

RESOURCE MATERIAL SERIES

FEATURED ARTICLES

THE FIGHT AGAINST HUMAN TRAFFICKING IN THE PHILIPPINES

Mr. SEVERINO H. GANA, JR. (PHILIPPINES)

HUMAN TRAFFICKING AND MODERN-DAY SLAVERY

DEALING WITH VICTIMS OF SLAVERY AND HUMAN TRAFFICKING

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 109. This volume contains the work product of the 172nd International Training Course, conducted from 15 May to 21 June 2019. The main theme of the 172nd International Training Course was *Criminal Justice Responses to Trafficking in Persons and Smuggling of Migrants*.

Human trafficking and the smuggling of migrants are serious crimes that cause grievous harm to human dignity, human rights and sustainable development. Transnational organized crime groups deceive victims into believing that they are *en route* to a better life, but they are instead pressed into indentured servitude or outright slavery. In order to suppress these crimes, the United Nations Convention against Transnational Organized Crime was adopted, along with its protocols on trafficking in persons and the smuggling of migrants. These instruments seek to, *inter alia*, harmonize the criminalization of human trafficking and smuggling, to strengthen investigative techniques to counter trafficking and smuggling crimes while maintaining a victim-oriented approach, and enhance international cooperation among States Parties.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Course to explore various issues that relate to combating trafficking in persons and smuggling of migrants. This issue of the *Resource Material Series* contains papers contributed by the visiting experts, selected individual-presentation papers from among the participants, and the Reports of the Course. I regret that not all the papers submitted by the participants of the Course could be published.

I would like to pay tribute to the contributions of the government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes. Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

December 2019



Takeshi Seto
Director of UNAFEI

RESOURCE MATERIAL SERIES

No. 109

Work Product of the 172nd International Training Course

**“Criminal Justice Responses to Trafficking in Persons
and Smuggling of Migrants”**

UNAFEI

VISITING EXPERTS' PAPERS

THE FIGHT AGAINST HUMAN TRAFFICKING IN THE PHILIPPINES

*Severino H. Gana, Jr.**

Trafficking in persons is a fundamental and crucially important challenge in the areas of human rights and law enforcement. It is not new—trafficking in persons is in many ways a modern-day form of slavery, which has persisted into the twenty-first century. Trafficking is a problem that has reached staggering dimensions around the globe. Solving this problem and bringing relief to its many victims are possible only through cooperative efforts. This cooperation must not only occur bilaterally and multilaterally among various governments, but also between governments and non-governmental organizations. It must involve governmental coordination on national counter-trafficking strategies as well as coordination at a local level for example, between local police and NGOs that provide services to victims. Destination countries must work with transit and source countries to stem the flow of trafficking; and source countries must work not only to prevent trafficking, but also to help with the reintegration of trafficked victims back into their home society.

I. ELIMINATING TRAFFICKING IN PERSONS

The ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children initiated the US Victims of Trafficking and Violence Protection Act of 2000. The act requires the US Secretary of State to submit a report to Congress with respect to the status of severe forms of trafficking in persons.¹

The earliest US Department of State Trafficking in Persons (TIP) Report in 2001 placed the Philippines in Tier 2 Category. The report stated that:

The Philippines is a source, transit, and, to a lesser degree, destination country for trafficked persons. Young Filipina women and girls are trafficked to Japan and many other countries for the purposes of sexual exploitation. Many Filipino overseas contract workers are forced to work in substandard conditions or are subjected to abuse. Mainland Chinese nationals are trafficked through the Philippines to worldwide destinations. A significant number of adults and children also are trafficked domestically from poorer areas to urban centers for the commercial sex industry and domestic work.

The Government of the Philippines does not yet fully meet the minimum standards; however, the Government is making significant efforts to combat trafficking. There is no law that specifically prohibits trafficking in persons; however, there are other laws such as the Migrant Workers and Overseas Filipinos Act that could be used to prosecute traffickers. Prosecutions are rare, since the pace of justice is slow and the Government faces serious financial constraints. Corruption is pervasive. Anti-trafficking efforts focus mainly on prevention, the protection of overseas Filipino workers, and assistance to victims. The Government provides assistance such as medical aid, shelter, and financial help to repatriated victims. It also provides extensive training on assisting victims to its diplomatic and consular staffs in destination countries. Persons trafficked to the Philippines are treated as victims and are not prosecuted or immediately deported. The Government enjoys a good relationship with the many domestic NGO's that work on human trafficking issues and is an active participant in regional anti-trafficking initiatives. For example, the

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¹ US Department of State 2001 TIP Report

*Philippines coordinates with governments in the region on trafficking issues in a number of settings, including the Asia-Pacific Consultations on Refugees, Displaced Persons, and Migrants and the Manila Process on trafficking and irregular migration in east and southeast Asia.*²

The Philippines remained in TIER 2 ranking up to the 2003 US Department of State TIP Report.

II. PHILIPPINE LEGAL FRAMEWORKS

During the 2001 and 2002 US Department of State TIP Report, the Philippines has no specific anti-trafficking law. However, we have a long history of legislation with severe penalties aimed at protecting the rights of the local and migrant workers, children, and women, *inter alia*.

- Presidential Decree No. 442, or the Labor Code of the Philippines enacted in 1974, stands as the law governing employment practices and labour relations in the Philippines. The law defines illegal recruitment and providing penalties therefor. The same sets the minimum age of employment at 15 years and prohibited the employment of persons below 18 years of age in hazardous undertakings. Later on, it was amended in 1986 by Presidential Decree No. 2018, making illegal recruitment a crime of economic sabotage and punishable with life imprisonment.
- Presidential Decree No. 603 (The Child and Youth Welfare Code) permits the employment of children aged 16 years and below only if they perform light work, which is not harmful to their safety, health or normal development, and which is not prejudicial to their studies. Strict rules and regulations were issued on their rates of pay, hours of work and other conditions of employment. An employment permit also has to be secured from the Department of Labor and Employment.
- The 1992 child protection law, Republic Act No. 7610 (Special Protection of Children against Abuse, Exploitation and Discrimination Act) provides for the protection of children against abuse, commercial sexual exploitation, trafficking, and employment in illicit activities.
- Republic Act No. 7658 (amending RA 7610) sets the minimum age of employment at 15 years, and 18 years and above for hazardous work.
- Republic Act 7160 (The Local Government Code of 1991) includes provisions for the proper development and welfare of children at the basic political level, the Barangay. It enjoins local officials to promote and support activities for the protection and total development of children, particularly those below seven years of age, and to adopt measures to prevent and eradicate drug abuse, child abuse, and juvenile delinquency.
- Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 which institutes the policies of overseas employment and establishes a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes, later on amended by RA 10022.
- Republic Act No. 9231 (19 December 2003 - An Act Providing for the Elimination of the Worst Forms of Child Labor (WFCL) and Affording Stronger Protection for the Working Child) - amends R.A. No. 7610 by embodying the State policy to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and conditions prejudicial to their development, including child labour and its worst forms. It also provides stiffer penalties for their commission. It spells out the WFCL, consistent with Convention No. 182; the hours of work of working children; and ownership, usage and administration of the working child's income. Further, it ensures working children's access to education and training, and immediate legal, medical and psychosocial services.

With the growing international clamour against human trafficking, the Philippines enacted the Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208). It was the first Anti-Trafficking law in Southeast Asia. Republic Act 9208 is a comprehensive law which seeks to institute policies to eliminate trafficking in persons, especially women and children, establishes the necessary institutional mechanism for the protection and support of trafficked persons, and provides penalties for its violations. Salient features of the law are

² US Department of State 2001 TIP Report

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outlined below.

The law defines Trafficking in Persons using the definition of trafficking in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as a framework. The law defines trafficking in persons as:

“the recruitment, transportation, transfer or harbouring, 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 or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, servitude or the removal or sale of organs. The recruitment, transportation, transfer, harbouring 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.”

The Anti-Trafficking in Persons Act of 2003 punishes the three categories of trafficking acts, enumerated below:

1. Acts of Trafficking in Persons
 - 1.1. Recruiting, transporting, transferring, harbouring, providing or receiving a person by any means for the purposes of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;
 - 1.2. Introducing for money or other consideration, any Filipina to a foreigner as a possible spouse or to offer any Filipina to a foreigner as a prostitute;
 - 1.3. Offering or contracting marriage for purposes of acquiring, buying, offering, selling or trading a person to engage in prostitution, or other acts of exploitation;
 - 1.4. Undertaking or organizing tours and travel plans consisting of tourism packages for purposes of utilizing or offering persons for prostitution, pornography or sexual exploitation;
 - 1.5. Maintaining or hiring a person to engage in prostitution or pornography;
 - 1.6. Adopting or facilitating the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;
 - 1.7. Recruiting, hiring, adopting, transporting or abducting 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; or
 - 1.8. Recruiting, transporting or adopting a child to engage in armed activities in the Philippines or abroad.
2. Acts that Promote Trafficking in Persons
 - 2.1. Knowingly leasing or subleasing property for trafficking purposes;
 - 2.2. Producing, printing, issuing or distributing unissued, tampered or fake counselling certificates, registration stickers and other certificates of government used for regulatory and pre-departure requirements for the purpose of promoting trafficking;
 - 2.3. Advertising, publishing, printing, broadcasting or distributing, by any means, any brochure, flyer,

or any propaganda material that promotes trafficking;

- 2.4. Facilitating, assisting or helping in the exit and entry of persons from/to the country at international or domestic airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking; or
 - 2.5. Confiscating, concealing, or destroying the passport, travel documents or belongings of trafficked persons, or preventing them from leaving the country or seeking redress from the government and appropriate agencies; or
 - 2.6. Knowingly benefiting, financially or otherwise, or making use of, the labour or services of a person held to a condition of involuntary servitude, forced labour or slavery.
3. Qualified Trafficking in Persons is committed when:
- 3.1. The trafficked person is below 18 years of age;
 - 3.2. An adoption is effected through the Inter Country Adoption Law and the adoption is for prostitution, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;
 - 3.3. The act is committed by a syndicate or on a large scale;
 - 3.4. The offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person, or when the offence is committed by a public officer or employee;
 - 3.5. The trafficked person is recruited to engage in prostitution for any member of the military or law enforcement agencies;
 - 3.6. The offender is a member of the military or law enforcement agencies; or
 - 3.7. By reason or on occasion of the act of trafficking, the offended party dies, becomes insane, suffers mutilation or is afflicted with HIV or AIDS.
4. Penalties:

ACT	PENALTY
Qualified Trafficking in Persons	Life imprisonment and a fine of P 2 million to P 5 million (Philippine Pesos)
Trafficking in Persons	20 years' imprisonment and a fine of P 1 million to 2 million
Promoting Trafficking in Persons	15 years' imprisonment and a fine of P 500 Thousand to P 1 million
Use of Trafficked Persons for Prostitution	First Offence: 6 months' community service and a fine of P 50 Thousand Subsequent Offence: 1 year's imprisonment and a fine of P 100 Thousand

5. Trafficking in Persons Distinguished from Human Smuggling

TRAFFICKING IN PERSONS

Usually involves coercion

Characterized by subsequent exploitation after the illegal entry of a person into a foreign country

Considered a human rights issue

HUMAN SMUGGLING

Usually does not involve coercion

Characterized by facilitating, for a fee, the illegal entry of a person into a foreign country

Considered a migration concern

III. PHILIPPINES RANKED TIER 2 WATCHLIST

In spite of the enactment of the above-stated law, the 2004 US Department of State TIP Report downgraded the Philippines (from TIER 2 Ranking in 2003) to TIER 2 Watch List category. The report stated that:

“The Government of the Philippines does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The Philippines is placed on Tier 2 Watch List due to the government's failure to provide evidence of increasing efforts to combat severe forms of trafficking, particularly in terms of its weak implementation of the anti-trafficking law and a lack of progress in law enforcement. The government recognizes that trafficking is a problem and has been engaged internationally to combat it. Despite limited resources, the government supports several programs in the areas of prevention and protection. In 2003, the government passed anti-trafficking legislation that protects women and children from sexual exploitation and forced labor. The Philippine government should take immediate corrective action through the prosecution of traffickers, aggressive implementation of the new law, and the arrest and prosecution of officials involved in trafficking.”

The downgrade of the Philippines into TIER 2 Watch List and the possibility of a further downgrade to TIER 3 category, alarmed the government. Since, pursuant to US Victims of Trafficking and Violence Protection Act of 2000, the governments of countries with the ranking of TIER 3 Category could be subjected to certain sanctions, notably withholding of non-humanitarian, non-trade-related assistance. (Countries that receive no such assistance would be subject to withholding of funding for participation in educational and cultural exchange programmes). Consistent with the Act, such governments also would face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions, specifically the International Monetary Fund and multilateral development banks such as the World Bank.

IV. SPECIAL INVESTIGATION TECHNIQUES

Investigations of human trafficking offences and their networks can be quite complex, particularly given that they must often be conducted across borders. Ensuring effective cooperation and coordination between government agencies, law enforcers and stakeholders must therefore be part of any strategy to address the problem of human trafficking.

The Inter-Agency Council Against Trafficking (IACAT) is the body mandated by law to coordinate and monitor the implementation of Republic Act No. 9208, or the Anti-Trafficking in Persons Act of 2003, as amended, with the Department of Justice as Chair, and the Department of Social Welfare and Development as co-Chair.

It was formed under section 20 of R.A. 9208, and is composed of the following government agencies and non-government sectoral representatives, as members:

- Secretary, Department of Foreign Affairs
- Secretary, Department of Labor and Employment
- Secretary, Department of the Interior and Local Government

- Administrator, Philippine Overseas Employment Administration
- Commissioner, Bureau of Immigration
- Chief, Philippine National Police
- Chairperson, Philippine Commission on Women
- Chairperson, Commission on Filipinos Overseas
- Executive Director, Philippine Center for Transnational Crimes
- Coalition Against Trafficking In Women – Asia Pacific (NGO representing the women sector)
- Blas F. Ople Policy Center and Training Institute (NGO representing the OFWs sector); and
- International Justice Mission (NGO representing the children sector).

The IACAT has the following powers and functions:

- Formulate a comprehensive and integrated programme to prevent and suppress the trafficking in persons;
- Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- Monitor and oversee the strict implementation of this Act;
- Coordinate the programmes and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- 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 LGUs, concerned agencies, and NGOs;
- Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- Formulate a programme 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;
- 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;
- Complement the shared government information system for 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 programme direction;
- Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
- 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;
- 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;
- Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- Initiate training programmes in identifying and providing the necessary intervention or assistance to trafficked persons; and
- Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

Major Challenges and Constraints

1. Lack of good education programmes for out-of-school youth;
2. Lack of manpower or personnel to support the full implementation of anti-trafficking programmes and interventions;

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3. Investment by LGUs in anti-trafficking interventions remains low;
4. Absence of a Knowledge Center and Lack of solutions-based research;
5. Lack of organization structure and plantilla position for IACAT Secretariat;
6. Need for more support to strengthen the operations of the anti-trafficking task forces and law enforcement agencies.

In spite of the many challenges and constraints, the IACAT successfully conducted many different projects that geared towards the elimination of trafficking in persons in the Philippines, prevention of the occurrence of trafficking, the protection and rehabilitation of victims and conviction of trafficking offenders.

V. INITIATIVES AND ACCOMPLISHMENTS

1. Policy Formulation

- Developed the National Strategic Plan of Action Against Trafficking
- Formulated the guidelines for the establishment of the Inter-Agency Law Enforcement Task Force Against Trafficking. (Set-up task forces at airports, seaports and land-transportation terminals at NAIA, Zamboanga, Cebu, Davao, Leyte.)
- Developed a manual for prosecutors and law enforcers in investigating and prosecuting trafficking cases.

2. Coordination and Monitoring

- Established lines of co-ordination with various agencies and bodies dealing with the issue of trafficking in persons.
- Institutionalized consultative and coordinative mechanisms with NGOs.
- Continuously monitored trafficking cases and facilitated referral of cases to concerned agencies.

3. Information, Education and Communication

- Developed Standard Orientation Module on Trafficking in Persons
- Printed and disseminated RA 9208 and its Implementing Rules and Regulations
- Popularized the law and its Implementing Rules and Regulations
- Conducted training for various stakeholders like law enforcers, public prosecutors, immigration officials and employees
- Conducted roadshow campaign against trafficking in Zamboanga City, Tacloban City and Davao City

Law Enforcement and Investigation

1. Philippine National Police (PNP)

- The PNP mainstreamed trafficking in persons in their Women and Children's Concerns Desks (WCCDs) nationwide.
- The Women and Children Complaint Division, Criminal Investigation and Detection Group (CIDG) intensified rescue operations.

2. National Bureau of Investigation (NBI)

The NBI created a specialized unit called Anti-Human Trafficking Division (AHTRAD), which provides dedicated and trained agents to investigation trafficking in persons violations.

3. Prosecution (Department of Justice)

The Secretary of Justice issued Department (DOJ) Circular No. 18 dated April 22, 2005 that provides guidelines on the investigation and prosecution of trafficking cases and giving preferential attention to trafficking cases, not dismissing trafficking cases on the mere account of an Affidavit of Desistance, and on the amount of bail for violations of the trafficking law (PHP10,000 per year of imprisonment except for Qualified Trafficking). It also recommends the designation of 95 trained Special Prosecutors to handle trafficking cases nationwide.

The Department has also implemented training of 156 public prosecutors nationwide on RA 9208. (The number includes those prosecutors trained by NGOs and other entities nationwide).

4. National Strategic Action Plan Against Trafficking in Persons (2004 – 2010)

The National Strategic Action Plan is a six-year plan of action that will serve as the blueprint for government, non-government organizations and other stakeholders' action against trafficking in persons. Its vision is "a just, humane, gender-fair and empowered society that protects its people, especially women and children, from all forms of exploitation, thus enabling them to fully exercise their rights, realize their potentials in the development of the country, and experience a happy and peaceful family life."

4.1 Goal and Objectives

Towards this vision, the Council shall undertake measures to prevent and suppress trafficking in persons, especially women and children, and to ensure their recovery, rehabilitation and reintegration into mainstream society. The council has likewise identified the following objectives: promote public awareness of trafficking in persons and sustain collective and coordinated advocacy efforts; coordinate the maximum effective and efficient implementation of the law; mobilize and forge partnerships and cooperation among different agencies involved in the areas of prevention, protection, prosecution, rehabilitation and reintegration of victims of trafficking; establish and institutionalize an effective and efficient referral and tracking system of incidents of trafficking through all the stages of intervention; and institutionalize a central database and a shared information system on trafficking.

4.2 Strategies

The National Strategic Action Plan will drive the work programme and associated prioritizing and budgetary processes of the Inter-Agency Council Against Trafficking in Persons (IACAT) into 2010. In order to attain its objectives, the Council shall pursue the following strategies:

- Advocacy and Social Mobilization
- Capability-building
- Data Collection and Management
- Alliance Building and Networking
- Research, Policy Studies and Documentation
- Institutional Mechanisms

4.3 Components

- This strategic plan of Action has three major components: prevention, protection, rehabilitation and reintegration, with objectives and a set of strategic activities under each component. Each component adopts all of the strategies mentioned.

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In 2006, the US removed the Philippines from its trafficking in persons TIER 2 Watchlist due to its progress in fighting modern slavery, including forced prostitution, sex trafficking and child labour. The US State Department's annual Trafficking in Persons Report moves the Philippines up a tier from its Watch List of problem nations, to one that is making significant efforts to combat trafficking. The report acknowledged the Philippines for its improvements, saying the government has stepped up its effort to implement its anti-trafficking law and made initial progress in implementing strategies to combat trafficking in persons, particularly in prosecuting human traffickers. The 2006 report noted that the Department of Justice tripled the number of prosecutors, resulting in a fourfold increase in cases presented for prosecution.

VI. ACTUAL CASES

Case 1: People of the Philippines vs. Hadja Jarma Lalli, et al.

Facts:

Sometime on June 3, 2005, the accused recruited a certain Lolita Plando, a 23 year old, single woman from Zamboanga City, as restaurant entertainer. On June 6, 2006, she left the port of Zamboanga City for Sandakan, Malaysia. She was brought to a restaurant in Labuan, Malaysia which turned out to be a prostitution den. Prostitutes were paid MYR300 (Malaysian Ringgits) for short time service of which MYR50 went to the entertainer, and MYR500 for over night service of which MYR100 went to the entertainer. Lolita worked at Piper Club from June 14 to July 8, 2005. She had at least one customer a night and at most she had around five customers a night. On July 9, 2005, she was lucky to contact her brother-in-law, an Indonesian national, who helped her escape and brought her back to Zamboanga City. After filing the complaint, the police apprehended the accused in this case. After a full-blown trial which lasted only for four months the court sentenced the accused to life imprisonment and a fine of PHP2,000,000 for the crime of trafficking in persons and the penalty of life imprisonment and a fine of PHP500,000 for the crime of illegal recruitment and to pay the offended party Lolita Plando jointly and severally the sum of PHP50,000 as moral damages and PHP50,000 as exemplary damages.

Case 2: People of the Philippines vs. Alice Tongco, et al.

Facts:

From October 2003 – January 2004, four women, two of whom were minors, were recruited from Cebu City by the accused, a couple, and brought to Manila with promised employment as movie actresses and singers, but instead they were peddled to men on several occasions for sexual pleasure in consideration of an average amount of PHP10,000 or engaged in prostitution. They were given half of the amount paid by male customers. The accused were arrested by National Bureau of Investigation agents assigned to the Violence Against Women and Children Division after conducting a surveillance and entrapment operation. After a full-blown trial, judgments were rendered against the accused and the court sentenced each to life imprisonment and to pay a fine of PHP2,000,000 (on four counts) and the accused were ordered to pay jointly and severally each of the four complainants moral damages in the amount of PHP50,000.

C. Case 3: PP vs. Rosalyn Dumot

Facts:

Sometime in the early part of the year 2005, women from Davao Del Norte, mostly under eighteen years old, were recruited to work as sales girls in Brunei. But instead they were exploited. They were confined in a closed and guarded room and forced into prostitution by their employers in Labuan, Malaysia. Two recruits luckily escaped through the help of their customers who felt pity for their ordeal. They successfully returned to Davao Del Norte in the Philippines and filed a formal complaint against their recruiters. After preliminary investigation, warrants of arrest were issued by the court against the accused. Assistance was being sought for those left in Labuan, Malaysia. When this matter came to my attention, I immediately contacted a Malaysian friend to see if he could be of help. He immediately flew to Malaysia and through his connections there, he was able to bring the women back to Manila.

VII. INTERNATIONAL COOPERATION THAT LED TO THE SUCCESSFUL CONVICTION OF A HUMAN TRAFFICKING OFFENDER

(ALFRED LIM CASE)

On June 30, 2008, Marilyn Bagsit and Marilou Capistrano escaped from the Eugene Beng Hua Lim a.k.a Alfred Lim agency office after enduring abuse and maltreatment. They asked the Philippine Embassy in Kuala Lumpur for assistance, and they were referred to the Department of Justice. Being the Chairman of the Human Trafficking Task Force, their case was assigned to me by our Secretary of Justice. I immediately contacted through email my good friend, then the Head of the Royal Malaysian Police, Police Inspector General Tan Sri Dato Musa Bin Hassan. He acceded to my request for legal assistance, and I brought the two victims of human trafficking to his office in Kuala Lumpur. After hearing the testimonies of the victims, he immediately ordered the arrest of the said suspect. The Malaysia's Attorney General's Chambers filed a criminal case against Lim in July 2009.

In June 2010, Bagsit and Capistrano testified in court that they were recruited by Lim's Filipino agent from their hometown in Luzon. They were both sent to Malaysia to work as domestic helpers, but they were maltreated by their employers. When they sought refuge at Lim's agency, they suffered further verbal and physical abuse. Lim even threatened that they will be sold in prostitution to recover the costs of recruiting and deploying them. I personally brought the two victims to Kuala Lumpur during scheduled hearings. The Supreme Court in Kuala Lumpur convicted Eugene Beng Hua Lim a.k.a Alfred Lim on two counts of human trafficking and sentenced him to 3 years of imprisonment for each count. I also rescued three victims of human trafficking in La Buan, Malaysia and one victim in Sabah through the cooperation of the Royal Malaysian Police Officials.

In 2017, the IACAT adopted its 2017 – 2021 National Strategic Action Plan Against Trafficking in Persons with the vision to have a just, humane, gender-responsive and inclusive society that protects all persons from all forms of human trafficking. Thus empowering them to fully exercise their rights, achieve their potentials, and to enjoy a comfortable, secure and peaceful life.

The National Plan covers all four key result areas with specific focus on child labour trafficking and online child sexual exploitation:

4 KEY RESULTS AREAS (KRA) MISSIONS

KRA 1-Prevention and Advocacy

- Expose the ills, forms and emerging trends to raise public awareness;
- Strengthen existing policies and mechanisms to eradicate human trafficking in the country.

KRA 2- Protection, Recovery, Rehabilitation and Reintegration

- Ensure that persons-at-risk are protected and survivors have access to rights-based, victim-centred and gender-sensitive programmes and services that guarantee their full recovery and empowerment.

KRA 3- Prosecution and Law Enforcement

- Comprehensively integrate and expeditiously prosecute TIP in all its forms, as well as other related offences, by conducting pro-active and coordinated actions including parallel financial investigation (with partner agencies and duty bearers) in the pursuit of justice.

KRA 4- Partnerships and Networking

- In 5 years, intensify coordination and collaboration through coordination and integration of information sharing, technical assistance, capacity-building and incentive provision to ensure accountability and commitment with the end goal of making EVERYONE, inclusive of government, civil society, individuals, private sector and international organization a stakeholder in the fight against trafficking in all forms.

VIII. INTERNATIONAL TRAINING

As a major stakeholder in the promotion of the rule of law in the Philippines, the National Prosecution Service has greatly benefited from UNAFEI's trainings and seminars. Quite a number of our prosecutors are UNAFEI alumni, and most if not all of them are now in positions where they are capable of implementing programmes that help to strengthen the rule of law in the Philippines.

For instance, our prosecutor who headed an inter-agency task force against trafficking in persons in the Philippines, and who had the opportunity to be sent to a UNAFEI seminar, finds that the seminar helped her promote the rule of law through good networking programmes that contributed to the effective implementation of the task force national and international anti-trafficking initiatives. Using this strategy, the task force conducts national and international events that resulted in stronger partnership and better coordination among government and non-government agencies in combating trafficking in persons. The established networks strengthen domestic as well as international cooperation in handling local and cross-border trafficking in persons cases. She thus believes that these initiatives greatly contribute to the promotion of the rule of law in the Philippines since all key areas on prevention, protection, and prosecution are being addressed. In fact, all these efforts helped the Philippines achieve a Tier "1" rank in the US Global Trafficking in Persons Report from 2016 to 2018.

IX. CURRENT SITUATION OF HUMAN TRAFFICKING AND MIGRANT SMUGGLING IN THE PHILIPPINES

For the third consecutive year, the Philippines retained its Tier 1 status in the US Department of State Department 2018 Trafficking in Persons (TIP) Report and holds the distinction to be the only Southeast Asian country ranked alongside developed countries. Being in Tier 1 means that the Government of the Philippines fully meets the minimum standards for the elimination of trafficking under the US' Trafficking Victims Protection Act (TVPA). The Philippine government demonstrated serious and sustained efforts by convicting and punishing more traffickers, effectively coordinating identification, referral, and provision of services to more victims, increasing efforts to prevent trafficking of Filipino migrant workers and to assist those who become victims of trafficking overseas, and implementing procedures to reduce the backlog of trafficking cases in the courts. It can be recalled that in 2004, 2005, 2009 and 2010, the Philippines was classified under the Tier 2 Watch List. Five years prior to 2016, the Philippines was ranked Tier 2.

In 2018, the report shows a significant rise in the number of victims of human trafficking in the Philippines. Experience to date suggests that trafficking for sexual exploitation is more prevalent, followed by trafficking for forced labour and organ trafficking, particularly, in urban areas. The Philippines is generally a source country for human trafficking. Victims of trafficking are mostly coming from the Visayas and Mindanao Regions, working, predominantly, for commercial sexual exploitation and prostitution and domestic labour. Also, the Philippines is a major labour sending country, with United States, United Kingdom, Malaysia, Singapore, Canada, Japan, Italy, Jordan, South Korea and Saudi Arabia are the top 10 destinations of Filipinos, with Saudi Arabia as the number one destination for Overseas Contract Workers.

A. Victims

The Philippines is a source and to a certain extent, a transit, and destination country for men, women, and children trafficked for the purposes of sexual exploitation and forced labour. Philippine women are often lured abroad with false promises to legitimate employment and are trafficked for commercial sexual exploitation to destinations throughout Asia, the Middle East, Africa, Europe, and North America.

