

# PREVENTION OF CRIME AND TREATMENT OF OFFENDERS

**RESOURCE MATERIAL  
SERIES NO. 118**



**UNAFEI**

**Akishima, Tokyo, Japan**

**October 2024**

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## INTRODUCTORY NOTE

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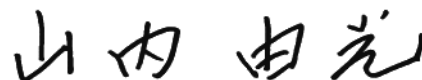
It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community this issue of *Prevention of Crime and Treatment of Offenders*, UNAFEI's Resource Material Series No. 118.

This issue contains the work product of the 183rd International Senior Seminar on Management of Correctional Institutions in the 21st Century – with a Focus on the Nelson Mandela Rules, the Third International Training Course on Building Inclusive Societies on Effective Measures for Preventing and Responding to Domestic Violence, and the 184th International Training Course on Countermeasures against Trafficking in Persons, with a Focus on Trafficking in Persons for Sexual Exploitation. These programmes were held to promote Goal 16 of the 2030 Agenda for Sustainable Development, which underscores the importance of governance and the rule of law in promoting peaceful, just and inclusive societies, as well as to follow-up on the implementation of the Kyoto Declaration adopted at the 14th United Nations Congress on Crime Prevention and Criminal Justice.

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 and other activities.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

October 2024



**YAMAUCHI Yoshimitsu**  
Director of UNAFEI



**PART ONE**

**RESOURCE MATERIAL SERIES  
No. 118**

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**Work Product of the 183rd International Senior  
Seminar**

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**UNAFEI**



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# REPORT OF THE SEMINAR

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## THE 183<sup>RD</sup> INTERNATIONAL SENIOR SEMINAR

### “MANAGEMENT OF CORRECTIONAL INSTITUTIONS IN THE 21<sup>ST</sup> CENTURY – WITH A FOCUS ON THE NELSON MANDELA RULES”

#### 1. Duration and Participants

- From 11 January to 6 February 2024
- 14 overseas participants from 13 countries
- 3 participants from Japan

#### 2. Seminar Overview

In order to create a safer and more just society, correctional institutions have two main responsibilities: to protect society from crime and reduce reoffending. To fulfil these responsibilities, criminal justice authorities are obliged to take necessary measures to ensure that prisoners are safely held in custody, ensure that each offender's human rights are respected, and support their reintegration into society as law-abiding citizens. In this regard, these underpinning principles have been recognized in the international community through international standards and norms, represented by the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted by the United Nations General Assembly, which proclaim those principles and embody them into a set of guidelines. The Nelson Mandela Rules call for respectful and fair treatment of inmates, promoting humane conditions of confinement. All these are indispensable preconditions for a rehabilitative environment in prison.

The purpose of the Seminar was to consider the management of correctional institutions in the 21st century based on the International Standards and Norms, including the Nelson Mandela Rules mentioned above. The seminar participants first presented the current state of correctional institutions in their own countries and shared the challenges they faced respectively. The participants learned about measures to tackle overcrowding and achieve a rehabilitative environment through lectures, and further discussed these issues in group workshops. Finally, based on the knowledge and in-depth understanding gained through the Seminar as a whole, they delivered Individual Presentations to present possible solutions to tackle the challenges in each country.

UNAFEI's Training Courses and Seminars are designed to build a human network that will enable the sharing of information on each country's efforts. The seminar participants stayed at the UNAFEI dormitory for four weeks, nurturing friendship through day-to-day exchanges and building a network of life-long international cooperation.

#### 3. Contents of the Seminar

##### (1) Country Reports

All participants made presentations on the systems, practices, statistics and challenges related to correctional institutions in their respective countries. After all the presentations, the Programming Officer summarized the presentations and held a summarizing session. Participants eagerly made comments and asked questions about challenges such as overcrowding and corruption in correctional institutions, which revealed their strong interest in the main theme of the Seminar.

##### (2) Lectures

Lectures were given by UNAFEI faculty members, experts from overseas (Visiting Experts) and Japanese lecturers as listed below. After each lecture, a Q&A session was held. A broad range of questions was asked by the seminar participants regarding each of the lecturers, which provided a lively exchange of opinions.

##### i) UNAFEI Faculty Members

- Professor MIYAGAWA Tsubura  
Lecture Title: Imprisonment around the World

Lecture Title: International Standards and Norms (Bangkok Rules and Beijing Rules)

- Professor AKASHI Fumiko  
Lecture Title: International Standards and Norms (Tokyo Rules)
- Thomas L. Schmid, Linguistic Advisor  
Lecture Title: Connecting Correctional Theory with Sustainable Development: An Historical Perspective on the United Nations Crime Congress

ii) Visiting Experts

- Mr. Robert Hollander  
Prison System Advisor, International Committee of the Red Cross  
Lecture Title: Improvement of Quality of Life and Protection of Human Rights in Correctional Institutions
- Mr. Charlie Taylor  
His Majesty's Chief Inspector of Prisons  
Lecture Title: The Importance of Independent Inspection in England and Wales (Online)

iii) Japanese Experts

- Mr. SHINIKETANI Rei, Director of Inspection Office, General Affairs Division, Corrections Bureau of the Ministry of Justice  
Lecture Title: Complaints and Inspection System in Penal Institutions in Japan
- Mr. ONO Fumihiro  
Manager of General Affairs Section, Training Institute for Correctional Personnel  
Lecture Title: Introduction of Training Institute for Correctional Personnel
- Ms. HANDO Mayumi  
Research Officer, Centre for Evidence-Based Research  
Lecture Title: Introduction of Centre for Evidence-Based Research

(3) Panel Discussion

The following three panellists made presentations on three topics, followed by Q&A and discussion by seminar participants and the guest audience. Active discussions were held on a wide range of topics, including the prison inspection system and the enhancement of staff awareness of human rights.

i) Panellists

Mr. Robert Hollander  
Mr. Charlie Taylor  
Dr. SHINKAI Hiroyuki, Professor, Faculty of Law, Kanagawa University

ii) Discussion Topics

- Measures to ensure the effectiveness of international standards and norms
- Methods for effective capacity-building
- Promoting human rights protection and quality of life in correctional institutions

(4) Group workshop

Seminar participants were divided into three groups to discuss the issues assigned to each group. In the discussions, the participants shared the systems and practices of their respective countries, identified challenges facing the promotion of legal aid based on the knowledge gained through the country report presentations and lectures, and discussed specific solutions to resolve those challenges. Each participant was very enthusiastic and engaged in active discussions. The main topic and outlines of each group's presentations are as follows.



## REPORT OF THE SEMINAR

Each group made presentations on the results of the discussion. In response to each presentation, participants in other groups asked insightful questions which contributed to lively presentations.

- Group 1: Measures to ensure the effectiveness of international standards and norms
  - Ensuring accountability and transparency for management of correctional institutions
  - Establishing an independent oversight body to prevent torture and ill-treatment
  - Implementing institution visits by external agencies
  - Establishing the procedures of filing complaints by inmates
  - Establishing appropriate procedures and guidelines
- Group 2: Methods for effective capacity-building
  - Implementing appropriate training and capacity-building programmes for staff
  - Preparation of training curriculum based on international standards and norms
  - Collaboration with universities and educational institutions
  - Evaluation of staff who contributed to the introduction of international standards and norms
  - Collaboration with private organizations and volunteers
- Group 3: Promoting human rights protection and quality of life in correctional institutions
  - Introduction of alternative punishment and diversion as measures against overcrowding
  - Building the new correctional institutions and renovating deteriorated institutions
  - Ensuring adequate salaries for correctional staff
  - Prevention of corruption through raising the awareness of correctional staff, etc.
  - Visits by judges and prosecutors to correctional institutions

### (5) Individual Presentation

In the final stage of the seminar, each participant delivered individual presentations addressing issues in their own countries based on the knowledge and in-depth understanding gained through the seminar. Some of the presentations extended to a comparison of Japan's system or an introduction to efforts in criminal justice in Japan. It was clear that the participants were keen to apply what they had learned in the seminar and the knowledge they had gained at the places they had visited to their future practice.

### (6) Self-learning Session

In order to efficiently implement the programme, a self-learning session for about one hour was set up every day. One of the self-learning programmes was e-learning materials on the Nelson Mandela Rules provided by the United Nations Office on Drugs and Crime (UNODC). All participants successfully passed the final online examination and they were issued a certificate. On-demand video materials jointly produced by UNAFEI and the Japan International Cooperation Agency (JICA) were also provided to the participants to learn about the criminal justice system in Japan. When all participants finished watching the videos, UNAFEI Professors conducted a feedback session to deepen their understanding.

## 4. Feedback from Participants

Many positive opinions were received from the participants, on the well-prepared curriculum and the comprehensive content. They commented that they have learned much from the programme. Through lectures and visits, the management of correctional institutions and the treatment of offenders in Japan attracted the participants' interest. They were especially surprised by the fact that Japan has managed facilities on an appropriate scale after the period of overcrowding, and that corruption has not spread to correctional officers. Opportunities to interact with Japanese volunteer probation officers greatly impacted the participants, acknowledging the significant contribution of Japanese citizens to the treatment of offenders and prevention of reoffending.

Based on experiences inside and outside the Seminar, including going out to various places on weekends, many participants mentioned that cities in Japan were safe and clean, and that they were impressed by the Japanese people's punctuality and disciplined behaviour.

## 5. Comments from the Programming Officer (Professor Miyagawa)

The principles of the international standards and norms concerning the management of correctional institutions and the treatment of offenders are very important and essential. Nevertheless, in many countries

around the world, overcrowding of correctional institutions is an urgent issue, causing extreme difficulties to put these principles into practice. With regard to those circumstances, the main theme of the seminar was highly challenging

Despite the difficulties, the participants earnestly engaged in the programme to deepen their understanding of the significance of the main theme and to learn from lectures and presentations. They had a high level of insight to objectively analyse the current situation and issues in their own countries. They were also willing to further improve the practices in accordance with the principles of the international standards and norms. In order to tackle various issues related to the management of correctional institutions, cooperation among relevant organizations with various expertise is indispensable. Therefore, I believe that it is meaningful that the International Senior Seminars invite high-level policymakers and practitioners from various fields of criminal justice. The participants spend four weeks together, sharing experiences and discussing important issues, which contributed to networking.

I was impressed by the sincere attitude and enthusiasm of the participants and learned much about practices in the participants' countries. I hope that the knowledge gained from the programme will serve as the basis for the development of the practise and contribute to the management of correctional institutions and the rehabilitation of offenders in each country.

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## VISITING EXPERTS' PAPERS

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### IMPROVING THE QUALITY OF LIFE AND PROTECTING HUMAN RIGHTS IN CORRECTIONAL INSTITUTIONS

*Robert Hollander\**

#### I. INTRODUCTION

This paper is a supplement to a lecture that will be provided to UNAFEI for its 183rd International Senior Seminar (Management of Correctional Facilities in the 21st Century – Focusing on the Nelson Mandela Rules) in January 2024. The lecture aims to explore the importance of the Standard Minimum Rules for the Treatment of Prisoners 2015, also known as the Mandela Rules. And how the Mandela Rules can be used to mitigate the negative impact on conditions and treatment of detainees caused by the numerous challenges prison systems have to deal with worldwide.

Protecting the rights of prisoners has never been easy. The Universal Declaration of Human Rights of 1948 did not specifically refer to prisoners, although the rights it laid out—including the prohibition of torture, the right to a fair trial and the presumption of innocence—implicitly covered them. Seven years later, in 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners. This was an important start, and in 2015, the United Nations General Assembly adopted expanded rules, known as the “Nelson Mandela Rules”, in honour of arguably the most celebrated prisoner of the twentieth century.<sup>1</sup>

The lecture will present, while many detaining authorities experience complex challenges like overcrowding, lack of human and material resources and sometimes situations of conflict, how the Nelson Mandela Rules could be used to address these challenges and to guide prison managers to improve the treatment of detainees and conditions of detention. In this paper and within the associated lecture we will examine several components of the Mandela rules as well as accountability mechanisms and the important role of oversight. The lecture will explain the position of ICRC and its work in detention for the past 100+ years in over 80 countries. Finally, some general thoughts will be shared and discussed on the opportunities the minimum standards for the treatment of detainees could offer.

#### II. THE INTERNATIONAL COMMITTEE OF THE RED CROSS

At the core of the work of ICRC are the visits to persons deprived of liberty and the interactions we have with their families. And, of course, ICRC interaction with the staff of the over 200 different detaining authorities that ICRC engage with around the world who manage prisons, police lockups, immigration facilities, military detention, and Prisoner of War Camps. Globally in 2022, ICRC conducted 2,930 visits to 939 places of detention in 78 ICRC operational contexts around the world.

Why does ICRC visit detainees and engage with prison authorities? We all know that due to the very nature of imprisonment, detainees are vulnerable, they are vulnerable to the environment in which they have been imprisoned, vulnerable to unsafe conditions of imprisonment and vulnerable to a variety of physical and mental health issues that combine to undermine dignity and humanity. Unfortunately, globally, we have seen little progress in reducing these vulnerabilities in recent years. At the policy or political level, a key barrier

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\* Prison System Adviser International Committee of the Red Cross

<sup>1</sup> UN Andrew Glimour Assistant Secretary-General for Human Rights and Head of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in New York.

to progress is the continuing over-reliance on incarceration<sup>2</sup> for those alleged to have committed crimes and those found guilty.

This global policy often remains disconnected from the evidence base which suggests that investment in basic living conditions, improved treatment and keeping people out of custody<sup>3</sup> would benefit society.<sup>4</sup> Investment in criminal justice continues to be primarily focused on policing,<sup>5</sup> resulting in insufficient investment in prevention, courts, child-appropriate justice, and prison and probation services. Meanwhile, outdated legislation and infrastructure, and non-evidence-based practices are tolerated and remain clear impediments to meaningful reforms. As a result, the world prison population, following a brief decline at the start of Covid, is continuing to increase,<sup>6</sup> and prisons remain dangerously overcrowded.<sup>7</sup> Although this is not just a numbers game.

The ICRC<sup>8</sup> continues to witness the human consequences of overcrowding in the vast majority of the places of detention where we visit. This includes:

- Detainees who can't sleep or breathe properly because of the overwhelming heat and humidity of cells packed far beyond capacity.
- Sanitation systems that have collapsed due to overuse.
- Water, food, and medicine that are inadequate in both quantity and quality.
- Families disconnected because of distance, transport and communication costs, and demand that outstrips supply.
- People going days or weeks without access to open air or health services due to the lack of prison staff to unlock and escort them.

This sadly remains the lived reality of many persons deprived of liberty whom the ICRC visits. And this does not even include the situation of some detainees deliberately subjected to torture, including sexual violence, and other forms of ill-treatment in the early stages of detention.

Fortunately, the international community has provided guidance on the minimum that must be done. The Convention against Torture and its Optional Protocol, Nelson Mandela Rules, Bangkok Rules, Tokyo Rules, Havana Rules, and Beijing Rules and many, many other standards and norms are clear. On overcrowding, a practical way forward was already set out ten years ago in an ICRC–UNODC collaboration on the Handbook on Strategies to Reduce Overcrowding in Prisons.<sup>9</sup>

The theme of the UNAFEI 183rd International Senior Seminar is particularly appealing for humanitarian organizations working in places of detention around the world. But in fact, all actors, including national detaining authorities, researchers and all prison and corrections professionals are working to achieve the main objective: assisting people deprived of their liberty to allow the realization of the criminal justice process, secure the community, and facilitate the social reintegration of detainees.

<sup>2</sup> Causes of prison overcrowding Tapio Lappi-Seppälä Director, National Research Institute of Legal Policy, Finland

<sup>3</sup> The Growth of Incarceration in the US Jeremy Travis, Bruce Western, and Steve Redburn, Editors National Academies of Sciences, Engineering, and Medicine. 2014. Chapter 5 The Crime Prevention Effects of Incarceration page 155

<sup>4</sup> Want to Reduce Crime? Start with Funding Our Communities Gina Clayton-Johnson and Thea Sebastian attorneys <https://www.newsweek.com/want-reduce-crime-start-funding-our-communities-opinion-1613995>

<sup>5</sup> Human Rights Watch Why More Police Funding Is No Route to Public Safety <https://www.hrw.org/news/2022/06/21/why-more-police-funding-no-route-public-safety>

<sup>6</sup> Roy Walmsley, World Prison Population List, 11th ed., Institute for Criminal Policy Research, London, 2016, p. 15

<sup>7</sup> World Prison Brief, “Highest to Lowest – Occupancy Level (Based on Official Capacity)”, available at: [www.prisonstudies.org/highest-to-lowest/occupancy-level?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All).

<sup>8</sup> ICRC Statement – HRC Side Event panel “Prison and Justice Sector Reform and Human Rights” Geneva, 28 February 2023 Terry Hackett ICRC Head of Unit Persons Deprived of Liberty Geneva

<sup>9</sup> UNODC Handbook on strategies to reduce overcrowding in prisons. In cooperation with the International Committee of the Red Cross.

### III. THE MANDELA RULES

In 2015, the United Nations General Assembly adopted expanded rules, known as the “Nelson Mandela Rules”. The United Nations Office on Drugs and Crime (UNODC) was the agency leading the revision process. The United Nations Office of the High Commissioner for Human Rights (OHCHR) ensured that the revised rules reflected international human rights standards adopted since the 1950s. As a result, the Mandela Rules<sup>10</sup> provide States with detailed guidelines for protecting the rights of persons deprived of their liberty, from pre-trial detainees to sentenced prisoners.

The Mandela Rules<sup>11</sup> are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. They offer detailed guidance on a wide variety of issues ranging from disciplinary measures<sup>12</sup> to medical services.<sup>13</sup> For example, they prohibit the reduction of a prisoner’s food or water, as well as the use of instruments of restraint that are inherently degrading or painful, such as chains or irons.

The Mandela Rules restrict the use of solitary confinement<sup>14</sup> as a measure of last resort, to be used only in exceptional circumstances. Mandela found solitary confinement to be “the most forbidding aspect of prison life. There was no end and no beginning; there’s only one’s own mind, which can begin to play tricks”.

The Nelson Mandela Rules emphasize that the provision of health care for prisoners is a State responsibility, and that the relationship between health-care professionals and prisoners is governed by the same ethical and professional standards as those applicable to patients in the community.

### IV. IMPROVING THE QUALITY OF LIFE AND PROTECTING HUMAN RIGHTS IN CORRECTIONAL INSTITUTIONS

The Mandela Rules serve as a comprehensive set of guidelines for the treatment of prisoners and the management of correctional facilities. To use these rules effectively, various stakeholders, including governments, correctional authorities, legal professionals, human rights organizations and the broader community, would be able to take specific actions. By actively incorporating the Mandela Rules into legal frameworks, promoting awareness and advocating for their implementation, the rules will contribute to a correctional system that prioritizes human rights, dignity and rehabilitation.

Advocating for implementation also includes education for staff of the criminal justice system, regular monitoring and evaluation by establishing oversight mechanisms to ensure compliance. At the same time, it would be important to hold those accountable who violate the Mandela Rules and ensure that legal professionals are aware of the Mandela Rules. To assess their effectiveness and to identify areas for improvement, data collection and research on the implementation of the Nelson Mandela Rules would be equally important.

Improving the quality of life and protecting human rights in correctional institutions is essential to adopt a fair and just prison service. To achieve this, effective rehabilitation programmes, safe and humane living conditions, staff training and transparent and accountable governance should be implemented. Detaining authorities should also regularly review their policies keeping them aligned with evolving standards and best practices in correctional management. By using the Nelson Mandela Rules, prison services and society work towards a correctional system that respects human dignity and contributes to the overall well-being of both inmates and communities.

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<sup>10</sup> The United Nations Standard Minimum Rules for the Treatment of Detainees.

<sup>11</sup> Mandela Rules: Rules of General Application Basic Principles, Rule 1.

<sup>12</sup> Mandela Rules: Restrictions, discipline, and sanctions, Rule 36-Rule 47.

<sup>13</sup> Mandela Rules: Health-care services, Rule 24-Rule 35.

<sup>14</sup> Mandela Rules: Restrictions, discipline, and sanctions, Rule 45.

## V. HOW TO ENSURE ADEQUATELY IDENTIFYING AND RESPONDING TO DETAINEES' NEEDS?

Whatever detaining authorities plan in the daily management, such as food and nutrition, infrastructure, health and discipline management, they should be thoughtful that generic solutions might be harmful to people. Even if they seem convenient to the majority, they might bring severe damages to some. This should not be the purpose of detention management.

