition of the victimization of complainants. Victimization should include subjecting, or threatening to subject someone to harm because they, or someone associated to them, has made a complaint, brought proceedings or

given evidence. The prohibition of victimization and emphasis on confidentiality is designed to protect complainants and those who assist them.

Currently, criminal prosecution does not provide any form of redress for the complainant for her injured feelings, humiliation and loss of dignity, not to mention the more tangible losses.

f) *Liability of the Alleged Trafficker*

There ought to be a provision stating that the alleged trafficker must redress any loss or injury suffered by the victim and caused by the alleged trafficker. The Attorney General has said that punishment for pimps would be increased to 30 years.³³ There should be similar provisions for punishment of traffickers as well.

7.14 An Anti - Trafficking Act

The participants felt that there was a need for an Anti-Trafficking Act. Whilst it may be true that currently, there exist sufficient laws pertaining to trafficking, these existing laws are piecemeal. Hence, the need for a comprehensive legislation encompassing provisions adequate to combat trafficking more efficiently.

No comprehensive law exists in Malaysia that penalizes the range of offences involved in trafficking. Currently, instances of trafficking are often punished under laws which also apply to lesser offences, and traffickers typically escape the full punishment they deserve. The existing piece-meal provisions are weakened by overlapping jurisdictions. They do not provide for the protection of victims. Currently, victims are viewed through the prism of the Penal Code.

The Anti-Trafficking legislation should provide a comprehensive approach to eliminating trafficking in persons through a three-pronged strategy: prevention of trafficking, prosecution of traffickers, and protection of victims.

Firstly, there needs to be a definition of trafficking — that includes the definition of recruiter transporter, buyer, seller, harbourer, brothel owner and manager.

³³ New Straits Report on 16 April 2004

Second, there needs to be increased penalties of up to 30 years imprisonment. This is important to send the message to traffickers that trafficking is taken seriously and that the penalties will commensurate with the crime.

Thirdly, the legislation should have a victim-centred approach that includes visa and temporary stay for victims of trafficking; as well as the establishment of shelters and services. In this regard, the law could also create an Office to combat and monitor Trafficking in Persons, which would support prevention efforts through public awareness campaigns and economic alternative programmes for the vulnerable.

7.15 The Need to Raise Awareness

SUHAKAM recommends that local vigilance or watch groups be set up to assist authorities in rescuing young women and children and nabbing traffickers or their agents. Religions and community leaders can help to educate children, women and their families on the dangers of trafficking. In this regard, a nationwide public awareness campaign on this issue is suggested.

Young people especially girls and their family should be the focus. There should be provision of education and/or training and/or employment/ assistance to the trafficked women/ children so as to prevent re-trafficking.

Those seeking jobs/labour in neighbouring countries / abroad should be furnished with accurate information about the dangers of working abroad and concrete steps taken to work aboard safely.

7.16 Best Practices of Other Countries

SUHAKAM feels that we can learn from the good practices of some countries. The government of Gambia for instance asks visitors to give information to the police on sex tourists and those who sexually exploit children through a special tip-system.

In some jurisdictions, there is a 30-year imprisonment for those dealing with trafficking. In Andhra Pradesh, law enforcement officers performance appraisal is linked to his or her efforts to apprehend and investigate human traffickers.

In Thailand the revised law of 1996,³⁴ proscribes imprisonment and a fine for procurers, pimps, owners and managers of brothels, mama-sans and includes penalties for a father or mother or guardian who colludes with procurers. It also includes provisions for assistance to the victims, as well as provisions for the NGOs to set up shelters and other supportive programs.

In the Netherlands, Immigration Law Circular B-9 [the B-9 regulation] offers aliens who are possible victims of trafficking and aliens who are witnesses to cases of trafficking, the possibility of making use of certain facilities when they report trafficking —like temporary residence in the Netherlands, reception and shelter, medical assistance and legal aid.

When during a police raid an alien is found who is possibly a victim of trafficking, and also when an alien who does not have a valid residence permit and who is or has been working in prostitution in the Netherlands contacts the police herself, even if there is only little indication of trafficking, the police must bring to the notice of the alien of the rights described in the B-9 regulation.

In order to be able to make the estimate whether or not the person found could be considered to be a possible victim of trafficking, the police have a list of indicators of trafficking.³⁵

Under the B-9 regulation, the possible victim is then offered a maximum period of 3 months, within which she must take a decision as to whether or not she wishes to report trafficking. During this reflection period her deportation from the Netherlands is suspended.

³⁴ The Prostitution Prevention and Suppression Act of 1960 was amended in 1996.

³⁵ This indicative but not limitative list contains twenty five factors that may play a part in the establishment of whether THB may be involved. The list contains points such as: not having travel documents, having an exorbitant debt, having to hand over the major part of the earnings, signs of maltreatment, restriction of freedom of movement.

If the possible victim decides to report the offence, this report is officially regarded as an application to grant a residence permit for a certain time. The application is honoured in the case of a criminal investigation or prosecution investigation (already underway or to be brought).

In principle, a decision on the application for a residence permit must be taken within 24 hours. If the alien does not wish to report an offence, she is issued a notification to depart and must leave the Netherlands. Residence permits based on the B-9 regulation are issued for a maximum of one year and may be extended. The permit is valid for as long as criminal investigations or prosecution continues.

In the United States, as a response to circumvent this problem of foreign victims being afraid to come forward for fear of deportation, a special visa was created to allow those freed from trafficking to remain in the US for up to 3 years. Up until 2004, 448 victims in the US had received these special visas.³⁶

In the US there exists a new legislation that allows enforcement officers to prosecute Americans who travel abroad for illegal sexual conduct with minors. American ex tourists are now subject to domestic exploitation laws even when their crimes are committed abroad. They face up to 30 years in prison if convicted and a fine of up to US\$ 250,000.00

7.17 The need for Political Will

The commitment to fight trafficking must come from the highest level of government. SUHAKAM feels that to tackle trafficking effectively and at its root causes, political will of the government and social will of the people/civil society is necessary.

³⁶ Paper presented by Her Excellency Marie T. Huhtala, Ambassador of the United States to Malaysia at the Forum on Trafficking of Women and Children organized by the Human Rights Commission of Malaysia on 13.04.2004

When regional governments extend their responsibility to protect foreign victims of trafficking, it will encourage these victims to assist in the investigation and prosecution of the traffickers. The state must reach out to victims and send the message that human freedom and dignity will be protected.

CONCLUSION

Measures that are introduced to combat trafficking must take into account the securing and promoting of human rights of trafficked persons. It is important to ensure that victims are not re-victimised. SUHAKAM believes this report will pave the way for future action and collaboration in restoring the rights and dignity of these innocent children and women, and prevent the escalation of such heinous and inhumane crimes.

Trafficking in women and children can only be defeated by the joint efforts of legislators, law enforcement officers, prosecutors and NGOs working together with their counterparts regionally and internationally.

APPRECIATION

SUHAKAM would like to record its sincere appreciation to the government agencies — the police, the Attorney General's office, the immigration, the prisons department, the welfare department, the ministry of tourism, the ministry of foreign affairs; the embassies of Russia, America, Thailand, China, Indonesia, Myanmar, Vietnam, Cambodia and the Philippines; the National Human Rights Commission of Mongolia; the various NGOs; the Bar Council; the academics and all who attended the dialogues and the forum and rendered invaluable assistance in discussing this issue of importance. SUHAKAM sincerely hopes that all parties will continue to give due priority and attention to the trafficking of women and children in Malaysia.

APPENDICES

Appendix I



APPENDIX I

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME

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 recognised 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 organised 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 Organised Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

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 Organised 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 organised criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalisation

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 internationally.
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) Organising 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 systems 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 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.

4. 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.
5. 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 authorisation as may be necessary to enable the person to travel to and re-enter its territory.
6. 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.
7. 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.

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 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 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 revictimisation.
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 organisations, other relevant organisations 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 organised 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 trafficking, 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 organisations, other relevant organisations 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 the 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

1. 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, anyone 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 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 recognised principles of non-discrimination.

Article 15

Settlement of disputes

1. 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 organisation of the arbitration, anyone 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 organisations provided that at least one member State of such organisation 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 organisation 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 organisation shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organisation 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 organisation 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 organisation shall declare the extent of its competence with respect to matters governed by this Protocol. Such organisation 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 organisation shall not be counted as additional to those deposited by member States of such organisation.

2. For each State or regional economic integration organisation 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 organisation of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph I 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 organisations, 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 organisations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph I of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph I 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 organisation 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 authorised thereto by their respective Governments, have signed this Protocol.

APPENDICES

Appendix II



APPENDIX II

HUMAN RIGHTS STANDARDS FOR THE TREATMENT OF TRAFFICKED PERSONS

SUMMARY

These Standards are drawn from international human rights instruments and formally recognised international legal norms. They aim to protect and promote respect for the human rights of individuals, who have been victims of trafficking, including those who have been subjected to involuntary servitude, forced labour and/or slavery-like practices. The Standards protect the rights of trafficked persons by providing them with an effective legal remedy, legal protection, non-discriminatory treatment, and restitution, compensation and recovery.

Under international law, states have a duty to respect and ensure respect for human rights law, including the duty to prevent violations, to investigate violations, to take appropriate action against the violators and to afford remedies and reparation to those who have been injured as a consequence of such violations.

Accordingly, the Standards adopt the following definition of trafficking and mandate the following State obligations towards trafficked persons:

Trafficking: All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

Principle of Non-Discrimination: States shall not discriminate against trafficked persons in substantive or procedural law, policy or practice.

Safety and Fair Treatment: States shall recognise that trafficked persons are victims of serious human rights abuses, protect their rights notwithstanding any irregular immigration status, and protect them from reprisal and harm.

Access to Justice: The police prosecutors and court shall ensure that their efforts to punish traffickers are implemented within a system that respects and safe- guards the rights of the victims to privacy, dignity and safety. An adequate prosecution of traffickers includes prosecution, where applicable, for rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions), kidnapping, torture, cruel, inhuman or degrading treatment, slavery or slavery-like practices, forced or compulsory labour, debt bondage, or forced marriage.

Access to Private Actions and Repatriations: States must ensure that trafficked persons have a legal right to seek reparations from traffickers as well as assistance in bringing such actions, if necessary.

Resident Status: States shall provide trafficked persons with temporary residence visas (including the right to work) during the dependency of any criminal, civil or other legal actions and shall provide trafficked persons with the right to seek asylum and have the risk of retaliation considered in any deportation proceedings.

Health and Other Services: States shall provide trafficked persons with ad equate health and other social services during the period of temporary residence.

Repatriation and Reintegration: States shall ensure that trafficked persons are able to return home safely, if they so wish, and when they are able to do so.

Recovery includes medical and psychological care as well as legal and social services to ensure the well being of trafficked persons.

State Cooperation: States must work cooperatively in order to ensure full implementation of these Standards.

INTRODUCTION

These Standards are drawn from international human rights instruments and formally recognised international legal norms. They aim to protect and promote respect for the human rights of individuals who have been victims of trafficking, including those who have been subjected to involuntary servitude, forced labour and/or slavery-like practices. Victims of trafficking are treated as objects or commodities by traffickers who use coercion, deception or debt bondage to deprive victims of their fundamental freedoms, such as their ability to control their own bodies and labour. To remedy this injustice and address the needs of the victims, the Standards adopt a victim-rights perspective. They protect the rights of trafficked persons by providing them with an effective legal remedy, legal protection, non-discriminatory treatment, and restitution, compensation and recovery.