It is not surprising that most trafficking victims are poor, lacking in education, and desperate for employment opportunities elsewhere. Most are victimized by illegal recruiters and sent to countries banned to Filipino workers. The majority of the victims are young females which fall into the 23 to 27 year age bracket, followed very closely by those aged 18 - 22. Victims come from all over the regions, but notable numbers of victims come from the National Capital Region, Region 3 and Region 4. While the majority of the victims are from Metro Manila, the victims from outlying provinces of the metropolis (very accessible by public transport) also account for a significant number. Estimates provided by experts reveal that the majority of trafficked victims are adult females, followed by minor females. Recruitment may have been through legal or illegal agencies and most victims are "willing travellers." Most come from Metro Manila

particularly in Valenzuela, Quezon City, Muntinlupa and Manila. The closest provinces to the metropolis follow, particularly residents of Laguna, Rizal, Pampanga, Cavite and Batangas. Experts also confirmed that there are a notable number of victims from Cebu, Zamboanga and Davao. This may be attributed to the victims' access to travel-related enterprises which are present in the said regions.

B. Trafficking Profile

As earlier stated, the Philippines is a source country and, to a lesser extent, a destination and transit country for men, women, and children subjected to sex trafficking and forced labour. Millions of Filipinos reside or work abroad and the government processes approximately 2.3 million new or renewed contracts for Filipinos to work overseas each year. A significant number of these migrant workers are subjected to sex and labour trafficking—predominantly via debt bondage—in the fishing, shipping, construction, education, home health care, and agricultural industries, as well as in domestic work, janitorial service, and other hospitality-related jobs, particularly in the Middle East and Asia, but also in all other regions. Traffickers, typically in partnership with local networks and facilitators, engage in illegal recruitment practices that leave migrant workers vulnerable to trafficking, such as charging excessive fees, producing fraudulent travel and contract documents, and confiscating identity documents. Illegal recruiters use student, intern, exchange programme, and tourist visas, and travel through other countries to circumvent the Philippine government and destination countries' legal frameworks for foreign workers. Traffickers also recruit Filipinos already working overseas through fraudulent offers of employment in another country.

Forced labour and sex trafficking of men, women, and children within the country remains a significant problem. Women and children from indigenous communities and remote areas of the Philippines are the most vulnerable to sex trafficking, and some are vulnerable to domestic servitude and other forms of forced labour. Men are subjected to forced labour and debt bondage in the agricultural, fishing, mining and maritime industries. Persons displaced due to the conflict in Mindanao, Filipinos returning from bordering countries without documents, and internally displaced persons in typhoon-affected communities are vulnerable to domestic servitude, forced begging, forced labour in small factories, and sex trafficking in Metro Manila, Metro Cebu, central and northern Luzon, and urban areas in Mindanao. Sex trafficking also occurs in tourist destinations, such as Boracay, Angeles City, Olongapo, Puerto Galera, and Surigao, where there is a high demand for commercial sex acts. Although the availability of child sex trafficking victims in commercial establishments declined in some urban areas, child sex trafficking remains a pervasive problem, typically abetted by taxi drivers who have knowledge of clandestine locations. In addition, young Filipino girls and boys are increasingly induced to perform sex acts for live internet broadcast to paying foreigners in other countries; this typically occurs in private residences or small internet cafes, and may be facilitated by victims' family members and neighbors. NGOs report high numbers of child sex tourists in the Philippines, many of whom are citizens of Australia, Japan, United States, Canada, and countries in Europe. Filipino men also purchase commercial sex acts from child trafficking victims. Organized crime syndicates allegedly transport sex trafficking victims from China through the Philippines en route to other countries. The UN reports armed groups operating in the Philippines, including the New People's Army, Maute Group, the Moro National Liberation Front, the Abu Sayyaf Group, and the Bangsamoro Islamic Freedom Fighters recruit and use children, at times through force, for combat and noncombat roles. The Islamic State is reported to subject women and girls to sexual slavery.

Officials, including those in diplomatic missions, law enforcement agencies, and other government entities, allegedly have been complicit in trafficking or allowed traffickers to operate with impunity. Some corrupt officials, particularly those working in immigration, allegedly accept bribes to facilitate illegal departures for overseas workers, reduce trafficking charges, or overlook illegal labour recruiters. Reports in previous years asserted police conduct indiscriminate or fake raids on commercial sex establishments to extort money from managers, clients, and victims. Some personnel working at Philippine embassies reportedly withhold back wages procured for their domestic workers, subject them to domestic servitude, or coerce sexual acts in exchange for government protection services.

C. Trafficking Flows

Filipino victims, along with those human trafficking victims from East Asia and the Pacific, have been detected in or repatriated from more than 60 countries across all sub-regions. Both the diversity of the flows and the number of victims detected indicate that trafficking from East Asia is of a global dimension. The flows from countries in Southeast Asia to North America, the Middle East, and Western and Central

Europe are particularly relevant.³

D. Protection

Through law enforcement activities, the government has identified potential victims of trafficking. The Department of Social Welfare and Development (DSWD) through its recovery and reintegration programme for trafficked persons, provided psycho-social support, medical services, legal assistance, livelihood assistance, skills training, and reintegration services to identified victims and led implementation of the national referral system. DSWD also continued to operate residential care facilities that provided services to victims of trafficking and other forms of exploitation. The government provided victims with temporary shelter in a DSWD residential care facility, an NGO facility, or in a local government shelter. The government also provided an unknown amount of support for two NGO-operated halfway houses at border entry points and a facility in the national capital region that serves as a safe space and processing centre where law enforcement officials, working with DSWD, interviewed suspected victims immediately after they were removed from a trafficking situation during an enforcement operation. The Department of Labor and Employment Relations (DOLE) remove them from hazardous or exploitative working situations and referred them for livelihood assistance. Available shelter and other assistance services such as mental health services, community reintegration, job training, and access to employment remained inadequate to address the specific needs of trafficking victims, including child victims of online sexual exploitation and male victims.

The government increased its resources and provided robust services for Filipino victims abroad. The Department of Foreign Affairs (DFA), deploys DSWD social welfare attaches and DOLE labour attaches in Philippine embassies. In 2017, DFA established priority funding for legal assistance to trafficking victims. Through its hotline, the Commission of Filipinos Overseas (CFO) assisted possible victims. The government continued to implement formal procedures to identify trafficking victims in the Philippines and overseas and to refer them to official agencies or NGO facilities for care.

During the reporting period, the government supported victims who served as witnesses during trials by providing assistance, security, and transportation. Continuing a donor-supported pilot programme, two Department of Justice (DOJ) victim-witness coordinators assisted victims whose cases were investigated and prosecuted by anti-trafficking task forces. Under its witness protection programme, justice officials protected victims from reprisals by providing security, immunity from criminal prosecution, housing, livelihood and travel expenses, medical benefits, education, and vocational placement.

E. Prevention

The government has continuously increased its efforts to prevent trafficking. The IACAT, which was chaired by the secretaries of DOJ and DSWD and included the heads of the key anti-trafficking agencies and three NGO members, met three times during the year and approved resolutions setting policy and approving interagency protocols, including approval of the government's third strategic action plan against human trafficking (2017–2021), as well as the national systems for referral, case management, and data collection.

In addition, 24 anti-trafficking regional and municipal task forces met regularly to share information and coordinate interagency activities. The IACAT and its member agencies led national and regional trafficking awareness raising events. The CFO continued its national prevention campaign. The POEA conducted seminars for law enforcement and other officials on how to detect illegal recruitment and amplified these efforts by training trainers and NGO partners to provide such training locally. Recognizing the increased vulnerability of people living in conflict-affected areas of Mindanao, DOLE and local government officials conducted orientation and trafficking awareness campaigns for university students, community leaders, and local officials.

POEA developed a database of persons known to be involved in trafficking or illegal recruitment and delisted recruitment agencies for use by the relevant enforcement agencies. National Bureau of Investigation and POEA officials increased its investigation of alleged illegal recruitment in 2017, and eight cases resulted in a conviction. The POEA filed administrative charges against licensed agencies for fraudulent employment or exorbitant fees, resulting in the cancellation of agencies' licenses. The Bureau of Immigration (BI) Travel Control and Enforcement Unit continued to screen departing passengers and deferred the departure of

³ UNODC 2018 Global Report on Trafficking in Persons

passengers due to incomplete or missing travel documents or misrepresentation, referred potential cases of suspected trafficking to IACAT task forces for further investigation, and identify victims of illegal recruitment. The BI Travel control are also authorized to stop foreign registered sex offenders from entering the country, local and foreign demand for the country's vast commercial sex trade remained high and the government's efforts to reduce the demand for commercial sex acts were negligible. During 2017, the government signed a regional anti-trafficking convention, led the drafting of its plan of action, and entered into a partnership with another government aimed at addressing child trafficking. The DFA also reviewed 30 bilateral labour agreements with other countries and signed five agreements aimed at reducing the vulnerability of Filipinos working overseas. The government also banned the issuance of new contracts for work in Kuwait following reports of the alleged murder of a Filipina domestic worker there and provided air transport for Filipino workers who wished to return to the Philippines. The government provided anti-trafficking training to Philippine troops prior to their deployment abroad on international peacekeeping missions. The DFA provided training on trafficking and guidelines on the employment of personal staff for its diplomatic personnel.

F. Prosecution

In 2017, the Philippine law enforcers investigated 488 suspected trafficking cases which resulted in the arrest of 283 suspects. During the same period, the government initiated prosecution of 177 alleged traffickers and convicted 65 traffickers, which includes one conviction for labour trafficking. Sentences imposed ranged from 12 years to life imprisonment, with most offenders sentenced to life imprisonment. Since 2005, the Philippines has reported a total of 443 Trafficking in Persons (TIP) convictions involving 441 trafficking offenders (as of February 2019).

X. CONCLUSION AND RECOMMENDATION

Because of the consistent demand for skilled Filipino labour, we foresee that cases of human trafficking and smuggling will persist. Many Filipinos believe that working abroad will provide them with better opportunities. Their vulnerability and ambitions of going abroad will continue to open up chances for organized crime syndicates to operate. Nevertheless, the Philippine Government continues to intensify co-operation among nations to combat human trafficking. This does not only mean strengthening law enforcement and prosecution efforts but involves implementation of appropriate political, economic and social measures as well. The Philippine Government will also continue to give high priority to intensifying relations with other nations as it continually seeks to promote cooperation, strengthening its ties to tighten security measures at ports and improving enforcement and intelligence exchange. It is only in intensifying regional cooperation in the area of law enforcement and prosecution that we will be successfully liberated from this international scourge. No country or region in the world is exempt from the scourge of trafficking. Thus, there is a need to harmonize legislation in the region to criminalize all forms of human trafficking in order to eliminate havens for the illegal activities of human traffickers. There is also a need to further develop regional capacity-building programmes to enhance existing capabilities of all countries in the region to monitor, detect and investigate transnational crime activities. The challenge of addressing and managing the threats of human trafficking certainly requires determined actions and solutions. Extensive and intensive forging of agreements to strengthen regional and international cooperation and linkages should include but not be limited to mutual legal assistance, extradition, mutual assistance in criminal matters, sharing of information, law enforcement and prosecutorial cooperation. The evils of human trafficking can only be eradicated through our joint and sustained efforts on all fronts. Whether on the national, regional or global level, we should put our resources together and engage each other constructively in effecting long-term solutions to this global menace.

HUMAN TRAFFICKING AND MODERN-DAY SLAVERY

*Janice Brennan**

I. INTRODUCTION

Criminals are excellent at being inventive. They constantly find new ways to make money illegally. At one time if a criminal wanted to obtain a large sum of money quickly, he robbed a bank. Now it is extremely rare, at least in my country, for a bank to be robbed. Why is that? Partly it is because banks have improved their physical security. They have thick doors, thorough closed-circuit television coverage (CCTV), time delay locks on their safes, security guards and so on. People use cash less than before. Many transactions are now done electronically. Law enforcement techniques have improved, meaning that bank robbers are more likely these days to get caught. The risk of arrest and conviction is now greater than the potential profit. So, bank robberies have gone out of fashion.

Instead organized criminal gangs have turned to other crimes, where the profits available are huge and the risk of arrest and conviction is sadly low. There is still a lot of money to be made from drug trafficking, but detection rates are improving and so a number of gangs have moved into the lucrative field of people trafficking.

Human trafficking is a particularly mean crime. It targets some of the most vulnerable people in society at a time when they are desperate. It produces massive profits for the criminal gangs, but it destroys lives and it is exceptionally difficult to detect, and even more difficult to prosecute the ringleaders. It is a global crime which exploits the understandable desire of those born into poverty and hardship to try to obtain a better life in another country.

Life is not fair. I am one of the lucky ones, born in the United Kingdom where we enjoy democracy and freedom and we have opportunities to live decent lives, raise families, have good healthcare and support schemes for those in need. But it is sheer luck where we are born. If I had been born in a poor country, perhaps torn by war and civil strife, without a functioning economy or democratic rights, with a corrupt government and a badly paid police force which itself has to resort to corruption and criminal activities to survive, then maybe I too would find the courage to seek to escape and to make my future in a new country. And maybe I too would be exploited by an organized criminal gang only too happy to profit from my desperate plight.

II. HOW DO THESE CRIMINAL GANGS OPERATE?

As with all gangs there is a hierarchy, with the major players at the top reaping the huge profits but rarely getting caught. At the bottom are the local recruiters. Often that local person is female. She may herself be a victim of the gang, forced to act at their direction. She will identify suitable victims to be targeted, the desperately poor, the abandoned, the isolated, and she will befriend them.

She will gain the trust of the victim, sympathising with the victim's sad circumstances. She will tell the victim stories of people she knows who have moved to another country and made a fortune, who are now living happy, comfortable lives. She will perhaps show them photographs of these people smiling and obviously wealthy, photographs of their new homes and cars. Of course, it is all untrue, but the victim doesn't know that. Slowly but surely the victim is drawn into the snare. The victim is promised a good job, accommodation, assistance with the travel. But it is a lie.

It takes a lot of courage to agree to move to a completely unknown country, but such is the desperate

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situation of the victims that they agree. Often, they and their families struggle to pay the fee demanded by the gang, but they are promised, falsely, that the wonderful new employment that awaits them will soon result in the repayment of the debt. But once that debt is incurred, then the victim and the victim's family are forever at risk of reprisals, often serious, if not deadly violence.

Not knowing the terrible consequences, the victim agrees to travel to this promised land. First of all, they must get there. Without lawful visas, it means that they must be smuggled into the new country. Journeys across the continents can take days with little, if any, food or water or even toilet facilities. Very often they will travel in complete darkness and complete silence to avoid detection.

As border controls improve, the smugglers have to be ever more inventive. Some of the people who are smuggled, do not even survive the journey. There have been some desperately sad cases where the victims, adults and even children, are trapped in hot, airless containers buried deep at the rear of lorries and those victims have died of suffocation and heat exhaustion before they reached their destination. How tragic to die in such a terrible way, but the gangs do not care. Their sole concern is that they have lost those they intended to use as slaves for their financial gain.

If the victims do survive the journey, their subsequent treatment may make them wish that they had not survived. The promised accommodation turns out to be utter squalor. Dozens of victims in one filthy room with no toilet facilities, far less a bathroom or shower, and no kitchen. Sleep may be limited to taking turns on flea infested mattresses on the floor with no blankets. The door may well be locked with a vicious guard dog outside. Any windows, and there may be none, are also likely to be locked. There is no escape, even in the event of a fire. For some victims, the accommodation is a disgusting old caravan or even a mere tent.

What about the promised employment? It was of course a mere fiction. The female victims may, if they are lucky, be put to work for long hours in nail bars. Their salary is almost always withheld in order to service their debt for being trafficked to this country. I describe them as lucky because it is much more likely that female victims will be forced to work as prostitutes, servicing dozens of men each day and being subjected not only to the most degrading sexual practices, but also to sexual violence. Again, the money earned by their forced prostitution does not go to the victims. Any pregnancy that results from the work will often be terminated by severe violence to the stomach causing a miscarriage, with no access to proper medical care. Some of these victims are barely more than children.

Female victims, whatever the work that they are forced to do, are frequently raped by the men who hold them captive. They are mere commodities to be used and abused as the criminals wish. They may even be sold on to other criminal groups. Male victims will usually be forced to work on building sites, on farms, in cannabis factories or perhaps in car wash businesses. The hours are long and the work hard. As with the females, payment for their work is minimal if at all. Violence is meted out to enforce discipline.

III. WHAT CAN THE VICTIMS DO?

Essentially the answer is very little. Attempts to escape are dealt with by extreme brutality. Threats to injure or even kill the victim's family back in the home country are real threats. Even if the victims were able to escape, often they are too afraid to go to the police. Their experience of the police in their own country may not be a good experience. If their belief is that police officers themselves are members of criminal gangs, then they will have no confidence in going to the police in the country to which they have been trafficked. And they know that they entered the country illegally and so they are very likely to fear arrest and punishment for that alone. Their captors will of course have seized from the outset their passport or identity documents.

And so, the victims are trapped in a world of miserable servitude into which they were tricked or forced. They can see for themselves no route to escape. A brave few may escape. If caught by the gang, their punishment will be severe in order to intimidate the others and deter future escapes. In some instances, the punishment is death. The dream of a better life, a life of opportunity, the chance to earn enough money to support the impoverished family back at home – none of this materialises and yet they cannot leave.

IV. HOW IS THIS CRIME DETECTED?

The answer is, with very great difficulty and, sadly, often not at all. The victims are sometimes described as “hidden in plain sight”. We see them, but we do not see them. How do I know that the young lady who manicures my nails is not a victim of modern-day slavery or human trafficking? It would surely be rude if I were to ask her how much money she earns or what sort of accommodation she has. How do I know if the hard-working man who washes my car has chosen this particular job of his own free will? Even if I were to ask him directly whether he has been forced to do this work, it is unlikely that he would dare to tell me the truth because he risks severe punishment if he talks. How do I know that the fruit and vegetables that I buy from the supermarket have not been picked by victims of this vile trade in people? I do not even get to see those people, far less an opportunity to see whether they seem happy or not. Those who use the services of prostitutes are not likely to question the female on why she is there! For all I know there may be thousands and thousands of victims in my country alone, so we can only guess at the true number across the world.

Just occasionally a victim will break free and will go to the police or at least to some organization that will then contact the police on the victim's behalf.

Persuading the victim to tell the police exactly what has happened is not always easy. The victim is likely, for reasons I have already mentioned, to be very slow to trust the police. Even if they do trust the police, they may be afraid to talk because of concern for the consequences on their family at home. Even if that fear is overcome, they may not be able to name those responsible simply because they do not know their true identities or the location where they have been held prisoner.

Sometimes it is sheer good luck that the police manage to discover the plight of these victims. For example, they may receive intelligence that a cannabis factory is in operation in a particular location. When the police raid that address, they may find two or three young men at the property. Those men will then be arrested on suspicion of the illegal cultivation of cannabis. Or the police may raid a brothel and arrest all the sex workers they find there. The people arrested will be interviewed and it may be that they will explain exactly what has gone on and how they have been first tricked and then mal-treated. I say, it may be that they will explain because, sadly, often they do not, for all sorts of reasons, but usually fear and distrust of the authorities.

In my country every person who is arrested by the police is entitled to free legal advice at the police station and to be accompanied by that lawyer during the interview. A competent lawyer will look out for signs that the client may be a victim of human trafficking or modern-day slavery and will encourage that client to disclose to the police the true situation. Of course, not all lawyers will recognise the often subtle signs, especially when the client fails to trust completely even the lawyer. Sadly, there have been cases in my country where a person has been prosecuted for crimes, such as cultivating cannabis, without it ever being discovered that that person is in fact a victim of crime and not really a perpetrator of crime.

V. PROSECUTING THE CRIMINAL GANGS

It is incredibly difficult to obtain enough evidence to identify and prosecute the leaders of these gangs. They are very skilful in creating a distance between themselves and the victims. Generally, in my country the only way to convict them is by a combination of different sources of evidence, such as telephone tapping, bank records and surveillance. One important source of evidence is accomplices, that is, members of the gang, usually junior members, who can be encouraged or persuaded to give evidence against other, often more senior, members of the gang.

Whether out of loyalty to the gang or fear of reprisals, many gang members will never consider assisting the prosecution in this way. In order to encourage assistance, English Judges will almost always give a lower sentence to those Defendants who do give real assistance to the authorities. Sometimes the Crown Prosecution Service, which is the body which decides whether to charge a Defendant with a crime, will offer immunity from prosecution to an accomplice who is willing to assist the prosecution of more dangerous Defendants, but this course is exceptionally rare.

One of the problems which we have encountered is persuading a jury that the accomplice is a witness whose evidence can and should be believed. Juries understand well that the obvious motive of an accomplice when assisting the prosecution is to secure a lower sentence for him or herself. The danger, though, is that the accomplice may be motivated to lie either in order to suggest that his or her own involvement in the crime was not as great as the prosecution believed and therefore deserving of a lower punishment, or falsely to blame an innocent person of involvement in the crime in order to protect the real members of the gang.

When I prosecute using an accomplice, I always hope to have sufficient other evidence to indicate the guilt of the Defendant, so that I can say to the Jury that the evidence of the accomplice is supported by or confirmed by other evidence which is wholly independent of the accomplice. I also want to have the accomplice sentenced for his or her involvement in the crime *before* the trial of the Defendants against whom he or she will be giving evidence. That reduces, but cannot eliminate entirely, the opportunity of the defence to say to the jury that the accomplice has lied in evidence now in order to secure a lower sentence.

No gang member is going to take the real risk of turning against the rest of the gang by helping the police unless there is a substantial benefit for him or herself. Even then, the accomplice may be very selective in the assistance he provides. In one case in London the accomplice had been convicted of a gangland murder. He agreed to give evidence against a corrupt police officer, but he would not assist the prosecution of the man who was believed to be the main offender in the murder. The Court of Appeal approved the decision of the Trial Judge to reduce his sentence from a minimum term of 26 years' imprisonment to 21 years, but said that he would have received a much bigger reduction if he had given evidence against the main offender to reflect the greater level of co-operation and the greater risk of reprisal to which he would be exposed. An accomplice who is a professional criminal and who gives evidence against dangerous people and therefore puts himself at considerable risk as a result can expect a reduction in sentence of between a half and two thirds, which is very significant indeed.

The prison authorities need to take very great care in ensuring that an accomplice who assists the authorities is kept in a prison away from the other gang members. On release from prison, the police may need to put the accomplice into a witness protection scheme in order to secure the safety of the accomplice.

It seems to me that the only way in which we can encourage members of the gangs to assist is to ensure that they understand fully the benefits to themselves in terms of much lower sentences and the extent to which the police will go to provide them with a new identity and new life in order to keep them safe.

VI. THE CURRENT LAW ON SLAVERY IN ENGLAND AND WALES

It is with great embarrassment and shame that I tell you that my country has only recently recognised the true plight of people who are the victims of human trafficking and modern-day slavery. Slavery was abolished in the United Kingdom as a result of the Slavery Abolition Act 1833. It resulted in freedom to over 800, 000 African slaves in the British colonies. In our naivety we believed that that was the end of slavery, but of course slavery is not limited to people from Africa, nor are all slaves physically kept in chains. There is many a white female from Eastern European countries, such as Romania, trafficked to England and forced to work as a prostitute. There is many a teenager from Far Eastern countries, such as Vietnam, trafficked to England and forced to cultivate cannabis. But for just under 200 years, we deluded ourselves that there were no longer any slaves in the United Kingdom. In fact, they were here, just hidden in plain sight. We were blind to their very existence.

It was not until part way into the current century that the British Parliament created a law to deal with modern day slavery. It was section 71 of the Coroners and Justice Act 2009, just one short section in a very long piece of legislation dealing with numerous other matters. The maximum sentence was 14 years' imprisonment. This section was a start, but was not sufficient and it was soon replaced by the Modern Slavery Act 2015, an entire piece of legislation devoted to this topic. The fact that this entire Act of Parliament is the first piece of law of its kind in the whole of Europe may sound impressive, but it is, of course, long overdue. Its aim is laudable – to prevent modern day slavery, to protect its victims and to prosecute the perpetrators.

The current British Prime Minister, the Right Honourable Theresa May, MP said this about the new law:

(It is sending) the strongest possible signal to criminals that if you are involved in this vile trade you will be arrested, you will be prosecuted and you will be locked up. And it says to victims, you are not alone – we are here to help you... We as a nation can be proud that today we are closer to consigning slavery to the history books where it belongs.

Welcome words, but has this legislation achieved its worthwhile goal? Before I answer that question, let me explain what the new law says. Section 1 of the Modern Slavery Act 2015 deals with slavery, servitude and forced or compulsory labour. It states that:

a person commits an offence if the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know the other person is held in slavery or servitude, or the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

Consent by the victim is not a defence. That is a very important principle because vulnerable people, who have never known true freedom or happiness, may not themselves recognise that they are in fact victims of a crime. When deciding whether a person is a victim of slavery, the Court will consider factors such as, whether that person is a child, what the family relationships are, as well as any mental or physical illnesses that may make that person more vulnerable.

How does the Court decide if a person is held in slavery or servitude? A person is a slave if treated as owned by another person, if he or she is denied personal autonomy, if another person exercises the sort of power over him or her that might be exercised over an animal or an object. Servitude exists where the obligation to work is a result of coercion. It is sometimes described as “forced or compulsory labour”, there is the menace of a punishment and the work is not the exercise of free will. The coercion may be physical violence or mental.

Section 2 of the Modern Slavery Act 2015 deals with human trafficking. It states that a person is guilty of human trafficking if he or she “arranges or facilitates” the travel of another person with a view to that person being exploited. Arranging or facilitating travel includes recruiting the victim, transporting or transferring the victim, harbouring or receiving the victim or transferring or exchanging control over the victim. In other words, any form of participation in the operation is capable of amounting to the crime.

Exploitation covers a number of different situations. It includes, of course, slavery and forced labour. It also covers sexual exploitation and the removal of human organs from the body.

Usually laws made by the British Parliament apply only to conduct committed within the United Kingdom. Human trafficking is a global crime and therefore in order to deal with this global activity, section 2 of the Modern Slavery Act 2015 specifically extends beyond the borders of the United Kingdom. It is irrelevant where in the world it is intended to exploit the victim. If the Defendant is a national of the United Kingdom, then it does not matter in which country of the world the victim’s travel takes place and it does not matter where in the world the actual arranging or facilitating of the travel takes place. If the Defendant is not a national of the United Kingdom, he or she can be prosecuted in my country if any part of the victim’s travel takes place into, out of or within the United Kingdom or if any part of the arranging or facilitating takes place inside the United Kingdom.

As with the slavery offence, the consent of the victim to the travel is no defence, whether the victim is a child or an adult. You may consider it interesting that there is no minimum distance or duration of travel in the legislation.

An indication of just how seriously slavery and human trafficking are now regarded in the United Kingdom is shown by the fact that the maximum sentence on conviction is life imprisonment.

Let me give you one example of a prosecution in England for modern day slavery. The Connors family was a very large family of travellers (gypsies). The family business was roofing, paving and other small building works. They made a lot of money and lived very comfortable lives in beautiful homes, driving luxury cars, wearing nice clothes and so on. Their workers in the family business were vulnerable men, usually homeless, friendless, isolated and addicted to alcohol. They recruited those vulnerable men persuading, cajoling and even bullying them. They promised the men accommodation, food and wages. In fact, they were made to live in disgusting accommodation not fit even for animals. At most they were paid £10 a day despite having to work very, very long hours. Sometimes they were not paid at all. They had to work without proper equipment or proper clothes. They were subjected to violence and verbal abuse. They were told that they could not leave and that, if they tried to leave, they would face physical punishment. Some did try to escape, but were recaptured and forced to return. Various members of the family were found guilty after a trial and sent to prison.

This prosecution was a success, but a rare one because, sadly, the people who commit this type of crime are very difficult to catch. We all need to be much more vigilant in trying to identify victims of modern slavery and human trafficking, two of the most evil crimes it is possible to commit, crimes which attack the very essence of what it is to be human.

DEALING WITH VICTIMS OF SLAVERY AND HUMAN TRAFFICKING

*Janice Brennan**

I. INTRODUCTION

I am confident that many, if not most, victims of slavery and human trafficking are never found. It is so very hard for them to come forward and to make themselves known to the authorities, some because they cannot physically escape from their captors, some because they are too afraid of the police or the border force, some because they fear punishment for their own illegal entry into the country, some because of a natural desire to protect their family back home from reprisals, some because they are simply too vulnerable or too young.