In any place of detention, it will be quite impossible to provide specific support to each person. In a detention centre holding hundreds of inmates, it will be utopic to ask them all for separate menus. But by triangulating data, it can be possible to adapt as much as possible to the needs of everyone, through different options. Detention-system managers should feel accountable to those they are taking care of. The examples below are describing Accountability to the Persons Deprived of Liberty<sup>15</sup> and how to ensure this most effectively. Detainees do understand the daily situation, and this should be the rationale behind a constructive dialogue detaining authorities should have with them. Involvement is great, but listening to them is a must!

The Accountability to the Persons Deprived of Liberty approach in detention:

- People-centric approach – never losing sight of the people you are serving, the detainees and community.
- Using power responsibly – due to this position, prison services have an ethical obligation to exercise power in a responsible way, among other things by considering and being held accountable to those who are affected by the use of power, the persons deprived of their liberty.
- Understanding problems, not just needs. By making informed and nuanced needs assessments including the viewpoints of the detainees, to better address the needs of the detainees.
- Ensuring a responsible use of power through a people-centric approach is an effective way of building trust and acceptance between people.
- In situations of deprivation of liberty, mutual trust between detainers and detained, authorities and detainees, promotes an environment of dynamic security.

## VI. CONCLUSION

The collective knowledge is available, but what will it take to achieve the commitments set out in the Nelson Mandela Rules? First, we must collectively move from words to action, and this should start from acknowledgement that the only way to achieve results in rehabilitation and reintegration lies in placing dignity and humanity at the core, which means tackling overcrowding and improving the treatment of detainees. It also means that states should make meaningful and sustainable investments in non-custodial responses that could be used before and after conviction.

Further on, when people are detained, investment should be made in the maintenance and repair of infrastructure, provision of sufficient food and clean water, delivery of health outcomes that are equivalent to those in the wider community, and facilitating family contact both face-to-face and by leveraging technology. Obviously, none of this is possible without investment in the funding and training of sufficient prison staff. They are critical to the State's ability to fulfil its duty of care towards persons deprived of liberty.

We must also proactively design mitigating measures in relation to new and emerging risks and trends specific to places of detention and criminal justice systems. Many parts of the world are facing conflict, climate change, food insecurity, the increasing cost of basic necessities and the reality that places of detention

<sup>15</sup> ICPA Conference, 22-27 October 2023, HUMANITY IN DETENTION: What about the voice of people deprived of liberty, Terry Hackett, ICRC, Head of Persons Deprived of Liberty Unit, Geneva.

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remain highly susceptible to the next pandemic. This alarming combination will increase the vulnerability of persons deprived of liberty in many states around the world. Action on this would be imperative.

Finally, detaining authorities need to increase their attention to the voices of the people with lived experience in and in relation to places of detention. It is only by listening to those most affected by deprivation of liberty that we can fully understand the potential or real impact of incarceration on the dignity and humanity of those detained, their families and friends.

For all these action points the Nelson Mandela Rules do provide excellent guidance to achieve the commitments set out in binding conventions and recommendations.

Nelson Mandela once said,<sup>16</sup> “A good head and good heart are always a formidable combination”. Effective leaders understand that a balance between intellect and compassion is essential. A good head, representing intelligence and strategic thinking, allows leaders to make informed decisions and set clear goals. A good heart, symbolizing empathy and concern for others, enables leaders to connect with their teams, inspire trust and foster a positive organizational culture.

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<sup>16</sup> Nelson Mandela, *Higher Than Hope* (authorized biography), 1991.





# THE IMPORTANCE OF INDEPENDENT INSPECTION IN ENGLAND AND WALES

*Charlie Taylor\**

The two sides of the main gate of the famous Wormwood Scrubs prison in London are depictions of two great British prison reformers – John Howard and Elizabeth Fry. Both were determined to improve conditions for prisoners in England and to those being transported to the British colonies.

It is in the work of these and other reformers that the idea of independent inspection of prisons began to grow. Initially, the responsibility of carrying out this task fell upon magistrates; however, as time progressed, official roles were created. Nevertheless, these roles were frequently perceived as closely aligned with the prison service they monitored, functioning more as an internal auditing body rather than an independent scrutineer.

In 1981, the government created the post of Her Majesty's Chief Inspector of Prisons. As this appointment is made by the Crown, it is technically regarded as independent from the government. The chief inspector and their team were given the right to conduct unannounced visits to all prisons and to report on the treatment and conditions of prisoners. I am the 8th chief inspector to fill the role, and neither I, nor my predecessors, have worked in the prison service. Our diverse backgrounds include a diplomat, a judge, a soldier, two from human rights bodies, a police officer and me, a teacher.

With the development of an independent inspectorate, England and Wales fulfilled their obligations to Mandela Rule 83 – “(b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies”.<sup>1</sup> Although the inspectorate pre-dates the Mandela rules, our work aligns closely to these universal human rights standards.

I assumed the post in November 2020 during the pandemic, finding an organization that was well organized, well-respected, and fiercely determined to protect its independence.

The idea of prison – locking up criminals for a period decided by the court, is a relatively recent idea. Prior to the 18th century there was much greater reliance on the use of physical punishment or execution. But as the number of offences on the statute book grew, transportation began to be used as an alternative to the death penalty. Initially convicts were sent to the American colonies, but after the war of independence they were transported to Australia, and by the middle of the 19th century, more than 160,000 had made the journey.<sup>2</sup>

Over time, transportation itself began to be seen as inhumane, leading to new prisons being built, particularly in cities experiencing significant population growth and rising crime rates. As a result of this, numerous prisons were built which we still inspect to this day, over one hundred and fifty years later. Prisons such as Dartmoor, Wandsworth, Pentonville, Bristol and Birmingham continue to be used, despite their ageing and deteriorating conditions. These jails continue to be used because they are often located in city centres, close to courts and convenient for families to visit. They cannot be pulled down and replaced because they are listed buildings, protected because of their often-remarkable architecture. Over the years, however, these prisons have frequently experienced issues with overcrowding, violence, and high levels of

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\* His Majesty's Chief Inspector of Prisons.

<sup>1</sup> United Nations Office on Drugs and Crime. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Available at: The United Nations Standard Minimum Rules for the Treatment of Prisoners (unodc.org) (Accessed: 22 January 2024).

<sup>2</sup> National Museum Australia (2022) *Convict transportation peaks*. Available at: Convict transportation peaks | National Museum of Australia (nma.gov.au) (Accessed: 22 January 2024).

drug use, and continue to be the biggest cause of concern for the inspectorate.

It is important to understand the influence of Christianity in the creation of our prison system. The notion that every human is uniquely created in the image of God, gave rise to the belief that prisoners, regardless of the heinousness of their crimes, could, if they had faith, be redeemed. However, for criminals to reform, it was imperative that they were isolated from the negative influence of their fellow inmates. So, they were locked in single cells, unable to talk to each other, except for sneaked conversations on exercise yards. The idea was that if they were left alone to work and pray, they would find their way back to God and would then become rehabilitated. The magnificent chapels inside so many of our prisons, with the most esteemed at Wormwood Scrubs, show the connection between imprisonment and religion.

The prison reformer, Samuel Hoare, described the objectives of prison as the enforcement of hard labour, strict silence and solitary confinement, which he believed to be the most effective means of morally rehabilitating offenders.<sup>3</sup>

Oscar Wilde, the great Irish playwright who was subjected to this regime in Reading gaol, where he served most of his two year's hard labour for homosexuality, wrote to the home secretary in 1896 following his release:

For more than thirteen dreadful months, the petitioner has been subject to the fearful system of solitary cellular confinement: without human intercourse of any kind; without writing materials whose use might help to distract the mind: without suitable or sufficient books, so essential to any literary man, so vital for the preservation of mental balance; condemned to absolute silence; cut off from all knowledge of the external world and the movements of life; leading an existence composed of bitter degradations and terrible hardships, hideous in its recurring monotony of dreary task and sickening privation.<sup>4</sup>

Already the tide was turning towards a more liberal approach with a greater focus on education and rehabilitation. For example, the borstal system introduced in 1902 and designed to reform younger offenders, was loosely based on English public schools with housemasters and lots of outdoor activity.<sup>5</sup>

Furthermore, in 1910, Winston Churchill, home secretary in the Asquith government, partly because of his imprisonment during the Boer War, set about making prison more humane, relaxing the rules on solitary confinement and introducing prison libraries. In a speech to the House of Commons in 2010 he said: "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country".<sup>6</sup> He went on to say that a nation should have an "unfaltering faith that there is a treasure, if you can only find it, in the heart of every man".<sup>7</sup>

After the second world war, the prison population had fallen to around 15,000, but by the time the role of chief inspector of prisons was created in 1981, there were 40,000 people in prison.<sup>8</sup> In the first annual report from over 40 years ago, it described the three main challenges – overcrowding, prisoners spending too much time locked in their cells with nothing to do, and a prison estate that was in poor repair – and these have been common themes in our reports ever since. Interestingly in their foreword to the report, the then home secretary, William Whitelaw wrote: "Consistent with the need to maintain public confidence in the criminal justice system, at a time of rising crime, we are seeking a reduction in the prison population, by doing all we

<sup>3</sup> Cooper, R. A. (1981) 'Jeremy Bentham, Elizabeth Fry, and English Prison Reform', *Journal of the History of Ideas*, 42(4). Available at: Jeremy Bentham, Elizabeth Fry, and English Prison Reform on JSTOR (Accessed: 22 January 2024).

<sup>4</sup> Lapham's Quarterly. *Oscar Wilde Pleads His Case: When has a mind been punished enough?* Available at: Oscar Wilde Pleads His Case | Lapham's Quarterly (laphamsquarterly.org) (Accessed: 22 January 2024).

<sup>5</sup> Britannica. *Borstal system*. Available at: Borstal system | Juvenile Detention, Reforms & Education | Britannica (Accessed: 22 January 2024).

<sup>6</sup> Stand Together Trust (2016) "*The Prisoners Friend*": *Winston Churchill's Beliefs on Criminal Justice Reform*. Available at: "Prisoners Friend": Winston Churchill & Criminal Justice Reform (standtogethertrust.org) (Accessed: 22 January 2024).

<sup>7</sup> Ibid.

<sup>8</sup> Sturge, G. (2023). 'UK Prison Population Statistics', *House of Commons Library*. Available at: SN04334.pdf (parliament.uk) (Accessed: 22 January 2024).

can to encourage the recent trend towards shorter sentences".<sup>9</sup> This was a very different tone to that which we heard from politicians in the next decade.

The prison population growth during the latter half of the 20th century followed the dramatic rise in crime rate that began in the early 1960s and peaked in the mid-1990s.<sup>10, 11</sup> Since then, it has begun to fall - according to the national crime survey - and few people would know that levels of serious violent crime were higher in 1981 than they are now.<sup>12</sup> Falls in crime since the mid-1990s were not limited to the UK — in the USA and in every country in Western Europe there were similar reductions, despite the often very different justice policies being enacted.<sup>13, 14</sup>

There are many theories for why there has been a reduction in crime – in England and Wales the prison population nearly doubled from 45k to 85k between the early 1990s and the 2010s.<sup>15</sup> In 1993, the home secretary, Michael Howard, made his famous “prison works” speech, in which he linked the falls in crime with increased incarceration.<sup>16</sup> At the same time Tony Blair, the opposition’s home secretary, expressed his commitment to being “tough on crime, and tough on the causes of crime”.<sup>17</sup>

By March 2027, the prison population in England and Wales is projected to increase to a range of 93,100 to 106,300.<sup>18</sup> Over time there has also been a remarkable increase in sentence lengths, with the average rising to 20.4 months in 2023 from 11.4 months in 2000.<sup>19</sup> It is not uncommon during inspection to encounter young men who are looking at spending the next thirty years behind bars.

For many years policymakers have argued over the purpose of prison. Typically, it has been a combination of four factors: to deter, to punish, to rehabilitate and to protect the public, although the emphasis on each varies over time. These distinct purposes often clash with one another. There is a small, esoteric group that believes in the complete abolition of prison – though what if anything should replace it, is not entirely clear; it always comes up against the question, what would you do with people like Hannibal Lector? Even the most passionate prison abolitionists would not necessarily want him as a next-door neighbour.

The existence of prisons, like the courts and the police, are a protection against people taking the law into their own hands and applying summary justice to those who they think have wronged them. These institutions provide a degree of separation between victim and criminal and protect us from the consequences of our instinct for revenge. Few people would argue against prison for serious violent and sexual offences, but in a country that incarcerates at a higher rate than any other country in Western Europe, there is certainly a question about who should be going to prison and for how long.<sup>20</sup>

<sup>9</sup> Her Majesty’s Chief Inspector of Prisons (1981) *Report of Her Majesty’s Chief Inspector of Prisons for England and Wales 1981*. London: Her Majesty’s Stationery Office.

<sup>10</sup> Office for National Statistics (2023) *Crime in England and Wales: year ending June 2023*. Available at: Crime in England and Wales - Office for National Statistics (ons.gov.uk) (Accessed: 22 January 2024).

<sup>11</sup> UK Parliament. *Crimes of the century*. Available: Crimes of the century - UK Parliament (Accessed: 22 January 2024).

<sup>12</sup> Office for National Statistics (2023) *Crime in England and Wales: year ending June 2023*. Available at: Crime in England and Wales - Office for National Statistics (ons.gov.uk) (Accessed: 22 January 2024).

<sup>13</sup> Tonry, M. (2014) ‘Why Crime Rates are Falling throughout the Western World’, *Crime and Justice*, 43(1). Available at: Why Crime Rates Are Falling throughout the Western World (researchgate.net) (Accessed: 22 January 2024).

<sup>14</sup> Federal Bureau of Investigation. *Crime Data Explorer*. Available at: CDE (cjis.gov) (Accessed: 22 January 2024).

<sup>15</sup> Sturge, G. (2023). ‘UK Prison Population Statistics’, *House of Commons Library*. Available at: SN04334.pdf (parliament.uk) (Accessed: 22 January 2024).

<sup>16</sup> Howard, M. (1993) *Does Prison Work?* Available at: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjw96f8wvODAxVQiv0HHbBGCRgQFnoECBQQAQ&url=https%3A%2F%2Fwww.michaelhoward.org%2FPrison\\_Works.doc&usg=AOvVaw11GOazpNjKr-LGIn\\_CNAn&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjw96f8wvODAxVQiv0HHbBGCRgQFnoECBQQAQ&url=https%3A%2F%2Fwww.michaelhoward.org%2FPrison_Works.doc&usg=AOvVaw11GOazpNjKr-LGIn_CNAn&opi=89978449) (Accessed 22 January 2024).

<sup>17</sup> British Political Speech. *Leader’s speech, Blackpool 1994: Tony Blair (Labour)*. Available at: British Political Speech | Speech Archive (Accessed 22 January 2024).

<sup>18</sup> Ministry of Justice (2023) *Prison Population Projections 2022 to 2027, England and Wales*. Available at: Prison\_Population\_Projections\_2022\_to\_2027.pdf (publishing.service.gov.uk) (Accessed 22 January 2024).

<sup>19</sup> Clark, D. (2024) *Average custodial sentence length at all courts to immediate custody for all offences in England and Wales from 2000 to 2022*. Available at: Average prison sentence length in England and Wales 2022 | Statista (Accessed 22 January 2024).

<sup>20</sup> Fleck, A. (2023) *Incarceration: The Western European Nations Imprisoning the Most People*. Available at: Chart: The

Of the nearly 88,000 prisoners in the country, around 400 are children and 3,500 are women.<sup>21</sup> They are spread around an estate which still includes the crumbling Victorian houses of correction, such as Bristol and Winchester, but also the brand-new prisons, such as Five Wells in Northamptonshire. The prison estate is split into different categories that reflect both the nature of the prisoners they hold and the aims of the establishment, from high security jails, such as Wakefield, to open prisons, such as Ford in Sussex.

Of the 120 prisons in England and Wales, 15 are contracted to private providers who can make a profit out of delivering the service.<sup>22</sup> These prisons are usually built with a newer infrastructure and are generally in better condition than older parts of the estate. There have been some serious failings by privately run contractors, notably at Birmingham jail which was returned to the public sector after it got into a catastrophic state. However, some of the better prisons in England and Wales are currently those run by private contractors.

In March 2020, the prison service quickly responded to alarming projections about the impact of Covid-19. They promptly implemented testing measures, new prisoners were quarantined, visits were stopped and transfers between prisons were limited.

Our inspections during that time found that apart from those who were doing prison jobs like cleaning, waste management and kitchen work, most prisoners were locked in their cells for around 22.5 hours a day – more in some cases and especially at weekends. In a Victorian jail, such as Bedford or Leicester, that meant that two prisoners were typically spending most of their time in a 12 foot by six-foot cell with a bunk bed, a sink, an unscreened lavatory in the corner, a kettle, a chair, and a television set. Any pretence at rehabilitation was sacrificed to keep staff and prisoners safe from the virus.

We continue to be disappointed by the pace at which prisons have reopened services since the pandemic. Inspections of category C training prisons show there has been a depressingly low level of activity for prisoners in jails whose responsibility is to educate, train and increase the employability of prisoners, with the aim of preparing them for their eventual release.

A sort of post-Covid torpor seems to have infected many prisons, with workshops and classrooms remaining empty, and prisoners wiling away their time watching daytime television and sleeping. This is in part because some prisons simply do not have enough staff to run them properly. The UK government's austerity measures, introduced in 2010, led to a reduced head count of prison officers and a cut in budgets.<sup>23</sup> The result was between March 2015 and 2019 the percentage of prison officers with more than three years' service fell from 92% to 58%.<sup>24</sup>

The loss of experienced staff, who knew how to keep wings running smoothly, combined with the arrival of synthetic psychoactive substances, such as Mamba and Spice, was catastrophic for the prison system. By the time these drugs had been criminalized, networks for getting them into prisons had been established, meaning that letters, photographs and even clothing could be laced with illegal substances and then smoked or sold to other prisoners.<sup>25</sup> Fewer staff and more drugs meant that prisoners built up debt they could not pay, and rival gangs began to compete for the lucrative prison market. From 2014 to 2019, the rate of

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Western European Nations Imprisoning the Most People | Statista (Accessed: 22 January 2024).

<sup>21</sup> Ministry of Justice (2024) *Prison population figures: 2024: Latest prison population figures for 2024*. Available at: Prison population figures: 2024 - GOV.UK (www.gov.uk) (Accessed 22 January 2024); Youth Custody Service (2024) *Youth custody data*. Available at: Youth custody data - GOV.UK (www.gov.uk) (Accessed: 22 January 2024).

<sup>22</sup> Beard, J. (2023) 'The Prison Estate in England and Wales', *House of Commons Library*. Available at: SN05646.pdf (parliament.uk) (Accessed: 22 January 2024).

<sup>23</sup> Ismail, N. (2022) 'After a decade of austerity, urgent changes are needed to improve prison services', *University of Bristol*. Available at: PolicyBristol\_PolicyReport79\_Prison-funding-austerity\_Ismail.pdf (Accessed: 22 January 2024).

<sup>24</sup> Ministry of Justice (2020) *Her Majesty's Prison and Probation Service workforce quarterly: December 2019*. Available at: Her Majesty's Prison and Probation Service workforce quarterly: December 2019 - GOV.UK (www.gov.uk) (Accessed: 22 January 2024).

<sup>25</sup> HM Prison & Probation Service (2019) *Prisons Drug Strategy*. Available at: Prison Drugs Strategy (publishing.service.gov.uk) (Accessed 22 January 2024).

violence doubled, as the prison service tried in vain to stem the assaults both on staff and between prisoners.<sup>26</sup> The anxiety caused by drugs, violence and debt could well have contributed to the rise in rates of self-harm.

There is no doubt that lockdowns reduced the levels of violence at most jails — with only small numbers of prisoners unlocked at any one time, there were fewer opportunities for violence. Furthermore, the introduction of better technology, such as body scanners, means it has now become harder to get drugs into prisons.

There are certainly those who would like to maintain this restrictive regime – there is an old prison officer saying that “happiness is door shaped”, meaning prisoners who are locked up cannot do any harm. We cannot yet know what the long-term effects of extended lockdowns will be on this generation of prisoners, but it is likely there will be a price to pay for the boredom, the inactivity, the loss of family ties, the postponement of group therapy and the lack of education or work.

Reoffending rates for those leaving custody remain stubbornly high at 38% for adults and 63% for children.<sup>27</sup> This suggests that most prisons are doing a better job of punishing than they are at rehabilitating or protecting the public from future crime. If prisons are to be an essential component of a successful justice system, that is trusted by the public to keep them safe, then our model needs to change.