States have a responsibility to provide protections to trafficked persons pursuant to the Universal Declaration of Human Rights (UDHR) and through ratification or accession to numerous other international and regional instruments. These and other instruments to which states have acceded or ratified are binding, while non-treaty declarations and standards adopted by the General Assembly have a strong hortatory nature and establish a standard by which national practices can be and are measured. International human rights instruments impose a duty upon states to respect and ensure respect for human rights law, including the duty to prevent and investigate violations, to take appropriate action against the violators and to afford remedies and recovery to those who have been injured as a consequence of such violations. Nonetheless, as yet, few states have fulfilled their obligation to implement the commitments or to provide adequate human rights protections to trafficked persons.

The protections called for in these Standards apply to all trafficked persons -women, men and children. However, it should be noted that trafficking disproportionately affects women and girls. The overwhelming majority of the persons trafficked to work in sweatshops and brothels are women and girls due to their inferior and vulnerable status in most societies. The gendered nature of trafficking derives from the universal and historical presence of laws, policies, customs and practices that justify and promote the discriminatory treatment of women and girls and prevent the application of the entire range of human rights law to women and girls.

The historical linkage of women and children has proven problematic in multiple ways. Linkage often encompasses the treatment of women as if they are children and denies women the rights attached to adulthood, such as the right to have control over one's own life and body. The linkage also serves to emphasise a single role for women as caretakers for children and to deny the changing nature of women's role in society, most notably, women's increasing role as the sole supporter of dependent family members and consequently, as economic migrants in search of work. Nearly half of the migrants today are women. Consequently, the Standards focus upon the rights and needs of adults and pay particular attention to the concerns and needs of female victims of trafficking.

The Standards do not contain specific provisions addressing the special status, rights and needs of the girl child or children generally. Adults, particularly women, have legal positions and require legal remedies that are not always consistent with the legal positions and needs of children. The special rights and needs of children should be protected according to the principles contained in the Convention on the Rights of the Child.

The second component of the Standards is effective prosecution of traffickers, which depends upon the cooperation of victims. However, trafficked persons typically fear authority and are unwilling to trust the police. Traffickers exploit persons who are trapped in conditions of poverty and subordinated by conditions, practices or beliefs, such as gender discrimination, gender violence and armed conflict. Their ability to operate further depends upon the existence of lax or corrupt law enforcement officials and traffickers themselves are often corrupt officials. Thus, a critical component in the effective detection, investigation and prosecution of traffickers is the willingness of trafficked persons to assist in prosecutions. In recognising and protecting the rights of trafficked persons, the Standards provide an incentive to trafficked persons to report to the authorities and act as witnesses.

In furtherance in achieving the full implementation of the rights of trafficked persons, we urge states to take all necessary measures to adopt and amend laws, where necessary and to implement laws and policies extending the universally accepted basic human rights of all persons to all trafficked persons. At a minimum, those laws and policies should contain the provisions set out below.

I. DEFINITIONS

States shall adopt and/or implement and periodically review and analyse legislation to ensure its conformity with the following definitions:

- Trafficking:** All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person
- (a) involving the use of deception, coercion (including the use or threat or force or the abuse of authority) or debt bondage
 - (b) for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

Commentary: Trafficking can involve an individual or a chain of individuals starting with the recruiter and ending with the last person who buys or receives the victim (such as the owner of the sweatshop) or the person who holds a person in conditions of slavery or subjects such person to slavery-like practices, forced or bonded labour or other servitude.

Persons are trafficked into a multitude of exploitative or abusive situations, such as in the garment, agricultural, fisheries, begging, sex and other industries and in domestic labour as servants or through forced marriages where they held as virtual prisoners, raped continually by their husbands and often forced to become pregnant for the purpose of providing their husbands with children. Trafficking does not require the crossing of borders. A large portion of modern trafficking consists of moving persons from one region to another within one country.

The violations and harms suffered by in-country victims are no less than for cross-border victims. For example, the harms suffered by a person trafficked several thousand kilometers within a country can be as great or even greater than the harms suffered by a person trafficked a few hundred kilometers across a border.

The core elements of the act of trafficking are the presence of deception, coercion or debt bondage and the exploitative or abusive purpose for which the deception, coercion or debt bondage is employed. Typically the deception involves the working conditions or the nature of the work to be done. For example, the victim may have agreed to work in the sex industry but not to be held in slavery-like conditions of work in a factory but not in a brothel.

The nature of the labour or services in the sex industry, are irrelevant to the question of whether or not the victim's human rights are violated. The coercion, or debt bondage to force the victim to work in slavery-like or exploitative or abusive conditions deprive the victim of her free will and ability to control her or his body, which constitutes serious violation of the fundamental rights of all human beings:

The definition reiterates existing international human rights standards prohibiting such acts. The Slavery Convention, article 1 (I), defines slavery as: the status or condition of a person over whom any or all of the power attaching to the right of ownership are exercised. The Supplementary Convention to the Slavery Convention, article 1, calls for the elimination of the slavery-like conditions in which many trafficked persons find themselves. It calls for the complete abolition or abandonment of debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt the length and nature of those services are not respectively limited and defined forced marriages, the transfer of a woman for value received or otherwise, and delivery of a child to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour. Article 6.2 prohibits the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1.

The International Labour Organisation also condemns such slavery-like practices 5. Article 2 of ILO No.29 prohibits the use of forced or compulsory labour, defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Also article 4 holds that [t]he competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

Trafficked Person: A person who is recruited, transported, purchased, sold, transferred, received or harboured as described in Trafficking above, including a child (as defined by and consistent with the principles in the Convention on the Rights of the Child), whether the child has consented or not.

Commentary: The definition distinguishes between adults who freely agree to travel (within or across borders) and who are fully informed about the type and conditions of work or services they are expected to perform and adults who do not consent at all or whose apparent, implied or express consent is vitiated by the use of deception, coercion or debt bondage. It respects the right of adults to make decisions about their lives, including the decision that working under abusive or exploitative conditions is preferable to other available options. However, even when migrants know the type of difficult and even dangerous work they will be required to perform, they often become victims of trafficking because the traffickers routinely confiscate their passports, hold them in confinement through coercion, and otherwise deprive them of their freedom of movement and choice.

In situations where labour conditions are no worse than those expected by the worker and the worker is not deprived of her or his freedom of movement or choice, the abuser or exploiter remains criminally liable for other crimes , such as assault, unlawful detention, and labour abuses and for appropriate administrative and civil offences. The existenc of consent to work under such conditions does not excuse the abuser or exploiter from being subjected to the full force of domestic laws that prohibit such practices.

Lastly, the definition recognises that children need special protection and that consent can never be a defence to a charge of trafficking in children.

Trafficker: A person who, or an entity that, intends to commit, is complicitous with, or acquiesces to, any of the acts described in Trafficking above.

Commentary: The definition is intended to punish only those persons or entities that have the requisite mental element, including persons and entities that intentionally remain ignorant of the manner in which their acts contribute to the trafficking chain. It excludes persons and entities that unwittingly (and without any reason to suspect the existence of trafficking) become a link in the trafficking chain, such as an innocent taxi driver or hotel owner.

II. STATE RESPONSIBILITIES

As discussed in the Introduction, all states have obligations to recognize and protect the human rights of all persons in conformity with the Universal Declaration of Human Rights and other international human rights instruments. States are obligated to respect and protect the human rights of the persons within its territorial boundaries, as well as to enable such persons to realise those rights, which includes the concept that human rights encompass not only states obligations to respect and protect but also their obligation to provide or make available the means (including information, capacity and structures) to ensure the realisation of rights possible by each person. In recognition and furtherance of those obligations, all states should adopt and/or implement and periodically review and analyse legislation to ensure its conformity with inter- national human rights standards and its effectiveness in eliminating trafficking and in protecting all rights of trafficked persons. Accordingly, states shall:

Principle of Non-Discrimination

1. Ensure that trafficked persons are not subjected to discriminatory treatment in law or in practice on account of race, colour, gender, sexual orientation, age, language, religion, political or other opinion, cultural beliefs or practices, national ethnic or social origin, property, birth or other status, including their status as victims of trafficking or having worked in the sex industry.

2. Cease enforcing and repeal all measures targeted at preventing or obstructing the voluntary movement of its citizens or legal residents within the country of residence,⁸ into or out of the country upon the ground that the citizen or legal resident might become, might be, or has been a victim of trafficking.

Commentary: Trafficking of women is typically facilitated by the intersection of discriminatory practices and beliefs about women from a particular ethnic, racial, class or other marginalised or disadvantaged group. Anti-trafficking measures must not, in the name of protecting all women from harm, deprive any woman of any of her human rights as the principles of non-discrimination and the universality of human rights norms are fundamental and non-derogatory. States have a duty to ensure that all procedural and substantive rights are protected, including the right to non-discriminatory application and interpretation of the law.

Safety and Fair Treatment

3. Ensure access to:
 - a. the embassy or consulate of the country in which the trafficked person is a citizen or, if there is no embassy or consulate, ensure access to a diplomatic representative of the State that takes charge of the country's interests or any national or international authority whose task it is to protect such persons, and
 - b. non-governmental organisations that provide services and/or counselling to trafficked persons .
4. Provide protection to trafficked persons and witnesses in a manner that does not subordinate the safety and integrity of trafficked persons or witnesses to the interests of the prosecution, including:
 - a. Before, during and after all criminal, civil or other legal proceedings measures to protect trafficked persons from intimidation, threats of reprisals and reprisals from

traffickers and their associates, including reprisals from persons in positions of authority and, where necessary, provide similar protection to family members and friends of the trafficked persons.

- b. A change of identity, where necessary.
- c. Take into account the need for the safety of the trafficked person, family members and friends in decisions on the arrest, detention and terms of any form of release of the trafficker, and notify the trafficked person prior to the release from custody or detention of persons arrested for, or convicted of trafficking, abusing or exploiting the trafficked person.
5. Provide all trafficked persons, as well as all persons who might be victims of trafficking (such as illegal migrants held in custody) with information about their legal rights and the procedures available for claiming compensation, restitution and recovery as a result of being trafficked.
6. Not detain, imprison or prosecute any trafficked person for offences related to being a victim of trafficking, including for lack of a valid visa (including a work visa), solicitation, prostitution, illegal stay and/or the use of a false visa or false travel or other documents; and not hold trafficked persons in a detention centre, jail or prison, at any time, prior to, during and after all civil, criminal or other legal proceedings.
7. Prohibit public disclosure of the names of persons trafficked into the sex industry and/or the use, by any person, of a person's history of being trafficked to discriminate or cause harm to any trafficked person or her or his family or friends in any way whatsoever, particularly with regard to the right to freedom of travel, marriage, or search for gainful employment.
8. Establish, whenever possible, specialised police and prosecutorial units that are trained to deal with the complexities, gender issues and victim sensitivities involved in trafficking.

Commentary: The above provisions, as well as others, are intended to ensure that trafficked persons are not treated as criminals but as victims of crimes who have suffered serious human rights abuses. The General Assembly recently called upon states [t]o encourage and assist women subjected to violence in lodging and following through on formal complaint.¹⁸ These provisions seek to meet that goal and constitute one leg of the stool upon which successful prosecutions sit. Unfortunately, most governments continue to treat trafficked persons as illegal migrants and criminals, thereby further victimising the victims.