I gave an example of a prosecution in England of a family of travellers (gypsies) called Connors, who used as slaves homeless, friendless, alcoholic men. Some of those men gave evidence at the trial. It surprised many observers that a few of those men did not consider themselves to be victims. They were so vulnerable that they were grateful to the Defendants for giving them any accommodation at all, even if it was not fit for human habitation. They were grateful to the Defendants for even the scraps of food that they were given, because it was preferable to no food at all. It never occurred to them to go to the police. Had they not been discovered by chance, then they would probably still be the slaves of the Connors family and the Connors family would not now be in prison.

I posed earlier the question of whether the Modern Slavery Act 2015 has achieved its worthwhile goal. The answer is both yes and no. No, because it can only be used once a victim has been found and the Defendant identified and arrested. We cannot prosecute if we do not know that a crime has been committed.

II. WHAT CAN WE DO TO FIND THE VICTIMS?

The best service that we can provide is, of course, to prevent them becoming victims in the first place. That is easier said than done, but I am convinced that we can do more, especially those of you in countries where children and the vulnerable are at risk of exploitation. We need to educate these potential victims so that they do not succumb to the recruiters from the criminal gangs. They need to be warned of the dangers from people who promise them jobs abroad. Teachers in the schools, elders in the villages, religious leaders – all have a role to play in educating the vulnerable and protecting them from exploitation.

To many people, countries such as the United Kingdom, the United States of America, Australia, Canada and Germany sound like paradise. Everyone is rich, everyone is happy, they think. Of course, many people in those countries are rich and happy, but that does not mean that everyone there is rich and happy. We have our poverty and unemployment and homelessness too, even if it is not at the level of other countries. It is important that people desperate for a better life understand that allowing yourself to be trafficked by a criminal gang is not going to provide that better life. On the contrary, it will guarantee a life of utter misery.

What can we do to help those who are tricked or forced into being trafficked? It seems to me that we need to educate the general public. Law enforcement needs the assistance of ordinary members of the public to act as its eyes and ears. We must encourage everyone to be alert, to look out for possible victims and to report whatever suspicions they have to the police.

III. WHERE THE NEW LAW HAS SUCCEEDED

It is much more common in my country for victims of human trafficking and slavery to be identified only

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when they themselves have been arrested on suspicion of the commission of a crime. In those cases, the 2015 Act of Parliament has resulted in some good and very necessary protection for those victims.

Section 45 of the Modern Slavery Act 2015 provides a specific defence for victims who are themselves accused of committing a crime. If the person is over the age of 18 years, then he or she is not guilty of whatever crime they are accused of if:

- a) that person has been compelled to do the act that constitutes the offence;
- b) the compulsion is a result of slavery or exploitation; and
- c) a reasonable person in the same situation and having the same characteristics would have no realistic alternative to doing that act.

Significantly, this defence in section 45 does not apply to all offences. The most serious crimes, such as murder, manslaughter, kidnapping, causing grievous bodily harm, arson, terrorism, causing death by dangerous driving and female genital mutilation, are considered to be so serious that even a victim of human trafficking or slavery should refuse to commit them.

For those offences to which this defence is available, what this section is recognising is that the criminality or culpability of the Defendant may be reduced substantially or even extinguished because no realistic alternative was available to the exploited victim other than to comply with the dominant force of another person or group of people.

If the person accused of the crime is under the age of 18 years, he or she is not guilty if:

- a) that person does the act as a direct consequence of being, or having been,
a victim of slavery or a victim of exploitation; and
- b) a reasonable person in the same situation and having the same
characteristics would do that act.

As you would expect it is a more generous test for those under the age of 18. Characteristics means age, sex, and any physical or mental illness or disability. So, for example, a girl aged 15 may be arrested by the police on suspicion of supplying heroin and cocaine. Hidden in her clothes are 45 wraps of heroin and 35 of cocaine. She has been seen on the streets of London selling these wraps to various customers. She declines to answer any questions when interviewed by the police. On the face of it, she appears to be guilty of supplying drugs and faces a significant sentence.

Eventually she finds the courage to tell her legal representatives what has happened. She says that she lived in a poor region of Albania. Her father died when she was 5 years old. She has 7 brothers and sisters and her mother could not afford to feed them all and so she, as the eldest, had to leave school at the age of 8 in order to work in the fields so that there would be money to feed the family. Because she left school early, she can barely read or write. She was smuggled to England on the promise that she would be given a good job and could send money home to her family. In England she was put in a filthy room where she had to live with 15 other girls. They were all threatened with punishment if they did not do as they were told. She was given the drugs and forced to sell them on the streets. If she did not return to the room each day with £1000 in cash, she would be beaten and raped. She was paid just £5 a day, sometimes nothing.

It is likely that a jury would find her not guilty as a result of the section 45 defence. It is also likely that she would not have continued to be prosecuted at all once her true situation was known. In England decisions whether to prosecute a person are made by the Crown Prosecution Service, which is a body wholly independent of the police.

The Crown Prosecution Service applies a four-stage test when deciding whether a Defendant, who claims

to be a victim of human trafficking or slavery, should be prosecuted:

- a) Is there reason to believe that the person is a victim of trafficking or slavery?
- b) Is there clear evidence of duress?
- c) Is there clear evidence of a statutory defence under section 45 of the Modern Slavery Act 2015? and
- d) Is it in the public interest to prosecute?

In the example I gave you of the 15-year-old girl selling drugs, it is highly likely that the Crown Prosecution Service would conclude that she satisfied that four-stage test. In the unlikely event that the Crown Prosecution did decide to continue with the prosecution, I would expect the Court to stop the trial on the basis that to allow it to continue would amount to an abuse of the Court's processes. That is because the Court itself has a duty to protect the rights of victims of trafficking by refusing to permit any prosecution that fails to acknowledge and address both the victim's situation and the United Kingdom's international obligations. The United Kingdom is currently a member of the European Union and, as such, is bound by the European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.

Recital 14 of that Directive states that:

Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States be protected from prosecution or punishment for criminal activities...that they have been compelled to commit as a direct consequence of being subject to trafficking.

Of course, just because a person claims to be a victim of human trafficking or slavery does not mean that it is necessarily true. Sadly, some people are smuggled into the United Kingdom and then choose to commit crimes as an easy way to make money. It would be quite wrong to say that a trafficked person is automatically entitled to immunity from prosecution just because he or she was trafficked. It is necessary, therefore, to look at all the circumstances in order to make sure that only genuine victims are excused from responsibility for crimes committed by them.

A particular problem in the United Kingdom these days is the use of vulnerable children, sometimes younger than 10 years old, by organized criminal gangs.

These are children born in the United Kingdom, who are groomed with money or gifts or who are tricked into incurring a small debt to the gang and who are then forced to sell drugs for the gang or to look after guns and other weapons for the gang. Just because they are born in the United Kingdom and still live in the United Kingdom does not mean that cannot also be victims of slavery or trafficking within the United Kingdom.

In recognition of the seriousness of the problem in the United Kingdom, the Government appointed in 2015 the first Independent Anti-Slavery Commissioner. His task was to seek to secure improvements in law enforcement. His goal was to identify more victims, to prosecute more traffickers and slave masters, to provide better support for victims and to train police better in how to handle victims of sexual exploitation and forced labour.

He was critical of the way in which victims were treated by the United Kingdom's authorities.

It is important to recognise that potential victims are usually targeted because they are especially vulnerable. They may be homeless, addicted to drugs or to alcohol, destitute or isolated and without friends or family. When they are subjected to threats and violence, they become controlled and effectively institutionalised. Accordingly, it is necessary for the authorities, such as the police or the border force, to use great care when dealing with these victims.

There are specific regulations that govern how such victims must be treated by the authorities in order to seek to prevent what we call "secondary victimisation". As far as is possible, there must be no unnecessary repetition of interviews with the victim or any unnecessary questioning about his or her private life. The victim should not have any visual contact with the trafficker.

There are further rules for victims under the age of 18. Interviews should take place as quickly as possible, they should be conducted by a specially trained professional who should conduct all of the interviews with that victim and the interviews should take place in suitable premises that are appropriate for a young person. That young person should also be accompanied by an adult of his or her own choice. In other words, sensible steps should be taken to make the victim feel safe and as comfortable as possible. It is essential that the authorities do not inadvertently cause further trauma to those who are already victims.

The present Anti-Slavery Commissioner, appointed this year, is Sara Thornton, a former Chief Constable of Police. She has a huge task ahead of her and it will be interesting to see what new proposals she will make in order to increase the chance of finding victims and prosecuting the perpetrators.

IV. THE ROLE OF ADVOCATES

My role as an advocate means that I deal with the cases that get to Court. I both prosecute and defend. It may be that my client, when I defend, seems to be a victim of slavery or trafficking. Or it may be that I am prosecuting someone accused of various crimes and my witness is a victim of slavery or human trafficking. In either case, it is important to remember that many victims take significant risks in revealing what has happened to them. Those of you who are advocates too will know just how very difficult it can be to deal with such vulnerable people at Court. Research suggests that male victims are less likely to report their trafficking and exploitation and so we must be especially careful to look out for the signs that they may suggest that they are victims. Female and child victims in particular can be gravely traumatised as a result of their life experiences and barely able to communicate at all. They often have little trust in authorities or in other people in general. They may not give consistent accounts of what they have suffered because they fear not being believed, or more likely, because they fear being recaptured by the criminal gang. They need high levels of support in order to receive justice.

Of course, it is important to guard against those who wrongly claim to be victims of slavery or trafficking in order to secure accommodation, support and even a residence permit. Some claim to be children, when they are not. It seems to me, though, that it is far more likely that a genuine victim will fail to disclose that he or she is a victim of slavery or human trafficking and so we need to be especially alert in order to give them the protection and the justice that they deserve.

V. WHAT CAN WE DO TO HELP EACH OTHER?

Slavery and human trafficking are global crimes and we must work together if we are to stand any prospect of success. Life is not fair. There are wealthy countries with systems to support those who are in need; and there are countries which are torn by war, countries which suffer devastating natural disasters such as floods or earthquakes, countries which cannot provide enough food or employment for the population and countries which are still creating an effective system of justice. There will always be people who are desperate to leave their own country and seek a future elsewhere. No matter how much they are warned that criminal gangs will exploit them, rape them, torture them, rob them, put them in unsafe boats or lorries, maybe even kill them, still they will take that chance. Our police forces need to work together if we are to save them and to catch the gangs that abuse them. We need to share intelligence and assist each other with the evidence needed at Court.

Certainly, in my country we need to make much more use of what are called “unexplained wealth orders”. These orders allow us to seize the assets of those who cannot show that their wealth comes from legitimate sources. Criminal gangs make massive profits. It can be incredibly hard to prove exactly what crime they have committed. It is much easier to prove that they did not earn their money lawfully. If we seize their assets, we are at least in some way defeating them.

We are much stronger together in the battle against crime than we can ever be on our own.

PARTICIPANTS' PAPERS

ORGANIZING ISE-HTCA TECHNICAL TRAINING TO OPTIMIZE THE PERFORMANCE OF THE NATIONAL ACTION PLAN FOR HUMAN TRAFFICKING CRIMINAL ACTION ERADICATION (NAP-HTCA)

*R. Yustiar Nugroho**

I. BACKGROUND

The presence of government in a country aims to realize security, convenience, and welfare for the people by providing and protecting people's rights¹ from various internal and external threats and disruptions, for example, the protection of rights from threats to wealth, life, and physical safety from each threatening crime including, in this case, protection of children² from human trafficking criminal action.

Human trafficking is an act highly contradictory to human dignity and value and violates human rights. This criminal action has widely spread in organized criminal networks threatening the norms of people's lives in a nation based on respect for human rights. Human trafficking is a transnational crime which has caused significant harm lately, for example, baby trafficking to other countries conducted by a syndicate; human trafficking conducted by a migrant worker from East Nusa Tenggara (NTT) who then committed suicide in Kuala Lumpur. Most of the trafficked persons are women and children. Trafficking is one of the five greatest crimes across the world which has to be overcome as it affects all life aspects from economic, political, and cultural aspects.³

The government has attempted to eradicate human trafficking criminal action by forming a task force as mandated by Presidential Regulation No. 69 of 2008 about the Task Force for Human Trafficking Criminal Action Prevention and Mitigation. The national human trafficking criminal action (HTCA) task force placed under the Ministry of Women Empowerment and Child Protection (MoWECP) has instructed the implementation of human trafficking case management and prevention in several provinces considered vulnerable.

The HTCA eradication task force has formed provincial task forces in 34 provinces and 196 task forces at the regency/municipal level. MoWECP has also formed community monitoring groups in 25 villages in 5 (five) regencies across Indonesia.

However, annual Task Force reports show that the performance of the National Action Plan for Human Trafficking Criminal Action has yet to be optimal, as indicated by the increasing occurrences of HTCA every year. Its causes include: 1) Numerous officers do not understand human trafficking indicators; 2) Anti-human

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¹ As stated in Article 28 G Section (1) of the 1945 Constitution of the Republic of Indonesia, "Every person shall have the right to protection of him/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not to do something that is a human right".

² As stated in Article 28 B Section (2) of the 1945 Constitution of the Republic of Indonesia, "Every child shall have the right to live, to grow, and to develop, and shall have the right to protection from violence and discrimination", and in Article 59 of Law Number 23 of 2002 about Child Protection, "Government and other state institutions are required and responsible to provide special protection to children in emergency situations, children dealing with law, children from minority and isolated groups, children economically and/or sexually exploited, children being trafficked, children as victims of the abuse of narcotics, alcohol, psychotropic, and other addictive substances (napza), children as victims of kidnapping and trafficking, children as victims of physical and/or mental violence, children with disability, and children as victims of mistreatment and neglect".

³ Mahrus Ali and Bayu Aji Pramono, *Perdagangan Orang, Dimensi Instrumen Internasional dan Pengaturannya* Di Indonesia, (Citra Aditya Bakti, Bandung,) 2011, p. 1.

trafficking laws hamper proactive victim identification process measures on vulnerable populations and law enforcement measures; 3) Improper available data; 4) Improper information; 5) Low coordination among governmental institutions; 6) law and judicial enforcement authorities have low knowledge related to anti-human trafficking law and its coverage.⁴

Considering the above matters, ISE-HTCA (Education and Training of Institutional Synergy for Eradication of Human Trafficking Criminal Action Eradication) Technical Training needs to be designed and organized to enhance and improve the competencies and synergies among HTCA eradication institutions in preventing and mitigating HTCA.

II. RESEARCH QUESTION

1. What is the modus operandi of HTCA in Indonesia?
2. How are the synergies among HTCA Prevention, Mitigation, and Eradication institutions built through ISE-HTCA training?

III. PURPOSE

This paper aims to identify the modus operandi of HTCA and the concept of Human Trafficking Criminal Action eradication institution synergy training (ISE-HTCA).

IV. DISCUSSION

A. Human Trafficking Criminal Action

Human trafficking is all measures or actions related to the recruitment, transportation in or across borders, purchase, sale, transfer, delivery, or reception of a person through deception or intimidation including through threat or violence or abuse of violence or debt with the purpose to obtain or withhold the person, either being paid or not, to conduct unwanted jobs (domestic, social, or reproductive) under forced labour or work bond or in a slavery-like situation in a different environment from where they first lived at the time of deception or debt.⁵

According to Article 1, Section (1) of Law Number 21 of 2007, human trafficking is “the acts of recruitment, transportation, sheltering, delivery, relocation, or reception of a person through threat of violence, use of violence, kidnapping, confinement, forgery, deception, and abuse of power or vulnerable positions, debt or provision of payment or benefit, to obtain approval from those in charge of the person, either conducted domestically or internationally, with the purpose of exploitation or causing the person to be exploited”.⁶ The above definitions mean that human beings become commodities, transferred arbitrarily, laden with various violations and crimes as well as arbitrariness based on power with the purpose to exploit workers for various interests which are harmful for the victims and advantageous for other parties. The victims of human trafficking are mostly children and women with the purpose to sexually exploit them or abuse them as sexual objects which destroys their lives.⁷

Indonesia is a country of origin, destination, and transit for human trafficking syndicates whose victims are mostly women and children for prostitution and exploitation.⁸ The victims, either men, women, or children from Indonesia, are recruited as forced labourers and sexual commodities. Almost all provinces in Indonesia are the regions of origin and destination for human trafficking.

The government estimates around 1.9 million of the 4.5 million Indonesians working abroad are mostly women and most of them do not have documents or have overstayed. This situation is like an ice mountain

⁴ <https://id.usembassy.gov/id/laporan-tahunan-perdagangan-orang-2017/>.

⁵ Farhana, *Aspek Hukum Perdagangan Orang di Indonesia*, (Sinar Grafika, Jakarta, 2010), p. 15.

⁶ Law Number 21 of 2007 about Eradication of Human Trafficking Criminal Action.

⁷ Romany Sihite, *Perempuan, Kesetaraan, dan Keadilan Gender*, PT Raja Grafindo Persada, Jakarta, 2007, pg. 199.

⁸ <http://www.kpai.go.id/artikel/temuan-dan-rekomendasi-kpai-tentang-perlindungan-anak-di-bidang-perdagangan-anak-trafficking-dan-eksploitasi-terhadap-anak/>, diakses pada tanggal 26 Januari 2015.

phenomenon and is highly vulnerable for those as human trafficking victims. The actual amount is far higher considering countless migrant labourers who hereditarily refuse completing the requirements of placement and permit to work abroad issued by government, due to the provocation from human traffickers.

Numerous Indonesians are exploited into forced labour and are saddled with debts in Asia and the Middle East, especially in the fields of household, factory, construction, and manufacturing work, including palm plantations in Malaysia and fishing vessels operating in the Indian Ocean and Pacific Ocean. Malaysia remains a primary destination for Indonesian migrant workers; the government estimates over 1 million of 1.9 million Indonesian workers with unofficial status are staying in Malaysia. Workers without official documents have higher risks to be human trafficking victims. The victims of Indonesian citizens are also found in Pacific Islands, Africa, Europe, and North America (including the United States). Women and girls from Indonesia become sexual trafficking victims, especially in Malaysia, Taiwan, and the Middle East.

Numerous Indonesian fishermen were recruited as forced labourers for Chinese and Taiwanese trawl vessels in 2016. Most of these vessels belong to a parent company in Thailand and operate under the monitoring of Thailand-Indonesia "offshore holding companies" using double flags and other illegal methods to avoid arrest by Indonesian security officers; the side-effect of the government's moratorium in 2014 about foreign fishing vessels.

Taiwanese companies cooperate with workers distributing agents in Myanmar, Indonesia, and Thailand to recruit fishermen by giving them identities as Thai citizens and forged working permit documents, and then force them to sail with long work hours in Indonesian waters and they receive low wages or no wage at all and often are subjected to physical violence. It also occurs in the waters around Benjina and Ambon. The offshore holding companies prohibit fishermen to leave their vessels and forbid them to report this violation with the threat to blow their fake identities to authorities or by imprisoning them in temporary prisons on land. Reports keep coming related to Indonesian fishermen becoming human trafficking victims in South Korean fishing vessels in the waters outside Indonesia's territory, in which similar coercion and deprivation measures are common. Non-governmental organizations (NGO) estimate that recruiters are responsible for over half of the Indonesian woman trafficked in other countries. Government and NGO records are in line with people's increasing awareness of human trafficking practice; human traffickers recruit more victims from the provinces in eastern Indonesian regions where the awareness remains low.

Migrant labourers often have great debts to domestic or international agents, making them vulnerable to debts. Most companies exploit this condition by retaining their documents and threatening violence so they (the migrants) remain working as forced labourers. Corruption among governmental officials has boosted practices contributing to human trafficking risks in tourism, hospitality, and worker recruitment industries.

According to the above explanations, we can see that the *modi operandi* of human trafficking in Indonesia are as follows:

- a. Exploitation of economic weakness, low levels of education, Indonesia's geographical position, countless governmental officers willing to receive bribery.
- b. Promising proper jobs with proper incomes, entangling victims with debts to prevent them from refusing HTCA players' malicious plans,
- c. Exploiting victims as sexual workers and low-wage workers.

B. Front Cluster Prevention and Handling of Human Trafficking Criminal Action: Between Hope and Reality

Government efforts in dealing with human trafficking criminal action requires sufficient and long-term resources due to the fact that this criminal action is organized transnational criminal action; therefore, cross-border consolidation of various state organizers, even with other countries is required for the strategy, and steps on handling criminal action (HTCA) can work effectively. Government efforts in dealing with this problem include issued laws in order to protect the victims and law enforcement, as follows: 1) Law no 339 of 1999 concerning Human Rights; 2) Law number 13 of 2006 concerning witness and victim protection; 3) Law number 23 of 2002 concerning children protection; 4) Law number 21 of 2007 concerning Anti Human

Trafficking Criminal Action; 5) Presidential Decree No 88 of 2002 concerning the National Action Plan of Child Trafficking Eradication; 6) Presidential Decree of the Indonesian Republic number 69 of 2008 concerning Front Cluster prevention and handling of criminal action; 7) Government Regulation number 9 of 2008 concerning Procedure and mechanism of integrated services for witnesses or human trafficking criminal action; 8) Coordinating Ministry in Social Welfare Sector Regulation number 25/KEP/MENKO/KESRA/VIII/2009 concerning the national action plan of criminal action and child sexual exploitation eradication in 2009-2014; 9) Ministry of Women Empowerment and Child Protection regulation number 10 of 2012 concerning issuing instructions of Cluster Job of Prevention and Handling of Child Trafficking Criminal Action; 10) Ministry of Women Empowerment and Child Protection regulation number 11 of 2012 concerning instruction of prevention and handling of society and community-based human trafficking criminal action. In accordance with those several requirements, in order to execute the human trafficking criminal action eradication, every local government should establish a cluster job, and execute integrated services for protecting the witnesses and the victims of human trafficking criminal action.

Job Cluster Prevention and Handling of Human Trafficking Criminal Action (Job Cluster PHHTCA) is an institution for coordinating the prevention and handling of human trafficking criminal action whether at the national, province or regency/city level. Job Cluster Prevention and Handling of Human Trafficking Criminal Action has several jobs:

- a. Coordinating prevention and handling efforts of human trafficking criminal action problems;
- b. Executing advocacy, socialization, training, and collaboration both nationally and internationally;
- c. Monitoring the development of witness protection execution such as rehabilitation, return, and social reintegration;
- d. Monitoring the development of law enforcement; and
- e. Executing reporting and evaluation.

The membership of the Main Job Cluster consists of Leaders and Members. The leaders of the Main Job Cluster as referred to in Article 5, are as follows:

- a. Chairman: Coordinating Ministry in Social Welfare Sector;
- b. Executive Director: Ministry of Women Empowerment;
- c. Member: 1. Ministry of Home Affairs; 2. Ministry of Foreign Affairs; 3. Ministry of Finance; 4. Ministry of Religion; 5. Ministry of Justice and Human Rights; 6. Ministry of Transport; 7. Ministry of Labor and Transmigration; 8. Ministry of Social; 9. Ministry of Health; 10. Ministry of National Education; 11. Ministry of Cultural Affairs and Tourism; 12. Ministry of Communication and Information; 13. Ministry of National Development Planning/Head of Bappenas; 14. State Ministry of Youth and Sports; 15. Chief of the Indonesian National Police; 16. Attorney General of the Indonesian Republic; 17. Head of National Agency for the Protection and Placement of Migrant Workers; 18. Head of the National Intelligence Agency; 19. Head of the Central Statistics Body.

The members of the Main Job Cluster as referred to herein are the representatives of government, law enforcement, society organization, non-governmental organizations, professional organizations, and researchers/academics. The work mechanism of the Job Cluster is ensuring synergy and continuity of the integrated steps of human trafficking criminal action eradication. Main, Province, Regency/City Job Clusters coordinate and contact directly those related agencies and other related parties to prepare policies, programmes, and events in the form of National and Local Action Plans.

In order to guarantee the effectiveness of steps on prevention and handling of human trafficking criminal action, Main, Province, Regency/City Job Clusters coordinate, monitor and evaluate, and report periodically. The coordination of the Job Cluster consists of national coordination, plenary coordination, sub-job-cluster coordination, and specified coordination. National coordination is executed by the Main Job Cluster followed

by Province and Regency/City Job clusters. National coordination, as referred to in Paragraph (1), is done at least once each year. National coordination, as referred to herein, aims to monitor and discuss the problems and obstructions and synergize the national execution of the steps on the prevention and handling of the human trafficking criminal action. In national coordination, the representative of government, non-governmental organizations, professional organizations, and researcher/academic sectors always coordinate with the main agency/institution of each plenary coordination attached to all members of the Main Job Cluster. Plenary coordination as referred to in paragraph (1) is periodically conducted once every four months. Coordination of sub-job-clusters is followed by all members of the sub-job-cluster in the Main Job Cluster. Coordination of sub-job-clusters, as referred to herein, are periodically conducted once every two months.

This case requires specified handling in the prevention and handling of the human trafficking criminal action, so the Main Job Cluster can coordinate specifically. Specified coordination, as referred to herein, is followed by all members of the Main Job Cluster and can engage the Province and Regency/City Job clusters. Specified coordination as referred to herein aims to respond to the specified problems requiring fast and proper solutions.

The coordination result of the Main Job Cluster is considered as a reference for the duties to be executed by the Province and Regency/City Job. The duties executed by the Main, Province and Regency/City Job Cluster are conducted in a coordinated manner in one-unit policy for prevention and handling efforts of human trafficking criminal action.

The coordination result, as referred to in Articles 17, 18, 19, 20, 21, 22, and 23, by each member of the Main Job Cluster is informed to each agency to be executed in accordance with its duty and function in compliance with the laws.

Monitoring, evaluation and reporting of the development of the duties to be executed by the Main Job Cluster are conducted periodically and anytime, whether through national, plenary, sub-job-cluster, and specified coordination, and direct monitoring to the field or using the existing communication facility. Evaluation of the duties to be executed includes yearly evaluation, mid-period evaluation, and end-period evaluation. Evaluation of the duties to be executed may be conducted internally and/or engage a third party. Evaluation of the duties to be executed as referred to in paragraphs (1) and (2) are referred by the Executive Director.

The Sub-Main-Job-Cluster reports the result of evaluation of duties to the Executive Director. Each of the Sub-Main-Job-Cluster reports as referred to herein is discussed in plenary coordination of the Main Job Cluster. The head of the Main Job Cluster reports his duties executed to the President and societies on an annual basis and every 5 years. The requirements regarding the work mechanism of the Main Job Cluster as referred to in this Presidential Regulation applies to the Province and Regency/City Job Cluster.

The budget of the Main Job Cluster is charged to the Amended State Budget cq. Ministry of Women Empowerment. The budget of the Province Job Cluster is charged to Amended Local Budget Province. The budget of duties execution of Regency/City Job Clusters is charged to the Amended Local Budget Regency/City. The coordination result of Main, Province and Regency/City Job Clusters, for which execution is the responsibility of both the Central and Local agency, and its expenses are charged to the budget of each related agency in compliance with the laws.

As explained above, prevention and handling of human trafficking is not done by a single institution. The execution of those duties requires high synergy among institutions and to build an effective team. According to the Annual Report of Job Cluster PHHTCA, the weak coordination among the institutions has contributed to the ineffectiveness and inefficiency of the action plan execution of HTCA eradication from year to year.

C. Optimization of Synergy between the Institutions in Implementing the National Action Plan for Eradication of HTCA through SIGAP-HTCA Training

It has been found through the analysis written in point 2 that the effectiveness of the implementation of task forces for the prevention and handling of human trafficking criminal actions (HTCA) depends on the level of coordination in enhancing synergy between the institutions which are incorporated as the members

of the PHHTCA Task Force that should be effective and built upon joint commitment. This level of coordination can be developed through training. Training is a sequence of learning activities, both classical and non-classical, which is held effectively, efficiently and continuously for developing competence with regard to the type of the training being held.

1. Description

HTCA-SPRY Training is education for developing competence and synergy of human trafficking prevention and handling task force officers through classical and non-classical learning processes with a method that is suitable for adults.

2. Learning Outcomes

Basic competency / learning outcome of this training is that training participants will be able to perform their duties and functions effectively and efficiently, and to build a team that is deemed effective and synergistic in performing cross-sectoral duties to eradicate human trafficking.

3. Indicator of Learning Outcomes

Indicators of learning outcomes of this training are: 1) Training participants are able to explain their duties and functions; 2) Training participants are able to understand principles of effective teams; 3) Training participants are able to build effective teams. Training participants can reach these indicators through several instructional materials with regard to the following curriculum matrix.