There are some who are sceptical regarding the rehabilitation of prisoners, believing that the sole deterrent against recidivism is getting older and the responsibilities of having a family. It is certainly true that most crime is committed by young men, and for many, growing up, taking responsibility for children, and finding work are all powerful resilience factors; however, the idea that prisons can achieve nothing beyond warehousing offenders until they grow out of crime is as depressing as it is wrong.

Every week I meet prisoners who are desperate to escape the cycle of crime and incarceration. Many are addicted to drugs or alcohol, and they describe how their lives, and those of the people around them, have often been destroyed by their habit, and they want help to change. Other prisoners have never known anything but the chaotic life in which they have been immersed since childhood – they never succeeded at school and have none of the skills or habits that they will need if they want to hold down a job or stay in a relationship when they are released.

Prisons like Grendon in Oxfordshire have demonstrated that it is possible to provide intense, therapeutic support for prisoners, some of whom have been fighting the system inside and outside custody all their lives. Similarly, Buckley Hall near Manchester or Warren Hill in Suffolk have shown how to create a rehabilitative culture. Oakwood, the largest prison in the country, thrives because of the way its leaders have given trust to prisoners. One man, who was serving a very long sentence at Oakwood, told me he had found meaning in his life for the first time in years through running a wood workshop for some of the prison's most vulnerable fellow prisoners.

The idea of rehabilitation describes a process that takes place over time. Criminals do not usually stop offending overnight, but often gradually reduce their criminal output. A change in identity away from the anti-social to the pro-social is important. Offenders must be able to view themselves from a new perspective — as someone who has moved away from crime and can achieve success. This psychological change is supported by practical support – when they leave prison, ex-offenders need to have somewhere safe to live, something meaningful to do and they need to be kept both physically and mentally healthy.

This means that rehabilitation works best when there are close links between prisons and the community, and that when it is safe to do so, there must be an expectation that prisoners will be released on temporary licence as they reach the end of their sentence. This helps to reintegrate them back into society, reunites

<sup>26</sup> Ministry of Justice (2020) *Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to March 2020 Assaults and Self-harm to December 2019*. Available at: Safety in Custody Statistics Bulletin, England and Wales, Deaths in prison custody to December 2016, Assaults and Self-Harm to September 2016 (publishing.service.gov.uk) (Accessed 22 January 2024).

<sup>27</sup> Ministry of Justice (2023) *Proven reoffending statistics: October to December 2021*. Available at: Proven reoffending statistics: October to December 2021 - GOV.UK (www.gov.uk) (Accessed 22 January 2024).

them with their families, and instils in them the habit of waking up and going to work.

There must also be continuity of health care, so that when they are released, their cases can be picked up by health services outside the jail. Too often, those leaving custody suffer a deterioration in their mental health that can lead to self-medication through substance abuse, engaging in criminal activities, and ultimately ending up back in prison.

Leadership is crucial to improving our jails. We find that the best governors can make a difference even in the hardest-to-run prisons, maintaining basic standards of care for prisoners and making sure that the jail is kept safe for those who live and work there. Running a jail can take a huge personal toll on a governor — I found it challenging running a school for children with behaviour difficulties, but I never had to worry about getting a phone call on Christmas day telling me that there had been a riot, or that a prisoner had escaped. This means that the best governors can get burnt out and exhausted, meaning they do not stay long enough in post to change some of the deep cultural issues that are embedded into the very fabric of the jail. It takes a good three years to begin to change a prison culture, and five to really move things on. In many prisons the turnover of governors is so high that officers cannot be blamed for sticking with what they know, rather than adapting to a lot of change imposed by a governor who might not even be there in six months.

Most of our inspections are unannounced. We have a confidential inspection schedule that ensures every jail is inspected at least every five years. More risky prisons are likely to get more regular visits, every two to three years.

Once a prison has been selected, we will drive to the prison car park on a Monday morning and put a call through to the governor, announcing the inspection and asking for arrangements to be made for us to have keys and a base room from which we can work. Our research team then go into the prison and run our prisoner survey. We randomly select prisoners based on the number of prisoners there that day. This gives us a representative proportion of the detainee population. The survey asks a wide range of questions about their experiences and perceptions of the jail, from the way they are treated when they arrive in custody, the behaviour of staff, the availability of drugs, the quality of education and the support for eventual release. The survey currently stretches to more than 100 questions, but much to my surprise when I first watched the team in action, most prisoners are keen to fill out the form. Where prisoners struggle with reading or are not English speaking, our team will assist to make sure we hear as wide a range of voices as possible. Prisoners welcome the chance to express their views about the jail and, as well as the questionnaire, they can also add their own comments.

While the survey is ongoing, one of our team who is coordinating the inspection will spend a day walking round the jail, making some initial assessments about general standards and talking to staff and prisoners. The surveys are then collected, and the information is analysed, allowing us to compare the prison to its last inspection as well as with other similar prisons. We also have access to the prison service's centralized data systems that allow us to consider trends across a wide range of metrics such as violence, self-harm, drug testing, serious incidents, and prisoner complaints. We also expect the governor to send us their own self-assessment of the state of the jail. All this information is gathered in the first week of the inspection and means that when inspectors arrive on the Monday morning of the second week, the team are already well prepared and have some good leads and information about the jail.

Our teams have a leader and then three or four inspectors. Each team is accompanied by our specialist health care inspectors, colleagues from the CQC and colleagues from Ofsted who look at education and training.

Our inspections use a set of expectations that we devised that follow the four tests by which we judge prisons. Expectations are the documents which set out the criteria we use to inspect prisons and other forms of detention. They are based on international human rights standards, including the Nelson Mandela rules, and are used to examine all aspects of life in detention. There is a different version of expectations for each type of custody we inspect. Our basic inspection methodology is consistent across all forms of detention. It consists of a series of broad thematic judgments known as healthy establishment tests.

The tests vary slightly but all have been developed from our four tests of a healthy prison, which are:

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1. Safety: Prisoners, particularly the most vulnerable, are held safely.
2. Respect: Prisoners are treated with respect for their human dignity.
3. Purposeful activity: Prisoners are able, and expected, to engage in activity that is likely to benefit them.
4. Preparation for release: Preparation for release is understood as a core function of the prison. Prisoners are supported to maintain and develop relationships with their family and friends. Prisoners are helped to reduce their likelihood of reoffending and their risk of harm is managed effectively. Prisoners are prepared for their release back into the community.

After four days of inspecting, the team convenes with the chief inspector, and we decide the scores for each area of a healthy prison:

- 1 = Poor
- 2 = Not sufficiently good
- 3 = Reasonably good
- 4 = Good.

We also assess the quality of leadership; however, this is not scored. That evening the team leader and chief inspector feedback the results to the governor of the prison. In the past, we would make up to 200 recommendations of areas to improve. However, I believed that this was an excessive number for the prison to effectively address. As a result, we now focus on Priority Concerns and Key Concerns that we consider to be the most crucial aspects requiring improvement. Subsequently, it is the responsibility of the governor and their team to devise an action plan.

All prison inspection reports should be finalized and published within 14 weeks of the end of the inspection.

If the chief inspector is particularly worried about a prison, they can invoke a “Urgent Notification” (UN) to the secretary of state for justice – meaning there are problems that need to be addressed immediately. The secretary of state then has 28 days to prepare an action plan in response to the UN. Sadly, I have used this power an unprecedented five times within a year between November 2022 and November 2023.

Where we have some concerns about a prison, we will return within 12 months to assess how much progress has been made. If we deem the progress insufficient, it is possible that we will declare another inspection, providing the prison with a notice period of six months to address the issues at hand.

An important part of the chief inspector’s job is engaging with various media platforms – television, radio, newspapers and online — to raise our concerns about prisons. I also go before parliamentary committees to give evidence in their investigations into standards in jails.

The inspectorate retains a strong reputation for fairness and integrity, built up by my predecessors in the role and by the outstanding team that I lead. Our reports are taken seriously by prison governors, the prison service, ministers, parliament, and the public. Having said this, we remain frustrated by the time it takes to make improvements, particularly in Purposeful Activity, where we see, since the pandemic, prisoners continuing to be locked in their cells with not enough to do and not gaining the skills that they need to succeed when they come out.

Independent inspection is critical to the UK fulfilling its commitments to the Optional Protocol to the Convention against Torture (OPCAT). There is much good work going on in our prisons, and some are as good as any in the world, but there are also some serious problems that need to be addressed. The independent inspectorate makes sure that ministers, the prison service, parliament, the media, and the public are kept informed about the state of our prisons and challenges that must be addressed to make improvements. Only by letting light and oxygen into a system that is necessarily closed to the outside world, can we make sure that those who are incarcerated are kept in decent conditions and the public is protected from future

offences and the misery caused by crime.



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## PARTICIPANTS' PAPERS

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### SECURITY AND SAFETY MANAGEMENT AT CORRECTIONAL FACILITIES

*Jenna Widyawati\**

#### I. INTRODUCTION

Security and safety management at correctional facilities aims to ensure the well-being of inmates and staff, as well as to maintain the function and daily operation of the facility itself. Unfortunately, due to power imbalances in correctional facilities, too much emphasis is often placed on security, which results in violations of human rights in many ways. Power imbalances also cause certain aspects of safety to be overlooked.

In 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners. In 2015, the United Nations General Assembly adopted expanded rules, known as the “Nelson Mandela Rules.”<sup>1</sup> These rules provide guidelines on the operation of correctional facilities to ensure the dignity and value of the inmates as human beings.

This paper will look at the security and safety management at correctional facilities as guided by the Nelson Mandela Rules. The data were collected through observations during site visits, interviews with various people whose jobs relate to prison management, lectures, and internet research of relevant publications and materials. Security management at correctional facilities will be considered from three aspects of prison security: physical security, procedural security and dynamic security. Good practice or areas that need further attention, in accordance with the Nelson Mandela Rules (the Rules), will be highlighted.

The paper will not discuss all issues found in most prisons but only those which are relevant to challenges posed to the ASEAN Secretariat in security and safety. The principles presented can be implemented to improve the security and safety at the facilities of the ASEAN Secretariat and eventually will provide some input to further improve the security and safety management at other public facilities.

#### II. SECURITY AND SAFETY MANAGEMENT

In places of detention, it is important to maintain security and order. Nevertheless, implementation shall not negate the person's dignity or impose torture and other ill-treatment. As a basic principle, Rule 1 of the Nelson Mandela Rules states: “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings...” The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.”<sup>2</sup>

##### A. Physical Security

Physical security aims to prevent escapes and other contact with the outside world mainly through physical structures and other building systems, such as walls and fences, building design, alarms and detection systems.

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<sup>1</sup> Gilmour, Andrew. “The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty.” *UN*, <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty#:~:>

<sup>2</sup> The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN Commission on Crime Prevention and Criminal Justice on 22 May 2015, endorsed by the Economic and Social Council on 9 September 2015, UN-Doc. E/ RES/2015/20 and adopted by UN General Assembly Third Committee on 5 November 2015, UN-Doc. A/C.3/70/L.3.

Guided the by Nelson Mandela Rules, there are two relevant rules related to physical security at correctional facilities:

(Rule 5) (1.) The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their inherent dignity as human being. (2) Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

(Rule 89) It is desirable to provide varying degrees of security according to the needs of different groups.<sup>3</sup>

In line with Rule 89, physical security at correctional facilities varies based on the security level of the facility. For example, in Sri Lanka, the correctional facility has three security levels: maximum security, medium security and open prison. In Japan, during visits, one can see the contrast between the security at Hiroshima prison and at a juvenile training school, with the later having a more humane feeling. While Hiroshima prison is guarded by 4-5-meter solid wall, juvenile training schools have a combination of a 2-meter-high wall and a 1.5-meter-transparent chain link fence. According to the explanation from the director of a juvenile training school, this approach is intended to create a more normal school feeling for the inhabitants.

Although the application may vary depending on security the level, in general, physical security consists of the following elements:

1. Perimeter wall or fence, some equipped with turrets and incorporating double or triple layers of perimeter wall with a no-man's area in between. Although not common, other types of perimeter protection can be used, such as in Maldives where the sea becomes the natural barrier.
2. Perimeter Intrusion Detection System (PIDS) in the form of infrared or strands of wire along the top of the perimeter wall. Japan prisons adopt this in many correctional facilities.
3. Closed Circuit Television (CCTV) as the surveillance and monitoring device. More sophisticated CCTV in Maldives uses analytical software that helps to detect intrusion.
4. Walk-through metal detectors in the form of gates or handheld devices, to screen inmates and visitors and prevent contraband from entering the prison area.
5. X-ray machines to scan incoming goods and prevent contraband.
6. Window treatments in the form of window grills, wire mesh or lately, to eliminate the use of metal grills, architects have opted to use tough glass.
7. Locks, latches, padlocks and grills to secure openings.
8. Alarm system and Public Announcement (PA) system as a mean to communicate and alert others of fire incidents or other critical security situations that require immediate attention and assistance such as fight, riot, attack on security staff or escape attempt by inmates.
9. Building design and material selection are carefully picked for effective protection and cost-efficient maintenance.
10. Area zoning that divides public and more secure areas.

It is notable that during visits to some correctional facilities in Japan, the use of barbed wire or razor wire

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<sup>3</sup> Ibid.

as the form of perimeter intrusion deterrent is not found. There has been controversy in utilizing barbed wire to secure areas due to its high potential to inflict injury on innocent passers-by, for which the property owner might be held liable. In Hiroshima prison, metal spikes are used on vertical piping and structural columns to prevent climbing and escape.

To meet the requirements of Nelson Mandela rule 5, careful prison design is important. Although the following description is intended to portray conditions of typical American prisons, arguably, the same conditions are found in many other countries as well:

Facilities are usually built like fortresses—monoliths in rural locations ringed with razor wire and high walls. Interiors are detailed to withstand tremendous abuse, made with hard materials... which mercilessly reflect the endless noise inside prisons, raising stress levels of both inmates and those who work with them. There's generally either too much or too little light—most of it fluorescent, and switched on 24/7—which scrambles everyone's circadian rhythms. But due to security and cost concerns, access to natural light is a luxury. Windows are expensive, and their size and location often determine a facility's weakest security points. The typical interior color palette, meanwhile, is a study in sensory deprivation—just a few shades of monotonous, soul-crushing beige."<sup>4</sup>

In the early stage of establishment of a correctional facility, the architect and planner must be aware of the physical security requirements, and the architectural design shall already accommodate security and safety management. There are many examples where the facilities are constructed without enough security and safety consideration. Later, renovation and new construction is required to fix the security weakness, which requires additional cost. At the opposite end, the facility is designed with too much emphasis on security aspects, creating a facility that does not facilitate supportive and humane treatment of the inmates. Examples of such improper design approaches are: facilities that minimize contact between staff and detainees to reduce staffing, no regard to the specific needs of a diverse detainee population, and design that assumes significant use of solitary confinement cells, which by design entail substandard living conditions<sup>5</sup> and are not in line with the spirit in the Nelson Mandela rules. Through study visits, we can see that Japan provides a good example of balance between creating a facility that supports humane treatment while still maintaining good security.

To achieve effective prison design, participation of correctional staff is required in the design stage to provide concrete information about day-to-day operation and what is required to support it. One good example is an initiative by the Government of Brazil to create prison design guidelines based on the active communication between correctional staff and architects/engineers. Another reference issued by the International Committee of the Red Cross (ICRC), "Towards Humane Prisons", provides guidance on prison planning and design. These guidelines also include provision for catering to special needs of inmates with disabilities. Interviews with several correctional staff reveal that most prisons are not designed and constructed with inclusivity in mind. On a case-by-case basis, if there is an inmate with disabilities, correctional staff must provide special arrangements that often require more effort from the staff and additional cost.

Related to the design and construction of buildings, engineers must pay attention to the applicable building codes. Ideally, server rooms, electrical panels, CCTV control units and other equipment related to building systems shall be put inside fire-rated enclosures with proper signage, away from heavy traffic or with limited access only for technicians. Not only is this crucial to maintaining the security of the equipment but also to ensure the safety of the people inside the building, as mandated by Nelson Mandela Rule 1.

### **B. Procedural Security**

Procedural security is about a set of routines or procedures that must be followed. In the prison context, this can be expanded to not only security but also safety procedures.

There are many Nelson Mandela Rules that are relevant in the procedural security context, such as rules

<sup>4</sup> Slade, Rachael. "Is There Such A Thing as 'Good' Prison Design?" *Architectural Digest*, <https://www.architecturaldigest.com/story/is-there-such-a-thing-as-good-prison-design>

<sup>5</sup> Towards Humane Prison: A Principled and Participatory Approach to Prison Planning and Design, ICRC.

regarding non-discrimination; file management procedures; separation of categories; restrictions, discipline and sanctions; information to and complaints by prisoners; contact with the outside world; retention of prisoners' property; and inspections.

Effective procedural security requires not only a clear set of regulations but must be implemented by staff that are adequate in number, recruited on merit, well trained, and adequately paid.<sup>6</sup> Shortages of staff are often compensated for by more strict security, while insufficient training leads to unnecessary security measures. Due to challenges in recruiting staff of suitable character, in many places, the position is filled with a person who believes that inmates, as people deprived of liberty, tend to be dangerous and violent; therefore, strict security measures are required to control them.

Based on several discussions with some people whose jobs are related to prison management, all of them already have a set of rules in place related to security. For example, the procedures to accept family visits, search procedures for inmates and procedures for service providers inside the prison have been carefully developed to accommodate the principles of the Nelson Mandela Rules and have been executed without issues. Japan in particular has a complete set of standard procedures on various activities and situations behind prison walls that are supported by effective training programmes to support implementation.

But in some cases, under special circumstances, there are still incidents where the correctional security staff inflict violence on inmates, which is a sign of problems in rule implementation. During his lecture, Mr. Hollander emphasized the importance of leadership. In this issue of poor implementation, leadership plays a great role in formulating proper and effective procedures, to provide role modelling, to provide mentorship, and to supervise and monitor the day-to-day implementation.

Safety procedures are often overlooked. There are two points to note regarding safety procedures: (a) safety monitoring and inspection to meet applicable industry standards, and (b) insufficient attention and preparedness of staff and inmates during emergencies.

Workshop facilities within prisons often play two roles as educational and production facilities. As production facilities, prison management must be aware about applicable safety standards and requirements within the respected industry to minimize the risk of occupational health problems and work injuries. This means that certain protocols must be established to ensure safe working environments, such as: application of personal protective equipment (PPE), routine workplace cleaning, regular maintenance of equipment, and periodic inspection by certified inspectors, SOPs for job related accident, and first-aid. The safety SOP must conform to the industry standard tailored to the specific conditions of the correctional facility.

During the lectures and study visit, questions arose over the preparedness of prisons during emergencies. There have been several cases of fire in Indonesian prisons caused by riots or electrical short circuits. Almost all news media, on 8 September 2021, reported that there was a great fire accident in Tangerang Class I Prison that killed at least 41 inmates.<sup>7</sup> There are also challenges in conducting evacuations in a safe and secure way, how to handle inmates with movement difficulties, whether there are alternative facilities for temporary evacuation, how to properly move the inmates during evacuation, how to address poor building maintenance that potentially creates hazardous situations. People in prison are among the most vulnerable from the negative effects of natural hazards, including extreme weather and climate change. Despite international and national momentum in many countries towards increasing and improving disaster risk reduction (DRR), the application of DRR in prison systems is often not a primary concern.<sup>8</sup> Prison management must do the risk analysis, develop procedures and execute drills for inmates and staff to familiarize them with the proper procedures. Prison management may introduce preventive maintenance action, which emphasizes periodic inspection to prevent safety incidents caused by faulty equipment that creates hazards. From the design stage, architects and engineers must plan for emergencies and provide necessary equipment in the event of power failure.

<sup>6</sup> Balancing Security and Dignity in Prisons: A Framework for Preventive Monitoring, *PRI and APT*.

<sup>7</sup> Supriyono, and Ihsan, Ahmad Yulianto., Criminal Liability in Prison Fire Cases: A Case Study of Class I Tangerang Prison Fire, *Indonesian Journal of Criminal Law Studies*. 7(1).

<sup>8</sup> Natural Hazards and Prisons, *Penal Reform International*.

### C. Dynamic Security

Dynamic security is an approach to security which combines positive staff-prisoner relationships with fair treatment and purposeful activities that contribute to their future reintegration into society.<sup>9</sup> Under this concept, prison staff actively and frequently observe and interact with prisoners to gain a better understanding and awareness of prisoners and assessment of the risks that they present.<sup>10</sup>

This concept is guided by the Nelson Mandela Rules:

(Rule 1) All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

(Rule 2) The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.

(Rule 38) Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.