Practice shows that current policies in the majority of states have the effect of deterring trafficked persons from reporting to the authorities, as reporting may result in arrest, detention and/or expulsion. The decision to press charges may have major consequences for the persons concerned, both in relation to their safety, in the light of the risk of retaliation against the person or her/his family (especially in cases of organised crime), and in relation to their future prospects, in the light of the risk of stigmatising exposure, social exclusion and/or harassment by authorities.

In order to obtain successful prosecutions of traffickers, states must implement policies and laws to allay the fear most trafficked persons have towards authority and law and must further provide incentives to encourage trafficked persons to seek help, report to the authorities and, if they wish, act as witnesses. The names of trafficked persons should not be recorded in any court or other public documents, nor should they be released to the press or members of the public, including family members, without the consent of the trafficked persons.

Access to Justice

9. Take all necessary steps to ensure that all trafficked persons, irrespective of their immigration status or the legality or illegality of the work they perform (e.g., begging or sex work) have the right to press criminal charges against traffickers and others who have exploited or abused them. In the case of a trafficker who has diplomatic immunity, states shall make a good faith effort to obtain a waiver of immunity or, alternatively, shall expel the diplomat. States should adopt a mechanism for promptly informing trafficked persons of their rights to seek this and other forms of redress.

10. Provide trafficked persons with a competent, qualified translator and legal representation before and during all criminal, civil, administrative and other proceedings in which the trafficked person is a witness, complainant, defendant or other party, and provide free transcripts or copies of all documents and records related to any and such proceedings, in their own language. Trafficked persons and defendants shall have different translators and legal representatives. If the trafficked person cannot afford to pay, legal representation and translation shall be provided without cost.

11. Recognize that trafficking is often only one of the crimes committed against the trafficked person. In addition to charging defendants with the crime of trafficking, states should consider bringing charges, for example, of:
 - a. Rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions) and kidnapping.

 - b. Torture, cruel, inhuman or degrading treatment.

 - c. Slavery or slavery-like practices, involuntary servitude, forced or compulsory labour.

 - d. Debt bondage.

 - e. Forced marriage, forced abortion, forced pregnancy.

12. Ensure that trial proceedings are not detrimental or prejudicial to the rights of the trafficked person and are consistent with the psychological and physical safety of trafficked persons and witnesses. At a minimum, states must ensure that:
 - a. The burden of proof prior to and during any prosecution of a person alleged to be guilty of trafficking lies with the prosecution and not with the trafficked person.

- b. The prosecutor either calls at least one expert witness on the causes and consequences of trafficking and the effects of trafficking on victims or consults with such expert in preparation for the criminal proceedings.
 - c. Methods of investigation, detection, gathering and interpretation of evidence minimise intrusion, do not degrade the victims or reflect gender-bias. For example, officials shall not use the personal history, the alleged character or the current or previous occupation of the trafficked person against the trafficked person or cite them as a ground for disqualifying the trafficked person's complaint or for deciding not to prosecute the offenders.
 - d. Defendants are not permitted to introduce as a defence evidence of the personal history, alleged character or the current or previous occupation (e.g., as a prostitute or domestic worker) of the trafficked person.
 - e. Trafficked persons subjected to, and witnesses of, sexual violence are permitted to present evidence in camera or by electronic or other special means, after taking into consideration all of the circumstances and hearing the views of the victim or witness.
 - f. Trafficked persons are informed of their role and the scope, timing and progress of the proceedings and of the disposition of their cases.
 - g. The views and concerns of trafficked persons are allowed to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.
13. Ensure that, if a trafficked person is a defendant in a criminal case:
- a. She or he has the opportunity to raise a defence of duress or coercion and the same evidence is considered as a mitigating factor in sentencing, if convicted.

- b. In cases involving charges of having committed a crime against a trafficker(s), including homicide, she or he has an opportunity to plead self-defence and to present evidence of having been trafficked and the same evidence is considered as a mitigating factor in sentencing, if convicted.
- c. Trials involving migrant trafficked persons are conducted in accordance with these Standards, relevant provisions of Article 5 of the Vienna Convention on consular Relations (VCCR) and the articles 16-19 of the ICPRWM. States providing assistance to their nationals under the VCCR shall act, at all times, in the best interests of, and consistent with the views of, the trafficked person.

Commentary: Action to combat trafficking must be targeted at the offenders and not at those who are victim of such practices. The victim too often is forced to stand trial instead of the offender, thus further undermining the victim's belief in the ability of the legal system to bring about justice. Anti-trafficking legislation, which is often more concerned with illegal migration and criminal prosecutions than with the rights and needs of victims, is often used as an instrument of repression by governments to punish, criminalise and marginalise trafficked persons and to deny trafficked persons their basic human rights.

When laws target typically female occupations, they are usually overly protective and prevent women from making the same type of decisions that adult men are able to make.

For example, anti-trafficking laws might prohibit women from migrating for work thereby throwing women into the hands of traffickers. Additionally, many women are deterred from reporting due to discriminatory treatment of migrant women, especially women working in the sex industry. Police and prosecutors have exhibited a tendency in many parts of the world to undermine the credibility of female victims of trafficking and to categorize women as fallen or without virtue, and thereby as not deserving of respect for their human rights.

Therefore, measures are needed to encourage and assist trafficked persons to report to the authorities and to act as a witness and to ensure fair treatment by the criminal justice system and the safety and integrity of trafficked persons.

Access to private action and reparations

14. Take all necessary steps to ensure that all trafficked persons, irrespective of their immigration status or the legality or illegality of the work they perform (e.g., begging or sex work), have the right to bring a civil or other action against traffickers and others (including public officials and, when possible, persons having diplomatic immunity) who may have exploited or abused them, and have access to other legally enforceable forms of compensation (including lost wages), restitution and recovery for economic, physical and psychological damages. Non-wage compensation, restitution and recovery shall be proportionate to the gravity of the violations and resulting harm.
15. Confiscate all assets of convicted traffickers and disburse such assets in payment of all court orders for compensation (such as unpaid wages), restitution and recovery due to the trafficked person.
16. Ensure that the relevant authorities, upon the request of the trafficked person and/or her or his legal representative, make available to the requesting party(ies) all documents and other information in their possession or obtainable by them that is relevant to the determination of the trafficked person's claim for monetary damages, including compensation, restitution and recovery.

Commentary: Trafficking in persons has major economic, emotional, psychological and physical consequences for the victims, their families and friends, which consequences are not accommodated by criminal investigation and prosecution of the offender. Adequate assistance and support as well as financial compensation serves not only to remove or redress the consequences, but also acts as a deterrent to traffickers by strengthening the position of trafficked persons. Whereas, the victims of human rights violations have largely remained outside the spectrum of national and international concern; however, in recent years, the need for

attention to the rights of victims, in particular the right to reparation, has increasingly been recognised as an essential requirement of justice. This trend is exemplified by the instruments cited in footnote.

Resident Status

17. Prevent immediate expulsion by staying any actions of deportation and provide resident status (including the right to work) for a period of six months initially, during which time the trafficked person can decide whether or not to initiate a civil action or to be a witness in a criminal action against the traffickers. If the trafficked person decides either to initiate a civil action or become a witness in a criminal action, or both, then the state shall provide the trafficked person with resident status (including the right to work) for the duration of such cases, including all appeals.
18. Not deport any trafficked person if there are substantial grounds for believing that such person would be in danger of being subjected to torture. All deportations shall be carried out in accordance with the law.
19. Provide trafficked persons with information and an opportunity to apply for permanent residence under national laws and international treaties. In considering applications for asylum, a trafficked person shall be permitted to introduce evidence supporting a claim that repatriation could seriously endanger her or his life, such as a high risk of reprisal by traffickers or persecution or harassment by the authorities. Guidelines recognising gender-based persecution as grounds for asylum should be followed.
20. If the state in which a trafficked person claims to be a citizen refuses for whatever reason to recognise the trafficked person's claim, consider whether, on the balance of probabilities, the trafficked person was born in and/or has spent most of her life in that country. In such event, the country in which the trafficked person is residing (legally or illegally) must provide the trafficked person with all the rights and privileges granted to other stateless persons contained in the UN Convention relating to the Status of Stateless Persons.

Commentary: Many trafficked person refrain from seeking help or reporting to the authorities for fear of deportation. Although, at first glance, deportation might seem to represent an escape from the trafficking situation, the reality is more complicated. Often, the victim has borrowed money to pay for the costs of recruiters. She may be indebted to her own family and also to the persons who recruited *her* in the country of origin. Deportation means returning home with empty hands, debts she will without any future prospects. If it becomes known that a woman has been in the sex industry, she risks being ostracised by her family or her community.

Moreover, it is questionable whether or not deportation means an escape from the criminal circuit. In many cases women return home only to find the traffickers waiting to take them back immediately. Often, traffickers threaten to inform the victim's family about her activities if she does not comply with their demands. Deportation, in many cases, means that the trafficked person is put at the mercy of the traffickers again, without protection from the authorities or society. In many cases, trafficked persons not only have to fear reprisals from their traffickers but also harassment, arrest or detention from authorities in their own countries.

Providing victims with a stay of deportation, temporary residence during criminal and civil proceedings and an opportunity to apply for a permanent residence removes the fear of trafficked persons of immediate deportation. This serves two interests: first, the trafficked person is able to recover and take back control over her life and, second, it enables the effective prosecution of traffickers by encouraging victims to report to the authorities and to act as witness.

Health and Other Services

21. Promote and support the development of cooperation between trafficked persons, law enforcement agencies and non-governmental organisations capable of providing assistance to trafficked persons.⁴¹ All persons providing services (health, legal and other) should receive training to sensitise them to the rights and needs of trafficked persons and should be provided with guidelines to ensure proper and prompt aid.⁴²
22. Provide, on an equal basis with citizens of the State, adequate, confidential and affordable medical and psychological care.⁴³

23. Provide strictly confidential testing service for HIV/AIDS and other sexually-transmitted diseases but only if requested by the person being tested. Additionally, any and all testing must be accompanied with appropriate pre- and post-test counselling and no punitive or restrictive measures should be taken against any trafficked persons who tests positive for HIV/AIDS or any other sexually-transmitted disease. Testing should be provided pursuant to the standards contained in the Report of an International Consultation on AIDS and Human Rights (UN Centre for Human Rights and World Health Organisation, Geneva, July 1989).
24. During the period of temporary residence status, provide:
- a) Adequate and safe housing
 - b) Access to all state-provided health and social services
 - c) Counselling in the trafficked person s mother language
 - d) Adequate financial support
 - e) Opportunities for employment, education and training

Commentary: In most cases, trafficked persons have no place to stay or means of earning a livelihood once they have escaped from the trafficker s control. They may not speak the local language or have any family or relatives who can take care of them in the place where they are stranded. Often, they have been subjected to physical violence, unsafe working conditions (e:g., exposure to chemicals), forced abortions or unsafe sexual contacts and are in urgent need of medical care. Apart from physical abuse, they might be severely traumatised by the physical and psychological violence they have endured and suffer from an array of psychological and psycho-somatic complaints. Moreover, viable employment opportunities are often lacking and/or damaged as a result of having been trafficked. Adequate support, employment and educational opportunities enable trafficked victims to regain their prospects.

Repatriation and Reintegration

25. When and if the trafficked person returns to her or his home country, provide the funds necessary for the return and, where necessary, issue, or provide assistance in the issuance of, new identity papers.