4. Instructional Material

**Curriculum Structure
HTCA-SPRY Training
(For the Members of the Human Trafficking Prevention and Handling Task Force)**

NO	TRAINING SUBJECTS	SESSION	JP
1.	Programme Briefing	1	3
2.	Group Dynamics	3	9
3.	Government's Policy on Eradication of Human Trafficking Criminal Actions (HTCA)	1	3
4.	Technique of Prevention and Handling of HTCA	3	9
5.	Technique of Monitoring, Evaluating and Reporting HTCA	2	6
6.	System Thinking	3	9
7.	Team Building	2	6
8.	Commitment Building	2	6
	Total	17	41

5. Learning Method

The prevailing learning methods for those instructional materials are as follows:

- Lecture
- Brainstorming
- Role play
- Simulation
- Window Shopping
- Cases

6. Time

The training is held for 5 days.

7. Facilities and Supplies

Facilities and supplies used in the learning process include:

- Classroom

- Outbound Area
- LCD
- Flip Chart
- Mic
- Marker
- Paper
- Etc.

This design of training for building competence and synergy between the members of the PHHTCA Task Force, or a so-called HTCA-SPRY, is an initial idea that needs to be followed up by doing Training Needs Assessment to ensure that the programme will be arranged systematically and continuously for the staff involved in the membership of the PHHTCA, with the hope that this training will be held effectively and efficiently.

V. CONCLUSION AND SUGGESTIONS

A. Conclusion

Regarding the above analysis, it can be concluded that:

1. Modus Operandi of HTCA in Indonesia

HTCA in Indonesia is a transnational crime which is organized systematically by professional syndicates. Making use of conducive geographical conditions, a considerable amount of residents with low levels of education and economic resources, and the plentiful amount of government corruption, the syndicate is free to perform its actions by:

- a) Offering jobs and better income to the victims;
- b) Ensnaring victims with debt they cannot repay in order to have them comply with the rules of the syndicate;
- c) Bribing officers to allow illegal labour/immigration;
- d) Abducting displaced children who are not monitored by their families;
- e) Employing victims as forced labourers with low salary or even unpaid work, plunging women into prostitution and selling body parts of the victims who are considered useless for making money.

2. Enhancement and Development of Competence and Synergy between Institutions

Planning a system of prevention and handling of HTCA has been established by government through regulations by forming task forces as the coordinative executor of human trafficking eradication. But, to this day, the performance of these institutions is not optimal because of lack of coordination between officers/institutions, resulting in lack of competence and synergy optimization.

For enhancing coordination and developing competence and synergy of the members of these task forces, technical training (HTCA-SPRY) is needed. It is expected that, by holding this training, competence and synergy between institutions can be leveled up so that performance and productivity of institutions incorporated in the task forces at the national, province, and district levels are enhanced.

3. Suggestions

Prevention and handling of human trafficking requires a strong commitment from the government, the people, and the private sector as a pillar of good governance. Implementation of the National Action Plan for eradicating HTCA requires intensive coordination. Therefore, it is the duty of the government to:

- a. Provide adequate budget;
- b. Enhance coordination between institutions;

- c. Enhance and develop competence of the executing members and build synergy between institutions that are incorporated in Task Force PHHTCA;
- d. MoUs in the form of joint rules between the institutions for the sake of the National Action Plan for eradicating HTCA are needed.

COUNTERMEASURES AGAINST TRAFFICKING IN PERSONS BY THE PREFECTURAL POLICE

*Takako KAMATA**

I. INTRODUCTION

In line with “Japan’s 2014 Action Plan to Combat Trafficking in Persons”, the police are linking up with the Immigration Bureau and other organizations to strengthen efforts at Japan’s borders to crackdown on malevolent employers and traders, while protecting victims as early as possible and working to understand the situation of human trafficking in Japan.¹ “Identification” and “control” are important parts of our countermeasures against trafficking in persons.² This paper discusses cases of trafficking in persons (hereafter, “TIP”) cleared by prefectural police and three factors which led to those cases.

II. THREE FACTORS THAT HELP CLEAR TIP CASES

The prefectural police’s countermeasures have contributed to the arrest of TIP suspects in Japan in multiple cases. One example of such an arrest involved a suspect who forced trafficking victims to live in a designated apartment and prostitute themselves with customers found online, seizing any money that was paid. In this case, the suspect was arrested for violating the Anti-Prostitution Act.³

In another case, the suspect deceived victims in Thailand, saying “You can make money if you work at a massage parlor in Japan”. Once the victims arrived at Japan, the suspect took their passports away from them, forced them to engage in sexual services and seized any money they were paid. In this case, the suspect was arrested for violating the Immigration Control and Refugee Recognition Act.⁴

There are three factors in which the information cycle of the prefectural police contributed to clearing these TIP cases. First, information was aggregated efficiently; all information on suspected TIP cases in the prefecture goes to one department at the prefectural police headquarters. Second, information was shared effectively; information such as signs common to victims of TIP is shared with both citizens and local police officers. Third, information was gathered comprehensively; the department in charge obtains a wide range of information related to TIP through administrative measures, specialized investigations and cooperation with related organizations. In short, the prefectural police’s information cycle related to TIP contributed to clearing both of these cases. The following chapters will introduce how this cycle works in detail.

III. INFORMATION AGGREGATION

A. Latency: Aggregating Pieces of the Puzzle

One characteristic of TIP is high latency⁵: it is extremely difficult to identify victims or suspects from

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¹ National Police Agency of Japan, The White Paper on Police 2018. <https://www.npa.go.jp/hakusyo/h29/english/Contents_WHITE_PAPER_on_POLICE2017.htm>, accessed 12 Apr. 2019.

² National Police Agency of Japan, Director General of Community Safety Bureau, Director General of Criminal Investigation Bureau, Director General of Security Bureau “Promotion on the identification of trafficking in person, protection and support of trafficking victims and control of trafficking in person (circular notice)” <<https://www.npa.go.jp/pdc/notification/seian/hoan/hoan20150216.pdf>> (16 Feb. 2015), accessed 12 Apr. 2019.

³ National Police Agency of Japan, Community Safety Bureau, Safety Division, Public information materials, Trends in the situation of trafficking in persons in 2018 (28 Feb. 2019),

<https://www.npa.go.jp/bureau/safetylife/hoan/jinshintorihiki/h30_jinshin.pdf>, accessed 12 Apr. 2019.

⁴ Ibid.

⁵ Prime Minister of Japan and His Cabinet, Ministerial Meeting Concerning Measures Against Crime, Japan’s Action Plan to Combat Trafficking in Persons, (16 Dec. 2014).

their external appearance. In order to identify TIP victims, it is important to bring pieces of information together and analyse them promptly. Once there is reason to suspect TIP has occurred, it is critical to start an organized investigation to combat a crime that is often committed across borders. At the prefectural police level, each police officer on duty can become the contact point with the victims and gather related information. Each bit of information may seem very small, like a piece of a puzzle, but in order to reach the full-length picture of TIP it is crucial to aggregate information within the prefectural police efficiently.

B. Prompt Reporting from the Scene

All information related to TIP or related crimes found in a prefecture goes to the Community Safety Department of the Prefectural Police Headquarters (hereafter, “HQ”). Since the range of duties for the prefectural police results in the range of the information which the HQ can gather and aggregate, this chapter briefly describes these duties and how reporting from the scene works.

In Japan, the National Police Agency (hereafter the “NPA”) and 47 prefectural police departments assume all policing duties. There are no independent police organizations such as city police.⁶ In addition, the NPA does not execute actual police duties, but rather manages police policies at the national level and the coordination of prefectural police departments.⁷

As a result, the duties of the prefectural police are relatively broad and include the control and prevention of crimes prescribed in the Penal Code, special laws and regulations at the prefectural or city level; traffic enforcement; the protection of intoxicated persons; searches for missing persons; the implementation of security measures for local events (from town festivals to the Olympics games) and rescue missions in areas affected by natural disasters.⁸

As a structure for aggregating information, prefectural police departments can be divided into HQ and police stations. The HQ consists of departments and divisions, and police stations are organized along similar lines. In addition, the jurisdiction of one police station is divided into several areas, each with one police box.

For example, the Saitama Prefectural Police (hereafter, “SPP”) has about 11,000 police officers,⁹ 39 police stations and 369 police boxes serving the 7.3 million people of the prefecture.¹⁰ If an officer encounters signs of a TIP case at a police box, this information is first reported to the community safety division of the police station, which then reports the information to HQ (Of course, in an obvious and urgent situation, officers at the scene use police radios to report immediately to HQ).

This is a relatively simple information aggregation structure (there are essentially no conflicts over jurisdiction with other organizations at the scene) but, with the breadth of their duties, it is a challenge for prefectural police to make prompt reports through this structure on a consistent basis. This is true of information on various matters, including TIP.

IV. INFORMATION SHARING WITH OFFICERS AND THE COMMUNITY

In order to identify TIP cases, it is crucial that each police officer engages in their duties with the adequate knowledge of TIP. Also, it is important to promote the awareness of TIP among the community.

< <https://www.kantei.go.jp/jp/singi/jinsintorihiki/index.html>>, accessed 12 Apr. 2019.

⁶ There are several police duties that overlap with those of other organizations, such as the Immigration Bureau, city offices or local fire departments. However, the prefectural police are the only “police” that cover all the duties described above as a primary investigative agency.

⁷ If a case that involves several prefectures, related prefectural police departments establish a joint investigation headquarters and report progress to the NPA.

⁸ Saitama Prefectural Police, Organizational chart of Saitama Prefectural Police, <<https://www.police.pref.saitama.lg.jp/b0011/saiyo/section.html>>, accessed 12 Apr. 2019 (Each prefectural police HQ consists of departments such as Community Safety, Community Police Affairs, Criminal Investigation, Traffic and Security).

⁹ Saitama Prefectural Police, Annual Report on Police Activities 2018 (10 Apr. 2019) <<https://www.police.pref.saitama.lg.jp/a0030/kenke/ayumi30.html>>, accessed 12 Apr. 2019 (11,524 police officers).

¹⁰ Saitama Prefecture, Population Estimates as of 1 Mar. 2019 (1 Apr. 2019), <<https://www.pref.saitama.lg.jp/a0206/03suikei/index.html>>, accessed 12 Apr. 2019 (Population Total 7,323,982 (Male 3,651,920, Female 3,672,062), Household Total 3,120,865).

A. Community Police Officers

Police officers assigned to police boxes (hereafter “community police officers”) work most closely with the local community. When incidents or accidents occur, community police officers immediately head toward the scene of action and take necessary initial responses. They are also focused on patrolling to prevent crimes as well as to crackdown on criminals.¹¹ Citizens also come to police boxes for consultations on a wide range of matters. (In 2018, about 140,000 new consultations were brought to SPP.¹²) In addition, community police officers assume a wide range of other duties, including but not limited to handling lost property, supervising unaccompanied minors at night etc.

In any of these instances, community police officers may encounter leads on TIP or related crime. For example, an emergency call or consultation about “a fight between male(s) and female(s) on a street (or in a neighbourhood), details unknown” may be a case that developed from a traffic accident, domestic violence, TIP-related troubles or other crimes. Items brought to a police box as found articles may also be stolen items and/or items containing illegal materials or materials related to crimes. (In 2018, SPP handled about 900,000 items brought to the police as found items.¹³)

In addition to these duties, community police officers make routine visits to houses and offices in their assigned areas, providing local residents with information on important items and listening to their opinions about the police. At apartment buildings, officers visit each household as well as the caretaker’s office. In order to combat TIP, community police officers ask the caretakers to post notices for residents and pass out multi-language leaflets that includes the number for emergencies, and anonymous hotline urges victims to go to the police.¹⁴ Officers share related information with residents such as the signs of TIP victims, which include:¹⁵

- A few females living together in an apartment are picked up by a van and taken somewhere every day, only returning late at night, and otherwise do not go outside.
- At a factory, a few foreign workers work long hours and get reprimanded severely every day and if one of them is seriously injured they do not go to a hospital.
- A girl with bruises on her face exits a car with a male driver and enters a hotel by herself.

These awareness-raising and information-gathering duties require steady effort and may be inconspicuous, and the possibility that they lead to a conviction may not be high (in 2018 the number of cleared TIP cases in Japan was 36¹⁶ out of all 327,081 cleared cases¹⁷). However, information gathered from the scene and from

¹¹ According to Article 2, paragraph 1 of the Police Duties Execution Act, “a police official may stop and question any person who is suspected on reasonable grounds of having committed or being about to commit a crime or who is deemed to possess information on a crime which has already been committed or is about to be committed, judging reasonably on the basis of unusual behavior and/or other surrounding circumstances”. This is a very effective tool, especially for community police officers, to crackdown on criminals or gain leads in various crimes.

¹² Saitama Prefectural Police, Annual Report on Police Activities 2018 (10 Apr. 2019).

<<https://www.police.pref.saitama.lg.jp/a0030/kenke/ayumi30.html>>, accessed 12 Apr. 2019 (140,793 new consultations. The topics of these consultation include crime prevention, domestic problems, criminal cases, public nuisance, agreements and trades and child abuse.)

¹³ Saitama Prefectural Police, Statistics 2018 <<https://www.police.pref.saitama.lg.jp/a0030/kenke/pr-suji.html>>, accessed 12 Apr. 2019 (903,627 items reported as found items).

¹⁴ National Police Agency of Japan, Community Safety Bureau, Safety Division Reporting Phone Number (Trafficking in persons).

<<https://www.npa.go.jp/bureau/safetylife/hoan/jinshintorihiki/otherlanguage/otherlanguage.html>>, accessed 12 Apr. 2019 (written in English, Thai, Tagalog, Indonesian, Chinese, Korean, Spanish, Russian and Japanese).

¹⁵ National Police Agency of Japan, Community Safety Bureau Signs of trafficking in persons

< <https://www.npa.go.jp/bureau/safetylife/hoan/jinshintorihiki/index.html>>, accessed 12 Apr. 2019.

¹⁶ The National Police Agency of Japan, Community Safety Bureau, Public information materials, Trends in the situation of trafficking in persons in 2018 (28 Feb. 2019),

< <https://www.npa.go.jp/bureau/safetylife/hoan/jinshintorihiki/index.html>>, accessed 12 Apr. 2019.

¹⁷ National Police Agency of Japan, The White Paper on Police 2018

<https://www.npa.go.jp/hakusyo/h29/english/Contents_WHITE_PAPER_on_POLICE2017.htm>, accessed 12 Apr. 2019 (the

members of the community can be critical to identify TIP cases.

B. Training

In order to gain leads in TIP cases through daily police duties or to provide information about TIP to the community, it is essential to share necessary information about TIP with all officers, including officers-in-training. To become a police officer in the prefectural police, one needs to finish six or ten months of training at a prefectural police academy.¹⁸ At the academy, cadets learn basic knowledge and skills related to their community policing duties. After the academy, new officers assigned to police stations start their duties at a police box. As time goes on, they receive subsequent training in advanced policing duties, such as countermeasures against TIP by senior officers.

However, as with all officers, the behind-the-scenes duties of community police officers are time-consuming; including filling out paperwork for investigations, consultations, or traffic enforcement. (For instance, it can take one hour to process one lost bag, including checking all items and drafting the report(s).) With the relative concentration of duties at the level of the prefectural police, it is a challenge to manage training efficiently and share necessary information with all police officers at all stages on a variety of subjects, including TIP.

V. INFORMATION GATHERING

Prostitution and adult entertainment-related offences are often related to TIP. The Department of Community Safety at the Prefectural Police HQ gains a wide range of information on those offences both through administrative measures and specialized investigation.

A. Administrative Measures

Based on “the Act on the Control and Improvement of Adult Entertainment Business” (hereafter the “Adult Entertainment Business Act”),¹⁹ designated police officers of the community safety division of a police station and HQ may visit and enter those adult entertainment businesses in its jurisdiction. If there is a violation of the “Adult Entertainment Business Act”, the police may execute administrative measures such as the revocation of a business license, an order for suspension or other necessary administrative guidance. These officers verify whether a business is run according to the “Adult Entertainment Business Act” and other related regulations; determining, for example, whether the roster of workers is kept in proper order and if the structures and equipment of the building match standard regulations.

At the end of 2017, in Saitama Prefecture, there were 1521 restaurants regulated by the “Adult Entertainment Business Act” (such as cabarets), 538 pachinko parlors, and 801 sex-related special businesses such as soap-lands, strip clubs and love hotels. Most of these businesses were located in the biggest entertainment area in the prefecture, Omiya. In 2018, 390 administrative measures were taken by SPP against those business for violations of the “Adult Entertainment Business Act” and other regulations.²⁰ The prefectural police promote a thorough understanding of those businesses in the prefecture, taking into considerations that victims of TIP may work at one of these adult entertainment-related businesses.

B. Specialized Investigation

In addition to these administrative measures, the Community Safety Department of the prefectural police also conducts specialized investigations into violations of the “Adult Entertainment Business Act”, the “Anti-Prostitution Act” and other related regulations taking into consideration that the possibility that victims of TIP may be identified through these investigations (In 2017, SPP cleared 127 adult entertainment business-related cases, but none of them involved TIP).²¹

number of cleared cases of criminal law offences).

¹⁸ Each prefectural police department provides this training for its own recruits, but the period of training is common to all prefectural police.

¹⁹ Article 37, paragraph 2 of the Act on Control of and Improvement of Adult Entertainment.

²⁰ Saitama Prefectural Police, Annual Report on Police Activities 2018 (10 Apr. 2019)

<<https://www.police.pref.saitama.lg.jp/a0030/kenke/ayumi30.html>>, accessed 12 Apr. 2019.

²¹ Saitama Prefectural Police, Annual Report on Police Activities 2018 (10 Apr. 2019)

<<https://www.police.pref.saitama.lg.jp/a0030/kenke/ayumi30.html>>, accessed 12 Apr. 2019.

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If the Department of Community Safety at HQ finds information related to TIP, they report it to the NPA. If necessary, the NPA seeks cooperation from other prefectural police departments, and related organizations to handle these cases. Countermeasures by prefectural police are an integral part of TIP countermeasures in the country as a whole.

VI. CONCLUSION

The wide range of duties of prefectural police and their proximity to local communities offers advantages in the fight against the high latency of TIP. To maximize this advantage, it is crucial that the information cycle within prefectural police departments includes information aggregation within the organization, information sharing with the officers and the community and information gathering through administrative measures, specialized investigation and cooperation with other organizations. The proper functioning of this information cycle has been and will be the key to clearing past and future TIP cases in Japan.

THE CRIMINAL JUSTICE RESPONSE TO TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS IN KENYA

*Hellen Khandasi Mafumbo**

I. INTRODUCTION

Trafficking in persons is a crime committed when a person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of threat or use of force or other forms of coercion, abduction, kidnapping, fraud, deception, abuse of power or of position of vulnerability, giving payments or benefits to obtain the consent of the person having control over another person. This is a crime normally done by people who are highly connected, and it is a wide syndicate of people doing it for personal gain. People are mostly trafficked for the purpose of using the victims for the purpose of cheap labour, sexual exploitation, organ harvesting and surrogacy.

A. Kenya Research Reports on Counter Trafficking in Persons

Trafficking in persons is not only a national problem but a regional and global problem as well. Kenya has been described as a country of origin, transit and destination in human trafficking by various reports as outlined below:

1. The National Crime Research Centre on Human Trafficking in Kenya, 2015

This is a government research centre which made the following findings: Trafficking of people from Kenya to other nations was the most prevalent (external trafficking) in Kenya at 60.2%. Forms of trafficking prevalent in Kenya were labour and sex related at 44% and 53%, respectively. Trafficking involves children, men and women at 33%, 26% and 41%, respectively. Victims of human trafficking are children, men and women whose socio-economic profiles are low income, impoverished, illiterate, unemployed, victims of domestic violence and social exclusion.

2. The CRADLE

This is a legal organization that researched and compiled the 'Children Foundation Trends Report on Child Trafficking in Kenya, (2014)'. The report highlighted child trafficking in Kenya based on the cases the organization had handled. According to the report, trafficking represents exploitation in different forms such as child labour, domestic labour, street begging, child sexual exploitation, prostitution, child sex tourism, and servitude among others. The report further indicated that 41.3% of children, both male and female between the ages of 10-14 years, are trafficked to offer cheap labour. Factors facilitating trafficking for children include poverty, ignorance and porous borders. The report indicated that there is a lack of reporting of trafficked persons. Trafficked children are threatened, physically harmed, traumatized and brainwashed.

Victims of trafficking in Kenya are overworked, suffer physical and sexual abuse, non-payment or under-payment of wages, poor working conditions, and restricted or no access to education. Research investigating the impact of trafficking experience on women has found that the conditions listed above have immense effects on their physical, reproductive, and mental health and may lead to drug and substance abuse, decreased social and economic well-being, and decreased access to health and support services. In Kenya trafficked children may not be aware that they are being trafficked. Some are too young to understand the dangers of being moved from one place to another. Older children are promised a job or education by the traffickers. Many children are trafficked from rural to urban areas for domestic labour, fishing, agricultural farms, pornography and sexual exploitation.

B. Causes of Child Trafficking

Causes of internal child trafficking are mostly social and economic which include poverty, lack of equal

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opportunities, lack of family support, gender inequality and domestic violence. Causes of external child trafficking are mostly deceit, arranged marriages, child theft and promises for further education. Children are trafficked through Kenya to other destinations. Kenya has played different roles in counter trafficking in persons as well as smuggling as outlined below.

1. As a Country of Origin

Kenyans are trafficked to other African countries such as South Africa, Rwanda, Uganda, to European countries such as Germany, Italy, Ireland, the United Kingdom and the Netherlands for the purposes of domestic labour and sexual exploitation; to the Middle East and North American countries for domestic work, forced labour, and commercial sexual exploitation. In the recent past, Kenya has cracked down on all the illegal agencies that were trafficking people to the Middle East when cases of Kenyan citizens dying or becoming incapacitated due to maltreatment from their employers increased and raised alarm. It is estimated ten deaths of Kenyan citizens happened in the Middle East in the years 2016 to 2018. Trafficking of Kenyans also caused social problems. Many children were left without the care of both parents; some were neglected by the caregivers who the children were entrusted to by their parents, many families separated or divorced when the breadwinners went away and could not send support to their families. Some of the serious cases that were handled, among others, are:

- In 2016, three children below the age of 10 years were rescued from their traffickers at the Kenya-Tanzania border where the perpetrator was crossing to Tanzania to hand over the children to his clients. He was arrested and charged in court and sentenced for life. Children are normally trafficked for organ harvesting and religious offerings.
- In mid-2017, two Ugandan women were intercepted while trafficking two children, one less than a year old and the second was under 2 years old. The women were charged with two accounts of trafficking and were jailed for 30 years for each account.

2. As a Country of Transit

Identified victims include Ethiopian, Somali and Indian nationals trafficked through Kenya en route to South Africa and the Middle East. They are smuggled into the country through porous border points and taken to houses in informal settlements or crowded estates where it is hard to be identified by the police. However, many cases have been identified and pursued through the justice system, and these are some of the examples:

- In 2017, 20 Ethiopian nationals were rescued from one of the towns in the outskirts of Nairobi when in transit to South Africa. They were all rescued and arraigned in court. Some of the victims were used as state witnesses. This helped the police to pursue the smugglers. Victims were repatriated back to Ethiopia, and one of the smugglers was arrested and the verdict has not been given since the criminal investigation is still in progress.
- On 2 April 2019, fifteen (15) Burundi women were rescued in a house in Nairobi in Kayole estate while on transit to Saudi Arabia for domestic labour. The victims were arraigned in court on 4 April 2019. Thirteen of the victims were repatriated back to Burundi and two are in witness protection as state witnesses to assist in investigations.
- In September 2018, five Ugandan women were intercepted in Nairobi while being trafficked to Oman. One of the traffickers was arrested immediately; the second one after a few days and the third one is still at large. The girls served as witnesses in court and were repatriated back to Uganda. A ruling has not yet been issued.

3. As a Country of Destination

Citizens of other African and Asian countries have been identified as victims of trafficking in Kenya working as casual labourers, commercial sex workers, beggars on behalf of the traffickers or domestic workers. A few examples are outlined below:

- From 2009 to date, there have been more than 50 Ethiopian girls and women who have been arrested in different parts of the capital city Nairobi working as sex workers. In February 2019, many Somali

girls were rescued from child labour working as servants. One of the girls, a 12-year old, had been trafficked from Somalia to be married off but was rescued early on the morning of the ceremony. The girl was placed in a safe house and enrolled in school. The perpetrators were arrested, and the verdict has not yet been given.

- Young women recruited for surrogate motherhood were rescued from the jaws of a trafficker who has not been arrested to date but whose case the police are still tracking. The trafficker recruits the young women with a promise to pay them handsomely to carry babies who are normally conceived after an IVF procedure (external fertilization) and the babies are taken away and given to couples without children. However, the young mothers are never compensated as promised. Some of the ladies who were ready to leave the safe house were reunified with their families, but those who did not feel ready are still in the safe house awaiting recruitment by economic empowerment groups.
- In August 2018, seventeen Nepalese women were rescued from trafficking in a brothel in Nairobi. They were arraigned in court and all were witnesses in the case. They were repatriated back to Nepal after testifying but the case is still going on in court.

C. Challenges Encountered in Handling Counter Trafficking in Persons Cases in the Justice System

- i. Most of the time the perpetrators are never arrested, and this hinders progress;
- ii. Communication barriers because most of the victims are non-Kenyans who need interpreters who are not readily available in court (i.e., Nepalese);
- iii. Delay in investigation which derails cases;
- iv. Poor coordination for trans-border cases; hence premature termination of cases;
- v. There is limited access to safe houses to give psychosocial support to the distressed and threatened victims to collaborate with actors in the justice system.

D. Possible Solutions

- i. High level of public awareness creation on counter trafficking in persons so that they can report cases when there are high chances of apprehending perpetrators before they move out of the area of operations;
- ii. All courts need to make arrangements for acquiring interpreters prior to the hearing of cases;
- iii. There is a need for global coordination on counter trafficking in person cases so that both the rescuing country and the country of origin can quickly collaborate to have the cases handled fairly and appropriately to meet global standards;
- iv. There is need to have safe houses across the country, possibly in each county, with all the support mechanisms such as counsellors on board so that victims can receive relevant support in a timely manner. This will enable victims to give testimony in a timely manner without any fear.

E. Current State of Counter Trafficking in Kenya

Kenya, as a Member State to the Palermo Protocol, has been submitting a report every year to the United States State Department showing the progress made to combat human trafficking. As discussed below, Kenya as a country has set up various strategies to combat human trafficking and smuggling in various aspects.

II. LEGAL FRAMEWORK

A. Laws¹

1. The Constitution

Article 2 (5) and (6) of the Constitution provide that any treaty or convention ratified by Kenya shall form part of the Law of Kenya under the Constitution. The effect of this is that the said conventions are applied by the municipal courts. Chapter 4 of the Constitution on the Bill of Rights contains fundamental rights and freedoms, some of which can be the basis for protecting the victims of trafficking in persons. These include the right to life; equality and freedom from discrimination; right to human dignity; protection against slavery, servitude and forced labour and freedom of movement and residence and protection of victims of offences. Article 59 (2) (g) under this Chapter also sets up a Commission that promotes respect for and develops a culture of human rights in Kenya. One of the principle functions is to ensure compliance with obligations under treaties and conventions relating to human rights. All the above rights cover a cross-section of abuses that are notorious within the context of human trafficking, such as murder, torture, inhuman or degrading treatment, discrimination, restriction of movement and where a person has been employed, poor remuneration.

2. The Counter Trafficking in Persons Act, 2010

The Kenyan Parliament enacted the Counter Trafficking in Persons Act on 17 September 2010. The Act's intention is to implement Kenya's obligation under the United Nations Convention against Transnational Organized Crime, particularly in its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. This National Plan of Action to combat human trafficking articulates the 3Ps approaches namely: Prevention, Protection and Prosecution. The Act also comprehensively covers the offences of trafficking in persons and other related offences, modalities of trial of offenders and an elaborate system on victim assistance. It further establishes a fund for victims of trafficking.

For purposes of implementation, the Act provides for the establishment of an Advisory Committee under section 19. The primary function of the Committee is to advise relevant Ministries on interagency activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons. The membership of the Committee is diverse and comprehensive. The Counter Trafficking in Persons Act has repealed and amended sections of the Penal Code, the Sexual Offences Act 2006 and the Children Act, 2001 that touch on trafficking. The Act became effective in 2012.

In 2016, the counter trafficking secretariat developed regulations on the implementation of the Counter Trafficking in Persons Act, 2010. The regulations stipulate exhaustively the procedure each actor in the criminal justice system is supposed to follow while serving the victims of trafficking without harming them further.

3. The Witness Summons (Reciprocal Enforcement) Act, Chapter 78 of the Laws of Kenya

This is an Act of Parliament providing for the enforcement of witness summonses issued by courts of certain foreign countries. The thrust of this Act is to permit the inter-state summoning of witnesses between Kenya and other countries for the purpose of giving evidence in criminal proceedings. Such summonses would help in shaping criminal investigations and trials of matters connected with human trafficking, in view of the trans-boundary nature of trafficking-related offences.