One issue that kept coming up in discussions, lectures, and reference materials is the undervaluing of inmates in the eyes of correctional staff. This issue increases the risk of abuse of power, use of force and violence toward the inmates. One possible solution offered is the L.A.C.E.S framework (Lawful, Accountable, Considered, Equal, and Setting the Standard).<sup>11</sup> Lawful means that correctional facility staff must act in compliance with law, which has clear conditions as to when the use of force can be justified and, hence, is considered lawful. In the event of unlawful use of force, the staff members involved must be held accountable for their action. Although one might argue that use of force is spontaneous, there often are opportunities to de-escalate situations before the use of force by training the staff to offer calm and rational replies when faced with emotive situations. A set of dedicated training is required, including training regarding unconscious bias and how to reduce the influence of negative stereotypes.<sup>12</sup> As for setting the standard, this means that staff are updated with training and are aware of guidance, and that supervisors ensure that the staff feel supported, and leaders are modelling the behaviour that we strive for.<sup>13</sup>

## III. LESSONS LEARNED AND FOLLOW UP ACTIONS FOR THE ASEAN SECRETARIAT

### A. Revisit the Security Improvement Approach

The current security and safety improvements based on UNDSS recommendations are focusing more on the reliance on physical security and strict security procedure. While some recommendations on physical security improvement are on the way, there are more recommendations which require significant budget to implement. On the ground, there has been some conflict due to opposing interests between maintaining security of the ASEAN Secretariat (ASEC) and the need to make the ASEC more open and accessible to the public. Based on the study, it is important to revisit the remaining recommendations to come up with some adjustments to maintain security and at the same time create a more “open and welcoming” secretariat for staff, service providers, and visitors. This requires seeking support from higher management. ASEC can learn from Japan, which puts more focus on safety procedures and capacity-building instead of current heavy reliance on physical security.

<sup>9</sup> Balancing Security and Dignity in Prisons: A Framework for Preventive Monitoring, *PRI and APT*.

<sup>10</sup> Prison Incident Management Handbook, *UN* 2013.

<sup>11</sup> Bosworth, Grant J. and Ashcroft, Sarah. L.A.C.E.S: Introducing a New Framework to Enhance Professional Standards Around Use of Force. *Prison Service Journal*. 252. January 2021.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

### **B. Shift the Focus to Capacity-Building of Human Resources**

Other than focusing on physical security, another cost efficient and more effective approach is to develop the existing human resources. Currently, the security guards have negative views of visitors and especially service providers. Often, some guards provide unequal treatment to staff. In this new approach, there are two follow up actions to be done, which are:

1. Provide training to security guards to allow more friendly procedures and treatment while still maintaining security measures.
2. Provide intensive coaching for some individuals to shift their perspective to a more positive view of others.

These plans of action will require strong leadership to show examples, provide guidance and supervise the adoption of new policy.

### **C. Review of the Current Emergency Preparedness and Risk**

As a preventive measure to anticipate unpredictable disaster, ASEC management must do internal risk assessment and develop detailed written procedures for emergencies. The procedure must be communicated to all relevant staff and other parties involved. This can be achieved by maximizing the role of the Risk Management Team that has already been established within ASEC.

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# **CORRECTIONAL INSTITUTIONS IN MALAYSIA: IMPLEMENTATION OF THE NELSON MANDELA RULES**

*Mohd Shahrizal Azhari\**

## **I. INTRODUCTION**

The Federal Constitution of Malaysia is a legal document that focuses on the country's governance pattern and protects the people's fundamental rights in ensuring the harmony and stability of the country. All laws in Malaysia are based on this constitution and serve as a guide in every behaviour of Malaysians, especially in Section 2, Article 3 to Article 13. However, there are a few Malaysians who abuse this privilege to the point that they commit criminal offences, either petty or serious crime.

Every action that leads to a criminal offence definitely has a specific motive or agenda. A basic principle suggests that there are two elements which must be present in order for a crime to exist, and delineates between a physical act which occurred and caused a criminal outcome (*actus reus*), and an element of fault or intent (*mens rea*) (Coke, 1797). Every criminal offence will be judged through the court process starting from the process of accusation until the sentence in prison. However, every mistake made can be prevented and cured not only through one's own actions, but also by getting support and encouragement from family members, the community and the government.

This paper discusses the role of the department responsible for managing prisoners in Malaysia, namely the Malaysian Prisons Department. In addition, this paper discusses laws and regulations, total number of staff, issues that have been faced and some of the programmes that have been planned. In the last part, this paper will discuss the practices of the Nelson Mandela Rules in Malaysia and some recommendations.

## **II. CORRECTIONS IN MALAYSIA**

### **A. The Malaysian Prisons Department**

Correctional services in Malaysia are overseen by the Malaysian Prison Department, which operates under the Ministry of Home Affairs. The main goal of these services is to provide a safe and secure environment for both inmates and staff while also promoting rehabilitation and reintegration into society (Mokhtar et al., 2023). There are 39 prisons in Malaysia at the moment (Bernama, 2023). Malaysian jails have a long history dating back nearly 225 years – the same age as many other prisons around the globe. Malaysia's current prison system was brought over from the British (Omar, 2014). History has it that the prisoners of the Prison Cornwallis, the first jail established in Malaysia in 1790, were compelled to work as forced labourers, breaking stones and bricks to construct roads, cities, forts and other structures.

In addition to custodial services, the department also offers various educational and vocational programmes to support the rehabilitation process. These include skills training, academic courses and religious counselling. Today, the Malaysian Prisons Department has prison officers consisting of various educational backgrounds such as psychology and so on. Open-minded prison officers are able to work together with the department in an effort to help rehabilitate prisoners (Mokhtar et al., 2023). In addition, the Malaysian Prison Department nowadays also has all the necessary and sufficient facilities to carry out its duties compared to the past. Next, the Malaysian Prisons Department also provides various rehabilitation programmes for prisoners in prisons to intensify their efforts to produce productive prisoners. The department also collaborates with other government agencies and NGOs to support inmates in finding employment and housing upon release.

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## B. Laws and Regulations

The Department of Prisons carries out its duties as an institution of imprisonment and rehabilitation. Acts and regulations that have been adopted by the Malaysian Parliament apply to Malaysia (Anon, 2012). The Malaysian Prisons Department is authorized by acts and regulations to lawfully detain an individual as a prisoner and carry out rehabilitation programmes for them. The relevant acts and regulations are listed below.

### 1. Prison Act 1995

This act is also known as Act 537. It became effective on 18 January 1996 after the amendment of the Prisons Ordinance 1952. It consolidated and amended the laws in respect of prisons, prisoners and general principles of prison administration and application of regulations (Hashim et al., 2018).

### 2. The Children Act of 2001

The implementation of this Act was on 1 August 2002, which replaced the Children's Court Act 1947 (Amended 1972). The purpose of this act is to safeguard children's rights. This Act was revised in 2016, and some additions and renewals have been made (Hashim et al., 2018). Horowitz (2000) mentioned that child offenders in general have better prospects for rehabilitation compared to adults for a variety of reasons. One of the main reasons is because children have a lower guilt-factor than adult offenders.

### 3. The Standing Order of the Chief Director of the Prison

The Standing Order grants authority to the Director General in accordance with the Prison Act of 1995, section 12. The Director General may make any standing order pertaining to the management of imprisonment when he or she exercises power (Hashim et al., 2018).

### 4. United Nations Standards Minimum Rules for the Treatment of Prisoners (SMR)

The First Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, introduced the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) in 1955. This document was authorized on 31 July 1957, and it was revised on 13 May 1977, with the intention of establishing a single set of general guidelines for the administration of prisons, the principles guiding the provision of services to inmates and other relevant topics (Official Portal, Malaysian Prison Department, 2021). When the General Assembly adopted the revised SMR in 2015, almost 35% of the Rules, it also decided that the Rules should be known as the Nelson Mandela Rules, in honour of Nelson Rolihlahla Mandela, the former President of South Africa. He spent 27 years in prison for his struggle for global human rights, equality and democracy.

## C. Staff

Based on the statistics given by the Commissioner General of Prisons, Malaysia, Nordin Muhamad, until 29 September 2023 the current total strength of the Malaysian Prisons Department staff is 16,475 people throughout the country, while the total number of offenders currently receiving prison sentences is about 75,565 people, exceeding the total capacity of 69,816. In 2022, the recidivism rate of 18.6% was reached, and the government is aiming to reduce this to 10% in the coming years. Also, 1,480 vacancies need to be filled, involving 1,300 uniformed members and officers and 180 non-uniformed staff (Hamid, 2023).

The Training Centre is one of the parts of the Malaysia Prison Department that is responsible for producing trained officers and staff through appropriate training/courses for officers and staff, either short-term or long-term courses. The objectives of the Training Centre are to deliver a high degree of professionalism and skill to influential members, to create a workforce that is competent and disciplined in order to provide high-quality work and to develop moral principles and optimistic outlooks.

## D. Issues

Like other countries in the world, Malaysia faces challenges in its correctional services, such as overcrowding and inadequate resources. Efforts are being made to address these issues, including the construction of new facilities and implementing alternative sentencing methods. Overall, Malaysia's correctional services strive to provide a holistic approach towards rehabilitation and reintegration for inmates while maintaining public safety.

Furthermore, ensuring that prison staff possesses the necessary competence to effectively conduct

counter-narrative and religious classes remain a key concern. The success of rehabilitation efforts hinges on the skills and abilities of officers in providing guidance and instruction to the inmates. So, the prison department must ensure that their officers are well trained.

The Prime Minister of Malaysia announced the 2024 budget in July 2023, whereby RM15 million to rehabilitate the Prison Department's quarters and facilities will be provided. Based on the statement given by the Minister of Home Affairs in January 2023, the government is improving asset and logistics capabilities to create a conducive work climate in the Malaysian Prison Department. From the speech of the Commissioner General of Prisons, Malaysia said that for 2024 new openings of Community Correctional Centers, County Parole Stations and also Lahad Datu Prison shows that the improvement of the prison department to ensure the inmate's comfort is guaranteed.

### **E. Programmes**

Many programmes have been implemented by the Malaysian Prison Department, which aim at aiding in the recovery process of prisoners. The successful reintegration of inmates into society is crucial for reducing recidivism rates and fostering a safer community. The relevant programmes are listed below:

1. The Human Development Programme (HDP)

The Human Development Programme (HDP) is a comprehensive recovery system that covers all exercise and spirituality. The programme was first made available in February 2002. HDP was implemented by placing a strong focus on the development of discipline, which was followed by character development to help offenders regain their sense of self and identity (Saad, 2015).

Implementing the HDP, which consists of four phases – orientation, character strengthening, skills and pre-independent — on every offender serving a prison sentence aims to shape the character of the offender or resident through an efficient and successful rehabilitation system, enabling them to return to society as accountable individuals and productive members of society based on attitude formation, skills and knowledge.

2. Parole

The parole system in Malaysia was implemented in July 2008 after the amendment of the Prison Act 1995, which permits the release of a prisoner to serve any part of his sentence of imprisonment outside prison. As of 19 September 2023, the number of people on parole was 1,553 prisoners.

3. Halfway House

A halfway house was launched in September 2011 in Kuala Lumpur. The objectives of the establishment of this house are to provide opportunities for ex-prisoners in the process of reintegration in society, to sustain the recovery process and to provide temporary shelter. As of 19 September 2023, the number of prisoners involved in this programme was 361 prisoners.

4. Release on Licence

This programme will be done by home detention, especially for inmates with a sentence of 4 years or less, consisting of categories of offenders with chronic diseases, the elderly, the disabled and pregnant mothers. These groups are given the privilege to apply for home detention to enable them to live with their families, seek medical treatment and other appropriate reasons. As of 19 September 2023, the number of prisoners involved in this programme was 1,436 prisoners.

5. Transfer of Prisoners (ToP)

Another new programme that has been announced by the Malaysian Prisons Department is Transfer of Prisoners. It focuses on the foreign prisoners who can be transferred to their country of origin to serve their remaining sentence in their home country. The same goes for Malaysia citizens who are serving sentences in other countries. This programme should have mutual agreement between both countries. Moreover, it also can be seen as humanitarian programme because they can get support from their family members.

6. ASEAN Regional Correctional Conference (ARCC) 2024

ARCC has been implemented from 21-23 January 2024 at the Malaysian Correctional Academy (MCA) Langkawi, Kedah, with the theme of transforming corrections. The conference aims to bring together the heads of all ASEAN prison services to discuss common challenges and share best practices. Moreover, it

encourages future collaboration, joint training and knowledge exchange between ASEAN Member States as well as provides a chance to engage with international organizations in prison reform.

#### **F. The Nelson Mandela Rules in Malaysia**

Applying the Nelson Mandela Rules in Malaysia would be a progressive step towards ensuring the protection of human rights and the well-being of individuals in detention, supported by the Prison Act 1995, Standing Order of the Chief Director of the Prison, Prisons Regulations 2000 and so on. These rules emphasize the importance of treating prisoners with respect, providing them with access to health care, education and vocational training, promoting their reintegration into society after release and prohibiting any form of torture or ill-treatment.

Implementing these rules in Malaysia would not only comply with international standards but also demonstrate our commitment as a nation to upholding human rights and create a more just society. By embodying the values of Nelson Mandela, we can enhance the rehabilitation and reformation process of prisoners, encouraging their successful reintegration into society.

Moreover, embracing the Nelson Mandela Rules would also contribute to Malaysia's efforts to combat overcrowding and improve the conditions within correctional facilities. By prioritizing the rights and welfare of inmates, we can create an environment that fosters rehabilitation and reduces the likelihood of recidivism as our target to reduce recidivism to 10% compared to 15% and above before this year (Bernama, 2022).

1. Rehabilitation: Mandela believed in the power of rehabilitation and education for prisoners. Similarly, the Malaysian Prisons Department focuses on programmes that help inmates learn new skills, access education and receive counselling, aiming to reform them and prepare them for reintegration into society. The rehabilitation of the juvenile offender and his reintegration into society are the two main goals of the rehabilitation theory. The initial step is to rehabilitate the child using a variety of techniques, including schooling, behaviour modification and cognitive restructuring. The second element is that the system must connect them to society, as society will be their guardians and rehabilitators.
2. Restorative Justice: Mandela's emphasis on reconciliation aligns with the concept of restorative justice, which aims to repair harm caused by crime by involving all stakeholders. The department might employ similar approaches, encouraging dialogue and mediation between victims and offenders to promote healing and understanding.
3. Human Rights and Dignity: Mandela was an advocate for human rights and dignity for all, including prisoners. The Malaysian Prisons Department emphasizes the humane treatment of inmates, ensuring their rights are respected while they serve their sentences.

These connections showcase how Mandela's principles of forgiveness, reconciliation and respect for human dignity can resonate with the objectives and practices of the Malaysian Prisons Department in rehabilitating and reintegrating inmates.

In order to achieve this, it is crucial that the relevant authorities, policymakers and stakeholders collaborate to review current practices and adapt them to align with the standards set forth by the Nelson Mandela Rules. By doing so, Malaysia can establish itself as a progressive country dedicated to ensuring justice, fairness and human rights for all its citizens. I strongly believe that the application of the Nelson Mandela Rules in Malaysia will have a positive and lasting impact on society. It will not only contribute to the well-being of prisoners but also foster a culture of empathy and respect for human rights.

The Nelson Mandela Rules are applied by the enforcement agencies in Malaysia such as the Malaysia Prison Department, Royal Malaysia Police (RMP), Immigration Department of Malaysia, Malaysian Anti-Corruption Commission (MACC) and others. In this paper, only two agencies are addressed: the Malaysia Prison Department and the Royal Malaysia Police (RMP). Some of the similar contents of the Nelson Mandela Rules are presented below.

**Table 1: Content of Nelson Mandela Rules with Malaysia Prison Department and Royal Malaysia Police (RMP)**

Num.	Content	Nelson Mandela Rules	Prison Act 1995 / Prison Regulation 2000	Lockup Rules 1953 (RMP)
1.	Separation of Categories	Rule 11	Regulation 34	Rule 6
2.	Accommodation	Rule 12	Regulation 4-9	Rule 14
3.	Searches of Prisoners	Rule 52	Regulation 11	Rule 8 & 22
4.	Visitors	Rule 58	Regulation 93-95	Rule 22

Based on the table above, the Nelson Mandela Rules are applied by RMP during the detention of the suspect. In terms of separation of categories, under Rule 6 of Lockup Rules 1953, suspects shall be categorized, having regard to their age, gender, character, personality, previous history and other factors as may be determined by the Officer-in-Charge. For accommodation, Rule 14 of Lockup Rules 1953 states that the suspects need to be informed by the Officer-in-Charge by determining any equipment or facilities that may be placed in a cell or dormitory. Rules 8 & 22 of Lockup Rules 1953 state that no suspects shall be searched except by a police officer who is of the same gender as the suspects to be searched. For visitors, under Rule 22 of Lockup Rules 1953, suspects can receive visits.

### III. RECOMMENDATIONS

In order to ensure the Nelson Mandela Rules can be successfully implemented by the enforcement agencies, below are some recommendations.

#### 1. The Probation System

The probation system plays a crucial role in facilitating the successful rehabilitation and reintegration of offenders back into society. By giving individuals the opportunity to serve their sentence under community supervision, we can focus on addressing the root causes of their criminal behaviour and provide them with the necessary support and resources to improve their lives. This reduces the likelihood of reoffending, ultimately contributing to a safer and more harmonious community. It serves as a valuable mechanism for rehabilitation, individualized support, cost-effectiveness, restorative justice and maintaining a fair and just society. By investing in and expanding the probation system, we can foster successful reintegration and contribute to the overall reduction of crime rates. In order to make this core a success in Malaysia, the necessary action is to revise and change the relevant laws in addition to creating new alternative punishments for prisoners.

#### 2. Community Involvement

By engaging community members and organizations, we can provide a supportive network for inmates that promotes their successful reintegration into society upon release. This approach not only benefits the individual, but also has positive implications for the overall safety and well-being of our communities. There are several key benefits to involving the community in inmate rehabilitation. First, it provides inmates with opportunities for meaningful social interactions and connections outside the correctional system. Second, it allows for the provision of specialized services and resources that may otherwise be lacking within the correctional system. Third, it helps to reduce stigmatization and promote a more empathetic understanding of those who have been incarcerated.

#### 3. Ratification in the United Nations Convention Against Torture (UNCAT)

Malaysia is among the 25 countries that have yet to ratify UNCAT as one of the international conventions that acts as a guideline to prevent any form of cruel and violent punishment and rehabilitation (Maidin, 2019). Why does UNCAT need to be implemented in Malaysia, and what is its importance? This convention provides a framework that is very effective in protecting and reducing the issue of violence, especially involving detainees (Hassan & Syed Annuar, 2023). So, Malaysia should become a State party in order to

conduct a transparent investigation, involving an official interrogation process, if there any allegations of torture.

4. Training and Education to the Prison's Staff Dealing with Inmates

Nelson Mandela emphasized the importance of treating all individuals with dignity and respect, regardless of their past actions. Implementing these principles by prison staff not only fosters a sense of humanity but also serves as a powerful example to inmates. By promoting empathy and compassion, we create an environment that encourages personal growth, encourages self-reflection and ultimately promotes better outcomes for all parties involved. Besides that, by practicing effective communication and maintaining an open dialogue with inmates, prison staff can establish trust and encourage responsible behaviour. This not only enhances safety within the facility but also creates an atmosphere conducive to personal development, reducing the likelihood of violent incidents.

5. Parolees to Take up Foreign Workers' Jobs

The government is looking at the possibility of using paroled prisoners in work programmes to offset the shortage of foreign workers in certain industries, especially the 7,000 inmates who are currently under the Community Rehabilitation Programme. In December 2021, in order to overcome a manpower shortage, the Federation of Malaysian Manufacturers (FMM) needs to replenish more than 600,000 foreign workers to help the industrial sector, particularly export-based companies (Muzamir, 2022). By using paroled prisoners, the shortage of manpower can be minimized.

6. "Know Yourself, Know Others" (KYKO)

The Malaysian Prison Department uses psychometric instrument tests, including an in-house tool known as "Know Yourself, Know Others" (KYKO). This tool can be used to assess inmates' behaviours, such as violence, pretence, lying, self-harm, and others, at the admission process. This tool will help the officers with placement, security measures, restoration, treatment plans and parole decisions among prisoners (Nordin, 2023).

7. Heart Rate Variability (HRV)

This biofeedback tool is a part of therapeutic interventions. These tools measure heart rate variability and provide feedback to help inmates regulate their physiological stress responses, fostering relaxation and emotional self-control. Biofeedback tools are integrated into individual or group therapy sessions, stress and anger management programmes or substance abuse treatment programmes (Nordin, 2023).