26. Provide reintegration assistance and support programmes for trafficked persons who want to return or have returned to their home country or community in order to minimise the problems they face in reintegrating into their communities. Reintegration assistance is essential to prevent or overcome difficulties suffered as a result of rejection by families or communities, inability to find viable employment, and harassment, reprisals or persecution from the traffickers and/or the authorities. Reintegration programmes should include education, training for employment opportunities and practical assistance and should not stigmatise or victimise trafficked persons. All programmes must guarantee the confidentiality and the privacy of the trafficked person.

Commentary: In most cases, trafficked persons have been deprived by traffickers of the financial means to pay for return to their home country or community. Apart from lacking the financial means, trafficked persons may also lack travel documents as traffickers characteristically confiscate the passports or identity papers of their victims. Without money and without papers it is impossible for trafficked persons to return to their home country or community. This might result in them being held in shelters or detention centres, often for years and under inhumane circumstances.

Trafficked persons who are able to return to their home country or community, either voluntarily or as a result of deportation, face multiple problems.

The absence of adequate support and opportunities upon their return places them at a heightened risk of repeated abuse and exploitation, including repeated trafficking. Thus, reintegration services are essential to ending the cycle of trafficking.

State Cooperation

27. Cooperate through bilateral, regional, interregional and international mechanisms in the development of strategies and joint actions to prevent trafficking in persons, including cross-border cooperation in the prosecution of traffickers and the protection of the lives and rights of trafficked persons.
28. Coordinate the safe and voluntary repatriation of trafficked persons.
29. Provide support to programs, including those undertaken by non-governmental organisations, for education and campaigns to increase public awareness of the causes and consequences of trafficking.

Commentary: Cooperation between states is absolutely essential if the Standards are to be realised. Trafficking is an international crime, requiring multilateral responses. States must deploy multi-disciplinary and multi-level strategies to combat the sophisticated networks operating throughout the world. States and non-governmental organisations must work together to ensure that traffickers are never able to find a safe haven anywhere in the world. Without such a concerted and coordinated effort, trafficking will never be stopped or even minimised.

APPENDICES

Appendix III



APPENDIX III

RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING

Recommended Principles on Human Rights and Human Trafficking¹

The primacy of human rights

1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.
3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.

Preventing trafficking

4. Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.
5. States and intergovernmental organisations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty all forms of discriminations.

¹ The term trafficking as used in the present Principles and Guidelines refers to 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. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (article 3 (a)).

6. States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in trafficking shall be investigated, tried and, if convicted, appropriately punished.

Protection and assistance

7. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.
8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked persons to cooperate in legal proceedings.
9. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.
10. Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs.
11. Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.

Criminalisation, punishment and redress

12. States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts² and related conduct.³
13. States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.
14. States shall ensure that trafficking, its component acts and related offences constitute extraditable offences under national law and extradition treaties. States shall cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law.
15. Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.
16. States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking.
17. States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.

² For the purposes of the present Principles and Guidelines, the component acts and component offences of trafficking are understood to include the recruitment, transportation, transfer, harbouring or receipt of persons over eighteen years of age by means of threat, force, coercion or deception for the purpose of exploitation. The recruitment, transportation, transfer, harbouring or receipt of a person under eighteen years of age constitute component acts and component offences of trafficking in children. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, articles 3 (a) and 3 (c).

³ For the purposes of the present Principles and Guidelines, conduct and offences related to trafficking are understood to include: exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, article 3 (a).

Recommended Guidelines on Human Rights and Human Trafficking

Guideline I: Promotion and protection of human rights

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked.
2. Consulting with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes.
3. Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating trafficking and/or assisting trafficked persons and relevant sectors of civil society.
4. Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner.

5. Protecting the right of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right.
6. Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement.
7. Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.
8. Presenting detailed information concerning the measures that they have taken to prevent and combat trafficking in their periodic reports to the United Nations human rights treaty-monitoring bodies.⁴
9. Ensuring that bilateral, regional and international cooperation agreements and other laws and policies concerning trafficking in persons do not affect the rights, obligations or responsibilities of States under international law, including human rights law, humanitarian law and refugee law.
10. Offering technical and financial assistance to States and relevant sectors of civil society for the purpose of developing and implementing human rights-based anti-trafficking strategies.

⁴ The human rights treaty-monitoring bodies include the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination against Women; the Committee on the Elimination of Racial Discrimination; the Committee against Torture; and the Committee on the Rights of the Child.

Guideline 2: Identification of trafficked persons and traffickers

Trafficking means much more than the organised movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process -such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place.

States are also obliged to exercise due diligence in identifying traffickers⁵, including those who are involved in controlling and exploiting trafficked persons.

States and where applicable, intergovernmental and non-governmental organizations, should consider:

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.
2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
3. Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.

⁵ The term 'traffickers', where it appears in the present Principles and Guidelines, is used to refer to: recruiters; transporters; those who exercise control over trafficked persons; those who transfer and/or maintain trafficked persons in exploitative situations; those involved in related crimes; and those who profit either directly or indirectly from trafficking, its component acts and related offences.

4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.
5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

Guideline 3: Research, analysis, evaluation and dissemination

Effective and realistic anti-trafficking strategies must be based on accurate and current information, experience and analysis. It is essential that all parties involved in developing and implementing these strategies have and maintain a clear understanding of the issues.

The media has an important role to play in increasing public understanding of the trafficking phenomenon by providing accurate information in accordance with professional ethical standards. States and, where appropriate, intergovernmental and non-governmental organisations, should consider:

1. Adopting and consistently using the internationally agreed definition of trafficking contained in the Palermo Protocol.⁶
2. Standardizing the collection of statistical information on trafficking and related movements (such as migrant smuggling) that may include a trafficking element.

3. Ensuring that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, ethnicity and other relevant characteristics.
4. Undertaking, supporting and bringing together research into trafficking. Such research should be firmly grounded in ethical principles, including an understanding of the need not to re- traumatize trafficked persons. Research methodologies and interpretative techniques should be of the highest quality.
5. Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular, ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another.
6. Recognizing the important contribution that survivors of trafficking can, on a strictly voluntary basis, make to developing and implementing anti-trafficking interventions and evaluating their impact.
7. Recognising the central role that non-governmental organisations can play in improving the law enforcement response to trafficking by providing relevant authorities with information on trafficking incidents and patterns taking into account the need to preserve the privacy of trafficked persons.

6 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking in persons as: "...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 Article 3 (a)). The Protocol further states that 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 .my of the means set forth above (article 3 (c)).

Guideline 4: Ensuring an adequate legal framework

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.

States should consider:

1. Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized.
2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. Reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.
3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.

4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund.
5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.
7. Providing legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings.
8. Making effective provision for trafficked persons to be given legal information and assistance in a language they understand as well as appropriate social support sufficient to meet their immediate needs. States should ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked.
9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.
10. Guaranteeing that protections for witnesses are provided for in law.
11. Making legislative provision for the punishment of public sector involvement or complicity in trafficking and related exploitation.

Guideline 5: Ensuring an adequate law enforcement response

Although there is evidence to suggest that trafficking in persons is increasing in all regions of the world, few traffickers have been apprehended. More effective law enforcement will create a disincentive for traffickers and will therefore have a direct impact upon demand.

An adequate law enforcement response to trafficking is dependent on the cooperation of trafficked persons and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or because of the absence of any effective protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures need to be taken to ensure that such involvement is investigated, prosecuted and punished. Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked persons. This responsibility lies with the investigator and cannot be abrogated.

States and, where applicable, intergovernmental and non-governmental organizations should consider:

1. Sensitizing law enforcement authorities and officials to their primary responsibility to ensure the safety and immediate well-being of trafficked persons.
2. Ensuring that law enforcement personnel are provided with adequate training in the investigation and prosecution of cases of trafficking. This training should be sensitive to the needs of trafficked persons, particularly those of women and children, and should acknowledge the practical value of providing incentives for trafficked persons and others to come forward to report traffickers. The involvement of relevant non-governmental organizations in such training should be considered as a means of increasing its relevance and effectiveness.
3. Providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony.

4. Establishing specialist anti-trafficking units (comprising both women and men) in order to promote competence and professionalism.
5. Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation.
6. Implementing measures to ensure that rescue operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place.
7. Sensitizing police, prosecutors, border; immigration and judicial authorities, and social and public health workers to the problem of trafficking and ensuring the provision of specialized training in identifying trafficking cases, combating trafficking and protecting the rights of victims.
8. Making appropriate efforts to protect individual trafficked persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. Appropriate protection programmes may include some or all of the following elements: identification of a safe place in the country of destination; access to independent legal counsel; protection of identity during legal proceedings; identification of options for continued stay, resettlement or repatriation.
9. Encouraging law enforcement authorities to work in partnership with non-governmental agencies in order to ensure that trafficked persons receive necessary support and assistance.

Guideline 6: Protection and support for trafficked persons

The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protections and support should be extended to all trafficked persons without discrimination.

States and where applicable, intergovernmental and non-governmental organisations, should consider:

1. Ensuring, in cooperation with non-governmental organisations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.
2. Ensuring, in partnership with non-governmental organisations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept such support and assistance and they should not be subject to mandatory testing for such diseases, including HIV/AIDS.
3. Ensuring, that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum-seekers.
4. Ensuring, that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.
5. Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they understand.

6. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, 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. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.
7. Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re- trafficking is considered likely).
8. In partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.

Guideline 7: Preventing trafficking

Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.

States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development cooperation policies and programmes, should consider:

1. Analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.

2. Developing programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.
3. Improving children s access to educational opportunities and increasing the level of school attendance, in particular by girl children.
4. Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.
5. Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking. Such campaigns should be informed by an under- standing of the complexities surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions.
6. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws.
7. Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.
8. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations.

9. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

Guideline 8: Special measures for the protection and support of child victims of trafficking

The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.

States and, where applicable, intergovernmental and non-governmental organizations, should consider, in addition to the measures outlined under Guideline 6:

1. Ensuring that definitions of trafficking in children in both law and policy reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of trafficking where the person involved is a child.
2. Ensuring that procedures are in place for the rapid identification of child victims of trafficking.
3. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
4. In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest.

5. In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.
6. In both the situations referred to in the two paragraphs above, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.
7. Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.
8. Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.
10. Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.

Guideline 9: Access to remedies

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.
2. Providing information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.
3. Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

Guideline 10: Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel

The direct or indirect involvement of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic personnel in trafficking raises special concerns. States, intergovernmental and non-governmental organizations are responsible for the actions of those working under their authority and are therefore under an obligation to take effective measures to prevent their nationals and employees from engaging in trafficking and related exploitation. They are also required to investigate thoroughly all allegations of trafficking and related exploitation and to provide for and apply appropriate sanctions to personnel found to have been involved in trafficking.

States and, where appropriate, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that pre- and post-deployment training programmes for all peacekeeping, peace-building, civilian policing, humanitarian and diplomatic staff adequately address the issue of trafficking and clearly set out the expected standard of behaviour. This training should be developed within a human rights framework and delivered by appropriately experienced trainers.