4. Witness Protection Act

Kenya enacted the Witness Protection Act, which established the Witness Protection Programme in December 2006. The witness protection programme is a special scheme that endeavours to protect and assist witnesses of crime from being threatened, intimidated and even harmed by criminals for cooperating with law enforcement and prosecution authorities. Witnesses under threat are rescued and placed in safehouses and are also given security to court and back.

¹ The Counter Trafficking in Persons Act (No. 8 of 2010), The Draft Counter-Trafficking in Persons Regulations, 2016, The National Plan of Action for Combating Human Trafficking Strategic Framework 2013-2017, The Constitution of Kenya 2010. Children's Act, 2001, Witnesses Protection Act, 2015.

B. Policies

1. National Referral Mechanism Guidelines

The document assists in identification of victims of trafficking and highlights the reporting procedure to assist the victims in getting help and to restore them to their original condition.

2. Police Standards of Operations (SOPS)

The SOPs were prepared within the framework of a working group of law enforcers and key players from civil society service providers with the aim of identifying current ways in which trafficking in persons is handled at the pre-trial stage in Kenya. This is a guide to the police officers giving a sequence of activities from the reporting point all the way to the courts while applying regional differences and current best practices.

3. Prosecutors' Manual

The document gives direction on how to categorize cases related to counter trafficking in persons, charge the offender and impose an appropriate penalty for each offence. This was to avoid discrimination and ensure fair trials. The manual is to be used by prosecutors.

4. Guidelines for Identification of Victims of Human Trafficking

The Counter Trafficking in Persons Act, 2010 (CTiP), which implements Kenya's obligation under the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), clearly sets out the components that constitute the offence of trafficking in persons. Kenya therefore developed the identification Guidelines to help the key actors in the public when well sensitized to be able to assist in reporting. The key factors, such as the police and authorized officers such as probation officers, chiefs and children's officers, can be able to identify, screen and interview victims ethically and with professionalism. Through identifying the victims early enough, they assist in the arrest of perpetrators, the rescue of the victims and also ensure that there is evidence available in court that will contribute to deterrence of further human trafficking.

The Guidelines clearly stipulate the process of identification of trafficked victims as follows:

- Definitions of human trafficking and smuggling;
- Who can identify a victim of trafficking;
- Indicators for assessing victims;
- Steps of identification;
- Risk assessment and protection;
- Screening interviews;
- Best practices for children and adult interviews;
- Who should be contacted first after ascertaining that the person or child is a victim of trafficking.

5. Achievements during the Period from 2013-2017

- Cases of persons involved in trafficking in children have been prosecuted;
- A human Trafficking Unit at the Police headquarters was created in 2003 to handle issues related to trafficking in persons;
- Enforcement of the Counter Trafficking in Persons Act;
- The Government has enforced the Sexual Offences Act and the Children's Act, 2001 which both touch on trafficking in persons, specifically women and children;

- The Ministry of Tourism has reviewed the Act and has included issues on Child Sex Tourism;
- The Ministry of Labour has a National Plan of Action on child labour which includes trafficking;
- Setting up of the Counter Trafficking Advisory Committee and its Launch on 8 July 2014;
- Development of the National Plan of Action for Combating Human Trafficking Strategic Framework 2013-2017;
- The Kenyan government has established a place of safety for both adult and child victims of trafficking.

III. CHALLENGES FACED IN DEALING WITH COUNTER TRAFFICKING CASES IN KENYA

- a) Poor reporting of cases of trafficking in persons because many victims fear harm by the perpetrators or being prosecuted for being in the country illegally;
- b) Lack of community-based structures to enhance reporting by the public;
- c) Low levels of awareness of the concept of counter trafficking in persons; hence there is little knowledge on identification of victims and reporting procedures;
- d) Witnesses fear for their safety and opt out of the criminal justice system; hence premature termination of cases;
- e) Lack of a database in which all cases can be consolidated to measure the magnitude of the problem which can meet reporting obligations and case management;
- f) There are no firm international cooperation mechanisms such as mutual legal assistance and joint investigations;
- g) Lack of strong reciprocal arrangements to enhance international cooperation to counter trafficking in persons;
- h) New crime trends among children are emerging daily, like gang rape;
- i) Crime trends change every now and then while the behaviour modification processes have not been streamlined fast enough to meet the needs of the children involved in child trafficking;
- j) Corruption in society;
- k) Gender inequality.

IV. CONCLUSION

The Kenyan government has reached a milestone in terms of the criminal justice response to trafficking in persons and smuggling of migrants. Many perpetrators have been judged and sentenced and many victims rescued, protected, repatriated back to their countries of origin, and victims of Kenyan origin have been reintegrated to their natural homes. In terms of legal framework, much has been done and various legal frameworks have been developed to prevent, protect and prosecute traffickers. The criminal justice system adheres to the UN Protocol to which Kenya acceded in 2005, which provides an internationally agreed definition of trafficking in persons, but also provides elaborate measures for preventing and suppressing trafficking in persons while ensuring protection and rights of victims are upheld. Kenya has also set up both private and public safe houses for the victims of trafficking. Finally, Kenya has been able to identify, arrest, and expeditiously deal with smuggling and counter trafficking cases because of the wide linkage and strong collaboration that has been built between the key actors in the justice system and the community.

COMBATING SMUGGLING AND TRAFFICKING IN HUMAN BEINGS IN THE KYRGYZ REPUBLIC

*Ulanbek Kudaibergenov**

I. TRAFFICKING AND SMUGGLING PROFILE

Smuggling and trafficking in human beings is one of the most profitable criminal businesses in the world. Unfortunately, the Kyrgyz Republic has become vulnerable to this type of crime. As observed over the past years, the Kyrgyz Republic is a source, transit, and destination country for men, women, and children subjected to forced labour, and for women subjected to sex trafficking. Adult male labour migrants working abroad are reportedly at the highest risk of trafficking.

Due to its domestic political objectives and socio-economic factors, the Kyrgyz Republic is a provider of human resources not only for ex-soviet countries (Kazakhstan, Uzbekistan, Russia), but also for those further afield (South Korea, UAE, Turkey, India, etc.). The International Organization for Migration says that about 15,000 Kyrgyz citizens became victims of human trafficking in foreign countries in 2017.¹ Organized crime in the Kyrgyz Republic, which occupies a rather strong position not only in the region but in the whole post-soviet space, plays an important role in this process. Kyrgyzstan criminals have coalesced into separate independent groups (e.g. in Moscow) and given that they do not pose to be powerful forces in Russia, the main focus of their activities is placed on their own compatriots.²

Kyrgyz men, women, and children are subjected to forced labour in Russia and Kazakhstan, and to a lesser extent in Turkey, as well as within the Kyrgyz Republic, specifically in the agricultural, construction, and textile industries and in domestic service and forced childcare. Kyrgyz children also are subjected to forced labour in agricultural services, the selling and distribution of drugs within the country, and hauling cargo both in the Kyrgyz Republic and neighbouring countries. Women and girls are subjected to sex trafficking abroad, reportedly in Turkey, the United Arab Emirates (UAE), India, Russia, Kazakhstan, South Korea, and within the country. Women and underage teenaged girls from Uzbekistan increasingly are subjected to sex trafficking in the southern region of the Kyrgyz Republic. Some men and women from Uzbekistan, Tajikistan, and Turkmenistan transit the country as they migrate to Russia, the UAE, and Turkey, where they may be subjected to sex and labour trafficking. In addition, international and national law-enforcement agencies reported some Kyrgyz individuals who join extremist fighters in Syria are forced to remain against their will and recruiters may deceive others, including minors, promising jobs in Turkey, before extremist groups force them to fight, work, or suffer sexual servitude in Syria.

As trafficking in persons generally occurs as a result of large labour migration outflows, very often Kyrgyz citizens are ill-informed about their labour rights and migration laws. According to experts, in 2017-2018 there were more than 750,000 migrants from Kyrgyzstan who work in Russia, Kazakhstan, South Korea, and other countries. To combat human trafficking more effectively, as well as to provide better assistance to the victims, government elaborated guidelines on victim identification, followed by a package of amendments to the Law on Prevention and Combating of Trafficking in Persons.

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¹ International Organization of Migration. "IOM Bishkek: Counter-Trafficking and Assistance to Migrants in Central Asia." 2012. Accessed January 20, 2017. http://iom.kg/en/?page_id=116.

² Delo. "Кто Кошмарит Кыргызов В Москве?" [Who is the nightmare of Kyrgyz in Moscow?]. delo.kg, 2013. <http://delo.kg/index.php/2011-08-04-18-06-33/6216-kto-koshmarit-kyrgyzov-v-moskve>.

II. PROSECUTION

The government-maintained law enforcement efforts by Article 124 of the Criminal Code, entitled "*Trafficking in Persons*", criminalizes both sex and labour trafficking of adults and children and covers a non-trafficking offence, "*child adoption for commercial purposes*". It is also in compliance with international standards: article 124 requires the prosecutor to prove the offender used force, blackmail, fraud, deception, or abduction for cases of sex trafficking regardless of whether the victim is a child or adult. Article 124 prescribes penalties of five to 20 years' imprisonment, which is sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape.

In the framework of combating of smuggling and trafficking in human beings, since independence, the Kyrgyz Republic has accordingly ratified several international conventions:

- Slavery Convention, 1926;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949;
- Convention on the Elimination of All Forms of Discrimination against Women, 1979;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;
- Convention on the Rights of the Child, 1989;
- The United Nations Convention against Transnational Organized Crime, 2000, with supplemental protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants by Land, Sea and Air, 2003.

According to the actual conditions of the Kyrgyz Republic, smuggling of people and related illegal actions have become more hidden and well prepared in advance. This fact encourages the criminals involved in people smuggling to commit their crimes. Therefore, the engagement and cooperation of state authorities, international organizations and civil society in this situation is very crucial and valuable in countering this type of transnational organized crime.

In recent years, the Kyrgyz Republic and other Central Asian countries have conducted ongoing measures against human trafficking and smuggling of people through the elaboration of strategies and national action plans, the development of legal bases, the enhancement of international and regional cooperation and coordination of law-enforcement activities.

The main frontline actor in combating these types of crimes, especially efficiently preventing crime, is the national law-enforcement agency, the Ministry of Internal Affairs. Taking the crime situation in the country into consideration, and in order to urgently and effectively counteract people smuggling, the Ministry of Internal Affairs created the Department of Combating of Human Smuggling and Trafficking within the Criminal Police Service in 2017.

In the framework ensuring conformity between national laws and international norms in countering people smuggling, and based on experience of practitioners in Central Asia regarding the identification of victims of people smuggling, this police unit performed analysis and monitoring of Kyrgyz Law, the "*Prevention and Combating Trafficking in Human Beings*" from 2005. According this analysis, the Kyrgyz Law "*Prevention and Combating Trafficking in Human Beings*" Nb.2 was adopted in 2018. Also, the Kyrgyz Government established a State Programme against Trafficking in Persons 2017-2020 in compliance with the "*Prevention and Combating Trafficking in Human Beings*" law that aims to effectively prevent, identify and stop trafficking in human beings, providing protection and support to victims.

The Criminal Police Service of the Ministry of Internal Affairs interacts with other national government bodies and international organizations, such as the IOM, ILO, OSCE, UNODC and NGOs, to establish national mechanisms of reorientation of victims of trafficking and smuggling in the Kyrgyz Republic. Actually, the Criminal Police Service initiates the preparation of instructions to the national mechanism of reorientation of victims from human smuggling. These instructions seek to strengthen cooperation among government authorities, NGOs and specialized departments on providing assistance and protection to victims. Therefore, the effective measures in combating trafficking in human beings are performed in building and enhancing the relevant institutes at the national and regional levels.

III. PREVENTION

The government increased efforts to prevent trafficking of human beings. The Criminal Police Service with the IOM established the criteria of identification of victims. These criteria conform with the requirements of the protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants by Land, Sea and Air, amended to the United Nations Convention against Transnational Organized Crime, that was an accepted commitment of the Kyrgyz Republic.

The process of victim identification applies the rules of classification of a victim to a given category of victims. The criteria create a unified standard for all actors of combating the system of smuggling of people on victim identification and the granting of victim status to corresponding persons. In this case, the identification of victims protects their rights and interests and provides them with social assistance and protection under the Kyrgyz law on “Prevention and Combating Trafficking in Human Beings”.

The Criminal Police Service jointly with the IOM in the Kyrgyz Republic created the training modules for national law-enforcement agencies in combating the smuggling of persons, which consist of methodological training materials, cases, instructions and practical recommendations for law-enforcement officials. These training modules are supported by a theoretical basis and exercises enhancing the level of knowledge on international and national legal norms in the area of countering the smuggling of people. From a practical point of view, these training materials help trainees from law-enforcement agencies in conducting the investigations of criminal cases based on the elements of the crime established in article 124 of the Criminal Code of the Kyrgyz Republic.

The Criminal Police Service also created a lecture on “Organizational-legal and tactical basis of prevention and combating trafficking in human beings”. Furthermore, for the purpose of prevention of human smuggling, the Criminal Police Service of the Ministry of Internal Affairs is permanently engaged in the following activities:

- Prevention, interdiction and crime detection related to smuggling and trafficking in human beings.
- Identification and processing of persons who provoke an operational interest, or there is operational information about their involvement, in smuggling and trafficking in human beings.
- Identification of persons and organized criminal groups specialized in human smuggling and trafficking, as well as persons who invite women for work abroad for the purpose of sex trafficking.
- Identification and elimination of causes and conditions that promote the smuggling and trafficking in human beings.

The Criminal Police Service of the Kyrgyz Republic is systematically carrying out operative investigations to reveal and interdict export channels of Kyrgyz citizens to foreign countries with the purpose of illegal labour and sexual exploitation. Over the course of seven years (2011-2017), the quantity of crimes under article 124, Kyrgyz Criminal Code is presented in the following statistics:

- 2011 – 9
- 2012 – 6
- 2013 – 12
- 2014 – 18
- 2015 – 10
- 2016 – 7
- 2017 – 4

**Criminal cases of human smuggling and trafficking considered by Kyrgyz courts
(article 124, Criminal Code)**

Year	Cases	Convicted persons	Convicted Women	Acquitted persons	Acquitted Women	Persons, against whom the case are discontinued	Returned cases for completing investigation gaps
2013	9	13	7	-	-	3	-
2014	20	15	8	2	1	5	-
2015	14	11	11	5	4	-	-
2016	6	6	6	-	-	2	5

According to the Plan of the Intergovernmental Programme on Joint Measures of Combating Crime for 2014-2018 of the Ministries of Internal Affairs of the Common Independent States (CIS) and by schedule of conducting the accorded preventive operational investigation actions and special operations for 2014-2018, in March 2018 on the territory of the Kyrgyz Republic, the raid activities were held under the code names "Trafficking in Human Beings" and "Kidnapping People". In these operations, the Criminal Police Service of the Kyrgyz Republic and other territorial subdivisions of national police used 1,493 officials.

On a permanent basis, the Kyrgyz Ministry of Internal Affairs enhances cooperation with law enforcement agencies of foreign countries with a view to establishing working contacts on information exchanges and identification and interdiction of channels of human trafficking. These measures were accorded by the Intergovernmental Programme of Joint Actions against Crimes for 2014-2018, adopted by the Council of Heads of CIS in October 2013 and the Programme of Cooperation of CIS Member Countries in Combating the Trafficking in Human Beings for 2014-2018.

IV. RECOMMENDATIONS

Based on experience, the following general and specific recommendations could be useful and promoted to enhance common action against crimes related to human trafficking:

- To create a unified automatic database about information related to criminals, organized crime groups, entities involved in illegal human trafficking (with data on methods, channels, ways, purposes, origin/destination/transit countries) with monthly distribution of this information to partners. This database should be operationally available to contact officers of departments involved in combating human trafficking and targeted to interaction of other authorities and NGOs.
- To consider the possibilities of unification of laws on combating human trafficking by: identification criteria of victims and a national mechanism of reorientation of victims while considering national and international laws.
- To activate inter-ministerial and international cooperation on stopping the financing of crimes related to illegal human trafficking.
- To conduct an analysis of ICPO-INTERPOL regulations on smuggling and trafficking in human beings concerning compliance with international norms of victim immunity from criminal and administrative prosecution for the actions committed being a victim of human trafficking.
- To get access to general information received during workshops, seminars on countering human trafficking, as well as to publish it on websites of authorities and brochures.
- To recommend the preparation of printed material for representatives in Kyrgyz embassies and consulates in foreign countries on victim identification and transferring the information to the national law-enforcement agencies for verification of facts.

- To create a unified database of government authorities, international agencies, NGOs, civil society, etc. who provide any assistance to victims of human trafficking.
- To elaborate the methodical recommendations on providing legal and judicial support for victims of human trafficking.
- To raise public awareness through sending SMS messages about helpline contacts.
- To raise public awareness via television spots in airports, railway stations, national and international channels.
- To create unified international standards for identifying victims suffering from human trafficking.

THE EFFECTS OF TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS AND THE ATTEMPTS TO EXTERMINATE THE PROBLEMS IN LAO PDR IN THE JUDICIAL SECTOR

*Mithounavanh Kongmany**

I. TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS AND THE EFFECTS OF THESE PROBLEMS

Many people may have heard the phrases “trafficking in persons” and “smuggling of migrants”, but there are not many people who truly comprehend their meanings. How is trafficking in persons related to smuggling of migrants, and what are the consequences of trafficking in persons and smuggling of migrants? As a matter of fact, the consequences of trafficking are hidden and difficult to see. People may be considered trafficking victims regardless of whether they were transported to an exploitative situation, previously consented to work for traffickers, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers’ aim to exploit and enslave their victims and the myriad coercive and deceptive practices they use.¹ All victims of trafficking in persons will probably be subject to physical, psychological, and social impact. Victims often experience or face harsh physical impacts due to excessive work or the use of force by traffickers. Furthermore, victims are perhaps exposed to serious health risks, such as HIV/AIDS, as well as serious mental health risks.² In addition, trafficked persons often lack access to basic necessities such as safety, food, sleep, hygiene and medical care. Moreover, trafficking in persons threatens and violates fundamental human rights and has a direct impact on economic and social development and the security of nations. Trafficking in persons is also related to sex trafficking, forced labour and unlawful recruitment and use of child soldiers and leads to many problems, for instance when a person engages in a commercial sex act such as prostitution. As the result of force, threats of force, fraud and so on, these people are victims of trafficking. Forced labour, sometimes also referred to as labour trafficking, encompasses the range of activities, such as recruiting, harbouring, transporting, providing or obtaining, when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception or other coercive means to compel someone to work. Furthermore, child soldiering is also one kind of human trafficking when it involves the unlawful recruitment or use of children through force. Lao PDR, as an origin country and one of the countries that has been affected by trafficking in persons and smuggling of migrants, needs to eliminate the problems efficiently and immediately.

II. THE ATTEMPTS TO EXTERMINATE THESE PROBLEMS FROM LAO PDR AND HOW THE PEOPLE’S COURT WORKS TO COMBAT THESE PROBLEMS

A. How Has Laos Been Affected by Trafficking in Persons and Smuggling of Migrants?

Trafficking in persons and smuggling of migrants are two main problems which not only affect lives, human dignity, human fundamental rights and property of persons but also have an effect on economics and the security of nations. Over the years, Lao PDR has been affected by trafficking in persons and smuggling of migrants due to the geographical location and characteristics of the country, which shares borders with several countries such as Thailand, Myanmar, China, Vietnam and Cambodia. This has translated into an enabler that facilitates inward and outbound travel as well as rapid economic development specifically infrastructure and technological development, which are also underlying factors that promote labour migration from rural areas to urban areas and from country to neighbouring countries and other countries. In most cases, however, these migrations are mostly illegal and largely involve the youth, women and

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¹ What is trafficking in persons? U.S. Department of State, Diplomacy in action, www.state.gov (last visited March 10, 2019)

² Human Trafficking Search (HTS) seeks to raise awareness and help prevent and eliminate human trafficking worldwide, <http://humantraffickingsearch.org/> (last visited on March 9, 2019)

children. In Laos, over the course of years, trafficking in persons has grown into a crime with many different forms and methods, for instance deception by offering a chance to travel, offering jobs in the service industry, promising marriage to foreigners by first getting engaged or offering a dowry before processing documents to go abroad. Moreover, efforts are also made by criminals to encourage the Lao labour force to go to work abroad, particularly in Thailand, illegally, and they often go without going through the official process, for instance the related sectors namely with the Ministry of Labour and Social Welfare in which they are at risk to become victims of the trafficking in persons.

B. How the Lao People's Court Works in Order to Combat Trafficking in Persons and Smuggling of Migrants

The People's Court of Lao PDR is one of the most significant and relevant sectors which has responsibilities and obligations in solving trafficking in persons problems. The main responsibilities of the Lao People's Court is to consider or adjudicate trafficking in persons cases in order to protect the rights of victims and to punish persons who commit the crime of trafficking in persons and smuggling of migrants, and to educate people about law and the dangers of trafficking in persons. Furthermore, the People's Supreme Court organized a workshop from 12 to 16 November 2018 in Luangnamtha Province for judges and assistant judges from six northern provinces such as Luangprabang, Oudomxay, Xayabouly, Borkeo, Xiengkhuang and Luangnamtha on elevating knowledge and skills to process cases of trafficking in persons. The workshop was organized by utilizing the funds of the National Steering Committee on Anti-Human Trafficking which was attended by a total of 75 participants who were judges and assistant judges. One of the purposes of the workshop was to disseminate guidelines for case management of trafficking cases which was written and developed with the assistance of the Australia-Asia Programme to combat trafficking in persons, enabling the participants to further disseminate these guidelines for judges all over the country by starting with the six northern provinces of Laos first. From the workshop it was observed that the judges and assistant judges were able to gain relevant knowledge and increase their understanding on issues pertaining to trafficking in persons, the structure, the challenges and how to manage cases of trafficking in persons. It was seen that the original percentage of understanding before the workshop was held was at 78%, but after attending the meeting it was determined that 85% were able to better understand the various methods to manage cases of trafficking in persons.³

The responsible organizations from the justice sector have carried out their duties based on the scope of their responsibilities and strictly complied with the criminal procedure law, the trafficking in persons law and the penal code no. 26/NA, date 17 May 2017. In 2018, the anti-human-trafficking police at the central and local levels collected information and made a list of target areas, locations, individuals, routes at risk of human trafficking problems, received complaints, petitions and other trafficking in persons requests and prosecuted 39 cases (26 new cases, 13 pending cases from 2017) involving 63 accused persons: 32 of them were females and 31 males; there were 64 victims, and 63 of them were females and 1 male; for those who were victims, 24 were under 18 years of age. 21 cases were already initiated for prosecution involving 32 accused persons: 13 of them were females; there were 34 victims and they were all females. Out of these, 1 case was suspended because the accused person could not be located, and 11 cases could not be prosecuted because the elements of the crime were not complete. 9 cases were forwarded to the People's Prosecutor involving 16 accused persons: 4 of them were females. There were 19 victims, all females, out of whom 7 were below the age of 18. Recently, the police have investigated 12 trafficking in persons cases, involving 17 accused persons and 30 victims, 29 of whom were females and 12 were below the age of 18 (11 were females). The People's Prosecutor received a total of 14 trafficking in persons cases, involving 25 accused persons, 15 of whom were females. In 2018, the People's Court received 8 new trafficking in persons cases and 4 cases pending from 2017, totalling 12 cases. The People's Court had passed judgments on 11 cases, involving 27 defendants, 10 of whom were females.⁴

Over the past few years there have been a lot of foreigners who have come to Laos in order to marry Lao women, and then they have taken Lao women to their countries. There has been an especially huge number of Chinese men who have come to Laos in order to marry Lao women and have taken these women

³ The Annual Report on Anti-Trafficking in persons of People's Court of Lao PDR 2018, The People's Supreme Court of Lao PDR (January 12, 2019)

⁴ The Annual Report on Anti-Trafficking in persons of People's Court of Lao PDR 2018, The People's Supreme Court of Lao PDR (January 12, 2019).

back to their country. Some of them, after taking their wives to their country, have sold their wives to other men or have tortured and forced these women to engage in sexual activity for payment, so they can receive great financial benefit from the exploitation of these women. Therefore, this incident becomes a main issue in Lao society for the trafficking in persons problem.

1. Case 1

There was 1 defendant who had deceived Ms. D (Hypothetical person) and told her that she could become the wife of a Chinese man by going through the official process of filling out a memorandum, and the Chinese man would pay 20 million kip as dowry to Ms. D's parents. After that, the defendant took Ms. D and dropped her off with the Chinese man who asked to marry Ms. D at a hydroelectric power dam in Nathom District. As they arrived at the Mekong River the defendant abandoned Ms. D, and she was then raped by numerous Chinese men. Ms. D, under distress, returned home. Then the Chinese man who had asked to marry Ms. D told the defendant to go back and retrieve the dowry paid to Ms. D's parents in which the defendant obliged. The defendant arrived at Ms. D's house and saw that she was bedridden and unhealthy. Ms. D's father also refused to pay back the dowry because the money was used to treat Ms. D. The defendant proceeded to threaten her father that if they did not pay that money back then he would sue him in court. Under these circumstances, Ms. D's father agreed to pay the defendant 40 million kip. Afterwards, the defendant was arrested for his crimes. The court of first instance ruled that the defendant was guilty of trafficking in persons under article 9 of the law on Anti-Human Trafficking, article 7 and article 134, paragraph 3 of the revised 2005 penal law. The court then sentenced the defendant to 5 years' imprisonment and fined him 10 million kip; as for payment for civil damages, the court did not order any because the plaintiff did not ask for any.⁵

2. Case 2

There were 2 defendants. Defendant 02 told Defendant 01 to recruit Lao women, and Defendant 01 managed to get 2 Lao women and brought them to China. Then Defendant 02 brought the victims to be wives of Chinese men. Defendant 01 got a commission fee from Defendant 02. The court of first instance ruled that both defendants were guilty of human trafficking under the Article 134, paragraph 4 of the 2005 Penal Law (revised) and sentenced the two to 15 years of imprisonment and fines of 100 million kip. Additionally, the court issued a confiscation order of the assets obtained from the crime including 19,520,000 kip and 1 mobile phone from Defendant 02 and ordered both defendants to pay civil damages to the victims under the pre-trial settlement amount 220.5 million kip.⁶

3. Case 3

There was 1 defendant. The defendant sought and recruited 12 Lao women to marry Chinese men by taking them to meet the Chinese men in Xieng Khouang province (northern Laos) and then negotiated and agreed on dowries and signed marriage agreements. After payment for dowries, identity and travel document processing fees and other expenses for the girls and their families were then made, the defendant transported the Lao girls to the checkpoint (Boten International Checkpoint) and then left for China. Once arriving in China, some went to live with husbands and families and were able to contact families back home. Only Ms. 'A' (pseudonym) was locked up by the father in law (Chinese man) for 10 days. Ms. A has now returned to Lao PDR. The court of first instance ruled that the defendant was found guilty of human trafficking under Article 134 of the 2005 Penal Law (revised) and sentenced him to five years' imprisonment and fines of 10 million kip. Civil damage compensation was not considered by the court because the victim did not request it⁷.

However, these example cases do not mean that all marriages between Chinese men and Lao women will be considered as a trafficking in persons offences. Judges must use their experience, knowledge and discretion to hear the cases impartially. For example, there are some judges who hear cases and sentence the defendants to prison with a trafficking in persons offence only because the accused married a Lao woman. As a result,

⁵ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (February 12, 2019).

⁶ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (April 20, 2019).

⁷ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (April 20, 2019).

it will lead to various problems when judges do not have knowledge or experience in presiding over trafficking in persons cases. They will not be able to give justice to victims, punish the persons who commit the crimes or give justice to the innocent persons who do not commit the crimes at all.⁸

C. Methods to Exterminate all Forms of Trafficking in Persons and Smuggling of Migrants in Lao PDR

Over the years, many relevant sectors of Lao government have combated trafficking in persons efficiently by improving and amending various laws and policies related to anti-human trafficking, and the president of Lao PDR issued Decree no. 118/p, dated June 26, 2018, on the promulgation of the penal code, and promulgated it on November 1, 2018. Therefore, this penal code has the following human trafficking related provisions: for instance, under Article 214, the sale or stealing of organs or human tissues shall be punished with five to seven years of imprisonment and shall be fined from 10 million kip to 50 million kip. Any person who has committed an offence of stealing organs or human tissue shall be punished with five to ten years of imprisonment and shall be fined from 20 million kip to 70 million kip. Any person who has committed a repeated offence of selling or stealing organs or human tissues or worked as part of an organized crime group or caused severe damages, shall be punished with seven to twelve years of imprisonment and shall be fined from 30 million kip to 100 million kip. The buyer shall also be subject to the same degree of punishment, and attempt to commit an offence shall also be subject to punishment.