## IV. CONCLUSION

The Malaysian Prisons Department is still dedicated to promoting the well-being of its inmates and has developed a number of programmes and activities to provide them with exposure prior to their release, making them more ready, self-assured and sociable. The Malaysian Prisons Department has implemented a number of proactive measures in the hopes that when released from prison, ex-offenders will be aware of the need to change, learn from their mistakes and become law-abiding citizens who benefit the community and the nation as a whole.

The role played by the government through the Ministry of Home Affairs in trying to shape the identity and comfort of the prisoners coincides with the Nelson Mandela Rules. For example, new openings of Community Correctional Centers, County Parole Stations and also Lahad Datu Prison. Also, 1,480 vacancies need to be filled in 2024. Moreover, in 2024 the government announced RM15 million to rehabilitate the Prison Department's quarters and facilities. Through the various programmes planned by the Malaysian Prisons Department, it also shows that the rehabilitation process for prisoners is given a lot of attention. Therefore, prisoners need to welcome this effort by giving their full contribution of energy and thinking, which can have a positive effect on themselves, their families and the community.

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# REHABILITATION AND REINTEGRATION OF OFFENDERS IN MAURITANIA: AN APPROACH TOWARDS A BALANCED PRISON SYSTEM

*Abdellahi Mohamed Yeslem Choumad\**

## I. INTRODUCTION

The prison has been regarded for a long time as *the house of bad people*. It is the place where the authorities apply their powers in punishing the violators of the law and depriving their liberty for the sake of the society's security. However, experience has proved that this view is wrong for two main reasons: first, that committing a crime, no matter how serious, does not deprive the perpetrator of human rights, and secondly, because simply detaining people for a period of time will not provide a final solution to the increase of crimes, nor does it guarantee a permanent protection for society, especially in light of the increase in population and the increase in social and economic problems. Therefore, there has been, in many countries around the world and at the level of the United Nations' bodies charged with confronting crime, a trend towards unconventional measures to confront crime, in a way that preserves the offenders' human rights, restores their relationship with society, and at the same time ensures real protection of society.

Rehabilitation and reintegration are well-known measures among the good practices of the treatment of offenders that we have seen during UNAFEI's 183rd International Senior Seminar. In fact, the ideas and titles of these two measures have been known in Mauritania for decades.

## II. HISTORICAL BACKGROUND

Since the beginning of the establishment of prisons in Mauritania, the rehabilitation of prisoners has been a target, and its regulation was mentioned in many articles of Decree No. 70-135 issued on 23 May 1970 (Articles: 7, 9 and from 23 to 39). Decree No. 98-078, dated 26 October 1998, changed the name of prisons from "Prison Institutions" to "Prison and Correctional Institutions." Article 2 of this decree stipulates that the treatment of prisoners aims to:

1. Reform and correct prisoners through the use of all educational, religious, medical, vocational training, social service, and sports, cultural, and recreational activities.
2. Creating the desire and inclinations among inmates towards an honourable life and good citizenship.

Moreover, article 12 of the same decree stipulates the appointment of educators in prisons to carry out disciplinary tasks in addition to teaching prisoners. In its last paragraph, it obligated all prison workers to assist and influence prisoners by providing a good example for their reform.

Decree No. 2022-134 expanded the prison administration and divided it into two large departments: the General Directorate of Prison Administration and Reintegration and the Directorate of Criminal Affairs and Amnesty. Each department is assisted by regional services and local prison administrations.

On 13 July 2023, the *National Document on Justice Reform* was issued, after arduous and serious dialogue and discussion among all partners interested in the judiciary in Mauritania, and it was an unprecedented event in the country. It is the document that obligated the government to take reform measures, such as:

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\* President of the Regional Tribunal of South Nouakchott. Mauritania.

strengthening alternative methods for resolving disputes, improving the legal aid law, raising awareness about the laws, amending articles of the procedural and criminal laws in order to avoid penalties restricting freedoms, establishing an independent directorate for prison management, called the “*General Directorate of Reform and Reintegration*” and obligating texts related to prisons to respect the international systems and standards related to the rights of prisoners (pages from 54 to 58 of the document).

However, no one can deny that the rehabilitation and reintegration efforts in Mauritania are still humble, weak and not ongoing, and the results, therefore, have brought a negative impact on the level of recidivism and have been an indirect cause of prison overcrowding. This situation might be a result of two main reasons:

- The lack of a clear strategy and programmes established for rehabilitation and reintegration;
- Failure to coordinate between stakeholders to implement goals.

This paper aims to answer the main question: what steps will guarantee best results for the rehabilitation and reintegration of offenders in Mauritania? In other words: what are the measures and decisions to be taken by the authorities to reach this goal?

Before getting into the topic, it is important to mention here that most of the main titles, recommendations and conclusions in this paper are collected through what I have heard and seen in the lectures of UNAFEI's professors, visiting professors and senior experts, discussions including the group workshops, some of UNAFEI's publications, some websites and field visits to the Correctional Officers' Training Center, Hiroshima Prison, Training Schools for Boys and Girls in Hiroshima and a halfway house, in addition to the texts of international standards for the treatment of offenders, especially the Mandela Rules, the Tokyo Rules, and the Bangkok Rules. The recommendations will be included in this paper, and before presenting those recommendations, I will begin by defining terms.

### Definitions<sup>1</sup>

- Rehabilitation can be defined as: “the result of a process that combines the correction of offending behaviour, human development and the promotion of social responsibility and values. It is a desired outcome of processes that involve both departmental responsibilities of Government and social responsibilities of the nation.”
- “Reintegration reflects the ability of an ex-prisoner to function in society (and family, place of employment, etc.) and manage situations by means of his or her decision-making and behaviour, in such a manner that avoids risk and further conflict with the law.”

From these two definitions, it is possible to distinguish the elements or steps that must be taken in any prison system to reach the goals of rehabilitation and reintegration.

## III. STEPS TOWARDS REHABILITATION AND REINTEGRATION

It is difficult, in fact, to enumerate all the procedures leading to the rehabilitation and reintegration of offenders into society, but we can distinguish between four main categories of these procedures: 1. resorting to non-custodial measures; 2. promoting a rehabilitative environment in correctional facilities; 3. promoting a rehabilitative environment in the community; and 4. promoting multistakeholder partnerships.

### A. Resort to Non-custodial Measures as Much as Possible

It is known that the longer a person is detained, the more difficult it is to reintegrate him or her into

<sup>1</sup> Muntingh, L (2005), “Offender Rehabilitation and Reintegration”, Research Paper, n. 10. CSPRI, Capetown, South Africa, pp. 6-8. Available online at: [https://repository.uwc.ac.za/bitstream/handle/10566/5097/Muntingh\\_Offender%20rehabilitation%20and%20reintegration\\_research%20paper%20no.%2010%20%282005%29.pdf?sequence=1&isAllowed=y](https://repository.uwc.ac.za/bitstream/handle/10566/5097/Muntingh_Offender%20rehabilitation%20and%20reintegration_research%20paper%20no.%2010%20%282005%29.pdf?sequence=1&isAllowed=y)

society. Therefore, most laws provide the criminal justice authorities with several options to choose what is appropriate for the accused person and the circumstances of the case.

There are many of these options in Mauritanian laws, but what we need is to develop a criminal policy that aims to restore the effects of the crime rather than simply putting the perpetrator in prison. I can mention here some examples of these measures that are either present in Mauritanian laws or can be taken from an international instrument, and we need to apply these measures in reality:

**1. Mediation and Fines (Arts. 41 and 42, Code of Criminal Procedure)**

This procedure is used to settle the dispute between the offender and the victim in misdemeanour crimes, and the case will be closed after the offender pays a fine. This option is not available for adults, except before the Public Prosecutor. As for juvenile cases, it is available at all stages of the case, even after the ruling is issued.

**2. Temporary Release (Articles 138, 142, 144, and 148, CCP<sup>2</sup>; Art. 11, Code of Criminal Protection of the Child)**

At every stage of the case, the accused can request temporary release pending his or her trial. In fact, misdemeanour perpetrators are often released after settling the victim's rights.

**3. Judicial Monitoring (Art. 123, CCP)**

Although the law stipulates dozens of procedures to achieve this oversight, judges often resort only to those related to preventing the accused from leaving the court's administrative circle, providing bail, and guarantying the presence of the accused.

**4. Conditional Suspended Punishment (Arts. 324, 658, 659, CCP; Arts. 170 and 171, CCPC<sup>3</sup>)**

The purpose of the conditions imposed on the accused in exchange for stopping his or her sentence is mostly to rehabilitate him or her.

**5. Medical Treatment for Drug Addicts (ANL<sup>4</sup>)**

The Anti-Narcotics Law obliges the criminal authorities to refer the accused to a specialist doctor for treatment, but this does not often happen in reality.

**6. Ban from Appearing in Some Areas (Art. 38, PC)**

The judge can ban the accused from being present in certain places for a period of time, if this prevents new crimes and helps with the rehabilitation of the accused.

**7. Parole (CCP)**

The law allows the Minister of Justice to release a misdemeanour convict who has completed half of his or her sentence and no violation of the prison system has been recorded against him or her. The powers of the Minister of Justice in parole procedures are based on his position as head of the Public Prosecution, which is entrusted with the task of implementing penalties in Mauritania.

**8. Juvenile Rehabilitation Programmes (Arts. 122 and 131, CCPC)**

The law allows juvenile justice authorities to resort to several options for rehabilitating juvenile offenders, including placing them in a safe environment, which are often the semi-open rehabilitation centres.

**9. Pardon**

It is within the powers of the President of the Republic (special pardon) and the Parliament (general pardon), and only those convicted of non-serious crimes usually benefit from pardons. It would be better here to adopt the Japanese special pardon practice, by establishing a specialized committee to decide on pardon requests, after subjecting the requester to a rehabilitation programme.<sup>5</sup>

<sup>2</sup> Code of Criminal Procedures

<sup>3</sup> Code of Criminal Protection of the Child

<sup>4</sup> Anti-Narcotics Law

<sup>5</sup> Articles 12 & 13 of the Japanese Pardons Act (Act No. 20 of March 28, 1947). The reference available online at: <https://>

**10. Adherence to What is Stated in the International Standards and Norms on Non-custodial Measures**

These standards and norms include the Tokyo Rules and the Bangkok Rules for women offenders.

**B. Promote a Rehabilitative Environment in Correctional Facilities<sup>6</sup>**

The first condition for rehabilitating inmates is to create the appropriate environment, which is done by:

**1. Humane Treatment (Rules 1, 2 and 3, NMR<sup>7</sup>)**

Although this treatment is a basic right for inmates and one of the minimum rules for their treatment, we must remember its importance in the field of rehabilitation, because good treatment raises the inmate's level of self-esteem and others and builds a bridge of trust between him and the authorities, and therefore, increases his or her ability to acquire knowledge and understand skills.

**2. Establishing and Implementing Effective Rehabilitative Programmes (Rule 4, NMR)**

The authorities should offer permanent access to educational, vocational and practical programmes in addition to the activities of a remedial, moral, spiritual, social and health – and sport – based nature.<sup>8</sup>

**3. Raising Awareness among Inmates and Staff**

About the rights and duties in a way that will protect security, safety and human rights and will guarantee a good environment for rehabilitation.

**4. Classifying Inmates**

Classification should include the question about what kind of programmes and methods of approach will fit the inmate, and this will save time and material efforts and will accelerate the rehabilitation.

**5. Minimize any Differences between Prison Life and Life at Liberty (Rule 5, NMR)**

This will at the end facilitate the inmate's reintegration in a normal social life after release, and we can achieve this minimization by respecting the UN minimum standard rules for the treatment of prisoners (NMR).

**C. Promote a Rehabilitative Environment in the Community**

The correction system cannot stand on the efforts of authorities without social support, and the Japanese justice system is clear proof of how important the role of the community is in the treatment of offenders and crime prevention. Although societies differ in terms of characteristics and cultures, the ideas remain human ideas that are adaptable to many societies, even if their applications vary from one society to another. In general, I have concluded in recent weeks that the Mauritanian society should be involved in prisoner rehabilitation procedures, in a way that guarantees its presence at all stages of procedures. There is no doubt, that the reasons for the failure of previous rehabilitation systems, especially for children, include the absence of any significant community presence in the correctional process. The community's presence in the prisoner's corrective process can be achieved by preparing a social environment capable of reforming the offender's behaviour through:

**1. Use of the Mediation Mechanism to Settle the Rights of Victims**

It has been said earlier in this paper that mediation is a legal measure under Mauritanian law to avoid the consequences of accusation and punishment, and the best way to apply such measure is through social means, as the Mauritanian society still recognizes the value of family and social ties. Therefore, the authorities should benefit from this fact and mobilize social forces to intervene in the efforts of mediation in order to end many cases before the courts.

[www.japaneselawtranslation.go.jp/en/laws/view/3201/en#je\\_at4](http://www.japaneselawtranslation.go.jp/en/laws/view/3201/en#je_at4)

<sup>6</sup> Online titles and ideas of this step and the steps III and IV are collected from the Kyoto Declaration (articles from 37 to 40); Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, March 2021, Kyoto, Japan, Published by UNODC, Vienna, Austria, 2021, p. 7.

<sup>7</sup> The United Nations Standards Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

<sup>8</sup> Rule 4, NMR.

**2. Raise Awareness of the Importance of the Public Acceptance of Offenders**

The social view towards inmates in general is still a tough obstacle in terms of reintegration, and the only solution is to take all possible means to inform the public about the rights of prisoners and the best practices for their treatment. There should be a mechanism (a radio programme or a Facebook page by the prison administration) that can bring the voices of prisoners outside the walls of the cell to talk about their experiences and express their wishes for their society and for their country, and this may narrow the gap between them and the society.

**3. Active Involvement of Local Communities**

The prison should not be an island closed to the community. There should be active interaction with the neighbouring communities as the rehabilitation programme should pay attention to the local means and needs for any productive projects. Also, the teachers, educators, imams and social assistants should be from the locality.

**4. Ensuring Access of Goods Manufactured in Prison to the Local Market**

This is in order to help the inmate to see the results of the rehabilitation programmes in the short term and to narrow the gap between the prison's programmes and the society.

**5. Reduce the Impact of Imprisonment on Inmates' Families**

The life of these families is destroyed when one of their parents is deprived of liberty. There should be a way to provide them with financial aid from an account of the rehabilitation programme.

**6. Allocate Prisoners to Prisons Close to Their Homes or Their Places of Social Rehabilitation (Rule 59, NMR)**

This rule aims to facilitate the reintegration of the offender to his or her normal life.

**D. Promote Multistakeholder Partnerships to Reduce Reoffending**

It is clear that any process that has a variety of aspects will not succeed without the contributions of all actors in these aspects, and rehabilitation is not an exception from this rule; thus, we should mobilize all the efforts by taking the following steps:

**1. Intensify the Efforts of the Prison's Monitoring Committee**

The composition of this committee was stipulated in Articles 15 and 16 of Decree No. 98-078 regulating the management of prison and correctional institutions. It is under the chairmanship of the governor of the region or the governor of the district, and its members include: the prosecutor, the director of the prison institution, the investigating judge, and the heads of the regional departments of the education and health sectors, the Commander of the National Guard Division, prison warden, and three national figures chosen by the county mayor based on their efforts to reform and reintegrate offenders. Article 17 of the same decree stipulates that the committee meets every six months and may visit the prison to monitor its conditions. It may also delegate one of its members to visit the prison in the period between meetings; however, the meetings of this committee are rare, so the law should be amended, in light of the restructuring of the prison administration, so that the chairmanship of the committee can be assigned to a representative of the prison administration in order to carry out its tasks in a flexible way, away from bureaucracy. It is necessary for this committee to supervise the rehabilitation programmes.

**2. Intensify Coordination between Government Agencies Concerned with Prisons**

Article 25 of Decree 078-98 stipulates that the Minister of Justice, the Minister of the Interior, the Minister of Finance, the Minister of Education, the Minister of Health and Social Affairs, the Minister of Labor, Youth and Sports, and the Minister of Culture and Islamic Guidance are each responsible for implementing this decree. Prison institutions are not an issue that concerns the Ministry of Justice or the Ministry of Interior alone. Rather, the responsibility for taking care of it falls on the entire public sector related to the needs and care of prison inmates.<sup>9</sup> However, the level of coordination between these bodies is not at the level of their mandates; therefore, they should increase their efforts of

<sup>9</sup> BABA, Mulay Abdullah. (August, 2023) a lecture on "The International Standards of the Prisoners' Protection". During a workshop held in Kiffa, Mauritania. The lecturer has been the General Director of Prisons in Mauritania since June 2016.

coordination.

**3. Establish Good Relations between Prison Authorities and the Inmates' Families for the Purpose of Rehabilitation**

This step is very important because it helps implement Rule 5 of the NMR regarding the minimization of the differences between life inside and outside prison.

**4. Establish Good Relations with the National Mechanism for Prison Oversight, to Share Ideas and Practices for Rehabilitation**

Through their work in inspecting prisons, these bodies will become aware of the need for rehabilitation programmes, and their knowledge of the conditions of inmates allows them to know which programmes are beneficial to them.

**5. Establish a Local Council for Rehabilitation**

This may include educators, medical experts, imams, businessmen and social experts, to discuss the best methods for rehabilitation and present recommendations to the authorities. This council or board will inform the prison administration about the skills and knowledge needed in the local market, and will coordinate with national NGOs to provide support for inmates.

**6. Strengthening Links with the United Nations Crime Prevention and Criminal Justice Programme Network**

By strengthening links with Programme Network Institutes (PNI), such as UNAFEI, criminal justice practitioners can learn and be updated about the good practices of the treatment of offenders. These think tanks in criminal justice are very important because of their research, studies and training programmes; therefore, the governments should have close ties with them.

## IV. CONCLUSION

Establishing programmes for rehabilitation and reintegration of offenders is not an option. It is one of the minimum international standards for the treatment of prisoners and deeply related to essential human rights. Therefore, the authorities cannot invoke the lack of means because in all cases they can provide programmes with the simplest means and can cooperate with stakeholders, and they cannot invoke security concerns because rehabilitation programmes fall within the context of procedural security and their results are beneficial to security and safety.

All that remains is the will, and the Mauritanian authorities are embarking on new directions that will achieve important progress in the field of reforming the justice system in general and the prison system in particular, in the context of implementing the *National Document on Justice Reform*. Therefore, I will seize the opportunity and submit the recommendations mentioned in this paper to the newly restructured Administration of Prisons, with the expectation that the rehabilitative policy will:

1. Reduce recidivism (permanent solution);
2. Reduce overcrowding in the prisons;
3. Strengthen social harmony;
4. Reinforce confidence in the justice system;
5. Provide better living conditions for society;
6. Impose staff training;
7. Build trust between the authorities and society;

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8. Put correctional institutions on the path to development and productivity instead of being merely costly to public funds;
9. Ensure transparency within prisons;
10. Increase awareness of duties and rights among staff and prisoners.

These great impacts on the prison system will, in short, create a productive and effective system which will be able to achieve the balance between the security of society and the rights of prisoners.





# CHALLENGES TO THE DEPARTMENT OF PRISONS, SRI LANKA, AND INITIATIVES TO OVERCOME THE CHALLENGES

*Ajith Basnayake\**

## I. INTRODUCTION

The Department of Prisons in Sri Lanka represents a vital component of the criminal justice system in the country and is moving towards its vision of “Social reintegration of inmates as good citizens through rehabilitation”<sup>1</sup> and performing the tasks with the mission of “Making a fine relationship between prison officers and inmates in order to achieve the main objectives of custody, care, and corrections and thereby to improve job satisfaction of the officers, regulate the welfare of the inmates thereby [utilizing] the productivity of their labour for benefit of the country.”<sup>2</sup>

The Department of Prisons is mandated to detain the prisoners under custody, provide them care and rehabilitate them through different mechanisms. The Department is headed by the Commissioner General of Prisons who is responsible for the entire functioning of the prison system in the country and five Commissioners, the Director (Engineering), the Director (Planning), and the Chief Financial Officer are under him, who are responsible for different divisions such as Human Resources, Prisoners Management, Logistic Management, Prison Industries, Rehabilitation of Prisoners, and Financial Management and Planning. Further, the prison institutions in the country are headed by Senior Superintendents of Prisons or Superintendents of Prisons or Assistant Superintendents of Prisons, and they are directly responsible for the Commissioner General of Prisons. The Department of Prisons is mainly governed by several laws and regulations including the Prison Ordinance of Sri Lanka of 1877, Statutory Legislation under the Prison Ordinance, and Departmental Standing Orders. In addition to that, the Department consists of 4 Closed Prisons which are specially designated for convicted prisoners, 18 Remand Prisons which particularly facilitate un-convicted prisoners, 12 Work Camps without walls or security fences which have been designated for agricultural therapies for short-term inmates, 1 Training School for Youthful Offenders where general education is provided to the young offenders between 16 to 22 years of age by the government teachers, 2 Correctional Centers for Youthful Offenders where youthful offenders between 18 to 22 years of age are detained and rehabilitated. In addition to that, there are 23 prison lock-ups where the inmates are temporarily detained.<sup>3</sup> The approved cadre of officers is 7,872 consisting of 85 designations or positions.<sup>4</sup> These officers are recruited through competitive examinations, interviews and physical fitness tests.