2. Ensuring that recruitment, placement and transfer procedures (including those of private contractors and sub-contractors) are rigorous and transparent.
3. Ensuring that staff employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions do not engage in trafficking and related exploitation or use the services of persons in relation to which there are reasonable grounds to suspect they may have been trafficked. This obligation also covers complicity in trafficking through corruption or affiliation with any person or group of persons who could reasonably be suspected of engaging in trafficking and related exploitation.
4. Developing and adopting specific regulations and codes of conduct setting out expected standards of behaviour and the consequences of failure to adhere to these standards.
5. Requiring all personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions to report on any instances of trafficking and related exploitation that come to their attention.
6. Establishing mechanisms for the systematic investigation of all allegations of trafficking and related exploitation involving personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions.
7. Consistently applying appropriate criminal, civil and administrative sanctions to personnel shown to have engaged in or been complicit in trafficking and related exploitation. Intergovernmental and non-governmental organizations should, in appropriate cases, apply disciplinary sanctions to staff members found to be involved in trafficking and related exploitation in addition to and independently of any criminal or other sanctions decided on by the State concerned. Privileges and immunities attached to the status of an employee should not be invoked in order to shield that person from sanctions for serious crimes such as trafficking and related offences.

Guideline 11: Cooperation and coordination between States and regions

Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level: a strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in combating trafficking activities. Such cooperation is particularly critical between countries involved in different stages of the trafficking cycle.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Adopting bilateral agreements aimed at preventing trafficking, protecting the rights and dignity of trafficked persons and promoting their welfare.
2. Offering, either on a bilateral basis or through multilateral organizations, technical and financial assistance to States and relevant sectors of civil society for the purpose of promoting the development and implementation of human rights-based anti-trafficking strategies.
3. Elaborating regional and subregional treaties on trafficking, using the Palermo Protocol and relevant international human rights standards as a baseline and framework.
4. Adopting labour migration agreements, which may include provision for minimum work standards, model contracts, modes of repatriation, etc., in accordance with existing international standards. States are encouraged effectively to enforce all such agreements in order to help eliminate trafficking and related exploitation.
5. Developing cooperation arrangements to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in relation to their nationality and right of residence.
6. Establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation.

7. Developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned States. In recognition of the value of direct contacts, provision should be made for direct transmission of requests for assistance between locally competent authorities in order to ensure that such requests are rapidly dealt with and to foster the development of cooperative relations at the working level.
8. Ensuring judicial cooperation between States in investigations and judicial processes relating to trafficking and related offences, in particular through common prosecution methodologies and joint investigations. This cooperation should include assistance in: identifying and interviewing witnesses with due regard for their safety; identifying, obtaining and pre- serving evidence; producing and serving the legal documents necessary to secure evidence and witnesses; and the enforcement of judgements.
9. Ensuring that requests for extradition for offences related to trafficking are dealt with by the authorities of the requested State without undue delay.
10. Establishing cooperative mechanisms for the confiscation of the proceeds of trafficking. This cooperation should include the provision of assistance in identifying, tracing, freezing and confiscating assets connected to trafficking and related exploitation.
11. Exchanging information and experience relating to the implementation of assistance, return and integration programmes with a view to maximizing impact and effectiveness.
12. Encouraging and facilitating cooperation between non-governmental organizations and other civil society organizations in countries of origin, transit and destination. This is particularly important to ensure support and assistance to trafficked persons who are repatriated.

APPENDICES
Appendix IV



APPENDIX IV

MEMORANDUM OF UNDERSTANDING

(DRAFT)

This Memorandum of Understanding (MoU) is being entered into on this

The_____ day of_____, 2004 between the National Human Rights Commission of Nepal (NHRCN) _____ (address to be given) and the National Human Rights Commission of India (NHRCI), Sardar Patel Bhawan, Sansad Marg, New Delhi.

Taking into account the United Nations Principles and Guidelines on Human Rights and Human Trafficking, which maintain that trafficking- is a regional and global phenomenon that cannot always be dealt with effectively at the national level.

Acknowledging that international, multilateral and bilateral cooperation can play an important role in combating trafficking activities and that such cooperation is particularly critical between countries involved in different stages of trafficking cycle.

Afirming that trafficking in women and children is the gravest form of violation of human rights.

Whereas the NHRCN and the NHRCI have decided to cooperate and act in furtherance of the recommendations of the Advisory Council of Jurists on the issue of trafficking, as adopted by the Asia Pacific Forum of the National Human Rights Institutions (APF) during its Seventh Annual Meeting held in New Delhi in 2002.

Now, the NHRCN and the NHRCI (hereinafter referred to as the Commissions¹ hereby enter into a Memorandum of Understanding (MoU), on the following terms:

1. Sharing of information and data on trafficking.

The Commissions hereby agree upon

a. Setting up a data base which would include:

- Data on trafficked persons, rescued victims, traffickers, etc.
- Data on persons vulnerable to trafficking including missing persons.
- Primary and secondary data collected through micro and macro studies.
- Information on best practices on all matters related to anti-trafficking.

Other relevant material related to different-activities in preventing and combating trafficking, including list of experts dealing with the problem of trafficking, list of officials and NGOs working in the field; etc.

b. Undertaking survey on cross-border trafficking. The National Human Rights Commission of India, if called upon, could provide the necessary technical backstopping for an action research on cross- border trafficking.

2. Joint Task Force (JTF):

The Commissions will advise their respective Governments to set - up a JTF of officials and NGOs of both sides to work together to prevent/ combat trafficking in women and children. The Commission will monitor the working of the JTF with a view to ensuring protection of human rights.

3. Review of laws/treaties:

In view of the existing cross-border problems and human rights violations, the Commissions will take initiative to review their *respective* laws, as well as the bilateral and international treaties and thereafter, advise their *respective Governments* regarding the appropriate course of action.

4. Listing out Human Rights Principles:

The Commissions will work in collaboration and bring out a check-list of human rights principles that should be borne in mind by their *respective Governments* while framing relevant guidelines/ rules/strategies with regard to rescue, repatriation, rehabilitation, reintegration etc., of trafficked person(s).

5. Training of Trainers (ToT):

The Commissions will *endeavour* to organize joint training of trainers (ToT) for officials, security personnel posted on the border, law enforcement agencies, media personnel, NGOs and general public of both sides to deal with the human rights issues on matters related to cross-border trafficking. .

6. Training Module:

The Commissions will prepare the training modules incorporating human rights perspective, on issues relating to cross-border trafficking for different: target groups.

7. Complaints Redressal:

The Commissions will work together to evolve a mechanism, look into complaints of human rights violations that allegedly take place during the rescue operation and other activities related to trafficking in women and children between Nepal and India. The complaints from the victims and others, if any, will be forwarded by either the NHRCN or the NHRCI to their counterpart and the other Commission would get the matter looked into and initiate appropriate action.

8. Commissioning Research Studies:

The Commissions will work together and identify, the areas/issues which need to be researched Upon.

9. Directory of NGOs:

The Commissions will facilitate compiling a directory of NGOs of both sides, working for preventing and combating cross-border trafficking.

10. Bilateral Treaty:

The Commissions will advise their respective Governments to enter into a bilateral treaty on trafficking that would address all types of exploitation and human rights violations within the existing legal framework.

11. Mutual Assistance in Criminal Matters:

As envisaged under the United Nations Convention against Transnational Organized Crime 2000, the Commissions could advise their respective Governments to enter into an agreement for mutual assistance in matters concerning enforcement of the relevant criminal and other laws and on all aspects relating to trafficking in women and children.

12. Implementing SAARC Convention:

The Commissions agree to advise their respective Governments on the human rights aspects that require to be accounted for during the implementation of the SAARC Convention on Preventing and Combating Trafficking in Women and *Children for Prostitution* 2002.

13. Joint Work with United Nations and Asia Pacific Forum:

The Commissions will work jointly with the United Nations Office of the High Commissioner for Human Rights (*UNOHCHR*) and the Asia Pacific Forum for National Human Rights Institutions (APF) on the aforesaid cross-border issues.

14. Working Group:

The Commissions will endeavour to set up a joint working group for effective follow-up of the plans, programmes, and projects as stated above.

In witness whereof the authorised signatories of the Commissions have appended their signatures to this MoU on this _____ the day of _____ 2004 as under:

Authorised Signatory
National Human Rights Commission
Commission of Nepal

Authorised Signatory
National Human Rights
of India

Witnesses:

1.

2.

APPENDICES

Appendix V



APPENDIX V

H. R. 2620

One Hundred Eighth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the seventh day of January,
two thousand and three.*

An Act

*To authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims
Protection Act of 2000, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America in
Congress assembled,*

SECTION I. SHORT TITLE.

This Act may be cited as the Trafficking Victims Protection Reauthorization Act of 2003 .

SEC. 2. FINDINGS.

Congress finds the following:

- (1) Trafficking in persons continues to victimize countless men, women, and children in the United States and abroad.
- (2) Since the enactment of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106-386), the United States Government has made significant progress in investigating and prosecuting acts of trafficking and in responding to the needs of victims of trafficking in the United States and abroad.
- (3) On the other hand, victims of trafficking have faced unintended obstacles in the process of securing needed assistance; including admission to the United States under section 101(a)(15)(T)(i) of the Immigration and Nationality Act.
- (4) Additional research is needed to fully understand the phenomenon of trafficking in persons and to determine the most effective strategies for combating trafficking in persons.

(5) Corruption among foreign law enforcement authorities continues to undermine the efforts by governments to investigate, prosecute, and convict traffickers.

(6) International Law Enforcement Academies should be more fully utilized in the effort to train law enforcement authorities, prosecutors, and members of the judiciary to address trafficking in persons-related crimes. .

SEC. 3. ENHANCING PREVENTION OF TRAFFICKING IN PERSONS.

(a) BORDER INTERDICTION, PUBLIC INFORMATION PROGRAMS, AND COMBATING INTERNATIONAL SEX TOURISM. -Section 106 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104) is amended-

(1) by redesignating subsection (c) as subsection (f);

(2) by inserting after subsection (b) the following new sub- sections:

(c) BORDER INTERDICTION.-The President shall establish and carry out programs of border interdiction outside the United States.

Such programs shall include providing grants to foreign non-governmental organizations that provide for transit shelters operating at key border crossings and that help train survivors of trafficking in persons to educate and train border guards and officials, and other local law enforcement officials, to identify traffickers and victims of severe forms of trafficking, and the appropriate manner in which to treat such victims. Such programs shall also include, to the extent appropriate, monitoring by such survivors of trafficking in persons of the implementation of border interdiction programs, including helping in the identification of such victims to stop the cross-border transit of victims. The President shall ensure that any program established under this subsection provides the opportunity for any trafficking victim who is freed to return to his or her previous residence if the victim so chooses.

(d) INTERNATIONAL MEDIA.-The President shall establish and carry out programs that support the production of television and radio programs, including documentaries, to inform vulnerable populations overseas of the dangers of trafficking, and to increase awareness of the public in countries of destination regarding the slave-like practices and other human rights abuses involved in trafficking, including fostering linkages between individuals working in the media in different countries to determine the best methods for informing such populations through such media.

(e) COMBATING INTERNATIONAL SEX TOURISM.

(1) DEVELOPMENT AND DISSEMINATION OF MATERIALS.- The President, pursuant to such regulations as may be prescribed, shall ensure that materials are developed and disseminated to alert travellers that sex tourism (as described in subsections (b) through (1) of section 2423 of title 18, United States Code) is illegal, will be prosecuted, and presents dangers to those involved. Such materials shall be disseminated to individuals travelling to foreign destinations where the President determines that sex tourism is significant.

(2) MONITORING OF COMPLIANCE.- The President shall monitor compliance with the requirements of paragraph (1).