Furthermore, under Article 215, trafficking in persons shall mean recruitment, abduction, movement, transportation or transfer, harbouring or receipt of persons domestically or internationally, providing a shelter or a hiding place by means of persuasion, recommending, deception, payment giving benefit, inducement, incitement or abuse of power, the use of threat or other forms of coercion, debt bondage, concealed child adoption, concealed engagement, concealed marriage, pregnancy for another, forced begging, producing, showing and publishing pornographic materials or by other forms of labour exploitation, sexual exploitation, slavery, prostitution, involuntary prostitution, removal of organs for the purpose of trade and other forms of unlawful conduct against culture and traditions or for other purposes to gain benefits.

In addition, Article 251 (the use of trickery to achieve sexual intercourse), Article 253 (forced prostitution), Article 254 (prostitution of others), Article 256 (publishing child pornographic materials), Article 257 (possession of child pornographic materials), Article 260 (prostitution), Article 262 (child sexual tourism), Article 263 (violence against women and children) and Article 269 (marriage with children). In addition, Laos also uses other means in order to combat trafficking in persons problems by monitoring labour groups migrating to work abroad and domestically and using measures to prevent the complicity of Lao government officials and diplomats.

D. Problems and Obstacles in Problem-Solving

In parallel with the improvement and amendment of various laws related to anti-human trafficking, there are still lingering challenges that must be addressed in order to effectively counter trafficking in persons⁹:

- Effective coordination at the central and local levels are still a challenge that hinders efforts to counter trafficking in persons;
- Efforts are needed to raise public awareness on policies, laws, dangers and impacts of trafficking in persons and must be intensified;
- Knowledge and understanding pertaining to the laws on anti-human trafficking by relevant sectors are still inconsistent and inadequate;
- There is still a lag in time in providing information for relevant officials that are in charge of processing cases on human trafficking, especially for transnational cases because exploiters and perpetrators are located abroad;
- Monitoring and evaluation of victims after returning to their families and society are still lacking;
- Providing initial financial support for victims of trafficking in persons is still limited;
- Bilateral and multilateral cooperation with international organizations and international non-

⁸ Chanthanom SIRIVATH, Lao People's Supreme Court Justice, Member of the Secretariat for National Steering Committee on Anti-Humana Trafficking (interviewed April 19, 2019).

⁹ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (February 12, 2019).

governmental organizations are not at maximum capacity, and some agreements made in memorandums of understanding have yet to be implemented or cannot be implemented in the given timeframe;

- Officials and relevant authorities still lack the knowledge, capacity and experience to efficiently combat the problem of trafficking in persons.

1. Problems and Obstacles in the Lao People's Court

The Lao People's Court is a state agency that has responsibilities and obligations to enforce law by adjudicating cases in order to protect the rights of people, to give people justice and to punish the persons who commit crime. Trafficking in persons and smuggling of migrants are two main problems that the Lao People's Court also works hard to exterminate efficiently and promptly.

According to the Lao law, trafficking in persons has a severe punishment. Therefore, the adjudication of this kind of case is very significant. Judges who hear these cases must have specific knowledge and experience in handling trafficking in persons cases and must be able to give justice to victims and to punish the persons who commit the crimes. On the other hand, judges must give justice to the innocent persons who do not commit the crimes as well. However, this kind of crime is a new matter for the Lao judiciary. The majority of Lao judges, assistant judges and legal officers are not experienced in handling trafficking in persons and smuggling of migrants cases. Even though over the past few years the Lao People's Court and other organizations have conducted the trainings, meetings or workshops on these issues for judges, assistant judges or legal officers in Laos or foreign countries, only a few of them have attended those trainings or workshops. Most judges, assistant judges or legal officers who work in other provincial courts or work in rural areas have barely had the opportunity to be trained on trafficking in persons because of the limited budget which the Lao People's court receives every year. Therefore, it may lead to problems when they hear the cases. Furthermore, many judges, assistant judges and legal officers are having difficulty in interpreting the law and the elements of trafficking in persons offences. In addition, in some cases in the investigation, prosecution and adjudication processes, their interpretation of the cases and their explanation of the cases can also differ significantly. For instance, if the prosecutor charges an accused with a trafficking in persons offence, when this case comes to court, the court hears the case with a different crime. At the same time, the prosecutor charges the accused with an illegal immigration crime, and when the case comes to court, the accused may be found guilty of committing a trafficking in persons offence.

The Vientiane Capital Court of Lao PDR is a general jurisdiction court which can hear most kinds of cases, and it has authority over civil matters, criminal, labour, family, juvenile, commercial and administrative cases of the Vientiane Capital city in Lao PDR and including the cases that are appealed from the lower courts. It is considered as the biggest court of first instance in the country in terms of the number of cases which come to court every year. The judicial system begins with a court of first instance, whose work may be reviewed by an appellate court, and then ends at the court of last resort. The Vientiane Capital Court typically handles civil matters for which the amount in controversy exceeds the sum or value of 300 million kip, and it is also responsible for criminal cases which have a minimum sentence of three years' imprisonment. For trafficking in persons cases, there are only two Vientiane Capital Court judges who have been trained on trafficking in persons. The rest of the judges have never been trained on this issue. The problem is when the cases come to court, their interpretation of the law on trafficking in persons between the judges who have been trained differs from the judges who have not been trained. The judges who have not been trained on trafficking in persons only use their knowledge and experience from their work for the criminal court. Now the Vientiane Capital Court is confronted with a difficult situation: the lack of judges, assistant judges or legal officers who have sufficient knowledge and experience in trafficking in persons.¹⁰

While the Lao judiciary is confronted with many difficulties from the impact of the lack of personnel who have sufficient knowledge and experience in trafficking in persons, the Lao judiciary also faces problems in finding the evidence of the crimes, especially the crimes which happen in foreign countries. They also face the problem of searching for, arresting and extraditing foreign traffickers from destination countries because most of the cases happen in other countries. As a consequence, it is extremely difficult to track the traffickers and find the evidence after they commit the crimes. Moreover, cooperation among government sectors to share information related to the crimes or evidence of the crimes does not happen in a timely manner. In addition, some victims are not willing to cooperate with government officials in the legal process when they

¹⁰ Bounpasong Chittakone, Vientiane Capital Court Judge (interviewed April 19, 2019).

come back to Laos. Many of them do not want to take any legal action against traffickers because they are frightened of the traffickers; they are also frightened of and ashamed of the incidents that have happened, and they just want to go home. As a result, it leads to lengthy proceedings, which impacts the victims and their rights.¹¹

III. MEASURES TO COMBAT TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS

The Lao PDR, as an origin country, is one of the countries that has been affected by trafficking in persons due to its geographical location and its characteristic as a country which shares borders with several countries. This has enabled inward and outbound travel as well as rapid economic development, specifically infrastructure and technological development, which are also underlying factors that promote labour migration from rural to urban areas and from country to country. In most cases, however, these migrations are mostly illicit or forced with some groups being deceived in which victims of trafficking in persons largely involve the youth, women and children. Over the years, Laos has endeavoured to fight trafficking in persons and smuggling of migrants by establishing, improving or amending various laws which combat human trafficking, establishing a mechanism to monitor labour groups that facilitate work abroad and domestically. Moreover, the Lao government also creates measures to prevent and repress the complicity of Lao government officials and diplomats, victim identification measures and other measures which help to combat human trafficking efficiently. However, Laos still needs to educate and advertise the negative impacts of trafficking in persons and smuggling of migrants, especially people who live in rural or remote areas. Furthermore, the Lao government also needs to conduct more trainings, meetings and workshops on trafficking in persons and smuggling of migrants for government officials, particularly officials who work directly on these problems such as police, prosecutors and judges.

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ILLEGAL IMMIGRANTS IN MALAYSIA: INVESTIGATION AND PROSECUTION CHALLENGES

*Muhd Azlan Bin Yusoff**

I. ABSTRACT

The issue of trafficking in persons and smuggling of illegal immigrants in Malaysia is a cross-border crime that creates an alarming situation. The terms trafficking and smuggling of migrants are often used incorrectly by the general public. The discrepancies between the terms and proper understanding of these issues need to be identified, which is important to providing appropriate legal and other protection to victims of trafficking or trafficking in persons in Malaysia. In addition, forced labour is often overlooked by the authorities because of the workers' status as illegal immigrants. Restricting the situation when the legislation of the country, particularly the Anti-Trafficking in Persons and Migrant Anti-Smuggling ACT 2007 (hereinafter referred to as "ATIPSOM") [Act 670], also did not clearly state the interpretation of the act. Based on cases decided by the Malaysian courts, it was found that the court interpreted a situation as 'trafficking of persons' based on the purpose and form of exploitation outlined in the act.

This paper discusses the approach adopted by international law and Malaysian law in enforcement aspects, as well as widens the interpretation of the meaning of trafficking in persons and smuggling of migrants in line with the era of globalization. Less knowledge and awareness of the exploitation of the victim complicates the process of prosecution of trafficking offenders. Hence, this study does not only examine the issues arising from the obscurity of trafficking in persons in the Malaysian legislation but instead tries to attract the attention of the authorities and the community to be more sensitive to this issue. Efforts using effective enforcement methods can help the authorities enforce ATIPSOM, 2007 more effectively.

II. INTRODUCTION

The influx of migrants in Malaysia has existed since the early 1970s following the outbreak of the Vietnam War. In addition, the country also faced the problem of a shortage of workers in various sectors at the time, which had affected the stable economic and political situation in Malaysia but also opened up employment opportunities. This atmosphere has attracted foreign nationals from all over the world to enter the country to seize these job opportunities. Foreigners from Indonesia, Philippines, Bangladesh, Myanmar, India, Pakistan, Sri Lanka and the People's Republic of China (PRC), the majority of which are economic refugees have entered this country mostly for the purpose of obtaining employment opportunities in the country.

In addition, Malaysia is also a transit country by foreign smuggling syndicates comprising citizens of Myanmar, PRC, Sri Lanka, India, Pakistan, Iran, Iraq, Afghanistan and others to destination countries such as the United States of America, Australia, New Zealand and Western Europe.

The issue of trafficking in persons has earned global attention as a serious cross-border crime similar to the smuggling of weapons and drugs. It is estimated that the profit from the crime of trafficking in persons amounts to USD 38 billion a year. There are many factors that contribute to the crime of trafficking in persons. Among them are poverty, illiteracy, economic crisis, domestic and regional conflict, political instability and displacement. The migration aspect is also closely related to the crime of trafficking in persons. In this regard, this aspect needs to be addressed as the number of migrant's increases and estimates of the number of migrants globally amount to 240 million people. Migration leads to labour-trafficking issues as exploited by individuals and irresponsible syndicates. Based on this background, the Malaysian government is aware of the importance of establishing ATIPSOM and the National Action Plan as an instrument for addressing this

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crime particularly affecting the areas of prevention, rehabilitation and protection of trafficking victims, including prosecution.

Malaysia is one of the transit countries for trafficking in persons, receiving immigrants from neighbouring countries such as Indonesia, Thailand, Philippines, Cambodia, Vietnam, Myanmar, Pakistan, and China directly or indirectly through syndicated agencies. The acceptance of Malaysia in the United Nations (UN) and acceptance of international conventions, such as the UDHR, the UNTOC and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter referred to as the “TIP Protocols”) and Protocols Against the Smuggling of Migrants by Land, Sea and Air, it places responsibility on Malaysia as a member to comply with the agreements entered into by providing protection against trafficking victims and smuggling. Malaysia ranks on the second-tier list (tier 2 watch list) in the 2018 United States Department of State’s Trafficking in Persons Report.

The second level places Malaysia as a state that does not fully comply with the minimum standards of the Trafficking Victims Protection Act (TVPA), but it is actively pursuing a move towards compliance with the standards. Awareness of the position of the Malaysian government in curbing the smuggling problem of people has made Malaysia more proactive in combating humanitarian crimes. The Malaysian Government through the National Action Plan has established a collective strategy involving the participation of government, civil society, the private sector, non-governmental organizations (NGOs) and the general public in addressing this problem.

The difficulty in distinguishing between migrants and trafficking victims, who often overlap and relate to each other, makes it difficult for the Malaysian government to provide protection to victims. If smuggling of migrants was easier to do when they tried to smuggle them into Malaysia across the border, it was harder to track because they were smuggled through fraudulent documents from fraudulent syndicates. Hence, the essential element to distinguish between migrants and trafficking victims is whether the migrants are being exploited. When a person is exploited for certain purposes such as prostitution and forced labour without paying any wages, they belong to the category of trafficked persons and should be protected, even though at the beginning of their involvement they were “unauthorized foreigners”.

This difference also affects the type of protection that can be given to the victim. Migrant offenders illegally entering Malaysia will be placed in immigration detention depots such as at the International Airport detention depot, which serves as a place of detention for immigrant offenders before they are deported to their respective countries. Meanwhile, victims of trafficking in persons are stationed at shelters for trafficking victims such as the Klang Valley, Melaka, Johor and Sabah. The authorities responsible for migrants and trafficking victims are also separate, where migrants are placed under the control of the Immigration Department of Malaysia, while trafficking victims are placed under the responsibility of the Ministry of Home Affairs and the Anti-Trafficking in Persons and Migrant Anti-Smugglers (MAPOM) Council. Separate authority between the Immigration Department and the Home Ministry also creates difficulties in identifying and distinguishing between their status as either migrant or trafficking victim.

III. INTERPRETATION OF ‘TRAFFICKING IN PERSONS’ AND ‘SMUGGLING OF MIGRANTS’ IN MALAYSIAN LEGISLATION

Malaysia has adopted the provisions of the ATIPSOM. Although it does not fully adopt the TIP Protocols, supplementing the UNTOC, it is still a major reference to the ATIPSOM policy. The Act was amended in 2010 by including provisions on migrant smuggling and in line with that has raised Malaysia’s status to the level 2 observation list by the United States Department of State.

Section 2 of ATIPSOM provides the definition of ‘trafficking in persons’ as any act involving the acquisition or retention of a workforce or service of a person by coercion, and includes acts of recruiting, transporting, transferring, protecting, preparing or receiving a person for the purposes of this Act. The definition provided by the Act is somewhat vague in respect of ‘for the purpose of the act’, as opposed to the Protocol’s intention of ‘for the purpose of exploitation’. If for the purpose of the act, it includes the meaning of the criminal act of smuggling of migrants, it provides a range between trafficking victims and victims of smuggling.

IV. STATISTICS:

a) Statistics on arrest of illegal migrants in Malaysia year 2016 - 2018 by Malaysia Immigration Department.

YEAR	2016	2017	2018
TOTAL	49,496	48,464	44,837

b) Statistics on arrest of illegal immigrants by country in Malaysia (year 2016 – 2018)

COUNTRY	TOTAL (YEAR 2016 – 2018)
Indonesia	48,792
Bangladesh	28,592
Philippines	15,606
Myanmar	13,133
Thailand	9,494
Vietnam	6,658
India	5,890
Other	14,632

V. MODUS OPERANDI (LAND BORDER)

There are various modus operandi used by human smuggling syndicates. This section will emphasize the latest modus operandi in Malaysia. Since the discovery of the graves and campsite of a human smuggling syndicate in Wang Kelian, Perlis in 2015, most syndicates have reduced their activities. The case in Wang Kelian is an example that shows how migrants used land borders to enter Malaysia. This is due to the strict enforcement action taken by Bangladesh and Thailand authorities especially on the sea and land routes. Admission at borders is carried out in smaller sizes via rat routes at the Malaysia–Thailand border.

However, since late 2017, the syndicate has changed the smuggling modus operandi by focusing on smuggling using land routes by public and private vehicles from source countries to transit countries and destination countries. Syndicates have a broad network of transporters across the borders of the affected countries. Syndicates are more focused on land routes using public transport such as buses and taxis besides using private vehicles such as trucks, pick-up trucks and cars. The refugees to be brought in are collected in several cities in Myanmar and then ride to Ranong, Thailand. In addition to Myanmar cities, they are also grouped on several islands near the Myanmar–Thailand border as a transit centre. Among those used is Song Island, Myanmar (Koh Song). Upon arriving in Ranong, Thailand, the syndicate will arrange travel from Ranong, Thailand to several other cities in Thailand, the city of Chumphon and Pattalung and then to Hatyai city, Thailand. Hatyai City is being used as a major collection hub for refugees for smuggling routes using land routes in Thailand. In Hatyai, Thailand, the syndicate will distribute illegal immigrants and refugees in accordance with the agents and syndicates in Malaysia whether in Satun / Perlis, Songkla / Kedah or Narathiwat / Kelantan. The refugees and runaways will be placed in guesthouses, budget hotels and shelter houses in Hatyai to wait for the right time to smuggle them into Malaysia.

In addition to the delivery to the three provinces, there are also syndicates managing trafficking using Langkawi Island, Kedah and Kuala Perlis, Perlis as a small shelter centre. They use small canoes and passenger ferries to Kuala Perlis, Perlis or Kuala Kedah, Kedah. However, this modus operandi is less used and will be implemented when syndicates have space and opportunity. In addition to using the Malaysia–Thailand border, syndicates also use alternative routes in the Straits of Melaka to enter the country through Indonesia to the West Coast of Peninsular especially in Melaka, Negeri Sembilan, Selangor and Perak.

VI. MODUS OPERANDI (BY SEA)

Smuggling through sea routes to date is only focused on Australia through Indonesia using boats and seaports waiting in international waters. Foreign nationals, especially those from Pakistan and Afghanistan, will be taken to temporary shelters either on the coast or near the coast. To date, the coastal states of Selangor and Negeri Sembilan and Johor have become their focus as there are many Indonesians or locals who are in conflict with syndicates. From the coast of Peninsular Malaysia, they are taken to Batam, Dumai and Tanjung Balai, Indonesia for further trafficking to Australia. There is also smuggling from the coast of Peninsular Malaysia which uses small boats to be taken to aircraft carriers that have been waiting in deep waters or international waters for smuggling into Indonesia or are even being smuggled into Australia. However, since the Australia government's new policy through "Operation Sovereign Border" which prevented the entry of unlicensed migrants to the country in September 2013, human smuggling syndicates have tried to target New Zealand as a new destination country through maritime routes using Malaysia and Indonesia as transit countries.

In May 2015, more than 1,000 migrants from Bangladesh and Myanmar landed in Malaysia after being dumped by human traffickers in shallow waters off the resort island of Langkawi. These cases show how the syndicate used a boat as transportation to bring in immigrants to the destination.

VII. MODUS OPERANDI (BY AIR)

Smuggling through the air becomes the choice of syndicates in carrying out smuggling activities of Sri Lankan citizens and the People's Republic of China (PRC) to third countries. The syndicate finds that the route is safest and the most secure. Syndicate Operating Modes are increasingly sophisticated and involve an international network of syndicates, as it involves several transit countries. Citizens of Sri Lanka who enter Malaysia either directly from their home country or through their neighbouring countries are using their own genuine passports after obtaining a social visit visa for Malaysia. Upon entering Malaysia, they are taken to a temporary shelter in hotels or in apartments around Selangor and Kuala Lumpur. Before they were smuggled out of Malaysia, they were supplied genuine Malaysia International Passports (face cutting) to facilitate them when entering and going to destinations. This syndicate has made Kuala Lumpur International Airport (KLIA) and Kuala Lumpur International Airport 2 (KLIA2 @ Low Cost Carrier Terminal) in their smuggling efforts to a third country, in particular, Western Europe.

These syndicates are also engaged with the authorities who to provide easy access (illegal) to Sri Lankan citizens from Malaysia to third countries. The use of the original passport itself, which is subsequently replaced with the fraudulent passports on board the flight or at the end or at the end of the conspiracy with the individuals in the flight agency and the enforcement at the airport, makes it difficult to track them.

The syndicates also smuggle migrants from Bangladesh, Vietnam, Pakistan, India, Uzbekistan, China, Kazakhstan and others in KLIA and KLIA 2 by using Social Visit Passes, Employment Passes and Students Passes. Syndicates are made up of citizens of Malaysia and Bangladesh and get cooperation from civil servants in the KLIA Immigration Department to obtain easy access facilities at the JIM inspection checkpoint at the KLIA Arrival Hall. In December 2017, there was a case in which two Malaysian immigration officers were detained for allegedly being involved in the smuggling of migrants.

VIII. MODUS OPERANDI (ILLEGAL MIGRANTS TO MALAYSIA AND THIRD COUNTRIES)

Information and intelligence by Malaysian authorities conducted over the past few years have revealed some of the syndicates that have been mastered by foreigners and locals have used Malaysia as a transit country or "spring board" to bring in and get false travel documents for smuggling out to third countries. The studies and information have also revealed that the smuggling activities have been carried out through sea and by air. These syndicates also involve neighbouring countries in the process of smuggling them into third countries.

Illegal of migrants enter Malaysia whether directly from their home country or through the borders of Indonesia, Singapore or Thailand and use their own genuine passports after obtaining a Malaysia social visa.

After successfully entering the country, they are taken or placed in hotels, apartments or houses in the majority of residential areas while agents operating in this country are preparing for service syndicates that arrange their smuggling in the future using sea or air routes. The syndicate and the agents take a deposit of between USD 3,000.00 and USD 7,000.00 for making preparations to manage smuggling as well as getting the forged documents or boats for further smuggling. The remaining cost of the package will only be paid when the migrants safely arrive at the destination.

Smuggling through sea routes is concentrated on Australia either through Indonesia or directly to Australia using boats and vessels that can accommodate between 40 and 600 passengers. The syndicates are involved when it is time to be smuggled out; they are taken to temporary shelters either on the coast or near the coast.

From the coast of the peninsula of Malaysia, they are taken to Batam, Aceh and Medan, Indonesia for further trafficking to Australia. There is also smuggling from the coast of Peninsular Malaysia which uses small boats to be taken to aircraft carriers that have been waiting in deep waters or international waters for smuggling into Indonesia or even being smuggled into Australia. Direct smuggling to Australia using the Strait of Melaka route, touring north of Sumatera and directly to Australia. The balance of the smuggling package will only be paid after the migrants have completed the 7-month stay at Christmas Island and get refugee rights from the Australian government.

On 1 May 2018, the Royal Malaysia Police busted a syndicate attempting to smuggle 131 Sri Lankans from Johor, Malaysia to Australia and New Zealand using a modified tanker ship called 'ETRA'. 98 men, 24 women, 9 children and 16 suspects were detained.

IX. FRAUDULENT TRAVEL DOCUMENT SYNDICATE

Syndication of counterfeit identification and travel documents begins when syndicated agents, whether locals or foreigners, who will try to identify potential customers for the identification and travel documents of Malaysia. At the same time, the counterfeit agent will cooperate with civil servants, namely the National Registration Department Officer (JPN) or the Immigration Department of Malaysia (JIM), who are willing to conspire with the counterfeit agent.

When counterfeiting agents acquire customers who are interested in obtaining Mykad (Malaysia Identity Card) and International Malaysia Passports (PMAs), agreement in terms of payment price and timeframe will be fixed. Payments are usually made in cash, for example, being illegally brought in via electronic money transfer through a foreign currency company. Payments charged for earning Mykad and PMA are dependent on the degree of authenticity. To get a birth certificate, MyKad and PMA packages, the rate charged by the syndicate can now reach up to RM500 thousand per person. When approval of the price is obtained, the customer will be brought to meet the JPN Officers either at the office or at a specific location such as the hotel to record fingerprints. Once MyKad is created, the agent will bring the customer to test the authenticity of MyKad made by opening a local bank account. For the record, from January 2017 to May 2018, 117 cases of Mykad forgery involving foreigners were recorded. It consists of Filipino, Indonesian, Thai, Chinese, Russian and Singaporean nationals. The cases of two Iranians who used fake passports in the case of the MH370 missing flight on Mac 2014 is one of the popularly known cases that happened in Malaysia.

X. SUGGESTIONS FOR ENFORCEMENT AND ENHANCEMENT OF ATIPSOM IN MALAYSIA

Based on the research conducted on the resolution of the issue of enforcement and the interpretation should be in line with the improvement of external aspects as follows:

- a. Strengthen legislative mechanisms. The effectiveness of implementing the enforced laws can be achieved by reviewing and improving the law, especially in relation to investigations, prosecution and penalties. Existing Operational Procedures may be reviewed if it is deemed necessary to improve the degree of investigation, protection and prosecution in accordance with current requirements. The proposal, by listing the trafficking criminal offences of persons in the Penal Code [Act 574] or the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613], will prevent the occurrence of

this crime.

- b. Enhanced law enforcement actions under anti-trafficking laws, particularly labour trafficking cases. Execute severe penalties against those involved in fraudulent hiring or forced labour exploitation. Increase efforts to prosecute and punish public servants who benefit or engage in trafficking in persons, or those who exploit trafficking victims. Develop and implement procedures for identifying labour trafficking victims among vulnerable groups such as foreign workers and referring them to existing protection services. Increase protection for victims in government facilities by providing legal assistance to victims, and providing effective counselling and care to victims of trafficking. Develop and implement mechanisms to enable adult trafficking victims to walk, work and live outside government shelters. Provide legal alternatives for expulsion of trafficking victims to countries where they will face penalties or hardships.
- c. Amendments to penalties and penalties within ATIPSOM need to be done to prove the seriousness of this trafficking crime. It is proposed that penalties be increased to RM 5 million and include penalties and death sentences against offenders relating to trafficking. In addition, the government should also launch or set up a National Anti-Trafficking in Persons plan as a guide to implementing the crime prevention efforts. The plan should outline the government's strategy in curbing such crime at both domestic and international levels. Public awareness programmes also need to be intensified among them to attract NGOs and private agencies in efforts to combat this crime.
- d. Study the laws of other countries or international law regarding the approach adopted by that country. Close cooperation with ASEAN countries and foreign countries such as Australia, the United States, the Netherlands, the United Kingdom and international organizations are essential to curbing such crimes and to discuss further in respect of the blurring of laws protecting victims of trafficking with illegal migrants moving without legitimate documents.
- e. The most practical advice needs to be implemented immediately by establishing a specialized agency with autonomy and full authority in enforcing, investigating, monitoring, executing and managing and controlling all matters relating to human trafficking crime. This agency needs to be placed under the Prime Minister's Department and may be named the Human Rights Enforcement Commission. This is a good move to avoid overlapping jurisdictions of existing enforcement agencies as well as to avoid rejecting refusal in the investigation. With the establishment of a specialized agency, it will make matters pertaining to ATIPSOM's enforcement more systematic and effective.

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THE ROLE OF THE ATTORNEY GENERAL IN COUNTERING THE TRAFFICKING OF PEOPLE AND MIGRANTS AS A TRANSIT ROUTE DUE TO THE GEOGRAPHICAL POSITION OF PANAMA

*Julio Alberto Campines Córdoba**

I. THE COMMITMENT OF THE ATTORNEY GENERAL'S OFFICE TO BATTLE TRANSNATIONAL ORGANIZED CRIME IN PANAMA

The Isthmus of Panama is a historic link between North and South America. It has been a strategic international commercial location due to its terrestrial and maritime accessibility, which place this Central American nation as a transit point for different markets, some of them being illicit markets served by organized crime groups. The Attorney General's Office, hand in hand with its auxiliaries, carries out daily operations throughout the country, the purpose of which is to dismantle groups dedicated to illicit drug trafficking, the illicit arms trade, money laundering, human and migrant trafficking among others. These criminal activities greatly affect the human rights of all people within the national territory.

The Attorney General and Public Prosecutor's Offices, as the entities responsible for criminal prosecution, are at the forefront of the progress that is being made in the area of criminal investigation in other countries. Best practices that benefit justice administration must be adopted, respecting the rights of the victims of these crimes, and thus strengthening international cooperation through the possibility of sharing experiences and acquiring knowledge that benefits prosecution.

A. Current Status of Trafficking in Persons and the Smuggling of Migrants

With respect to trafficking in persons and smuggling of migrants, the Republic of Panama can serve as a transit territory in which criminal organizations use the different maritime and land borders to transport victims from their country of origin to their intended destination.

- Regarding trafficking in persons, organized crime groups exploit victims by forcing them into prostitution or other forms of sexual exploitation, forced labour, servitude, begging, as well as the extraction of organs, so it is important to know exactly the different forms of exploitation that exist today.
- However, the purpose of smuggling of migrants is different: to obtain a material or economic benefit based on the illegal entry of a person to a country in which they do not have a stable migratory situation, for which migrants grant their "consent", in order to reach their destination.
- Transnational organized crime groups play roles in both trafficking in persons and smuggling of migrants, which represents a threat against the state in which they are carried out, since in order to carry out these crimes they have an operative team willing to do anything necessary to achieve their objective, even if these "techniques" endanger the lives of the victims, This includes the commission of various acts of corruption that undermine the legal security of the state.