The Department of Prisons has been facing several pressing issues. Overcrowding in prisons, higher numbers of un-convicted prisoners, drug offenders in prisons, shortage of human resources, lack of modern technologies and old prison infrastructures are the main issues. These issues have become a big challenge in upholding prisoners’ rights, which are guaranteed by domestic and different international standards such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), the Nelson Mandela Rules, the Bangkok Rules, the Beijing Rules and the Basic Principles for the Treatment of Prisoners. However, the Department of Prisons Sri Lanka has been making efforts to manage the above issues to protect and promote human rights and better life within prisons. Accordingly, this paper discusses the initiatives of the Department of Prisons Sri Lanka to resolve the pressing issues.

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\* Superintendent of Prisons, Department of Prisons, Sri Lanka.

<sup>1</sup> Department of Prisons, <<http://prisons.gov.lk/web/en/about-us-en/>> Accessed 26 Dec. 2023.

<sup>2</sup> Ibid.

<sup>3</sup> Prison statistics of Sri Lanka (2023), 42.

<sup>4</sup> Department of Prisons, “Performance Report” (2022) <[http://prisons.gov.lk/web/wp-content/uploads/2023/08/performance-report-2022\\_EN.pdf](http://prisons.gov.lk/web/wp-content/uploads/2023/08/performance-report-2022_EN.pdf)> Accessed 28 January 2024.

## II. PRESSING ISSUES AND INITIATIVES TO OVERCOME THEM

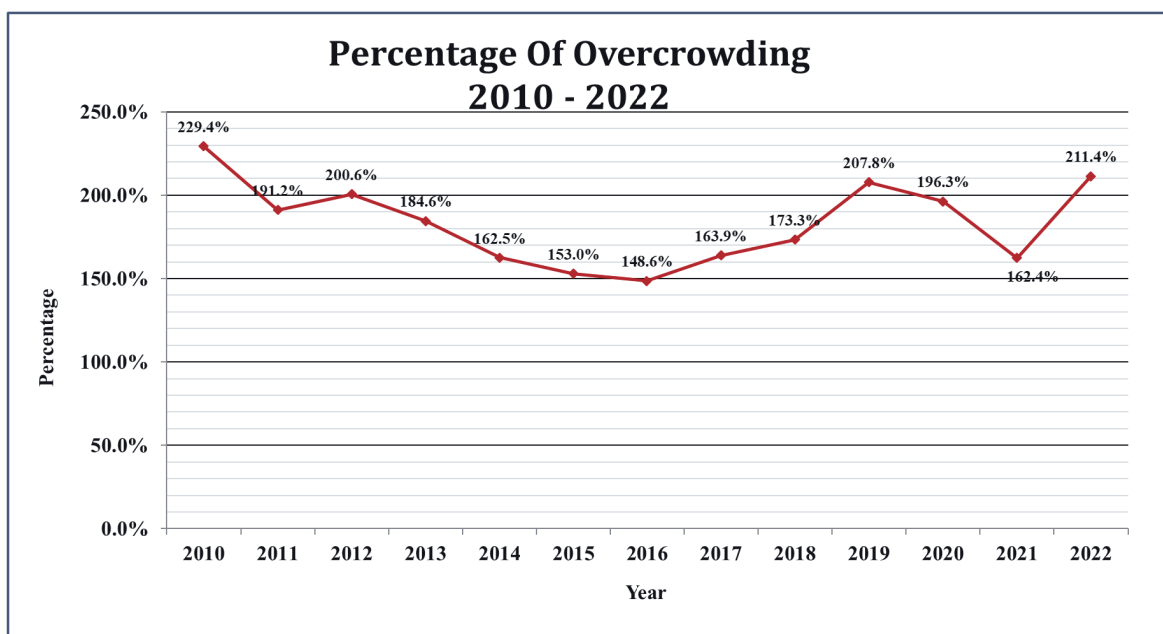
### A. Overcrowding

#### 1. Overview of the Issue

Overcrowding in prisons in Sri Lanka has been the biggest pressing issue which has created several other problems. Accordingly, as of 30 December 2023, the overcrowding percentage was 292% in general.<sup>5</sup> However, it is observed that some of the prisons, particularly the urban prisons, are overcrowded by about 350%. This overcrowding issue has directly and indirectly affected the smooth functioning of prisons as well as the proper implementation of international standards in terms of prisoners. Accordingly, the overcrowding in prisons negatively affects prisoner file management, separation of categories, accommodation, personal hygiene, clothing and bedding, food, exercise and sport, health-care services, restrictions, discipline, and sanctions, searches of prisoners and cells, information to and complaints by prisoners, contact with the outside world, retention of prisoners' property, removal of prisoners, internal and external inspections, education and recreational activities — which means the overcrowding is a huge threat for the promotion and protection of the Human Rights and Quality Life within prisons. Accordingly, the below graph shows the trend of overcrowding in prisons in Sri Lanka from 2010 to 2022.

In addition, the ICRC recommendations with regard to required space for accommodation (5.4 m<sup>2</sup> single cell and 3.4 m<sup>2</sup> shared cell), the minimum requirement of the toilet (1:25), and the minimum requirement of the shower (1:50)<sup>6</sup> and other minimum requirements cannot be fulfilled in overcrowded prison conditions.

Sri Lanka has been focusing on prison reforms to promote and protect human rights within prisons. Accordingly, a five-year plan has been developed incorporating the expected reforms. This plan consists of nine reform areas: Dealing with prison overcrowding, Prison Management Reforms, Prison Officers Training, Amendment of the Prisons Ordinance, Upgrading Security Measures in Prisons, Improving Prison Health Care, Offender Rehabilitation and Effective use of Labor Force, Reforming Women's Prisons and Training Centers for youthful Offenders and Implementation of e-Prison Concepts.<sup>7</sup> Accordingly, in this five-year plan, dealing with prison overcrowding has been recognized as the first reform area. In addition to this five-year



(Source – Prisons Statistics VOL 42 – Year 2023)

<sup>5</sup> Statistics of Department of Prisons, “Morning Unlock” (30 Dec. 2023).

<sup>6</sup> ICRC, “Water, Sanitation, Hygiene and Habitat in Prisons” (2013) <<https://www.icrc.org/en/doc/assets/files/other/icrc-002-0823.pdf>> Accessed 26 January 2024.

<sup>7</sup> Department of Prisons, “Prison Reforms” (2020) <<http://prisons.gov.lk/web/wp-content/uploads/2020/10/Prison-reform-implementation-plan-2021-2025.pdf>> Accessed 27 January 2024.

plan, the Department has developed a comprehensive plan that has recognized short-term, mid-term and long-term solutions to resolve the overcrowding issue in prisons.<sup>8</sup> As per the above plans, the following initiatives have already been implemented and some of the initiatives are already in process.

## 2. Initiatives to Overcome the Issue

### *(a) Urban Prisons Relocation Project*

It is observed that the overcrowding in urban prisons is much higher than the rural prisons as urban prisons have been established in limited spaces and there are no adequate spaces for further extension of prison facilities. In addition to that most of the overcrowded urban prisons are very old and infrastructure facilities in such prisons are not adequate to cater to the prison population in those prisons. Accordingly, Sri Lanka has been in the process of shifting or relocating urban prisons to places where enough space is available. Some of the urban prisons have already been shifted and authorities are always concerned about the international standards when establishing such new prisons. Accordingly, the Tangalle Prison, which had limited space for about 100 people, was shifted to a new prison complex at the Agunakolapalassa area with required facilities for about 1,200 inmates. In addition, old Jaffna prison was also shifted to a new prison complex with more facilities and space. Further, Bogambara prison, which had been established during the colonial period and was located in the middle of Kandy city, was shifted to a new place with more facilities and new infrastructure. The new prison complex has facilitated a better life compared with the previous old prisons.

The above three prisons have already been relocated and inmates have been detained. In addition to the above prisons, the Department of Prisons in Sri Lanka is in the process of relocating the Colombo prison complex.<sup>9</sup> This complex consists of three major prisons, prison headquarters, the training school for officers, prison hospital, female prisoners' section, and officers' quarters. This complex is on about fifty acres of land and facilitates one-third of the prison population and prison officers of the country. Further, the overcrowding in these prisons is significantly higher as the complex is very old and has insufficient space for further development. Accordingly, the Department of Prisons together with the other authorized government agencies has been planning to shift this complex away from Colombo city to 200 acres of land. The design of the new prison complex has already been finalized in accordance with the domestic and international standards. This new complex consists of four prisons, the officers' training school, the prison intelligence unit, the prison hospital, and officers' accommodation.<sup>10</sup> Further, this will facilitate 10,000 inmates with the required facilities.

### *(b) Construction of Pre-fabricated Buildings and Permanent Buildings*

This is also one of the initiatives of the Department of Prisons to reduce overcrowding. Under this project, permanent and pre-fabricated buildings are constructed in prison institutions where there is enough space to build such buildings. Accordingly, the permanent buildings in one prison and pre-fabricated buildings in four prison institutions have already been constructed.<sup>11</sup>

### *(c) Parole Systems*

This is another main initiative in Sri Lanka to reduce prison overcrowding under which several initiatives are implemented. Accordingly, Sri Lanka has been practicing amnesties on nationally important and celebrated days like Independence Day, New Year's Day, Christmas Day, Wesak Poya Day etc. As per the Department Statistics in 2022, 1,333 inmates have been released on general amnesties.<sup>12</sup> In addition to general amnesties, there are mechanisms to release inmates on special pardons such as on medical grounds, and review processes of appointed special committees. Further, releasing inmates on remission is a special mechanism in Sri Lanka, through which the inmates are granted marks for their good behaviour and labour during the day. Considering the total marks obtained by the inmate, he is granted a remission which is about

<sup>8</sup> Department of Prisons, "Prison Reforms" (2020) < <http://prisons.gov.lk/web/wp-content/uploads/2021/11/prison-overcrowding-overcome-plan.pdf> > Accessed 27 January 2024.

<sup>9</sup> Department of Prisons, "Trails of Renaissance" (2022) < <http://prisons.gov.lk/web/wp-content/uploads/2022/10/trails-of-renaissance-english.pdf> > Accessed 27 January 2024.

<sup>10</sup> Department of Prisons, "Performance Report" (2022) < [http://prisons.gov.lk/web/wp-content/uploads/2023/08/performance-report-2022\\_EN.pdf](http://prisons.gov.lk/web/wp-content/uploads/2023/08/performance-report-2022_EN.pdf) > Accessed 29 January 2024.

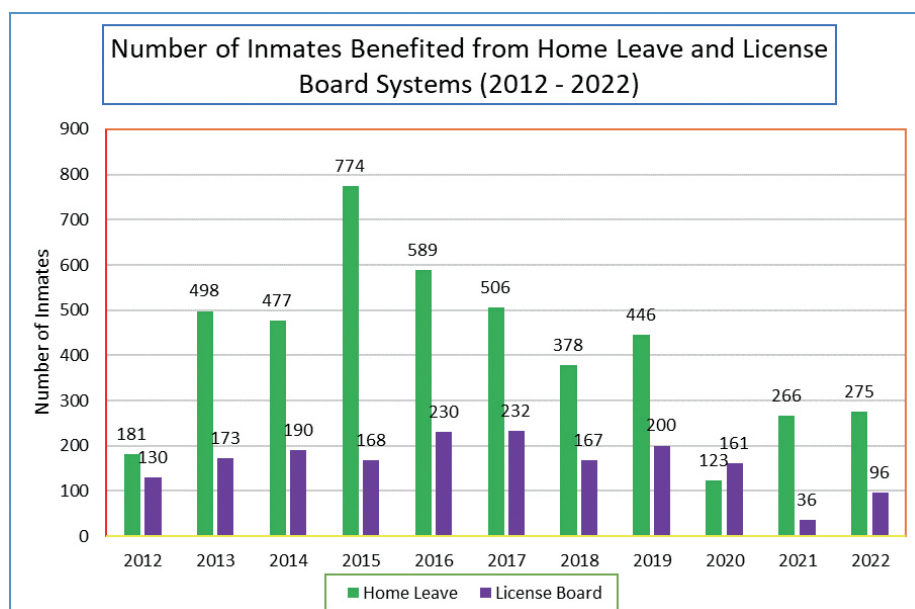
<sup>11</sup> Ibid.

<sup>12</sup> Prison statistics of Sri Lanka (2023), 42.

one-third of the inmate's sentence. As per Department Statistics in 2022, 23,789 inmates have been released under this mechanism.<sup>13</sup> This remission is granted to the convicted inmates, and they are released before the expiration of the judicial sentence.

Another important, parole mechanism is the home leave mechanism. Under this mechanism, eligible inmates are granted leave to visit his/her family for a specific period. For the first time, the eligible inmates are granted seven days' leave under which they can go to their family and be with them on given conditions and return to the prison on a given date and time. If the prisoner behaves in a good manner during this period, the inmate becomes eligible for ten days leave for the second time, fourteen days for the third time, and subsequent opportunities that come after every six months. Accordingly, as per the Department Statistics in 2022, 275 inmates have been eligible for this benefit.<sup>14</sup>

In addition to the home leave system, another important parole system in Sri Lanka is the License Board mechanism, which is a system for releasing inmates on conditions before the expiration of their sentence. There is a formally appointed committee to consider the eligibility of the inmate to be released under this mechanism. This committee, after reviewing the eligibility criteria, makes recommendations to release the inmate on conditions. After release, the inmate has to fulfil the conditions until the expiration of the sentence. Accordingly, the following graph shows the number of inmates who benefited from the Home Leave and License Board mechanisms over the recent years.



(Source - Prison Statistics in Sri Lanka)

#### (d) Alternatives to Imprisonment

One of the most important strategies to reduce prison overcrowding is the implementation of non-custodial measures such as community supervision, probation, house arrest and halfway houses. Accordingly, Sri Lanka has been practicing community-based correction under the Community-Based Correction Act No 46 of 1999, and those who get community-based correction orders from the court have to undergo processes assigned by the Community-Based Correction Officer. Further, community-based correction is implemented for offenders involved in minor offences and who can be punished with less than two years of sentence considering the nature of the offence and the character of the offender.<sup>15</sup> In addition to community-based corrections, persons who are found addicted to drugs can be sent to rehabilitation centres under the Bureau of the Commissioner General of Rehabilitation under the Bureau of Rehabilitation Act, No. 2 of 2023, instead

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Nayomi Wickramasekera, "Alternative Sentencing in Sri Lanka and its Challenges from a Rehabilitative Perspective" (2020) <[https://www.unafei.or.jp/publications/pdf/RS\\_No114/No114\\_11\\_PART\\_ONE\\_Participants\\_Papers\\_04.pdf](https://www.unafei.or.jp/publications/pdf/RS_No114/No114_11_PART_ONE_Participants_Papers_04.pdf)> Accessed 30 January 2024.

of sentencing them to imprisonment. Accordingly, the persons who are likely to be imprisoned are detained in these rehabilitation centres.<sup>16</sup>

In addition to the above measures, suspended sentences are another measure to reduce prison overcrowding which comes under section 303 of the Code of Criminal Procedure [Amendment] Act No 47 of 1999. A suspended sentence cannot be imposed on an offender where the law provides a mandatory minimum sentence for the offence he has committed, or where the offender is serving a term of imprisonment or is yet to serve the term of imprisonment which has not been suspended, or where the offender committed the offence while he/she was on a probation order, conditional release or discharge, or where the term of imprisonment or the aggregate terms of imprisonment exceeds two years.<sup>17</sup>

Another measure is Conditional Discharge under section 306 of the Code of Criminal Procedure. Under this provision, the Court has the authority to discharge offenders conditionally on a bond, which will guarantee the good behaviour of the offender after release, also considering the offender's character, age, health etc.<sup>18</sup> Another non-custodial measure is mediation under the Mediation Boards Act No 72 of 1988 where minor disputes are mediated through settlement rather than processing in courts. The mediation board consists of three members who are respected figures in the area.<sup>19</sup>

Most importantly, Sri Lanka is in the process of introducing the house arrest mechanism to reduce prison overcrowding.<sup>20</sup> A high-level committee has been appointed to review the proposal to implement the house arrest mechanism submitted by the Department of Prisons, and the reviewing process is in the final stage. In addition to house arrest, the government is in the discussion of implementing a plea-bargaining system to clear the backlog which amounts to about one million, and this system will expedite the cases<sup>21</sup> and reduce the length of pre-trial detention through which the unconvicted population will be reduced.

## B. Increasing Unconvicted Population

### 1. Overview of the Issue

This is another pressing issue and a reason for prison overcrowding in Sri Lanka. As of 30 December 2023, the unconvicted population in prisons was 20,699 out of the total population of 30,396<sup>22</sup> which means two-thirds of the prison population is unconvicted prisoners. The following data demonstrates the issue of

Annual Admissions of Convicted and Unconvicted Prisoners, 2014 - 2022				
Year	Admissions		Total	Ratio
	Convicted	Unconvicted		
2014	27,588	90,251	117,839	1 : 3
2015	24,086	89,559	113,645	1 : 4
2016	24,060	94,655	118,715	1 : 4
2017	22,833	99,036	121,869	1 : 4
2018	24,852	108,263	133,115	1 : 4
2019	29,164	115,325	144,489	1 : 4
2020	19,856	90,362	110,218	1 : 5
2021	14,547	62,426	76,973	1 : 4
2022	30,331	108,250	138,581	1 : 4

Source – Prison Statistics vol 42 - 2023

<sup>16</sup> Bureau of Commissioner General of Rehabilitation <[https://www.moj.gov.lk/index.php?option=com\\_content&view=article&id=356&Itemid=276&lang=en](https://www.moj.gov.lk/index.php?option=com_content&view=article&id=356&Itemid=276&lang=en)> Accessed 28 January 2024.

<sup>17</sup> Wickramasekera, *supra*, n. 15.

<sup>18</sup> Ibid.

<sup>19</sup> Ministry of Justice <[https://www.moj.gov.lk/index.php?option=com\\_content&view=article&id=30&Itemid=178&lang=en](https://www.moj.gov.lk/index.php?option=com_content&view=article&id=30&Itemid=178&lang=en)> Accessed 30 January 2024.

<sup>20</sup> Ada Derana <<https://www.adaderana.lk/news.php?nid=95590>> Accessed 29 January 2024.

<sup>21</sup> Daily Mirror <[https://www.dailymirror.lk/worldnews/breaking\\_news/SL-to-introduce-Plea-Bargaining-procedures-to-ease-backlog-of-cases-in-courts%3A-Wijeyadasa/108-263107](https://www.dailymirror.lk/worldnews/breaking_news/SL-to-introduce-Plea-Bargaining-procedures-to-ease-backlog-of-cases-in-courts%3A-Wijeyadasa/108-263107)> Accessed 31 January 2024.

<sup>22</sup> Department of Prisons, 'Morning Unlock' (30.12.2023).

the higher unconvicted population. As per the data, the unconvicted to convicted ratio is 4:1<sup>23</sup> which means in general four cases out of five cases are not proven guilty before the court. This higher unconvicted population is the main reason for overcrowding.

## 2. Initiatives to Overcome the Issue

The Department of Prisons has been making efforts to reduce this population through different initiatives, but it has been challenging as these inmates are on trial and under the authority of the judiciary. Accordingly, the Department together with the ICRC organized several awareness programmes for judges to make them aware of the prevailing overcrowding situation and other challenges in prisons with possible alternatives to reduce the unconvicted prison population. In addition to that close coordination and cooperation among law enforcement agencies like police, judiciary, and government analysts have been a good initiative in reducing the prison population. For example, the testing reports (drug testing and other expert reports) of the government analysts are essential to speed up the trial cases. So, the process of obtaining these reports has been sped up through close coordination among relevant government officials. In addition, awareness programmes have been organized for prison staff to make them aware of the available laws and regulations (Remand Prisoners' Release Act) that the prison authorities can use to release unconvicted inmates.