(3) FEASIBILITY REPORT. - Not later than 180 days after the date of the enactment of the Trafficking Victims Protection Reauthorization Act of 2003, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Affairs of the Senate a report that describes the feasibility of such United States Government materials being disseminated through public-private partnerships to individuals travelling to foreign destinations. ; and (3) in subsection (1) (as redesignated), by striking initiatives described in subsections (a) and (b) and inserting initiatives and programs described in subsections (a) through (e) .

(b) TERMINATION OF CERTAIN GRANTS, CONTRACTS AND

COOPERATIVE AGREEMENTS.-Section 106 of such Act (as amended by subsection (a) is further amended by adding at the end the following new subsection:

(g) TERMINATION OF CERTAIN GRANTS, CONTRACTS AND COOPERATIVE AGREEMENTS.-

(1) TERMINATION.-The President shall ensure that any grant, contract, or cooperative agreement provided or entered into by a Federal department or agency under which funds described in paragraph (2) are to be provided to a private entity, in whole or in part, shall include a condition that authorizes the department or agency to terminate the grant, contract, or cooperative agreement, without penalty, if the grantee or any subgrantee, or the contractor or any subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, contract, or cooperative agreement.

(2) ASSISTANCE DESCRIBED.-Funds referred to in paragraph (1) are funds made available to carry out any program, project, or activity abroad funded under major functional budget category 150 (relating to international affairs). .

SEC. 4. ENHANCING PROTECTION FOR TRAFFICKING VICTIMS.

(a) AMENDMENTS TO TRAFFICKING VICTIMS PROTECTION ACT OF 2000.-

(1) COOPERATION BETWEEN FOREIGN GOVERNMENTS AND NONGOVERNMENTAL ORGANISATIONS.-Section 107(a)(1)(B) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(a)(1)(B)) is amended by adding at the end before the period the following: and by facilitating contact between relevant foreign government agencies and such nongovernmental organizations to facilitate cooperation between the foreign governments and such organizations .

(2) ASSISTANCE FOR FAMILY MEMBERS OF VICTIMS OF TRAFFICKING IN UNITED STATES.-Section 107(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)) is amended-

(A) in subparagraph (A), by inserting , or an alien classified as a non-immigrant under section 101(a)(15)(T)(ii), after in persons ; and

(B) in subparagraph (B)- -

(i) by inserting and aliens classified as a non-immigrant under section 101(a)(15)(T)(ii), after United States, ; and

(ii) by adding at the end the following new sentence: In the case of no entitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking. .

(3) CERTIFICATION OF VICTIMS OF A SEVERE FORM OF TRAFFICKING IN PERSONS.-Section 107(b)(1)(E) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)(E)) is amended by adding at the end the following new clause:

(iv) ASSISTANCE TO INVESTIGATIONS-In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offences, where severe forms of trafficking appear to have been involved. .

(4) PRIVATE RIGHT OF ACTION.-

(A) IN GENERAL.-Chapter 77 of part I of title 18, United States Code, is amended by adding at the end the following new section:

/1595. Civil remedy

(a) An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)(I) Any civil action filed under this section shall be stayed during the dependency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a criminal action includes investigation and prosecution and is pending until final adjudication in the trial court. .

(B) CONFORMING AMENDMENT-The table of contents of chapter 77 of part I of title 18, United States Code, is amended by adding at the end the following new item:

M1595. Civil remedy. .

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT- (1) NONIMMIGRANT ALIEN CLASSES.-Section 101(a)(15)(T)

of the Immigration and Nationality Act (8 U.S.C. 101(a)(15)(T) is amended-

(A) in clause (i)(III)(bb), by striking 15 years of age, and inserting 18 years of age, ; and

(B) in clause (ii)(I), by inserting unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, before and parents . (2) ADMISSION OF

NONIMMIGRANTS-Section 214(n) of the Immigration and Nationality Act (8 U.S.C. 1184 (n)) is amended-

(A) in paragraph (3), by inserting siblings, before or parents ; and

(B) by adding at the end the following:

(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101 (a)(5)(T)(i), and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(T)(ii), if the alien attains 21 years of age after such parent s application was filed but while it was pending.

(5) An alien described in clause (i) of section 101(a)(15)(T) shall continue to be treated as an

alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien s application for status under such clause (i) is filed but while it is pending.

(6) In making a determination under section 101(a)(15)(T)(i)(II)(aa) with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offences, where severe forms of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000) appear to have been involved, shall be considered. .

(3) ADJUSTMENT OF STATUS.-Section 245(1) of the Immigration and Nationality Act (8 U.S.C. 1255(1) (as added by section 107(!) of Public Law 106- 386) is amended- ,

(A) in paragraph (1)-

(i) by striking admitted under that section and inserting admitted under section 101(a)(15)(T)(ii) ; and

(ii) by inserting sibling, after parent, ; and

(B) in paragraph (3)(B), by inserting siblings, after daughters, .

(4) EXEMPTION FROM PUBLIC CHARGE GROUND FOR INADMISSIBILITY.-Section 212(d)(13) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(13)) as added by section 107(e)(3) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(e)(3)), is amended-

(A) in subparagraph (A), by striking the period at the end and adding the following:

, except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a non-immigrant. ; and

(B) in subparagraph (B)-

(i) by amending clause (i) to read as follows: (i) subsection (a)(1); and ; and

(ii) in clause (ii)-

(I) by striking such subsection and inserting subsection (a) ; and

(II) by inserting (4), after (3), .

(5) AGGRAVATED FELONY DEFINED.-Section 101(a)(43)(K)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(K)(iii)) is amended to read as follows:

(iii) is described in any of sections 1581-1585 or 1588-1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons); .

SEC. 5. ENHANCING PROSECUTIONS OF TRAFFICKERS.

(a) SEX TRAFFICKING OF CHILDREN OR BY FORCE, FRAUD, OR COERCION.-Section 1591 of title 18, United States Code, is amended-

(1)in the heading, by inserting a comma after FRAUD ;

(2)(2) in subsection (a)(l), by striking in or affecting interstate commerce and inserting in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States ; and

(3) in subsection (b), by striking the person transported each place it appears and inserting the person recruited, enticed, harboured, transported, provided, or obtained .

(b) DEFINITION OF RACKETEERING ACTIVITY.-Section 1961(l)(A) of title 18, United States Code, is amended by striking sections 1581-1588 (relating to peonage and slavery) and inserting sections 1581-1591 (relating to peonage, slavery, and trafficking in persons) .

(c) CONFORMING AMENDMENTS.- (1) The heading for chapter 77 of part I of title 18, United States Code, is amended to read as follows:

CHAPTER 77 - PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS .

(2) The table of contents for part I of title 18, United States Code, is amended in the item relating to chapter 77 to read as follows:

77. Peonage, slavery, and trafficking in persons .

SEC. 6. ENHANCING UNITED STATES EFFORTS TO COMBAT TRAFFICKING.

(a)REPORT-

(1) IN GENERAL- Section 105(d) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103(d)) is amended by adding at the end the following new paragraph:

(7) Not later than May 1, 2004, and annually thereafter, the Attorney General shall submit to the Committee on Ways and Means, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives and the Committee on Finance, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate, a report on Federal agencies that are implementing any provision of this division, or any amendment made by this division, which shall include, at a minimum, information on-

(A) the number of persons who received benefits or other services under section 107(b) in

connection with programs or activities funded or administered by the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and other appropriate Federal agencies during the preceding fiscal year;

(B) the number of persons who have been granted continued presence in the United States under section 107(c)(3) during the preceding fiscal year; -

(C) the number of persons who have applied for, been granted, or been denied a visa or otherwise provided status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)(i)) during the preceding fiscal year;

(D) the number of persons who have been charged or convicted under one or more of sections 1581, 1583, 1584, 1589, 1590, 1591, 1592, or 1594 of title 18, United States Code, during the preceding fiscal year and the sentences imposed against each such person;

(E) the amount, recipient, and purpose of each grant issued by any Federal agency to carry out the purposes of sections 106 and 107 of this Act, or section 134 of the Foreign Assistance Act of 1961, during the preceding fiscal year;

(F) the nature of training conducted pursuant to section 107(c)(4) during the preceding fiscal year; and

(G) the activities undertaken by the Senior Policy Operating Group to carry out its responsibilities under section 105(0) of this division. .

(2) CONFORMING AMENDMENT- Section 107(b)(l) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7105(b)(l)) is amended by striking subparagraph (D).

(b) SUPPORT FOR THE TASK FORCE.-

(1) AMENDMENT.- The second sentence of section 105(e) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103(e)) is amended by inserting at the end before the period the following: , who shall be appointed by the President, by and with the advice and consent of the Senate, with the rank of Ambassador-at-Large .

(3) APPLICABILITY.- The individual who holds the position of Director of the Office to Monitor and Combat Trafficking of the Department of State may continue to hold such position notwithstanding the amendment made by paragraph (1)

(c) SENIOR POLICY OPERATING GROUP.-

(1) AMENDMENT.-Section 105 of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103) is amended by adding at the end the following new subsection:

(f) SENIOR POLICY OPERATING GROUP.-

(1) ESTABLISHMENT.-There shall be established within the executive branch a Senior Policy Operating Group.

(2) MEMBERSHIP; RELATED MATTERS.-

(A) IN GENERAL.-The Operating Group shall consist of the senior officials designated as representatives of the appointed members of the Task Force (pursuant to Executive Order No.13257 of February 13, 2002).

(B) CHAIRPERSON.- The Operating Group shall be chaired by the Director of the Office to Monitor and Combat Trafficking of the Department of State.

(C) MEETINGS-The Operating Group shall meet on a regular basis at the call of the Chairperson.

(3) DUTIES.-The Operating Group shall coordinate activities of Federal departments and agencies regarding policies (including grants and grant policies) involving the international trafficking in persons and the implementation of this division.

(4) AVAILABILITY OF INFORMATION- Each Federal department or agency represented on the Operating Group shall fully share all information with such Group regarding the department or agency's plans, before and after final agency decisions are made, on all matters relating to grants, grant policies, and other significant actions regarding the international trafficking in persons and the implementation of this division.

(5) REGULATIONS.-Not later than 90 days after the date of the enactment of the Trafficking Victims Protection Reauthorization Act of 2003, the President shall promulgate regulations to implement this section, including regulations to carry out paragraph (4). .

(2) CONFORMING AMENDMENT.- Section 406 of the Department of State and Related Agency Appropriations Act, 2003 (as contained in division B of Public Law 108-7) is hereby repealed.

(d) MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING. Section 108(b) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7106(b) is amended-

(1) in paragraph (1) -

(A) by striking that take place wholly or partly within the territory of the country and inserting , and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country ; and

(B) by adding at the end the following new sentences: After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted

or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

; (2) in paragraph (7)-

(A) by striking and prosecutes and inserting , prosecutes, convicts, and sentences ; and

(B) by adding at the end the following new sentence: . After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data. .

(4) by adding the following new paragraphs -at the end:

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year. . .

(e) SPECIAL WATCH LIST.-Section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)) is amended-

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

(3) SPECIAL WATCH LIST.-

(A) SUBMISSION OF LIST.- Not later than the date on which the determinations described in subsections (c) and (d) are submitted to the appropriate congressional committees in accordance with such subsections, the Secretary of State shall submit to the appropriate congressional

committees a list of countries that the Secretary determines requires special scrutiny during the following year. The list shall be composed of the following countries:

(i) Countries that have been listed pursuant to paragraph (I)(A) in the current annual report and were listed pursuant to paragraph (1)(B) in the previous annual report.