B. Criminalization of Trafficking in Persons, Smuggling of Migrants and Related Offences

In Panama, trafficking in persons is criminalized and understood as the means by which the capture, transportation or transfer of people is made through the use of threats, deception, or vulnerability of the victim, to carry out their exploitation, for which a penalty of 15 to 20 years in prison will be imposed if the victim is subject to sexual exploitation, labour, slavery, forced labour, begging and the illegal extraction of organs. Nevertheless, the crime is classified as aggravated, and penalty will be enhanced from 20 to 30 years, if the victim is a minor, is in a vulnerable situation, if the victim is used in acts of exhibitionism through photographic means, if the act is executed by deception, if it is performed by a close relative or is performed

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by a public servant.

The smuggling of migrants, on the other hand, is directed to any person who promotes, finances or facilitates the entry or exit of people from the national territory, for the purpose of smuggling migrants, even when they give their consent. A sentence of 15 to 20 years in prison will be assigned to the investigated, while the penalty will be aggravated from 20 to 30 years, when the migrant is a minor, when their life is at risk, when they are pregnant, have a mental or physical disability, as well as having the act committed by a public servant.

C. Investigation, Prosecution and Adjudication of Trafficking in Persons and Smuggling of Migrants Cases

1. Challenges in the Investigations

The investigation and prosecution of crimes of trafficking in persons and smuggling of migrants is an important challenge given the clandestine nature in which the events take place. Handling such cases is complex, precisely because of the empathic relationship that may arise between the trafficker and the victims; in many cases the trafficker is the only contact the victim has with her place of origin. Similarly, the investigation of these crimes poses a challenge to the prosecutors since the victims of these crimes are distrustful of the law, the police, migration and any other intervening authority, due to the manipulation that can be carried out by the trafficker.

Effective measures are necessary to identify, investigate and prosecute the masterminds and the true beneficiaries and to deprive them of their illicit gains. Panama, through Law No. 121 of 2013, has adopted a specialized Law against Organized Crime, in which the purpose is to identify, investigate, pursue and punish organized crime. The law enables the use of special investigation techniques for the purpose of dismantling criminal organizations by using covert operations, surveillance and monitoring, controlled delivery, controlled purchases, and interception of communications. These techniques must be tailored to the nature of each particular case in which care must be taken to protect the lives of the victims and witnesses of the events while obtaining valuable information on the operations of organized crime groups.

In the same sense, in order to obtain better results in the different investigations, the application of penalty agreements can be adopted. Penalty agreements are carried out between the prosecutor, the person under investigation and their legal representatives, so that the masterminds of the criminal organizations can be identified through effective collaboration. This should be the main object of the investigation, because if we limit ourselves to investigating the people who make the transfers and not those in charge of making these connections, the investigations will not have any purpose, since these people in charge of executing the orders can be replaced by the criminal organization. That is why penalty agreements are promoted by prosecutors. Such agreements help prosecutors determine the structure of the criminal organization, allowing it to be attacked at its core. However, in order to carry out these investigative strategies, it is necessary to promote reciprocal international assistance through joint investigation among nations so that progress can be achieved in parallel.

2. Ensuring Cooperation of Trafficked/Smuggled Persons and Securing Their Testimony

The protection of witnesses and victims must occur comprehensively at each stage of the process. Different protocols for cases of human trafficking and migrant smuggling have been adopted for the victims who are in need of protection when detained while transiting through Panama. These protocols provide for the physical and psychological recovery of the victims, witnesses and other intervening parties. The protocols are administered by the Victim Attention Unit, which ensures that victims receive the legal, psychological and social support that facilitates an understanding of the real situation of the victim and what support should be provided to avoid revictimization. In this way, taking into account the seriousness of the events in which the victims are immersed, protection measures are applied to ensure the safety of the victims and witnesses throughout the process, such as:

- Holding closed-door hearings
- Non-disclosure of information
- Preventing contact between the suspect and the victim
- Testimony through video or other technologies
- The use of pseudonyms

- Use of Gesell chambers to obtain victim testimony while protecting their integrity and avoiding their participation on repeated occasions throughout the process
- Avoiding revictimization
- Not treating victims as criminals

It is of the utmost importance that the victims of human trafficking and migrant smuggling can be protected through the cooperation of different agencies, among which the application of all measures of security to remain in the territory can be carried out first during the Prosecutor's investigation, without any type of attack against their physical integrity, protecting them from a new risk of victimization. Thus, through international cooperation, the process of repatriation must be secure, which requires extensive communication with the country of origin that guarantees the security of the person upon return, as well as granting the corresponding permits and documents of travel without delay.

3. Suppression of Related Crimes, Investigation, Prosecution and Adjudication of Those Involved in the Exploitation of Trafficked/Smuggled Persons

The criminal laws punish all people who knowingly assist a trafficker engaged in trafficking in persons or smuggling of migrants. Those people are investigated and punished with a sentence of imprisonment even if they provide assistance with the consent of the victim.

In the Public Prosecutor's Office of Panama, the crimes of trafficking in persons and smuggling of migrants are handled by different regional agencies in charge of the investigations. Officials from these agencies must be trained to identify the different peculiarities of trafficking and smuggling crimes and to handle the victims with dignity, because not knowing how to handle these investigations at the initial stage can result in the loss of evidence, or the case might be treated as another type of crime. Trafficking in persons can be confused with the forced labour of minors or pimping, which can lead to an investigation of a less serious offence, and those under investigation may be punished with inappropriate penalties. Once the case has been identified as smuggling of migrants or trafficking in persons, the Republic of Panama has at the investigation stage a Superior Specialized Prosecutor's Office against Organized Crime, which has jurisdiction throughout Panama to conduct investigations, and with the support of the different regional offices, it is possible to obtain good results.

In the area of procedure, Panama has adopted a system of oral prosecution, which entails a constant process of adaptation and preparation of investigations based on a theory of the case which should be tested at the trial stage which corresponds to practice the tests and demonstrate the responsibility of the person investigated. With regard to trafficking in persons, penalty agreements have been reached in which the persons investigated have admitted responsibility and have accepted prison sentences to avoid being brought to trial.

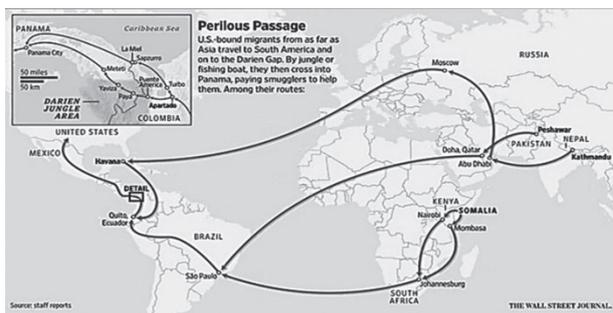
The Trafficking in Persons Section is currently investigating a case of Internal Labor Trafficking of a victim of 17 years of age, female and indigenous, which is originally from the Province of Bocas del Toro, where it was caught, the report was filed by a neighbour, where she relates that the girl was brought from the province of Bocas de Toro by a family as a domestic worker, working specifically in the care of 4 underage children as well as all the household chores without receiving a payment for 5 months, until she was able to escape after having been threatened by the owner of the home with a knife to continue doing her job, many times. The minor indicated that she had been mistreated, humiliated and insulted by her boss because she was an indigenous person, she pointed out that her working day was over 14 hours. She was even forbidden to talk to neighbours or tell someone that she had not been paid or communicate with her family, so she decided to flee and seek help.

On the other hand, the type of trafficking that occurs most frequently in Panama is trafficking for the purpose of sexual exploitation, in which in many cases the victims are foreigners, usually from Colombia and Venezuela, because of the economic situation and social issues facing these countries, the victims are captured for prostitution, first they are confined in hostels and they profit through the sexual relations service, where they provide all the elements to receive the clients from whom they obtain great economic benefits, that in many occasions it is tolerated by the victims because they require the economic income to help their families, to carry out this activity they completely control the documents of the young people and they watch them to avoid having economic losses, for which here I am going to include some pictures of different centres

where this activity took place.



In relation to the crime of migrant trafficking, Panama is an international transit route, being the access route to North America. People enter South America through Brazil or Bolivia, and they transit through Peru to Ecuador. Subsequently, through the Colombian and Ecuadorian border, they leave for Panama, then Costa Rica. They pass through Guatemala and Mexico, with their final destination in the USA, for which Panama uses a Biometric Analysis System to verify the entry and exit from the country.



For the year 2016, a joint operation called 'Mesoamerica' was carried out, which integrated the police teams of five nations (Costa Rica, Honduras, Guatemala, El Salvador and Panama), which aimed to put an end to an associated criminal structure with migrants and their illegal transfer to US territory. Through this collaboration, 33 subjects were captured. They used to traffic people of Asian and African origin who wished to enter the United States using 'green roads'.



D. International Cooperation

It is of the utmost importance that the judicial bodies of the different nations create links where cooperation can be effective through officials who have full knowledge of the vanguard techniques, where each state handles the same tools that facilitate timely communication and in real time to minimize the consequences of transnational criminal groups, to achieve effective mutual legal assistance.

Cooperation with related agencies in other jurisdictions is also important. Achieving judicial communication between the different states that are victims of the scourge of organized crime is a joint task that involves a lot of coordination; however, if it is carried out in a timely manner, it will be a mechanism through which the different migration institutions will have open communication channels, and administrative bureaucracy will be reduced, which translates into better care for victims within these crimes.

E. Prevention and Detection of Trafficking in Persons and Smuggling of Migrants

As part of a management programme for these crimes of high international impact, it is very important, as a representative in this course of the Attorney General's Office, to act as a multiplying entity of knowledge through institutional academic spaces in which we will support comrades in the different criminal investigations that arise from the crimes of human and migrant trafficking.

In the same way, as representatives of society, we carry out periodic training for the community in different crimes of impact such as sexual crimes, for which campaigns of the crimes of human and migrant trafficking in the different medical centres may be initiated, educational establishments, institutions in which they collaborate providing information on the importance of assessing the emotional reactions presented by the victims of these crimes, always having gender as a central perspective.

Sensitizing the community to the possible signs of people who are victims of such crimes—such as depression, hopelessness, numbness, detachment, loss of interest in life, as well as panic attacks, fear and hyper-vigilance—can help detect possible acts of human trafficking. In this sense, the approach that institutions must provide must be focused on guaranteeing the safety, protection and assistance for victims without judging them or accusing them of crimes, as they have no responsibility for the events that led to their trafficking. This requires a high degree of professionalism of the staff.

Currently, the role I play is as prosecutor in charge of the Decision and Early Litigation Section in the Province of Bocas del Toro. My section is in charge of ordering the apprehension of the persons under investigation, formulating charges and adopting the precautionary measures and measures that help the process to be carried out without any interruption. Within this section we have had the opportunity to conduct high-profile investigations for crimes of possession of weapons, extortion, sexual crimes in which we have achieved good results through teamwork. Our aim is to protect the victim of the crime through effective collaboration.

Among the victims that we have had to attend, we have been able to work with victims in a great state of vulnerability, for which we apply protection measures against the aggressor, as well as the making advances within our jurisdiction by using Gesell chambers—with the presence of judges, defenders and other interveners—which serve as a method to avoid revictimization. The video recording of interviews and witness testimony given in Gesell chambers also avoids revictimization because the recordings are played as evidence at trial, thus avoiding the need for the victim to testify again.

As well as in the cases in which operability has been required, there have been searches, visual inspections and covert operations aimed at the clarification of the different investigations, which have been positive, and the facts investigated have been clarified.

The province of Bocas del Toro faces geographical challenges with broad maritime and land access, which is a key point in Panamanian tourism, in which the crimes of trafficking in persons can occur through the mode of traffic and destination of the victims, in the different hotel and leisure spaces, for which I consider it is important to have the trained human resources in this vulnerable area, who can count on the skills and the current techniques for the detection and attention to the victims.

With respect to the crime of trafficking in persons, the territory in which we operate borders on Costa Rica, making it a vulnerable area to be used as a transit point for migrants to North America, since many of the border crossing points may be trafficking migrants without the proper controls that organized groups can take advantage of so that teamwork with immigration officials and the Border Police, together with the Public Prosecutor's Office are key in the follow-up of these international crimes.

It is very important to have a space where colleagues from the international community can share experiences. By the nature of our geographical position, the participation of the Attorney General's Office of Panama is very important because we can illustrate to origin and destination countries our approach to people who are in transit and how our approaches have evolved by placing emphasis on victim protection from the first contact with law enforcement authorities through the investigation phase, trial and repatriation.

Being able to share our experiences allows us to acquire knowledge and to be able to adopt concrete strategies that may be effective in another part of the world. This directly influences the adoption of best practices in justice systems, and leading of objective investigations in which the rights of all participants are recognized, always remembering that we work willingly to respond to society.

COMBATING TRAFFICKING IN PERSONS THROUGH CRIMINAL INVESTIGATION, PREVENTION AND COOPERATION IN TIMOR-LESTE

*Paulo Anuno**

I. Introduction

Trafficking in people in East Timor is increasingly widespread, both domestically and across national borders. Prominent among trafficking in persons is the trafficking of children and women associated with the sex industry, which is now starting to become a public concern. Of course, it cannot be concluded that this phenomenon is new; it is likely that this phenomenon has occurred since independence, occurring on a small scale or because the activities are organized so neatly that they are unattractive and unreachable by news media.

Prostitution and human trafficking for sexual exploitation have existed in East Timor for centuries. From the Portuguese colonial period (1511-1975), to the Japanese occupation during World War II (1942-1945), to the Indonesian occupation (1975-1999), there has been some form of sexual exploitation that can be considered trafficking under the international standard set forth in the 2000 "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Crime" (Trafficking Protocol).

In May 2002, East Timor gained the restoration of its independence when the United Nations Transitional Administration in East Timor (UNTAET) transferred its interim authority to the new government. By that time in Dili, East Timor's capital city had an estimated population of 150,000 inhabitants. There are approximately 250 female sex workers from East Timor (100), Indonesia (60), China (35), Thailand (30), Philippines (20), and Australia (3). In addition, Dili has 100 East Timorese male sex workers and 10 Indonesian male sex workers. Research indicated that the sex workers in the nation's districts are exclusively East Timorese women.

Between March and June 2004, the Alola Foundation¹ conducted an Anti-trafficking for Sexual Exploitation Needs Assessment in East Timor. This research focuses on a qualitative study with three main objectives:

1. To analyse the situation and assess the needs of trafficking victims for sexual exploitation,
2. To uncover the scope of trafficking operations by understanding how the sex industry operates, and
3. To evaluate the political, legal, cultural, and social context of prostitution and the efforts to combat human trafficking.

To achieve the first two objectives, an assessment team surveyed 42 sex workers (women, girls, men, and boys) as a means to identify trafficked persons and their needs. In addition, the team contacted over 400 other sources to complement and confirm the data obtained from the sex workers themselves. Over 60 persons were interviewed in governmental agencies, local and international non-governmental organizations, and the United Nations mission and agencies, as well as private individuals.

In 2006, 3 men and 1 woman were arrested, investigated and accused. In 2007, 8 women and 2 men were arrested, investigated and accused but no convictions were recorded prior to 2007.

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¹ Alola Foundation is a nonprofit NGO to improve the lives of women and children. Founded in 2001 by former First Lady, Dr. Kirsty Sword Gusmão.

In 2009, UNPOL² and PNTL³ conducted an operation for human trafficking that apprehended 22 women between the ages of 17 and 29 years old. In 2006 and 2010, the International Organization of Migration (IOM) estimated that there were close to 1,000 construction workers and large percentages of the 550 commercial sex workers in Dili. In 2012, there were 3 people investigated and 1 was charged. But between 2013 and 2014, legislation was pending approval from the Council of Ministers. Thus, no trafficking cases were successfully investigated during that period.

II. TRAFFICKING IN PERSONS

Article 163 of the Criminal Code of East Timor⁴ states that “Trafficking in people” is punishable by a prison sentence of 8 to 20 years, applying to those who “recruit, alienate, assign, acquire, transport, transfer, to host or welcome people, using the threat, the use of force, other forms of coercion, abduction, fraud, deceit, abuse of authority or situation of vulnerability, or through the delivery or acceptance of payments or benefits, to obtain the consent of a person who has authority over another to achieve the purpose of exploitation” (paragraph 1); and those who “recruit, transport, transfer, host or host a child under the age of 17 for even if it does not involve any of the means referred to in the previous paragraph” (paragraph 2). Explaining the conduct in paragraph 3, that the “holding” must include at least the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, or extraction of organs.

The next challenge for countries is to convert these legal obligations into practical outcomes. The translation of law into practice is rarely easy, particularly for a crime as complex as trafficking. Experience in East Timor confirms that enacting appropriate criminal laws is just the first step. Greater challenges lie in giving full effect to these laws, while recognizing the special rights and needs of victims of trafficking.

III. INVESTIGATION AND PREVENTION

Trafficking in persons, especially of women, is a form of crime that is very complex. Of course it requires a comprehensive and integrated effort. Not only knowledge and professionalism are needed, but also information collection and exchange, good cooperation between law enforcement officers such as the police, prosecutors, judges and other related parties, namely government institutions (relevant ministries) and non-governmental institutions (NGOs) both locally and internationally. All parties can exchange information and professional expertise in accordance with their respective authority and agency code of ethics not only about prevention, but also handling cases and protecting victims increasingly justifies the efforts to prevent and combat trafficking in an integrated manner.

In the context of investigation and prosecution, law enforcement officials can maximize the network of cooperation with fellow law enforcement officials within a country to exchange information and conduct joint investigations. Collaboration with law enforcement officials in destination countries can be done through information exchange, or even through mutual legal assistance, for the prevention and control of cross-border trafficking in women:

1. The State must take appropriate measures to discourage and reduce the demand that favours all forms of exploitation of persons, particularly women and children, conducive to trafficking, including:
 - (a) Measures to raise awareness of the responsibility and the important role of the media and civil society in identifying demand as one of the root causes of human trafficking, including through the internet, information and awareness-raising campaigns, research and education;
 - (b) Preventive measures including educational programmes for children and young people in education, stressing the unacceptable nature of discrimination based on sex and its harmful consequences, the importance of equality between women and men, and the dignity and the

² United Nations Police (UNPOL).

³ National Police of East Timor (PNTL).

⁴ Decree law no. 19/2009, approval of the Penal Code of Timor-Leste.

integrity of every human being.

2. The State shall further promote the regular training of officials and other servants of justice and others who may intervene or contact victims of trafficking in persons, including police officers on the ground, so that they may identify and deal with victims.
3. The State shall act in cooperation with relevant international organizations, civil society and other interested parties.

IV. PROSECUTION

The government has made increased law enforcement efforts and took steps to strengthen relevant legislation. Articles 163 and 164⁵ of the criminal code criminalize all forms of trafficking and prescribe eight to 25 years' imprisonment as penalties which are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. The government reported that it investigated 176 cases of suspected trafficking a significant increase from 12 in 2015. It confirmed 79 of these as genuine trafficking cases and initiated 16 prosecutions, an increase from six in 2015. For the fourth consecutive year, the government did not obtain any convictions; all prosecutions remained pending at the end of the reporting period. The government did not report any investigations, prosecutions, or convictions of government employees complicit in human trafficking offences. In the past, police officers reported using their own personal funds to pursue trafficking investigations due to inadequate resource allocation from the government.

In February 2017, the government promulgated the Law on Preventing and Combating Human Trafficking to amend the criminal code, extending criminal liability for trafficking to "legal persons," such as corporations. The new law prescribes fines, judicial dissolution, and asset forfeiture as penalties, and authorizes compensation of victims.

After the entry into force of the UN Trafficking Protocol⁶ in 2003, East Timor ratified the protocol in 2009, establishing a set of key legal obligations relating to trafficking. These include the following obligations:

- criminalization of trafficking and providing appropriate penalties;
- extraditing or prosecuting traffickers;
- actively identifying victims;
- diligently investigating and prosecuting traffickers;
- assisting and protecting victims;
- refraining from detaining and prosecuting victims;
- providing adequate and appropriate remedies to victims of trafficking;
- providing special measures for children;
- working towards preventing trafficking;
- cooperating across borders.

V. REGIONAL AND INTERNATIONAL COOPERATION

According to the Timor-Leste Constitution, article 8, nos. 1 – 4, addresses creating better international relationships. Moreover, article 9, nos. 1 – 3, adopts international human rights law. Law no. 3/2017, the Law on Prevention and Fight against Trafficking in Persons and a Fourth Amendment to the Criminal Code, article 32 states that:

1. The State and the entities competent under this law and their agents shall promote cooperation through bilateral, regional and international mechanisms in the development of common strategies and forms of action to prevent and combat trafficking of people.
2. Without prejudice to the results of the obligations already assumed by the Timorese State, for the

⁵ Ibid.

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

purposes of the preceding paragraph, the competent authorities shall, in particular:

- (a) Develop cooperation agreements to facilitate the rapid identification of victims of trafficking in persons, including the dissemination and sharing of information on the nationality and right of residence of the persons concerned;
- (b) Establish mechanisms to facilitate the sharing of information on traffickers and their methods of operation;
- (c) Develop procedures and protocols for the joint conduct of surveys;
- (d) Ensure international judicial cooperation in investigations and prosecutions relating to trafficking in persons;
- (e) Establish cooperation mechanisms for the seizure of the proceeds of trafficking in persons;
- (f) Share information on the implementation of assistance, repatriation and integration programmes;
- (g) Encourage and facilitate cooperation between non-governmental organizations and other civil society organizations in the countries of origin of victims of trafficking in persons, so as to ensure the provision of support and assistance to repatriated victims.

There is an opportunity to establish Mutual Legal Assistance (MLA) to work together for better criminal justice. The cooperation from government to government not only with Portuguese Speaking Countries (CPLP) but also with ASEAN, the European Union, the United States of America, China, Japan, Australia and others.

In January 2017, the Indonesian government reported 5 residents for violating immigration procedures in Lombok, Nusa Tenggara Barat (NTB). Recently in 2019, one concrete example of cooperation is that the government of Timor-Leste and the Chinese government have negotiated to repatriate 31 workers from Timor-Leste illegally working in Chian, China. The Immigration Police⁷ played an important role in investigating and the report submitted to the Prosecutor's Office. The case is now being handled by the Prosecutor's Office in Timor-Leste. However, there is another way for the Prosecutor to decide whether to continue investigating or delegating the mandate to the police organs. Usually, cases relating to corruption will be given to the Anti-Corruption Commission, cases relating to trafficking in persons or drug trafficking will be given to the NDI Police and PCIC Police, and illegal immigrants will be handled by the Immigration Police and so on.

Cooperation with civil society is very necessary to jointly fight trafficking in persons, as stated in article 33 of the above-stated law, and the competent entities under this law shall cooperate with other public entities, non-governmental organizations and other relevant organizations in order to establish strategic partnerships with a view to:

- (a) Prevent and combat trafficking in persons;
- (b) Protect and provide assistance to victims;
- (c) Investigate or prosecute criminal offences relating to trafficking in persons.

⁷ According to the L. Barreto the Attache, Police and Immigration and current acting Interim Director of Immigration Police said that from 2018 to March 2019 there were East Timorese around 31 people who worked in Fujian, China. They were arrested by Police in Fujian for violating the immigration rules and misused the visa. Immigration Police of Timor-Leste work in a protocol to work together with China Police to repatriate them. In the first stage there were 7 people, the second stage was 11 people and in the third stage there were 13 people who would arrive in Dili, Timor-Leste on 23 April 2019.

VI. CONCLUSION

Trafficking for sexual exploitation is occurring in East Timor, the world's newest nation. Due to conflicting views about prostitution, its legality versus cultural acceptance, there has been confusion between trafficked persons (crime victims) and non-coerced adult sex workers whose commercial sex work is a legal activity in East Timor. The misconceptions have resulted in almost all women and girls suspected of prostitution activities being treated as criminals. Through this period, however, the East Timorese government has made progress toward recognizing the rights of trafficking victims and targeting the traffickers as opposed to legal prostitution activities. Important steps are still ahead including the formulation of a comprehensive anti-trafficking law that addresses the needs of law enforcement as well as trafficked persons, and the coordination of anti-trafficking policies that include civil society organizations as strategic partners. Although trafficking is occurring, it is not so entrenched that effective multidimensional measures enacted soon could not dramatically reduce, if not halt, its incidence. Moreover, concerted holistic efforts now may also prevent East Timorese women, girls, men, and boys from being targeted by traffickers in the future. The more trafficking is recognized as a global human rights issue, not just a local law enforcement challenge in East Timor but in the rest of the world, the more we will move toward stopping this affront to human dignity.

Therefore, we should provide guidance to overcome trafficking in persons at the community level by providing labour intensive training to communities that do not yet have the ability to increase the economy of the community, providing knowledge about trafficking to communities, improving relations between communities so that there is no mutual use for their own interests and introducing to the communities the modes commonly used by traffickers.

At the national level, it is important to uphold Law no. 3/2017, Law on Prevention and Fight against Trafficking in persons and fourth Amendment to the Penal Code of East Timor, Law no. 11/2017, on Immigration and Asylum law, Law no. 2/2017 25 January, Law to Combat Illicit Drug Trafficking, East Timor Penal Code and Procedure Penal Code and Law no. 15/2011, Judicial International Cooperation. Increasing the security of safeguards in the country's borders, both land and sea, improve security at immigration (overseas permission), increase employment, improve education, close discotheques and cafes that are used for sexual exploitation, training the sex workers who are arrested so that they do not return to the dark world and sentencing traffickers to the death penalty.

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REPORTS OF THE COURSE

GROUP 1

EFFECTIVE MEASURES TO ENSURE COOPERATION OF WITNESSES AND TO SECURE THEIR TESTIMONY

Rapporteur: Mr. Koshiro Mansho (Japan)

Co-Rapporteur: Mr. Mohammed Asmar (Palestine)

Chairperson	Mr. Bobir Turdiev	(Uzbekistan)
Co-Chairperson	Mr. Godai Oguchi	(Japan)
Members	Mr. Benedicto Chitsakamire	(Malawi)
	Ms. Hellen Khandasi Mafumbo	(Kenya)
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	Mr. Ewai Segi	(Papua New Guinea)
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I. INTRODUCTION

Human trafficking and smuggling of migrants are very grave crimes. But when it comes to bringing criminals to justice, it is even more challenging because establishing guilt depends on evidence that the police obtain from witnesses (victims). In such circumstances cooperation with witnesses is very important to secure conviction. At the same time, as most of the evidence relies on witness testimony, supporting its credibility is a challenging task.

Owing to the aforementioned issues and group discussion outcomes, this report is divided into two main topics (securing witness cooperation and securing the credibility of witness testimony). Each topic outlines main challenges, best practices and recommendations.

II. ENSURING WITNESS COOPERATION

A. Issues and Challenges

1. Challenges of Reporting

Crime statistics related with TiP or SoM are skewed because most of the witnesses do not report these crimes. As a result, most of the TiP or SoM cases are left unprosecuted. The main reasons for that are:

- i. Lack or insufficiency of communication channels (hotlines, websites etc.), lack of public awareness about ways of reporting, the nonexistence of anonymous reporting in some countries, language barriers for foreigners who cannot contact (call, report) or understand the language of the host country;
- ii. Distrust in law enforcement and the criminal justice system, fear of retaliation by criminals, the existence of corruption in the criminal justice system, conflicts of interest, abuse of power by law enforcement, fear of being punished for other related crimes or fear of deportation faced by illegal immigrants;
- iii. Cultural/social values where victims feel ashamed to be seen as a victim of sexual exploitation, forced labour or slavery, physical, psychological harm or trauma caused by TiP/SoM.

2. Legal and Procedural Obstacles

- i. *From the perspective of witnesses:* lack of recognition as a victim, loss of time and financial burden due to lengthy investigation or trial, lack of legal assistance or support for witnesses, their maltreatment by law enforcement, undue pressure for additional evidence hinders witness cooperation. These

circumstances can lead to refusal to pursue the case and drop of legal proceedings by witnesses.

- ii. *Failure of the criminal justice system*: non-prioritization of TiP/SoM cases, lack of investigator's professionalism and consideration for the dignity of victims, continuous, repeated and non-victim-centred interviews, undue delay of procedure, lack of professional interpretation or misinterpretation of statements/testimony during investigation and trial further contribute negatively to cooperation.

3. Challenges of International Cooperation

Most of the criminals in TiP/SoM cases enjoy non-prosecution due to failure of international or bilateral cooperation. Jurisdictional issues, different legal procedures and prosecuting authorities, lack of mutual legal assistance, bureaucracy and lengthy procedures are some examples of obstacles in this sphere.