## C. Drug Addicts in Prisons

### 1. Overview of the Issue

Drug offenders in prisons have been one of the biggest pressing issues of prisons in Sri Lanka. As of 30 December 2023, 15,756 out of 30,396<sup>24</sup> of the total prison population have been drug-related offenders, which means 50% of the total prison population is drug-related offenders. Further, a significant number of drug offenders are drug addicts as well. As per the statistics, 51.6% in 2018, 51.9% in 2019, 47% in 2020, 64.2% in 2021 and 60.9% in 2022 are drug offenders from the total convicted prison population,<sup>25</sup> which is the biggest component of the convicted population. The recidivism rate among drug offenders was 17.7% in 2022.<sup>26</sup>

### 2. Initiatives to Overcome the Issue

Accordingly, the Department of Prisons has established ten centres under prison institutions to rehabilitate drug offenders and different kinds of rehabilitation programmes including counselling, vocational training, and religious programmes. These programmes carried out for the inmates in these centres. As per the prison statistics, 1,500 inmates were under rehabilitation in the above centres as of 19 January 2024.<sup>27</sup> It is expected that recidivism among drug offenders will be reduced through these centres, which will reduce the prison population.

## D. Shortage of Human Resources

### 1. Overview of the Issue

The shortage of officers has been a big issue in carrying out the daily routine in prison institutions in Sri Lanka. As a result of that prison management has been facing many difficulties in managing the institutions. The approved cadre of the Department is 7,872 of 85 positions. The available cadre is 6,268 and the shortage is 1,617.<sup>28</sup> When such a shortage exists, assurance of security, custody, proper care, rehabilitation and maintenance etc. is immensely challenging. Sometimes, the number of inmates to be supervised by an officer can be large, and both the inmates and the officer are negatively impacted.

### 2. Initiatives to Overcome the Issue

The Department of Prisons, with the ministry, has taken several initiatives to overcome this pressing issue. Accordingly, one of the initiatives is the recruitment of military officials to the Department of Prisons as prison officers.<sup>29</sup> Though the Thirty Years' War, which prevailed in the country, ended in 2009, a big cadre of military officials are still in service, and they are already paid salaries from the treasury. Therefore, the

<sup>23</sup> Prison statistics of Sri Lanka (2023), 42.

<sup>24</sup> Ibid.

<sup>25</sup> Prison statistics of Sri Lanka (2023), 42.

<sup>26</sup> Ibid.

<sup>27</sup> Department of Prisons, "Morning Unlock" (19 Jan. 2024).

<sup>28</sup> Department of Prisons, "Performance Report" (2022) <[http://prisons.gov.lk/web/wp-content/uploads/2023/08/performance-report-2022\\_EN.pdf](http://prisons.gov.lk/web/wp-content/uploads/2023/08/performance-report-2022_EN.pdf)> Accessed 29 January 2024.

<sup>29</sup> Ibid.

Department of Prisons is in the process of recruiting eligible military officials as prison officers after training them for prison administration. These officers have to resign from military service to join the Department of Prisons as prison officers, and they are not considered as military officials anymore. Further, the government does not want to allocate additional funds for the salary payments of these officers as the treasury already allocates the funds. In addition to the above initiative, the Department of Prisons has been taking assistance from police officials to ensure the security of outer perimeters and outside escorts of inmates due to the shortage of prison officers, although they have no authority to be involved in prisoner administration.

Further, the Department is currently in the process of recruiting 300 new officers through the normal process which consists of a competitive examination, fitness test as well as a structured interview. This recruitment is at the examination stage. The entire process including induction training will be concluded in 2024, and they will be assigned duties in prison institutions throughout the country. Another initiative is the employment of civil officials from other services for office administration in prison institutions instead of attaching prison officers to such office work. This facilitates the maximum use of prison officers for prisoner management. However, the prison management is careful not to assign office work to such civil officials, which is mostly relevant to prisoners' file management and other confidential matters. Further, different capacity development programmes including higher educational opportunities and international training programmes are provided for officers to make them more efficient and effective in performing their duties. Accordingly, about 1,000 officers have been trained through the UNODC on dynamic security, incident management, management of violent extremist prisoners, etc. since 2022.<sup>30</sup> Moreover, due to the shortage of officers, the Department of Prisons has allowed officers to work overtime and on holidays on payment basis. The above initiatives have significantly assisted in mitigating the impact of the shortage of human resources within the prisons in Sri Lanka. Further, there are some instances where trustworthy inmates are utilized for minor duties under the supervision of officers as a solution for the shortage of officers and as a rehabilitation strategy.

### **E. Lack of Modern Technologies**

#### **1. Overview of the Issue**

The lack of modern technologies in correctional facilities in Sri Lanka has been another issue, and it has made the processes in prisons more complex. Further, due to the lack of technology, it has been a challenge to searches, prevention of contraband in prisons, waste of time and labour force, etc. This issue further aggravates the shortage of human resources. If the technological solutions are adequately available, they can be a solution for the shortage of officers.

#### **2. Initiatives to Overcome the Issue**

The Department of Prisons has made several efforts to introduce technological initiatives to the systems. Accordingly, E-visits were introduced to the systems through which families are provided facilities for online visitation.<sup>31</sup> This was a great initiative during the Covid-19 pandemic as physical visits had been suspended and also lockdowns were constantly implemented in the country. Further, the Prison Information Management System (PIMS) has been introduced for the registration of inmates and other daily routines of the inmates.<sup>32</sup> In addition to the above, CCTV surveillance, mobile phone signal jamming systems, body and parcel scanners, etc. have been introduced. Further, the Department of Prisons together with the UNODC has been establishing facilities in three southern prisons for virtual court productions.<sup>33</sup> However, the Department has not been able to introduce these technologies to all prison institutions due to financial constraints. Further, some of these initiatives are assisted by ICRC, UNODC and other such non-governmental bodies.

### **F. Old Prison Infrastructure**

#### **1. Overview of the Issue**

Most of the urban prisons in Sri Lanka are old, and some of those prisons were established during the colonial period. Therefore, infrastructure facilities in these prisons are very old and sometimes, the structures of the facilities are not in line with international standards. Further, some of the buildings in some prisons have been abandoned due to their dilapidated status. Moreover, as these buildings are very old, the sanitary

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

and other infrastructure facilities must be renovated or repaired frequently.

## 2. Initiatives to Overcome the Issue

Accordingly, the Department of Prisons has taken some initiatives to manage this issue. A major initiative is urban prison relocation, or shifting to other places where new correctional facilities will be established in accordance with international standards.<sup>34</sup> In addition to that, the treasury has been allocating more funds in recent years to develop sanitary facilities in such prison institutions. As per the prison statistics, the government has allocated LKR 600 million in 2021, 200 million in 2022, 300 million in 2023, and 400 million for the year 2024. Moreover, the Department has been getting assistance from non-governmental organizations such as ICRC and UNODC to develop prison infrastructure. Accordingly, the ICRC has assisted in converting several prison kitchens which used firewood into gas lines, and the UNODC has been assisting in developing prison industries, kitchens in prisons, and constructing mock-up cells and virtual courts, etc.<sup>35</sup>

## III. CONCLUSION

The Department of Prisons in Sri Lanka has been playing a vital role in the criminal justice system in the country through custody, care and corrections of the prison inmates. However, the accomplishment of these tasks has been a challenge due to prevailing pressing issues in the system such as overcrowding, higher unconvicted prison population, drug offenders in prisons, shortage of human resources, lack of modern technologies and old prison infrastructures. The Department of Prisons has been moving forward initiating various programmes, projects and strategies to overcome the above pressing issues. Accordingly, prison relocation with more space and facilities, construction of pre-fabricated and permanent buildings in space available prisons, implementation of parole systems, and implementation of alternatives to imprisonment have been in place to overcome the overcrowding issue. Further, awareness programmes for judges regarding prevailing situations in prisons, close coordination and cooperation among law enforcement agencies and awareness programmes for prison staff to make them aware of the available laws and regulations (Remand Prisoners' Release Act) that the prison authorities can involve in releasing unconvicted inmates etc. have been carried out to reduce the unconvicted prison population. In addition to that the initiatives of recruitment of military officials as prison officers after proper training, taking assistance from police officers for outer wall security, initiatives to new recruitments, development of the capacity of already available officers through government and other funding as well as international training and higher study opportunities in universities and overtime work and holiday work on payment basis etc. have been implemented to manage the shortage of human resources. Moreover, the installation of surveillance cameras, the introduction of e-visitation and information management system for registration and file management of inmates as well as the establishment of mobile phone jamming systems etc. have been put into practice as technological initiatives.

However, it is imperative to highlight that all the above initiatives have not resolved the pressing issues completely, but they have been able to contribute to the mitigation of their impact. Further, it is also essential to mention that some of the above initiatives are more effective and efficient than some other initiatives.

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid.



## **PART TWO**

### **RESOURCE MATERIAL SERIES No. 118**

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**Work Product of the Third International Training  
Course on Building Inclusive Societies**

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**UNAFEI**



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## REPORT OF THE COURSE

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### THE THIRD INTERNATIONAL TRAINING COURSE ON BUILDING INCLUSIVE SOCIETIES

#### “EFFECTIVE MEASURES FOR PREVENTING AND RESPONDING TO DOMESTIC VIOLENCE”

#### 1. Duration and Participants

- From 5 to 14 March 2024
- 7 overseas participants from 7 jurisdictions
- 4 participants from Japan

#### 2. Programme Overview

This programme focused on effective measures for preventing and responding to domestic violence. While keeping in mind the recent international trends in domestic violence cases in light of the impact of the Covid-19 pandemic, the programme explored efforts made to provide support for domestic violence victims in each country, the prevention of secondary victimization, and effective treatment of domestic violence perpetrators. Through participants' presentations, lectures and discussions, this programme aimed to enhance the participants' mutual understanding and knowledge in regard to measures to improve efforts to address domestic violence in their respective jurisdictions as well as to establish a global network among criminal justice practitioners.

#### 3. Contents of the Programme

##### (1) Lecturers

The following visiting experts from overseas and Japanese experts, as well as UNAFEI faculty members, gave lectures as follows:

- Visiting Experts
  - Ms. Frances Gordon  
International Justice Consultant/ Former Director of ICCLR Ms. Eileen Skinnider  
Senior Associate of ICCLR  
“Effective Measures for Responding to Domestic Violence”
  - Dr. Stuart Ross  
Enterprise Professor, School of Social and Political Science, University of Melbourne  
“Perpetrator Interventions for Preventing and Responding to Family Violence”
- Japanese Experts
  - Dr. KIKUCHI Akiko  
Professor, Faculty of Human Sciences, Musashino University  
“Psychology of Victims of Domestic Violence”
  - Ms. UEMIYA Ai  
Senior Lecturer, Institute of Human and Social Sciences, Kanazawa University  
“Forensic Interview — The NICHD protocol”
  - Ms. TOMITA Satoko  
Director, International Affairs Office, Headquarters of the Japan Legal  
Support Center/ Attorney at Law  
“Measures Taken by the Japan Legal Support Center for Domestic Violence Victims”

(2) Individual Presentations

Participants shared the practices and the challenges in their respective jurisdictions regarding the theme of the programme through their individual presentations.

(3) Observation Visits

Participants visited the Tama Branch of the Tokyo Women's Consultation Center and the Salvation Army Japan Shinsei-ryo to learn efforts and practices of counselling services and temporary protection for domestic violence victims.

(4) Creation and Presentation of Action Plans

Each participant concluded the programme by presenting their own action plans to the fellow participants and faculty of UNAFEI, focusing on the challenges they identified, possible solutions, as well as what they learned in the lectures, presentations by colleagues and discussion.

**4. Feedback from the Participants**

Most participants commented that it was a meaningful programme in which they were able to comprehensively learn about support for domestic violence victims, efforts to prevent secondary victimization, and effective treatment of domestic violence perpetrators through individual presentations, lectures, and observation visits. On the other hand, there were also comments that the short duration of two weeks did not allow enough time for discussion among the participants. We appreciate all the feedback from the participants and will take them into consideration when planning our future training programmes.

**5. Comments from the Programming Officer (Professor Okuda)**

In cases of domestic violence, especially from the perspective of protecting victims and preventing secondary victimization, it is necessary to establish an effective support system through cooperation among related organizations and to take appropriate measures with consideration of the feelings, circumstances, needs, and so forth of domestic violence victims.

Through this programme, it became clear that each country prioritizes countermeasures against domestic violence as an issue of national importance, reviewing the current situation and clarifying the problems that need to be solved. In this regard, useful knowledge and effective practices, including collaboration with other relevant organizations and communities, were exchanged among participants. Moreover, each lecture contained useful knowledge and practical experiences, such as the mechanism of trauma among domestic violence victims and forensic interviewing – perspectives that were difficult for participants to obtain in their daily practice. Therefore, the participants were highly interested in the lectures, which led to active discussions.

We hope that the knowledge gained from this programme will be utilized in the development and enhancement of each participants' jurisdiction.

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## PARTICIPANTS' PAPERS

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### DOMESTIC VIOLENCE IN THE PHILIPPINES FROM A PROSECUTION PERSPECTIVE

*Yvette T. Coronel\**

#### I. INTRODUCTION

Violence against women remains a pervasive crisis globally, with one out of three women worldwide having been subjected to physical or intimate/sexual partner violence, or both, at least once.<sup>1</sup> This figure was also said to have increased dramatically during the onset of Covid-19, with UN Women calling it a “shadow pandemic.” In the Philippines, while there is a seemingly downward trend or decrease in the number of reported domestic violence (DV) cases based on the 2019-2022 figures from the Philippine National Police (PNP) database,<sup>2</sup> experts and policymakers are concerned that this does not accurately reflect the magnitude of the problem, as DV cases remain largely unreported.

This paper will examine the Philippine response to DV from a prosecution perspective. It will discuss the legal framework in addressing DV, the mechanisms in place and the government agencies primarily involved in responding to DV, from law enforcement, prosecution, policymaking and legislation. It will also consider the current challenges in prosecuting DV cases and provide recommendations in order to improve the Philippine response to DV.

#### II. LEGAL FRAMEWORK

##### **A. Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004**

The primary legislation that principally addresses domestic violence in the Philippines is Republic Act No. 9262 (R.A. No. 9262), or the Anti-Violence Against Women and Their Children Act. Enacted in March 2004, the passage of the law is part of the Philippine compliance to its commitments under the Universal Declaration of Human Rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and other international human rights instruments.<sup>3</sup>

The law defines “*violence against women and their children*” as any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.<sup>4</sup> It further lists four (4) forms of DV, that is:

- a. Physical violence;
- b. Sexual violence;
- c. Psychological violence;

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\* Assistant State Prosecutor, National Prosecution Service, Office of the Secretary of Justice, Prosecution Staff, Department of Justice, Philippines.

<sup>1</sup> UN Women, Facts and Figures, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>

<sup>2</sup> FOI (Freedom of Information) Request, Philippine Commission on Women, <https://www.foi.gov.ph/requests/aglzfMvmb2ktcGhyHQsSB0NvbnRlbnQiEFBDVy0zOTE5Mzg5Mjc3MTIM>; last accessed: 2 January 2024

<sup>3</sup> Sec. 2, Declaration of Policy, R.A. No. 9262.

<sup>4</sup> Sec. 3, Definition of Terms, R.A. No. 9262.

d. Economic Abuse.<sup>5</sup>

On 21 September 2004, the Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC) adopted and approved the implementing rules and regulations of R.A. No. 9262. Likewise, the Supreme Court issued A.M. No. 04-10-11-SC, dated 19 October 2004, providing for the “Rule on Violence Against Women and Children”. The said rule applies to petitions for protection orders in cases of violence against women and their children under R.A. No. 9262 and enables the courts to manage and monitor the said cases.

**B. Republic Act No. 8369, or the Family Courts Act of 1997<sup>6</sup>**

Even prior to the enactment of R.A. No. 9262, jurisdiction over cases of DV has been vested before the Family Courts. Specifically, Republic Act No. 8369, or the Family Courts Act of 1997, provides that cases of DV include those acts of gender-based violence that result, or are likely to result, in physical, sexual or psychological harm or suffering to women, and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom movement.<sup>7</sup>

With the enactment of R.A. No. 9262, the law now provides that Regional Trial Courts, designated as a Family Court, shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offence was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant.<sup>8</sup>

**C. Relevant Jurisprudence**

1. Constitutionality of R.A. No. 9262

In *Garcia vs. Hon. Drilon*,<sup>9</sup> the Supreme Court upheld the constitutionality of R.A. No. 9262 after the same was questioned by petitioner Garcia on the ground that its violative of the equal protection clause. It held that the law was based on a valid classification and did not violate the equal protection clause by favouring women over men as victims of violence and abuse to whom the State extends its protection. It further recognized that the law rests on substantial distinctions, that is, the unequal power relationship between women and men and the fact that women are more likely than men to be victims of violence.

2. Battered Woman Syndrome

Prior to the enactment of R.A. No. 9262, the Supreme Court in *People vs Genosa*,<sup>10</sup> acknowledged that Battered Woman Syndrome may be considered as a form of self-defence, provided that the following are present: *First*, each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the appellant and her intimate partner. *Second*, the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life. *Third*, at the time of the killing, the batterer must have posed probable – not necessarily immediate and actual – grave harm to the accused, based on the history of violence perpetrated by the former against the latter.<sup>11</sup>

3. Marital Infidelity as Psychological Abuse

In *AAA vs BBB*,<sup>12</sup> the Supreme Court affirmed that what R.A. No. 9262 criminalizes is not the marital infidelity *per se* but the psychological violence causing mental or emotional suffering on the wife. Further, the

<sup>5</sup> Ibid.

<sup>6</sup> Enacted: 28 October 1997

<sup>7</sup> Section 5 (k), R.A. No. 8369.

<sup>8</sup> Sec. 7, R.A. No. 9262.

<sup>9</sup> G.R. No. 179267, 25 June 2013.

<sup>10</sup> G.R. No. 135981, 15 January 2004.

<sup>11</sup> Section 26 of R.A. No. 9262 now provides that “Battered Women Syndrome” is a complete defence. Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal or civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defence under the Revised Penal Code.

<sup>12</sup> G.R. No. 212448, 11 January 2018.

Supreme Court acknowledged that acts of violence against women and their children may manifest as transitory or continuing crimes. Thus, even if the alleged extra-marital affair causing the offended wife mental and emotional anguish is committed abroad, the case may be filed within the Philippines where the victim is a resident in view of the anguish suffered being a material element of the offence.

4. Economic Abuse for the Purpose of Controlling the Woman

In complaints anchored under economic abuse, the Supreme Court held in *Acharon vs People*<sup>13</sup> that the mere failure to provide financial support is not enough. *There must be allegation and proof that the act was done with the intent to control or restrict the woman's and/or her child's or her children's actions or decisions.* It is this element of specific intent to control or restrict the woman's and/or her child's or her children's actions or decisions which is the defining characteristic that makes the act of "deprivation of financial support" under Section 5(e) of R.A. 9262 criminally punishable.

5. Mothers May Be Charged for Violation of R.A. No. 9262

In *Knutson vs Hon. Sarmiento-Flores*,<sup>14</sup> the Supreme Court ruled that mothers who maltreat their children resulting in physical, sexual or psychological violence defined and penalized under RA No. 9262 are not absolved from criminal liability notwithstanding that the measure is intended to protect both women and their children. The law covers situations where the mother committed violent and abusive acts against her own child and further allows the father of the offended party to apply for protection and custody orders on behalf of the minor.

### III. GOVERNMENT EFFORTS TO ADDRESS DOMESTIC VIOLENCE

**A. Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC)<sup>15</sup>**

R.A. No. 9262 established the Inter-Agency Council on Violence Against Women and their children (IAC-VAWC) to ensure the effective implementation of the law and to act as the lead coordinator and monitoring body on VAWC initiatives. Member-agencies are tasked to formulate programmes and projects to eliminate VAW based on their mandates as well as develop capability programmes for their employees. The members of the IAC-VAWC are as follows:

- (a) Department of Social Welfare and Development (DSWD);
- (b) National Commission on the Role of Filipino Women (NCRFW);
- (c) Civil Service Commission (CSC);
- (d) Commission on Human Rights (CHR)
- (e) Council for the Welfare of Children (CWC);
- (f) Department of Justice (DOJ);
- (g) Department of the Interior and Local Government (DILG);
- (h) Philippine National Police (PNP);
- (i) Department of Health (DOH);
- (j) Department of Education (DepEd);
- (k) Department of Labor and Employment (DOLE); and
- (l) National Bureau of Investigation (NBI).

The IAC-VAWC has the following core functions<sup>16</sup>:

- 1. Promotion of the Anti-VAWC Act through public information and advocacy such as conducting massive information dissemination campaigns on the various issues and problems relative to VAWC;
- 2. Capacity-building of stakeholders working on VAWC;

<sup>13</sup> G.R. No. 224946. 9 November 2021.