(ii) Countries that have been listed pursuant to paragraph (1)(B) pursuant to the current annual report and were listed pursuant to paragraph (I)(C) in the previous annual report.

(iii) Countries that have been listed pursuant to paragraph (I)(B) pursuant to the current annual report, where-

(I) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

(II) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecutions and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or

(III) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year .

(B) INTERIM ASSESSMENT- Not later than February 1st of each year, the Secretary of State shall provide to the appropriate congressional committees an assessment of the progress that each country on the special watch list described in subparagraph (A) has made since the last annual report.

(C) RELATION OF SPECIAL WATCH LIST TO ANNUAL TRAFFICKING IN PERSONS REPORT.- A determination that a country shall not be placed on the special watch list described in subparagraph (A) shall not affect in any way the determination to be made in the following year as to whether a country is complying with the minimum standards for the elimination of trafficking or whether a country is making significant efforts to bring itself into compliance with such standards. .

(f) ENHANCING UNITED STATES ASSISTANCE.- Section 134(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2152d(b)) is amended by adding at the end the following new sentence: Assistance may be provided under this section notwithstanding section 660 of this Act. .

(g) RESEARCH RELATING TO TRAFFICKING IN PERSONS.-

(1) IN GENERAL.-The Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 et seq.) is amended by inserting after section 112 the following new section:

SEC. 1 12A. RESEARCH ON DOMESTIC AND INTERNATIONAL TRAFFICKING IN PERSONS.

The President, acting through the Council of Economic Advisors, the National Research Council of the National Academies, the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, the Secretary of State, the Administrator of the United States Agency for International Development, and the Director of Central Intelligence, shall carry out research, including by providing grants to nongovernmental organizations, as well as relevant United States Government agencies and international organizations, which furthers the purposes of this division and provides data to address the problems identified in the findings of this division. Such research initiatives shall, to the maximum extent practicable, include, but not be limited to, the following:

- (1) The economic causes and consequences of trafficking in persons.
- (2) The effectiveness of programs and initiatives funded or administered by Federal agencies to prevent trafficking in persons and to protect and assist victims of trafficking.
- (3) The interrelationship between trafficking in persons and global health risks. .
- (2) CONFORMING AMENDMENT.-The table of contents of the Victims of Trafficking and Violence Protection Act of 2000 is amended by inserting after the item relating to section 112 the following new item:

Sec. 1 12A. Research on domestic and international trafficking in persons. .

(h) SANCTIONS AND WAIVERS.-Section 110(d) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(d)" is amended-

- (1) in paragraph (4), by inserting after nonhumanitarian, nontrade-related foreign assistance the following: or funding for participation in educational and cultural exchange pro- grams ; and
- (2) in paragraph (5)(A)(i), by inserting after foreign assistance the following: or funding for participation in educational and cultural exchange programs .

(i) **SUBSEQUENT WAIVER AUTHORITY.**- Section 110 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107) is amended by adding at the end the following new subsection:

(f) After the President has made a determination described in subsection (d)(1) with respect to the government of a country, the President may at any time make a determination described in paragraphs (4) and (5) of subsection (d) to waive, in whole or in part, the measures imposed against the country by the previous determination under subsection (d)(l). . .

SEC. 7. AUTHORIZATION OF APPROPRIATIONS; RELATED MATTERS.

Section 113 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7110) is amended-

(1) in subsection (a)-

(A) by striking 105 and inserting 105(e), 105(f) ; and

(B) by striking and \$3,000,000 for each of the fiscal years 2002 and 2003 and inserting , \$3,000,000 for each of the fiscal years 2002 and 2003, and \$5,000,000 for each of the fiscal years 2004 and 2005 ;

(2) in subsection (b), by adding at the end before the period the following: and \$15,000,000 for each of the fiscal years 2004 and 2005 ;

(3) in subsection (c)-

(A) in paragraph (1) to read as follows:

(1) **BILATERAL ASSISTANCE TO COMBAT TRAFFICKING.**-

(A) **PREVENTION.**-To carry out the purposes of section 106, there are authorized to be appropriated to the Secretary of State \$10,000,000 for each of the fiscal years 2004 and 2005.

(B) **PROTECTION.**-To carry out the purposes of section 107(a), there are authorized to be appropriated to the Secretary of State \$15,000,000 for fiscal year 2003 and \$10,000,000 for each of the fiscal years 2004 and 2005.

(C) **PROSECUTION AND MEETING MINIMUM STANDARDS.**- To carry out the purposes of section 134 of the Foreign Assistance Act of 1961, there are authorized to be appropriated \$10,000,000 for each of the fiscal years 2004 and 2005 to assist in promoting prosecution of traffickers and otherwise to assist countries in meeting the minimum standards described in section 108 of this Act, including \$250,000 for each such fiscal year to carry out training activities

for law enforcement officers, prosecutors, and members of the judiciary with respect to trafficking in persons at the International Law Enforcement Academies. ; and

(B) in paragraph (2), by striking for each of the fiscal years 2001, 2002, and 2003 and inserting for each of the fiscal years 2001 through 2005 ;

(4) in subsection (d)-

(A) by adding at the end before the period the following: and \$15,000,000 for each of the fiscal years 2004 and 2005 . and

(B) by adding at the end the following new sentence: To carry out the purposes of section 134 of the Foreign Assistance Act of 1961 (as added by section 109), there are authorized to be appropriated to the President, acting through the Attorney General and the Secretary of State, \$250,000 for each of fiscal years 2004 and 2005 to carry out training activities for law enforcement officers, prosecu- tors, and members of the judiciary with respect to traf- ficking in persons at the International Law Enforcement Academies. ;

(5) in subsection (e)-

(A) in paragraphs (1) and (2), by striking for fiscal year 2003 each place it appears and inserting for each of the fiscal years 2003 through 2005 ; and

(B) by adding at the end the following new paragraph:

(3) RESEARCH.-To carry out the purposes of section 112A, there are authorized to be appropriated to the President \$300,000 for fiscal year 2004 and \$300,000 for fiscal year 2005. ;

(6) in subsection (0, by adding at the end before the period the following: and \$10,000,000 for each of the fiscal years 2004 and 2005 ; and

(7) by adding at the end the following new subsection: (g) LIMITATION ON USE OF FUNDS.-

(1) RESTRICTION ON PROGRAMS.-No funds made available to carry out this division, or any amendment made by this division, may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to promote the purposes of this Act by ameliorating the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

(2) RESTRICTION ON ORGANIZATIONS.-No funds made available to carry out this division, or any amendment made by this division, may be used to implement any program that targets victims of severe forms of trafficking in persons described in section 103(8)(A) of this Act through any organisation that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked. .

SEC. 8. TECHNICAL CORRECTIONS.

(a) IMMIGRATION AND NATIONALITY ACT.-

(1) CLASSES OF NONIMMIGRANT ALIENS.- Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended-

(A) by moving the margins of subparagraphs (T) and (U) 2 ems to the left;

(B) in subparagraph (T), by striking 214(n), and inserting 214(0), ;

(C) in subparagraph (U), by striking 214(0), and inserting 214(p), ; and

(D) in subparagraph (V), by striking 214(0), and inserting 214(q), .

(2) CLASSES OF ALIENS INELIGIBLE FOR VISAS AND ADMISSION.-Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d) is amended by redesignating the paragraph (13) added by section 1513(e) of the Battered Immigrant Women Protection Act of 2000 (title V of division B of Public Law 106-386; 114 Stat. 1536) as paragraph (14).

(3) ADMISSION OF NONIMMIGRANTS.- Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by redesignating subsections (m) (as added by section 105 of Public Law 106-313), (n) (as added by section 107(e) of Public Law 106-386), (o) (as added by section 1513(c) of Public Law 106-386), (0) (as added by section 1102(b) of the Legal Immigration Family Equity Act), and (p) (as added by section 1503(b) of the Legal Immigration Family Equity Act) as subsections (n), (0), (p), (q), and (r), respectively.

(4) ADJUSTMENT OF STATUS OF NONIMMIGRANTS.-Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended-

(A) in the subsection (l) added by section 107(0) of Public Law 106-386, by redesignating the second paragraph (2), and paragraphs (3) and (4), as paragraphs (3), (4), and (5), respectively; and

(B) by redesignating the subsection (l) added by section 1513(f) of Public Law 106-386 as subsection (m).

(b) TRAFFICKING VICTIMS PROTECTION ACT OF 2000.- (1) Section 103(7)(A)(i) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(7)A(i)) is amended by inserting after part II of that Act the following: in support of programs of nongovernmental organizations .
(2) Section 107(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(g)) is amended by striking 214(n)(l) and inserting 214(o)(2) .

Speaker of the House of Representatives.

***Vice President of the United States and
President of the Senate.***

APPENDICES

Appendix VI



REPUBLIC ACT 9208

AN ACT

TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES

SECTION 1. *Title.* -This Act shall be known as the Anti- Trafficking in Persons Act of 2003 .

SEC. 2. *Declaration of Policy.* -It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery , rehabilitation and reintegration into the mainstream of society .

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families, United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

SEC.3. Definition of Terms. -As used in this Act:

(a) Trafficking in Persons -refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim s consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, 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 which includes at a minimum, the exploitation or the prostitution of others or other forms of sexua exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as trafficking in persons even if it does not involve any of the means set forth in the preceding paragraph.

(b) Child- refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

(c) Prostitution -refers to any act, transaction, scheme or design involving-the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

(d) Forced Labor and Slavery -refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.

(e) Sex Tourism -refers to a program organized by travel and tourism-related

establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.

(f) *Sexual Exploitation* -refers to participations by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim's Vulnerability .

(g) *Debt Bondage* -refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the values of the services as reasonably assessed is not applied toward the liquidation of the debt.

(h) *Pornography* -refers to any representation, through publication, exhibition, cinematography, indecent show, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.

(i) *Council*- shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

SEC. 4. *Acts of Trafficking in Persons* -It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No.6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

(e) To maintain or hire a person to engage in prostitution or pornography;

(f) To adopt or facilitate the adoption of persons for the purpose prostitution, pornography, sexual exploitation, forced-labor, slavery, involuntary servitude or debt bondage;

(g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;

(h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

SEC. 5. Acts that Promote Trafficking in Persons. -The following acts which promote or facilitate trafficking in persons, shall be unlawful:

(a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promotion trafficking in persons;

(b) To produce, print and issue or distribute unissued, tampered or fake counselling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;

(c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, or any brochure, flyer, or any propaganda material that promotes trafficking in persons;

(d) To assist in the conduct of misrepresentation or fraud for purposes of facilitation the acquisition of clearances and necessary exit document from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;

(e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampers or fraudulent travel documents for the purpose of promotion trafficking in persons;

(f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies;

(g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

SEC. 6. Qualified Trafficking in Persons. -The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

(b) When the adoption is effected through Republic Act No.8043, otherwise known as

the Inter-Country Adoption Act of 1995 and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offences is committed by a public officer or employee;

(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;

(f) When the offender is a member of the military or law enforcement agencies; and

(g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

SEC. 7. Confidentiality. -At any stage of the investigation, prosecution and trial of an offence under this Act, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the trafficked person and the accused. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public.

In cases when prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or information technology to cause publicity of any case of trafficking in persons.