B. Best Practices and Recommendations

The group reached consensus to tackle challenges of securing witness cooperation via establishing secure communication channels, organizational and legislative countermeasures, witness support programmes and enhancing inter-agency and international cooperation.

1. Secure Communication Channels

Secure and accessible communication channels should be established to receive reports, while guaranteeing confidentiality of the reporter by allowing anonymous reports in multiple languages. The general public should be informed about these communication channels.

2. Victim (Witness) Protection / Support Programmes

All countries are recommended to establish victim support funds and to allocate adequate financial resources to support them. Money should also be allocated to NGOs in the form of grants or subsidies to support their activities in victim protection programmes.

3. Organizational Concepts

In order to identify and effectively combat country-specific challenges and patterns of TiP and SoM, deliberate research and well-designed surveys should be conducted to evaluate the overall situation of a country. Consequently, results of this study can be used as a basis for developing *national strategies* for combating TiP/SoM. Most participants agreed on establishing *special units* for fighting human trafficking. By specialization and identifying clear target groups, these units will be able to effectively and efficiently combat such crimes. Before taking decisions about rotation and promotion of such personnel, consideration should be given to their knowledge and expertise in this sphere. Likewise, special training should be conducted for law enforcement personnel to adequately meet risks and threats related to TiP/SoM. Clear and elaborate standards of operation (guidelines / manuals) for law enforcement personnel should be developed, and best practices and new methods of detection of TiP/SoM cases should be disseminated among them. Cooperation mechanisms should be developed between law enforcement and civil society for detection, investigation and rehabilitation of victims of human trafficking.

4. Overcoming Legal Challenges

Occasionally, depending on the case, witnesses should be guaranteed immunity from prosecution, including for crimes they committed during their victimization. Also, incentives should be increased for accomplices and suspects for their cooperation, law enforcement should give consideration to accomplices for providing evidence or testimony, the liability of offenders should be differentiated depending on whether they self-report their crimes, cooperate with the investigation or pay compensation to victims. Foreign or vulnerable witnesses' testimony during interviews should be secured via video recording for further use as evidence.

5. Enhancing International and Inter-agency Cooperation

Information exchange and the execution of requests play a vital role in immediately combating human trafficking. In order to facilitate collection and dissemination of data related to TiP/SoM, focal points (information sharing systems, red lists and risk profiles) should be established at the international, regional and domestic levels. Mechanisms for cooperation under the auspices of the UN, UNODC, INTERPOL and other international/regional organizations, on a bilateral level or on the basis of reciprocity should be used to discuss and communicate, exchange data and requests on TiP/SoM cases.

III. SECURING THE CREDIBILITY OF WITNESS TESTIMONY

A. Issues and Challenges

Human trafficking cases are very challenging to investigate and prosecute. Usually all investigators have is witness testimony. Sometimes all chances of securing witness testimony have passed or there was no opportunity due to the vulnerability of the witness. After thorough discussion of the issue, the group decided to classify the challenges of securing credibility of witness testimony into the following categories:

1. Bias or Vulnerability of an Individual's Testimony

The cross-border nature of TiP/SoM cases makes it challenging for law enforcement to prosecute criminals and bring them to justice. These criminals usually avoid prosecution by remaining in foreign jurisdictions with hidden identities. The vulnerability of witnesses due to age, psychological status and trauma, loss of memory or mental stability, fear of physical harm or pressure, not wanting to give testimony due to social/cultural values or stigma makes it impossible for the investigators to collect credible evidence to successfully prosecute suspects. The prosecutors will, thus, have false or fabricated evidence or insufficient evidence that would require corroborative evidence.

2. Pitfalls of the Criminal Justice System

Not following procedural rules when collecting evidence may result in evidence being disregarded. Undue delay of securing evidence consequently ends either with no evidence or the chances of obtaining evidence elapse. Investigators' lack of knowledge and expertise on deciding which kind of examination needs to be conducted in a specific case and in a timely manner inhibits collecting credible evidence.

B. Countermeasures and Recommendations

To secure credibility of evidence, the investigators must endeavour to find corroborative evidence to support the evidence of victims and witnesses. Corroborative evidence could be financial records, evidence of decoy witnesses, informants and others.

As new trends indicate, advances in technology and online platforms are contributing to the growth and complexity of crimes. To effectively detect and suppress such crimes new investigative techniques and tools (electronic/online investigation, financial investigations, undercover operations) should be developed and be used to collect corroborative evidence.

New methods of forensic examination of statements or testimony should be developed to verify the credibility of witness testimony. To avoid contamination of statements and mistakes of translation, interviews should be video recorded, and translations should be double checked. Video recording of interviews and evidence may be allowed to be used as evidence at trial.

To elude procedural pitfalls, capacity-building of law enforcement should be routinely conducted, and they should be provided with manuals and guidelines with clear instructions. Forensic interviewing techniques should be developed taking into consideration each country's circumstances, and speedy investigation and trial should be supported.

IV. CONCLUSION

The results of the group workshop and discussions show that securing witness cooperation and the credibility of witness testimony relies on both sides (witness and law enforcement). If both sides back up each other, they will both reach favourable outcomes. However, if one fails to back up another, none of them will reach their desired results. On the other hand, the existence of a number of obstacles and challenges makes it difficult or impossible for both sides to cooperate effectively. The participants of this group believe that implementation of the proposed solutions or recommendations will facilitate cooperation with witnesses, which will ultimately support the credibility of their testimony.

GROUP 2

PREVENTION AND DETECTION OF TRAFFICKING IN PERSONS (TIP) AND SMUGGLING OF MIGRANTS (SOM), INCLUDING SUPPRESSION OF RELATED CRIMES

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Co-Chairperson	Mr. Riad Amin Mohamed Ahmed Mansour	(Egypt)
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I. INTRODUCTION

The discussion theme of group 2 is “Prevention and Detection of Trafficking in Persons and Smuggling of Migrants, Including Suppression of Related Crimes”. Various acts associated with TIP and SOM have also been criminalized. The prevention and detection of these related crimes leads to the prevention and detection of TIP and SOM. We focused on TIP and SOM carried out across borders and discussed countermeasures in the detection and investigation of related crimes. In the discussion, we sorted the crimes into three categories: entry by legal means, illegal entry from unmanaged borders, illegal entry with fake documents. The group discussed challenges and countermeasures for each of these categories.

II. ISSUES AND CHALLENGES

The following points were identified as the current situation and issues of investigation and detection of related crimes leading to prevention and detection of TIP and SOM.

A. Entry by Legal Means

Some trafficked persons enter a country legally using a valid passport with a visa. Even if the entry itself is not illegal, it can be assumed to be conducted as a means of TIP or SOM by brokers or criminal organizations.

1. Related Crime

After entry, if a person stays over the period permitted, the person will be classified as an “overstay”. In some countries, “overstays” are criminalized, as is activity that is not permitted by the person’s visa. In addition, a person who commits marriage fraud for acquisition of a visa is criminalized. The group recognized that there are cases in which forged documents are submitted to an embassy for acquisition of a visa.

2. Challenges and Countermeasures

During the visa application process, if forged documents are detected, the application will be denied. That is one of the ways to prevent TIP and SOM. To detect forged documents, related agencies in the country need to cooperate with visa examinations conducted by the embassy. Exposing overstays is one of the important challenges. Identifying overstays may be a clue for investigation of TIP and SOM. Therefore, to identify overstays, all investigators must have knowledge about TIP and SOM. It is important to identify overstays who are TIP victims and obtain information about criminal organizations from the victims.

B. Illegal Entry from Unmanaged Borders

Circumstances at borders are different between inland countries and island countries surrounded by sea. This is a type of illegal entry in which a person comes over the border without an immigration check.

1. Related Crimes

Generally, it is difficult to carry out illegal entry without help from criminal organizations. Therefore, illegal entry is criminalized, as well as helping some enter the country illegally. In addition, after the illegal entry, there are a lot of cases in which a person is exploited as a prostitute in a night club or a brothel, or as forced labour. This is common also a common characteristic of entry by legal means (type "A").

2. Challenges and Countermeasures

While it is difficult to monitor all of a country's borders, it is possible to find routes and hubs of smugglers by collecting information, or to use modern technologies and IT products such as drones to cover the lack of personnel. TIP victims can be found by exposing employers who hire illegal workers. Then a criminal organization which commits TIP or SOM may be detected. But it is very difficult to get the information from either the victim or the employer. When interviewing victims, it is necessary to build rapport with them. Also, it is important to get information about criminals of higher rank than the brokers from the employer by using plea-bargaining or promoting the use of amnesty for illegal migrants.

C. Illegal Entry with Fake Documents

This is a type of illegal entry, that a person who through an immigration examination by using a fake documents or spoofing.

1. Related Crimes

It is a crime for a person to use fake documents for illegal entry, and the person may have information that provides clues for the investigation of a criminal organization. If an immigration officer is bribed to facilitate illegal entry, it will be easy to identify this through an immigration examination by the officer. Therefore, corruption is a serious crime related to TIP and SOM.

2. Challenges and Countermeasures

In the case of fake documents, one challenge is how to detect them. Recently, passports with IC chips have become standard worldwide, and it makes forgery difficult. In the case of spoofing, one challenge is how to determine whether the passport holder is the true holder or not. Currently, immigration officers check identity by visual inspection. Therefore, training needs to be improved. As further measures, introduction of modern technologies for facial recognition and inputting biometric information on a passport should be considered.

It is difficult to solve the problem of corruption related to immigration. In our discussion, there was an opinion as the way to detect the corruption case. According to that, if the immigration service officially records each officer's name on each immigration examination in a database, it makes it easier to detect who might be bribed after illegal entry is detected. This seems to be a useful way to prevent corruption. Also, for prevention of corruption, ethics training and education is important.

III . CONCLUSION AND RECOMMENDATIONS

The members of group 2, all of whom are judges, prosecutors, or other law enforcement officials, finally reached agreement on the importance of the following as effective countermeasures against crimes related to TIP and SOM.

1. Victim Protection

Provide and establish additional legislative and promotional measures to reveal and protect victims of TIP and SOM.

2. Strengthening of International Judicial Cooperation

As a measure to find routes of illegal migrants, share information internationally as much as possible. Especially, it is important to exchange information about overstays between the origin and destination

country in order to locate them and the crime organization behind them.

3. Capacity-Development Training for Law Enforcement Agencies and Introducing Modern Investigation Tools and Technologies

As the capacity of investigators and other law enforcement officials is critical to countering TIP and SOM, training should be conducted to enhance skills for the prevention and prosecution of organized crimes. Also, modern investigative tools and technologies should be introduced.

4. Conducting Public Awareness Campaigns

In origin countries, public awareness campaigns should be directed to members of the general public who may become TIP victims. In destination countries, amnesty should be given to illegal migrants to promote cooperation with law enforcement, and law enforcement should collect information on criminal organizations from them.

GROUP 3

INTERNATIONAL COOPERATION, FOCUSING ON THE DEPRIVATION OF ILLICIT PROFITS

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I. INTRODUCTION

Effective international cooperation is the key to efficient deprivation of illicit profits. In this group workshop, participants discussed the challenges and measures for financial investigation of trafficking in persons (hereafter "TIP") and smuggling of migrants (hereafter "SOM"), and examined both informal and formal cooperation in financial investigation for TIP and SOM. In this paper, "informal cooperation" means the direct exchange of information between law enforcement and investigative agencies, immigration bureaus etc. This is the fast and easy way to gather and share information. Also, "formal cooperation" means the exchange of information using channels in accordance with laws and conventions.

II. ISSUES AND CHALLENGES

A. Financial Investigation of TIP and SOM

1. Information/Evidence Necessary to Identify, Trace, Freeze, Seize and Confiscate Proceeds of Crime

To identify, trace, freeze, seize and confiscate proceeds of crime, law enforcement officers need to know the types of the assets (money, land, houses, aircraft, cars, precious materials etc.), the location of the assets, the ownership of the assets, bank account information and money transfer records etc.

2. The Challenges to Obtaining such Information/Evidence

Bank secrecy is a challenge to obtaining the above-mentioned information. Each country has different regulations on bank secrecy, and business activities cross borders easily. For example, in Japan, it is possible to obtain bank account information without compulsory measures. However, in Côte d'Ivoire, Lao PDR, Timor-Leste, it is required to have compulsory measures to obtain the same. Identifying the real owner of the assets is another challenge. Related assets are often owned by family members of the suspect or surrogates etc. Transaction data analysis is often time consuming, and even if law enforcement reaches the real owner, the speed of transferring related assets is often faster than the international judicial procedures. Also, it is a challenge to train law enforcement officers to conduct international financial investigations, including obtaining related information etc.

3. Measures to Obtain Information/Evidence

As for bank secrecy, regulations of each country have changed. For data gathering and sharing, FIUs are a fundamental mechanism for international and domestic cooperation between law enforcement and financial institutions. Financial analysis training for officers has been implemented at various levels. In Côte d'Ivoire, an inter-agency task force for financial investigation has been implemented.

B. Informal Cooperation in Financial Investigation for TIP and SOM

1. Challenges Faced by Law Enforcement Authorities with Regard to International Cooperation in Financial Investigations

Technically, except the items under the restriction of domestic laws such as bank secrecy, various information is available to be shared through informal channels including the existence of bank accounts in the country, bank account information and the owner of the company, shareholders, assets etc. However, law enforcement authorities lack frameworks for international judicial cooperation and face time-consuming procedures, different legal systems and languages etc.

2. The Usefulness and Limitations of Using Informal Channels

Informal channels are very fast and have the benefit of real time communication. They allow law enforcement to gather a lot of information, which facilitates the building of cases. With more information, it is often easier to analyse investigative materials, especially against latent crimes such as TIP and SOM. However, information gained through informal channels cannot be used as an evidence at trial. Law enforcement needs a formal request to obtain the material admissible at a trial. Also, in some countries, bank account information is not available without compulsory measures.

3. How the Information Obtained through Informal Channels Can Be Used to Facilitate MLA

The information obtained through informal channels can be used as a lead for an ongoing investigation. It allows law enforcement to facilitate MLA by enabling them to focus on the investigation. Sometimes it is possible to avoid unnecessary requests through MLA, because with the initial information obtained through informal channels, law enforcement can sometimes complete the investigation within its country without the need for further international investigation. Also, law enforcement can include this information as a result of an internal investigation on a request through MLA to request information through a formal channel.

C. Formal Cooperation in Financial Investigation for TIP and SOM

1. The Legal Basis for MLA

Domestic legislation for international cooperation (e.g. TIP and SOM Acts in Egypt etc.), universal conventions (e.g. UNTOC, UNCAC etc.), bilateral agreements, regional conventions, the reciprocity principle, MOUs and related UN Security Council resolutions are the legal basis for MLA. There are bilateral agreements such as Judicial International Cooperation Conventions for combating crimes. For example, Egypt concluded some bilateral treaties with France, Italy, Greece, Cyprus, USA, some Arab states, and some African countries etc. As for regional conventions, there is the San Luis Treaty among Mercosur countries (Brazil, Paraguay, Uruguay and Argentina) and the Arab Convention for Combatting Corruption.

2. The Challenges Law Enforcement/Prosecutorial Authorities Face in Using MLA

Formal international cooperation is a time-consuming process. Each country has a different legal system for criminal procedure, punishment, terminology etc. It takes even longer between countries which use different languages (e.g. names and spelling). Confiscation of overseas properties is one of the main challenges, lack of political will or involvement of diplomats also can be a challenge for law enforcement and prosecutorial authorities.

3. Measures Available to Expedite MLA Procedure

With ongoing cases, it is crucial for related counterparts to communicate with each other in advance. For example, law enforcement can share information through informal channels or send drafts of necessary documents in advance. As general measures, it is important to have periodic meetings at various levels to improve frameworks for international cooperation. Also, it is effective to train officers at the international, national and local levels.

There are a number of good examples on overcoming the aforementioned challenges, for example: forming of international and regional associations for international cooperation; the Arab Prosecutor's Association, the African Association for Prosecutors, the Ibero American Prosecutor's Association (AIAMP) and the Council of ASEAN Chief Justices (CACJ) etc., the West Africa regional convention, the African association of prosecutors, the American convention on human rights, and the ASEAN declaration. Moreover, Egypt and the UK have formed joint-investigation networks and are sending/receiving investigators. In Brazil, the updated online MLA manual is available to share information on each country. Also, a special treaty between Spain and Portugal has been adopted, which makes it possible to use materials without translating from one

language to another could be applicable for other Spanish and Portuguese speaking countries.

4. Ministries and Agencies Specifically Designated as the Central Authorities for MLA

The organization identified as the Central Authority for MLA depends on the country: Ministry of Foreign Affairs (Panama, Egypt, Laos), Ministry of Justice (Brazil, Japan, Egypt, Laos, Côte d'Ivoire), Prosecution service (Laos, Timor-Leste) and National Police Agency (Japan) etc.

5. The Roles of Central Authorities and Investigative Authorities

The roles of central authorities also depend on the country; sending information to and receiving it from other countries, deciding whether to accept the request or not, and establishing guidelines for requests. Hence, it is important to confirm which ministry or agency has which role in advance.

III. RECOMMENDATIONS

1. Financial Investigations of TIP and SOM

States are encouraged to

- Develop more training courses for financial analysis/investigation on TIP and SOM;
- Gather more information (e.g. bank information etc.) from countries which can share bank information etc. without compulsory measures (e.g. Japan);
- Improve their official websites to easily share more information with other countries.

2. Informal Cooperation in Financial Investigations of TIP and SOM

States are encouraged to

- Develop more frameworks especially between countries which share (related) languages;
- Create systems between countries which use different languages or in different regions;
- Exchange more information through FIU units etc.;
- Create more networks for law enforcement officers to exchange information.

3. Formal Cooperation in Financial Investigations of TIP and SOM

States are encouraged to

- Consider UNTOC as a legal basis for extradition;
- Accept MLA requests in more flexible ways to overcome procedural obstacles that can be easily solved;
- Start contacting counterparts in advance as much as possible (e.g. exchanging MLA drafts);
- Have international meetings to create or develop frameworks;
- Have international legal/police attaché(s) abroad;
- Prepare updated manuals on MLA and train officers to have adequate knowledge of different legal systems.

APPENDIX

*PRESENTATIONS AND COMMEMORATIVE PHOTOGRAPH OF
THE 172ND INTERNATIONAL TRAINING COURSE*

UNAFEI



Contribution to UNAFEI 172nd International Training Course, “Criminal Justice Responses to Trafficking in Persons and Smuggling of Migrants”.

*Martin Fowke
Team leader, Normative and Policy,
Human Trafficking and Migrant Smuggling Section (HTMSS)*

UNODC Session 1: **Global Trends: Trafficking in persons and smuggling of migrants**

Description:

In 2016, as Chair and coordinator of the UN system-wide *Inter-agency Coordination Group Against Trafficking in Persons* (ICAT), UNODC led the development of a major review of monitoring and evaluation practices by anti-trafficking actors. A major finding of that work was that counter-trafficking programmes do not routinely assess the trafficking they are seeking to address nor draw on the significant amount of knowledge accumulated from multiple responses to date, with the consequences of limiting the potential effectiveness of programmes, as well as the ability of evaluation to identify and report on programme outcomes. Further UNODC-led work focused on trying to improve the design of anti-trafficking actions to more consistently address what we know occurs and what works effectively in response.

Both human trafficking and migrant smuggling are often called hidden crimes. Both present numerous challenges in detection, in detailing their nature and seeking to determine their scale. As a result, responses to these crimes have been greatly limited in impact by these challenges to development of a deep, nuanced and shared understanding of these crimes between States, and the multiple stakeholders who can potentially and positively impact on either or both phenomena.

What then are global trends on trafficking in persons and smuggling of migrants? This session introduces UNODC’s research and analysis of current, existing information, with a view to focusing discussion on the development of more evidence-based responses to both crimes.

Objectives:

Participants will review global trends regarding:

- Trafficking in persons:
 - Profile of the victims;
 - Forms of exploitation;
 - Trafficking flows;
 - Profile of the traffickers;
 - Estimating non-detected trafficking;
 - Trafficking in the context of armed conflict;
 - Criminal justice case information.
- Smuggling of migrants:
 - Migrant smuggling routes;
 - Scale of migrant smuggling;
 - Migrant smuggling methodology;
 - Smugglers;
 - Smuggled migrants;

- Cross-border data-sharing;
- Criminal justice case information.

Participants will share and discuss characteristics and details of trafficking and smuggling as they occur in their own local setting.

Agenda:

- UNODC presentation – Global overview of trafficking in persons;
- Discussion – trafficking in persons situation, local, national and regional;
- UNODC presentation – Global overview of smuggling of migrants;
- Discussion – smuggling of migrants' situation, local, national and regional.

Exercises:

1. What local, national and regional data and research sources of information are you aware of regarding trafficking and smuggling? How is any resulting information collected, shared and updated?
2. Based on the above and your own knowledge, what patterns of trafficking or smuggling do you believe exist in your communities?
 - a. What factors allow traffickers/smugglers/criminal networks to commit these crimes?
 - b. What factors allow traffickers/smugglers/criminal networks to profit from these crimes?
 - c. What factors allow traffickers/smugglers/criminal networks to mask or escape detection for these crimes?
 - d. What factors allow traffickers/smugglers/criminal networks to avoid prosecution for these crimes?

Key resource material:

- Global Report on Trafficking in Persons, UNODC, 2018
- Global Study on Smuggling of Migrants, UNODC, 2018
- UNODC's Sherlock knowledge management portal, including the Human Trafficking and Smuggling of Migrants Case Law Databases.

For other practitioner-oriented material, please see the ***Catalogue of Materials*** of UNODC's Global Programmes against Trafficking in Persons & Smuggling of Migrants at (please note more than 80 specialized materials, in multiple languages, are hyperlinked through this document):

- https://www.unodc.org/documents/human-trafficking/2019/UNODC_Catalogue_of_Materials_May_2019.pdf

Post-session checklist:

- What are UNODC's global trends and patterns regarding trafficking in persons and smuggling of migrants?
- What trends, patterns and routes has UNODC analysed regarding your region?
- What is noted in the country profile for your State in UNODC's *Global Report on Trafficking in Persons, 2018*?
- What information sources supplement, enhance or deepen the picture regarding trafficking and/or smuggling as it affects your local setting?
- What are the key information gaps regarding trafficking and/or smuggling in your local setting?
- How does the state of knowledge on these crimes impact on responses?



Contribution to UNAFEI 172nd International Training Course, “Criminal Justice Responses to Trafficking in Persons and Smuggling of Migrants”.

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UNODC Session 2:

International Framework: Trafficking in persons and smuggling of migrants

Description:

On 13 May 2019, Palau acceded to the United Nations *Convention against Transnational Organized Crime (UNTOC)*, bringing the number of states parties to 190, and raising the high probability that this international treaty will soon achieve universal ratification within only two decades of existence. This significant milestone for the Convention and its protocols on human trafficking and migrant smuggling is in step with the increasing focus the multilateral community places on these issues. The past three years alone have seen the adoption of the *2030 Agenda for Sustainable Development* with three of its 17 Sustainable Development Goals (SDGs) explicitly targeting human trafficking, the *Security Council* adopting its first-ever resolutions on trafficking in persons, the adoption of the *Global Compact for Safe, Orderly and Regular Migration*, with two of its 21 objectives addressing trafficking in persons and smuggling of migrants, and *CEDAW* preparing its first-ever *general recommendation* on trafficking in women and girls.

Implementation of this widely-accepted international framework, however, remains at best uneven. In October, 2020, a review mechanism under the Conference of Parties to UNTOC will become operational, starting a process by which the implementation of all States parties of the Convention and its Protocols will be reviewed and reported on in little over a decade.

Human trafficking and migrant smuggling are complex crimes which national policy-makers and practitioners, globally, find challenging, with the development of the needed knowledge and expertise taking significant time and resources. Issues such as challenging legal concepts present hurdles not only for national actors, but to the possibility of cooperation between counterparts in different jurisdictions.

This session introduces key components of the existing international legal and policy frameworks addressing human trafficking and migrant smuggling, highlights select implementation challenges, as well as recent international developments regarding legal and policy frameworks and practice. This is done with a view to fostering discussion on the challenges, innovations and promising practices taken in national responses to both crimes.

Objectives:

Participants will be briefed on and discuss national responses to:

- The United Nations Convention against Transnational Organized Crime (UNTOC), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (TIP Protocol), and the Protocol against the Smuggling of Migrants by Land, Sea and Air (SOM Protocol);
- common implementation challenges globally, including:
 - legal concepts;
 - criminal justice capacity;

- awareness-raising;
- identification and referral;
- protection and assistance; and
- cooperation and coordination
- Recent developments regarding the international legal and policy framework and global practice

Participants will be encouraged to share and discuss characteristics and details of trafficking and smuggling frameworks and responses as they occur in their own local setting.

Agenda:

- UNODC presentation – UNTOC and the Protocols;
- Discussion – Legal and other frameworks at national and regional levels;
- UNODC presentation – Implementation challenges and recent international developments;
- Discussion – responses at the local, national and regional levels.

Key resource material:

- UNTOC, TIP Protocol and SOM Protocol
- UNODC Legislative Guides – UNTOC (2015); TIP Protocol (coming 2019); SOM Protocol (2004)
- Model Law against Trafficking in Persons, UNODC, late 2019
- Model Law against the Smuggling of Migrants, UNODC, October 2010
- International Framework for Action to Implement the Smuggling of Migrants Protocol, UNODC 2011
- International Framework for Action to Implement the Trafficking in Persons Protocol, UNODC, 2010
- UNODC’s Sherlock knowledge management portal, including the Human Trafficking and Smuggling of Migrants Case Law Databases.
- Case Digest - Evidential Issues in Trafficking in Persons Cases, UNODC, 2017

For other practitioner-oriented material, please see the ***Catalogue of Materials*** of UNODC’s Global Programmes against Trafficking in Persons & Smuggling of Migrants at (please note more than 80 specialised materials, in multiple languages, are hyperlinked through this document):

- https://www.unodc.org/documents/human-trafficking/2019/UNODC_Catalogue_of_Materials_May_2019.pdf

Post-session checklist:

- What is the ratification status of these three international instruments in your country?
- Does your country’s legal framework address all elements of the crimes of trafficking in persons and smuggling of migrants as set forth in the UN Protocols?
- Does your country’s legal framework address areas relevant to:
 - the prevention and prosecution of these crimes;
 - the protection and assistance of victims of trafficking and smuggled migrants; and;
 - the cooperation with other jurisdictions?
- Are you aware of the multilateral objectives, targets, commitments and/or obligations related to trafficking in persons and smuggling of migrants contained within:
 - General Assembly’s Global Plan of Action to Combat Trafficking in Persons;
 - Sustainable Development Goals of the 2030 Agenda;
 - Security Council resolutions 2331 and 2388; and
 - Global Compact for Safe, Orderly and Regular Migration?

The 172nd International Training Course



Left to Right:

4th Row

Mr. Onda (Staff), Ms. Yamada (Staff), Ms. Iwakata (Librarian), Prof. Furuhashi, Prof. Morikawa, Prof. Yamamoto, Ms. Matsuda (Staff), Ms. Iinuma (Staff), Ms. Kita (JICA), Mr. Hirose (Staff), Mr. Saito (Staff)

3rd Row

Mr. Kondo (Staff), Mr. Peerris (Sri Lanka), Ms. Odagiri (Chef), Mr. Ikeda (Japan), Mr. Oguchi (Japan), Mr. Mansho (Japan), Mr. Asmar (Palestine), Mr. Suzuki (Japan), Mr. Segi (Papau New Guinea), Mr. Nugroho (Indonesia), Mr. Turdiev (Uzbekistan), Mr. Turakhodjaev (Uzbekistan), Mr. Murone (Japan), Mr. Oliinyk (Ukraine), Ms. Renteria Mena (Panama)

2nd Row

Mr. Anuno (Timor-Leste), Ms. Lifaefi (D.R. Congo), Mr. Mizota (Japan), Mr. Chitsakamire (Malawi), Mr. Costa (Brazil), Mr. Yusoff (Malaysia), Mr. Mansour (Egypt), Mr. Osman (Egypt), Mr. Campines Cordoba (Panama), Mr. Ettien (Cote d'Ivoire), Mr. Kudaibergenov (Kyrgyz Republic), Ms. Mafumbo (Kenya), Mr. Kumara (Sri Lanka), Ms. Kongmany (Lao PDR), Ms. Kamata (Japan)

1st Row

Mr. Koseki (Staff), Mr. Fujita (Staff), Prof. Hosokawa, Prof. Otani, Mr. Fowke (UNODC), Mr. Gaña (Philippines), Director Seto, Ms. Brennan (United Kingdom), Deputy Director Ishihara, Prof. Futagoishi, Prof. Watanabe, Prof. Kitagawa, Mr. Schmid (LA)

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