SEC. 8. Prosecution of Cases. -Any person who has personal knowledge of the commission of any offense under this Act, the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.

SEC.9. Venue. -A criminal action arising from violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the trafficked person actually resides at the time of the commission of the offense: *Provided*, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

SEC. 10. Penalties and Sanctions. -The following penalties and sanctions are hereby established for the offenses enumerated in the Act:

(a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

(b) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less then Five hundred thousand pesos (P500, 000.00) but not more than One million pesos (P 1,000,000.00);

(c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2, 000,000.00) but not more than Five million pesos (P5, 000,000.00);

(d) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500, 000.00) but not more than One million pesos (P1,000,000,.00);

(e) If the offender is a corporation, partnership, association, club, establishment or any, juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;

(f) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager there of shall not be allowed to operate similar establishments in a different name;

(g) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;

(h) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counselling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall likewise be forfeited; and

(i) Conviction by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

SEC.11. Use of Trafficked Persons. -Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

(a) First offense —six (6) months of community service as may be determined by the court and a fine of Fifty thousand pesos (P50, 000.00); and

(b) Second and subsequent offenses -imprisonment of one (1) year and a fine of One hundred thousand pesos (P100, 000.00).

SEC. 12. *Prescriptive Period.* -Trafficking cases under this Act shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6 shall prescribe in twenty (20) years.

The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage and shall be interrupted by the filing of the complaint or information and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

SEC. 13. *Exemption from Filing Fees.* -When the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from the payment of filing fees.

SEC. 14. *Confiscation and Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons.* -In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favour of the government, of all the proceeds - and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act: Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender: Provided, further, That If such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties. When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

SEC. 15. *Trust Fund.* -All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 hereof shall accrue to a Trust Fund to be administered and managed by the Council to be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the mainstream of society. Such

programs shall include, but not limited to, the following:

- (a) Provision for mandatory services-set forth in Section 23 of this Act;
- (b) Sponsorship of a national research program on trafficking and establishment of a data collection system for monitoring and evaluation purposes; ,
- (c) Provision of necessary technical and material support services to appropriate government agencies and non-government organizations(NGOs);
- (d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, NGOs and international organizations;
and
- (e) Promotion of information and education campaign on trafficking;

SEC. 16. *Programs that address Trafficking in Persons.* -The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:

- (a) Department of Foreign Affairs (DFA) -shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in elimination trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs.
- (b) The DFA shall take necessary measures for the efficient implementation of the Machine Readable Passports to protect the integrity of Philippine passports, visas and ciber travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

It shall establish and implement a pre-marriage, on-site and pre-departure counseling program on intermarriages.

(b) Department of Social Welfare and Development (DSWD) -shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community.

(c) Department of Labor and Employment (DOLE) -shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.

(d) Department of Justice (DOJ) -shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.

(e) National Commission on the Role of Filipino Women (NCRFW) -shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women's issues.

(f) Bureau of Immigration (BI) -shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés / fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.

(g) Philippine National Police (PNP) -shall be the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. It shall closely coordinate with various law enforcement

agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. It shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.

(h) Philippine Overseas Employment Administration (POEA) -shall implement an effective pre-employment orientation seminars and pre-departure counseling programs to applicants for overseas employment. It shall likewise formulate a system of providing free legal assistance to trafficked persons.

(i) Department of the Interior of Local Government (DILG) -shall institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons.

(j) Local government units (LGUs) -shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with DILG, Philippine Information Agency (PIA), Commission On Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community based initiatives which address the trafficking in persons.

In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people's organizations (POs), civic organizations and other volunteer groups.

SEC. 17. Legal Protection to Trafficked Persons. -Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

SEC. 18. Preferential Entitlement Under the Witness Protection Program. -Any provision of Republic Act No.6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein.

SEC. 19. Trafficked Persons Who Are Foreign Nationals. -Subject to the guidelines issued by the Council, trafficked persons in the Philippines who are nationals of a foreign country shall also entitled to appropriated protection, assistance and services available to trafficked persons under this Act: Provided, That they shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution offenders.

SEC. 20. Inter-Agency Council Against Trafficking. -There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

- (a) Secretary, Department of Foreign Affairs;
- (b) Secretary, Department of Labor and Employment;
- (c) Administrator, Philippine Overseas Employment Administration;
- (d) Commissioner, Bureau of Immigration;
- (e) Director-General, Philippine National Police;
- (f) Chairperson, National Commission on the Role of Filipino Women;
- (g) Three (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino workers (OFWs) and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

The members of Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meeting, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

SEC. 21. *Functions of the Council* -The Council shall have the following powers and functions: -

(a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;

(b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;

(c) Monitor and oversee the strict implementation of this Act;

(d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons; -

(e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the local government unites (LGUs), concerned agencies, and NGOs;

(f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;

(g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;

(h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;

(i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;

(j) Complement the shared government information system form migration established under Republic Act No.8042, otherwise known as the Migrant Workers And Overseas Filipinos Act of 1995 with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;

(k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;

(l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;

(m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;

(n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;

(o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and

(p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

SEC. 22. Secretariat to the Council -The Department of Justice shall establish the necessary Secretariat for the Council.

SEC. 23. Mandatory Services to Trafficked Persons. -To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies shall make available the following services to trafficked persons:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services which shall include information about the victims rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person,
- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance to a trafficked child.

Sustained supervision and follow through mechanism that will track the progress of recovery , rehabilitation and reintegration of the trafficked persons shall be adopted an carried out.

SEC. 24. Other Services for Trafficked Persons.

(a) *Legal Assistance* -Trafficked persons shall be considered under the category Overseas Filipino in Distress and may avail of the legal assistance created by Republic Act No. 8042, subject to the guidelines as provided by law.

(b) *Overseas Filipino Resource Centers.* -The services available to overseas Filipinos as provided for by Republic Act No.8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.

(c) The Country Team Approach. -The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity and fundamental rights are concerned.

SEC. 25. *Repatriation of Trafficked persons.* -The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of the trafficked persons shall expose the victim to greater risks, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

SEC. 26. *Extradition.* -The *DOJ*, in consultation with DFA, shall endeavor to include offenses of trafficking in persons among extraditable offenses.

SEC. 27. *Reporting Requirements.* -The Council shall submit to the President of the Philippines and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act.

SEC. 28. *Funding.* -The heads of the departments and agencies concerned shall immediately include in their programs and issue such rules and regulations to implement the provisions of this Act, the funding of which shall be included in the annual General Appropriations Act.

SEC. 29. *Implementing Rules and Regulations.* -The Council shall promulgate the necessary implementing rules and regulations within sixty (60) days from the effectivity of this Act.

SEC. 30. *Non-restriction of Freedom of Speech and of Association, Religion and the Right to Travel.* - Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

SEC. 31. *Separability Clause.* -If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SEC. 32. *Repealing Clause.* -All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly: Provided, That this Act shall not in any way amend or repeal the provision of Republic Act No.7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act .

SEC. 33. *Effectivity.*- This Act shall take effect fifteen (15) days from the date of its complete publication in at least two (2) newspapers of general circulation.

Approved.

APPENDICES

Appendix VII



APPENDIX VII

LIST OF SPEAKERS AND PARTICIPANTS

Forum on Trafficking in Women and Children —A Cross Border and Regional Perspective

No.	Name	Organisation
1.	Tan Sri Abu Talib Bin Othman	Chairman of the Human Rights Commission of Malaysia [SUHAKAM]
2.	Her Excellency Ambassador Marie T. Huhtala	Ambassador of the United States of America
3.	Dr. Saisuree Chutikul	Former Cabinet Minister for Women and Children's Affairs Thailand
4.	Ms. Anne Gallagher	Asia Regional Cooperation to Prevent People Trafficking
5.	Ms. Margy de Monchy	UNICEF's Regional Adviser on Protection
6.	Ms. Lynette Pereira	Deputy Public Prosecutor Attorney General's Chambers Malaysia
7.	Ms. Gaye Phillips	Representative UNICEF Malaysia
8.	Tan Sri Datuk Seri Panglima Simon Sipaun	Vice-Chairman Human Rights Commission of Malaysia
9.	Tan Sri Dato' Ramon Navaratnam	SUHAKAM Commissioner
10.	Datuk Dr. Raj Karim	SUHAKAM Commissioner
11.	Dato' Ranita Mohd.Hussein	SUHAKAM Commissioner
12.	Cik Zainah Anwar	SUHAKAM Commissioner
13.	Prof. Dr. Chiam Heng Keng	SUHAKAM Commissioner
14.	Dato' Asiah Abu Samah	SUHAKAM Commissioner

LIST OF PARTICIPANTS

No.	Name	Organisation
1.	Ab Razak Bin Ab Ghani, ACP	OCCI Melaka
2.	Akrapong Chalerman	Embassy of Thailand
3.	Anne J. Louis	Embassy of Phillipines
4.	Alexander W. Sokolofo	Embassy of US
5.	Avudainathan	Commercial Crime Dept. Bukit Aman
6.	Choo Lily, ASP	Commercial Crime Dept. Bukit Aman
7.	Mohd. Hafiz Lo	Jabatan Imigresen Malaysia
8.	Habibah Binti Haji Baba	Ministry of Home Affairs
9.	Hassan Jagar, ACP	Commercial Crime Dept. Bukit Aman
10.	Intan Zurina	Assistant Secretary Wisma Putra
11.	Ithnin Bin Haji Talib	Ketua Jabatan Siasatan Jenayah IPK Johor
12.	Jessie Ang	Women Aids Organisation (WAO)
13.	Sergei Kuzmin	Embassy of Russia
14.	Mohd. Sham Kassim	Majlis Kebajikan Kanak-kanak
15.	Teng Book	MCA Legal Adviser
16.	Mahanum Adam	Lecturer, Faculty of Law, UiTM
17.	Mazlifah Mansor	Lecturer, Faculty of Law, UiTM

LIST OF PARTICIPANTS

No	Name	Organisation
18.	Nurhalida Khalil	Lecturer, Faculty of Law, University of Malaya
19.	Noor Aziah Hj. Mohd. Awal	Lecturer, Faculty of Law, University of Kebangsaan Malaysia
20.	Norbaini Mohamed Nazeri	Lecturer, Faculty of Law, University of Malaya
21.	Parisyia Tardgi	Embassy of Phillipines
22.	Ros Simara	Embassy of Cambodia
23.	Ragunath Kesavan	Bar Council Malaysia
24.	Ramany Gurusamy	NCWO
25.	Ravindran Manickam	Embassy of US
26.	Rasamah Buhapan	NCWO
27.	Shamima Hasan	Programme Manager IPPF
28.	Yasmeen Shariff	Association of Women Lawyers
29.	Yeoh Yoke Kim	UNPFA
30.	Ramli Bin Halim	Jabatan Imigresen Malaysia
31.	Nurazlina Ismail	Kementerian Pelancongan
32.	Jamil Razif Kassim	Jabatan Penjara Malaysia
33.	Rohaizi Bin Bahari	Kementerian Hal Ehwal Dalam Negeri
34.	Prof. Madya Dr. Abdul Halim Sidek	Faculty of Law, UiTM
35.	Oyuchinmeg Puser	National Human Rights Commission of Mongolia
36.	Bangga Munga	Jabatan Imigresen Sarawak
37.	Siti Dermawan	Jabatan Kebajikan Masyarakat Malaysia