<sup>14</sup> G.R. No. 239215. 12 July 2022.

<sup>15</sup> Sec. 39, R.A. No. 9262; Section 52, Implementing Rules.

<sup>16</sup> Section 52, Implementing Rules and Regulations, R.A. No. 9262.

3. Development of comprehensive programmes for VAWC victim-survivors, such as an integrated referral system between and among stakeholders to ensure a holistic approach in handling VAWC cases and standards for the delivery of services for victim-survivors of VAWC to ensure the timely, systematic, synchronized and effective response to cases of VAWC;
4. Networking with other stakeholders and creation of mechanisms to ensure the participation of NGO's, academe, private sector, civic and religious groups in the implementation and monitoring of VAWC cases;
5. Monitoring of the implementation of the Act, promulgation of rules and regulations and issuance of policies, memoranda and circulars directing all stakeholders working on VAWC to submit periodic reports on their VAWC-related efforts and services, including VAWC statistics, to the Council;
6. Conducting research to include the integrated approach to eliminate VAWC, nature and root causes of VAWC, battered woman syndrome, violence within lesbian relationships, violence committed against marginalized women, rehabilitation of VAWC perpetrators and documentation of good practices as bases for policy formulation and programme development.

#### **B. Joint Memorandum Circular No. 2010-1 (Creation of Local Committees on Anti-Trafficking and Violence Against Women and Their Children)**

To ensure that relevant government agencies and stakeholders are able to immediately address cases of human trafficking and violence against women and their children (VAWC), the Local Committees on Anti-Trafficking and Violence Against Women and their Children (LCAT-VAWC) were established in order to facilitate the implementation of the laws at the local levels. It provides a parallel structure at the local level that will monitor and oversee the implementation of the laws on trafficking and VAWC. It was also meant to empower and mobilize resources of the local community in the prevention, protection, recovery and reintegration of victim-survivors.<sup>17</sup>

#### **C. 18-Day Campaign to End Violence Against Women**

R.A. No. 9262 mandates government agencies and local government units (LGUs) to establish programmes such as, but not limited to, education and information campaigns and seminars or symposia on the nature, causes, incidence and consequences of such violence particularly towards educating the public on its social impacts.<sup>18</sup>

One of the primary education and information campaigns undertaken by the government is the annual holding of the 18-day Campaign To End Violence Against Women, spearheaded by the Philippine Commission on Women. The campaign kicks off every 25 November which is declared as the National Consciousness Day for the Elimination of VAWC.<sup>19</sup> The campaign culminates on 12 December, which marks the signing in the year 2000 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women, and Children under the UN Convention Against Transnational Organized Crime.<sup>20</sup>

### **IV. VICTIM SUPPORT SERVICES AND AVAILABLE REMEDIES**

#### **A. Mandatory Programmes and Services**

In order to facilitate the healing, recovery and social reintegration of DV victims, the following programmes, benefits and appropriate services shall be made available to them through the Department of Social Welfare and Development and the concerned local government unit (LGU)<sup>21</sup>:

<sup>17</sup> JMC 2010-1 dated 18 October 2010.

<sup>18</sup> Section 32, R.A. No. 9262.

<sup>19</sup> Republic Act No. 10398.

<sup>20</sup> "18 Day Campaign to End VAW", Philippine Commission on Women, <https://pcw.gov.ph/18-day-campaign-to-end-vaw/> ; last accessed: 2 January 2024.

<sup>21</sup> Section 40, R.A. No. 9262; Section 39, Implementing Rules.



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- a) Provide emergency shelter, psycho-social counselling and other rehabilitation services to victim-survivors of VAWC;
- b) Ensure that service providers in institutions/centres for women and children are gender sensitive and uphold the rights of women and children;
- c) Make available relevant skills training and other livelihood development services to victim-survivors of violence against women;
- d) Ensure the successful social reintegration and after-care of victim-survivors and their children; and
- e) Continue to develop relevant programmes and strategies to ensure protection, healing, recovery and social reintegration and address emerging needs and concerns of victim-survivors of violence.

Likewise, health programmes and services shall immediately be provided through a socialized scheme by the Women and Children Protection Unit (WCPU) in DOH-retained hospitals or in coordination with LGUs or other government health facilities.<sup>22</sup>

### B. Victim Relief and Remedies

In addition to the above-listed mandatory services, the victim-survivor may obtain the remedy of a protection order from the *barangay* or from the court. A protection order is an order issued under R.A. No. 9262 for the purpose of preventing further acts of violence against a woman or her child and granting other necessary relief. This is to safeguard the victim-survivor from further harm, minimizing any disruption in the victim-survivor's daily life, and facilitating the opportunity and ability of the victim-survivor to independently regain control over her life.<sup>23</sup>

#### 1. Barangay Protection Order (BPO)<sup>24</sup>

Barangay Protection Orders (BPO) are issued by the *barangays* and granted ex parte, without notice and hearing to the respondent. The order is effective for fifteen (15) days and enforceable within the *barangay* that issued the BPO. It orders the perpetrator/respondent to desist from committing acts such as causing physical harm to the woman or her child. It may also contain a prohibition on the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the victim-survivor, directly or indirectly.

#### 2. Temporary Protection Order/Permanent Protection Order

Temporary Protection Order (TPO) is a protection order issued ex parte by the court on the date of filing of the application. It is effective for thirty (30) days and enforceable anywhere in the Philippines. On the other hand, a Permanent Protection Order (PPO) is issued by the court after notice and hearing and is likewise enforceable anywhere in the Philippines. Regardless of the conviction or acquittal of the respondent in a criminal prosecution under the Act, the Court must determine whether or not the PPO shall become final.

## V. CURRENT CHALLENGES IN THE PROSECUTION RESPONSE

Violence against women and their children is a public offence which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.<sup>25</sup> While this may be so, it cannot be denied that the most important proof of the commission of DV is through the testimony of the victims themselves. This is particularly relevant in proving psychological violence, as affirmed by the Supreme Court in *Dinamling vs People*,<sup>26</sup> thus:

Psychological violence is the means employed by the perpetrator, while mental or emotional

<sup>22</sup> Section 40, R.A. No. 9262; Section 40, Implementing Rules.

<sup>23</sup> Section 8, R.A. No. 9262; Section 11, Implementing Rules.

<sup>24</sup> Ibid.

<sup>25</sup> Section 25, R.A. No. 9262.

<sup>26</sup> 761 Phil. 356 (2015).

anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party. (Emphasis supplied.)

Accordingly, prosecution of DV cases is highly dependent on the cooperation and willingness of victims to testify. While the initial point of contact for DV cases is from the LGU, through the *barangay* VAW desk or police/law enforcement officers, it is acknowledged that not all reported cases reach the stage of filing a complaint before the Prosecutor's Office due to one or more factors:

- a. disinterest of the victim in further pushing through with the case due to lack of trust in the justice system (e.g. delays, expensive litigation, etc.);
- b. pardon or forgiveness given by the victim;
- c. victim is financially dependent on the perpetrator;
- d. victim's interest in keeping the peace or keeping the family intact;
- e. shame or embarrassment in further pursuing the case.

While for the other types of VAWC or DV such as physical abuse, sexual abuse and economic abuse may be proven by evidence other than the testimony of the victim, proof of psychological violence and the element of mental or emotional anguish must be established through the testimony of victims themselves, as their lived experience. Thus, once a case for DV or violation of R.A. No. 9262 is brought before a Prosecutor for prosecution before the courts, it is necessary that the cooperation of victims is sought at the earliest opportune time. Otherwise, the prosecution may run the risk of having the victim lose interest during the course of the trial if they are not apprised of their rights and remedies under the law. Of particular importance is Section 29 of R.A. No. 9262 which provides for the duties that prosecutors must observe when dealing with victims of DV. Prosecutors are encouraged to communicate with the victim in a language understood by the woman or her child and inform the victim of her/his rights including legal remedies available and procedure, and privileges for indigent litigants.<sup>27</sup> This is in consonance with the affirmation made by R.A. No. 9262 that victims of DV have rights, and further emphasizes the following rights in addition to their rights under existing laws<sup>28</sup>:

- (a) to be treated with respect and dignity;
- (b) to avail of legal assistance from the Public Attorneys Office (PAO) of the Department of Justice (DOJ) or any public legal assistance office;
- (c) To be entitled to support services from the DSWD and LGUs;
- (d) To be entitled to all legal remedies and support as provided for under the Family Code; and
- (e) To be informed of their rights and the services available to them including their right to apply for a protection order.

While the law provides that it is the prosecutor's duty, including that of court personnel, to inform the victim regarding their rights and available remedies, the point of contact between a prosecutor and/or court personnel is already well within the course of the criminal justice chain, and at this point victims may already have desisted or decided not to pursue the case. Crucial information regarding their case and legal options must be communicated to victims at the first contact.

Currently, the first point of contact of DV victims is with the Barangay VAW Desk. The Barangay VAW Desk Officer is mandated to assist victims of DV in securing BPOs and facilitating the provision of necessary services.<sup>29</sup> They are required to inform the victim-survivor of their rights, the solutions and remedies available and the processes involved. More than providing options, victim survivors should also be encouraged and given the opportunity to decide for themselves which available remedies to avail of. This can be attained by providing a victim-centred approach by placing the victims at the centre of consideration, putting the

<sup>27</sup> Section 29, R.A. No. 9262.

<sup>28</sup> Section 35, R.A. No. 9262.

<sup>29</sup> Memorandum Circular No. 2023-104 dated 28 July 2023, Guidelines on the Operationalization of the Barangay Violence Against Women Desk, Department of Interior and Local Government.

victim's safety and dignity at the core of any criminal justice intervention.<sup>30</sup>

## VI. RECOMMENDATIONS

Given the foregoing realities and to reduce case attrition at the prosecutor and court level of DV cases, the following recommendations are put forward:

- a. provide continuous training of persons and agencies involved in responding to DV cases to acquaint and reinforce the nature, extent and causes of violence against women and their children;
- b. provide capacity-building to prosecutors regarding techniques in the effective handling of DV victims as witnesses;
- c. ensure that legal rights and remedies, as well as information on available services and facilities, are communicated in a practical and timely manner to victims of DV by frontline responders, mindful of the rights-based approach and giving them the autonomy of choice;
- d. intensify the conduct of massive information dissemination campaigns on DV;
- e. consider institutional reforms in order to provide more benefits and compensation to DV victim survivors, other than the award of actual, compensatory, moral and exemplary damages.<sup>31</sup>

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<sup>30</sup> UNODC, Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women, UNODC Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women; [https://www.unodc.org/documents/justice-and-prison-reform/Strengthening\\_Crime\\_Prevention\\_and\\_Criminal\\_Justice\\_Responses\\_to\\_Violence\\_against\\_Women.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf); last accessed: 2 January 2024.

<sup>31</sup> Republic Act No 7309, The Board of Claims grants an award not exceeding Ten Thousand Pesos (Php10,000) to victims of violent crimes. Several pending amendatory bills have been filed seeking to increase the said award to Fifty Thousand Pesos (Php50,000); SBN-884 filed by Senator Francis Escudero; [https://legacy.senate.gov.ph/lis/bill\\_res.aspx?congress=19&q=SBN-884](https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SBN-884); last accessed: 2 January 2024.



# DOMESTIC VIOLENCE IN TONGA - WHAT ARE WE DOING?

*Amelia Taholo\**

## I. INTRODUCTION

Tonga is committed to gender equality and ending violence against women. The national gender and development policy (2014-2018) recognizes that domestic violence is a “rampant problem, largely under reported, which affects our family, our society and our economy.”<sup>1</sup> One of the outputs of the policy is to enact measures to “eliminate domestic violence and provide services to the victims.”<sup>2</sup> In compliance with these obligations, Tonga adopted the Family Protection Act (FPA) in 2013. It came into force in July 2014 and provides the legal framework for the protection of survivors of domestic violence. This progress towards protection of women from domestic violence has been recognized in the third Universal Periodic Review for Tonga in 2018. One of Australia’s recommendations was for Tonga to prioritize work to eliminate violence against women, and to improve gender equality.<sup>3</sup>

Recognizing the importance of the work towards elimination of violence against women and girls, and to improve gender equality, the Family Protection Legal Aid Centre (FPLAC) (“the Centre”) was established in 2018 by the Ministry of Justice. The Centre began as a joint project between the Ministry of Justice and the Pacific Community, Regional Rights Resource Team (SPC/RRRT), now the SPC Human Rights and Social Development Division (SPC HRSD). The main objective of the Centre is to “increase access to justice” for survivors of domestic violence (“DV”) and gender-based violence (“GBV”) in Tonga, through the provision of quality free legal advice and legal representation in court. The Centre is the first of its kind to be established in Tonga and in the whole of the Pacific.

The Centre opened to the public on 12 March 2018 and initially ran as a pilot project until 26 February 2019. Following the Cabinet Decision on 21 November 2018 the Centre was approved to run for another three (3) years and thereafter the Ministry of Justice absorbed it from 1 July 2022. The Centre’s objective aligns with the Tonga Strategic Development Framework 2015-2025 (Organizational Outcomes 3.2) which states:

*Strengthened implementation and enforcement of law and order in a more inclusive, fair and transparent manner which helps resolve disputes, more effectively punishes and rehabilitates those who have broken the law, while supporting the population to go about their legitimate daily business without fear or favor (TSDF organizational outcome 3.2.).*

The Centre is a key implementing agency of the Family Protection Act 2013. Its mandate strengthens the implementation of the Act and the enforcement of the law against perpetrators of violence. It creates an enabling environment for survivors through court orders that resolve disputes for the most part, and punishes perpetrators for their abusive behaviours.

The Centre also provides a secondary prevention programme through its public and community outreach and education programme. This programme is aimed at raising awareness of domestic violence, relevant legislation and the primary response to survivors by way of protection orders that are available under the FPA 2013 and other legal assistance under allied family laws.

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<sup>1</sup> The revised national gender and development policy, 2014-2018, p. 5.

<sup>2</sup> The revised national gender and development policy, national plan of action (2014-2018), p. 3.

<sup>3</sup> Report of the Working Group on the Universal Periodic Review: Tonga, 2018, UN Doc/ A/HRC/38/5, para. 94.58.

The Centre collaborates with key partners and relevant stakeholders as part of the whole-of-government response to domestic violence. The visibility of the Centre through these programmes and collaboration with other agencies both from government and non-government organizations is crucial to raise more awareness and ensuring that the Centre's services are recognized and taken advantage of by those who need it the most.

It should be noted that due to the complexity and sensitivity of family matters, clients are encouraged to consider proceeding to court as a last resort. This approach produces favourable outcomes for both parties and for the children of the marriage or family, when children are involved.

The Centre has achieved a lot since its establishment in 2018, particularly in providing legal assistance for survivors of DV and GBV; however, there are prevailing challenges that require serious consideration and these are highlighted in this paper.

## II. CURRENT TRENDS AND CHALLENGES OF DOMESTIC VIOLENCE IN TONGA

### A. Current Trends of Domestic Violence in Tonga

A study conducted by Ma'a Fafine moe Famili in 2009 highlighted that violence against women is prevalent. A few results are highlighted below<sup>4</sup>:

- In their lifetime, 79% of Tongan women and girls have experienced physical or sexual abuse;
- 68% of Tongan women and girls are affected by physical violence perpetrated by their fathers or teachers;
- Perpetrators of violence are likely to be well-respected and educated Tongan men;
- 56% of all respondents to the survey, both women and men alike, agreed with the statement that a husband could beat his wife if she was unfaithful;
- 83% of women agreed that a good wife obeys her husband even if she does not agree; and
- 61% of women respondents believe that a wife can refuse to have sex with her husband if she does not want to.

Analysis of these result indicates the perception that the cause of domestic violence is predominantly gender inequality – gender roles and the power dynamics of women and men in the Tongan society. Of course, other factors identified to have contributed to domestic violence stem from alcohol, family expectations and having children out of wedlock, to name a few.

From the recent MISC survey conducted in 2019, the following were highlighted:

- 35.9% of women from the ages 15-49 years old experienced physical violence since the age of 15 perpetrated by anyone; and
- A total of 257 women from 2,872 who participated in the survey experienced sexual violence since the age of 15.

It is important to note that only one woman among all women aged 15-49 from each household was randomly selected for the survey. It is observed that there may have been a gap in encompassing all survivors of domestic violence in a household.

<sup>4</sup> Jansen, H.A.F.M., Johansson-Fua, S., Hakofa-Blake, B., Ilolahia, G.R. (2012). *The National Study on Domestic Violence against Women in Tonga 2009: Ma'a Fafine mo e Famili (For women and families)*.

From the Centre's perspective, the number of clients seeking assistance against perpetrators of domestic violence have increased since its establishment in 2018. It is observed that domestic violence reported to the Centre is still under-reported due to many reasons, including the stigma of being labelled a domestic violence survivor, the economic and social circumstances of the survivor, and the pressure from external families as to name a few. The Centre works on the consent of the survivor and therefore cannot do much if the survivor does not come forth or withdraws from seeking assistance.

### **B. Challenges Faced by the Centre in Preventing and Responding to Domestic Violence**

The Centre is a key implementing agency of the FPA 2013 and is mandated by FPA 2013, which is the governing legislation of DV and GBV in Tonga. Other family-related laws utilized by the Centre to assist with providing other legal options include:

- Births, Deaths and Marriage Registration Act (Cap. 17.02)
- Divorce Act (Cap. 17.24)
- Guardianship Act (Cap. 17.09)
- Magistrate Court Act
- Maintenance of Illegitimate Children (Cap. 17.18)
- Maintenance of Deserted Wives (Cap 17.15)
- Criminal Offences Act

As aforementioned, the Centre's main objective is to increase access to justice for survivors of domestic violence, both men and women, girls and boys. It is not without its challenges and barriers.

The primary law addressing domestic violence and gender-based violence is the FPA 2013. Although this law protects all family members, introduces protection orders, explains police responsibilities, and advances the health, safety, and well-being of victims of domestic abuse and related issues, it still leaves gaps when it comes to addressing issues pertaining to children and youth.

It does not particularly address the requirements of teenagers and young adults with regard to responding to and preventing GBV. According to the 2019 MICS, young women between the ages of 20 and 24 reported the highest rates of partner violence.<sup>5</sup> Furthermore, according to the survey, 23.2% of Tongan children aged 14 and younger said they had been punished with severe physical violence, and 86.6% of the youngsters said they had received violent methods of discipline. Thus, the FPA 2013's definition of domestic violence under Section 4(b) as acts "*beyond the reasonable expectations and acceptances of family and domestic life*"<sup>6</sup> significantly undermines the rights of children and young people to protection in the context where physical and violent discipline is normalized and considered a part of family and domestic life.

Health professionals and social service providers have a duty of care to report cases of domestic abuse and to take appropriate action, as stipulated in the FPA 2013. This includes the service provider's obligation under section 17(1b) to file a report to the authorities on behalf of the child victim and recommend them for counselling or medical attention. However, the FPA 2013 offers very little to no guidance on particular strategies and actions for assisting children and young people in connection with GBV and DV.

Key outcome 4.1 of the Tonga National Youth Policy & Strategic Plan of Action 2021–2025 states that "*Measures are in place to eliminate gender-based violence and user-friendly social services are in place for youth victims / survivors.*" It places special emphasis on gender-based violence. Nevertheless, this plan does not go into great detail regarding the actual tasks that will be carried out or that might be observed.

<sup>5</sup> Tonga Statistics Department. (2020). *Tonga Multiple Indicator Cluster Survey 2019, Survey Findings Report*. Nuku'alofa, Tonga: Tonga Statistics Department.

<sup>6</sup> Section 4(b) of Family Protection Act 2013 (2020 revised edition).

Under Key Action 2.2.6 of the National Women's Empowerment and Gender Equality Tonga Policy and Strategic Plan of Action 2019-2025 mentions young people, and specifically girls, in its course to "*Continue to raise awareness and support implementation of the Family Protection Act, in particular as it pertains to the prevention and response components of the Act, and to include young people in its implementation.*"<sup>7</sup> The policy does not, however, address the specific risks that young people have in relation to GBV and DV or the possibility that they require preventative and response measures that are specially designed and resourced. In turn, this does not assist with the Centre's delivery services to young people and children who seek the assistance of the Centre.

As a signatory to the Convention on the Rights of the Child, Tonga is obligated to guarantee that every child is shielded from all forms of sexual exploitation and abuse (Article 34), from physical or mental violence, injury, or abuse (Article 19); from torture and other cruel, inhuman, or degrading treatment or punishment (Article 37); and from school discipline that is applied in a way that respects the child's human dignity (Article 28). Having said that, Tonga has the lowest criminal responsibility age in the world, at seven years old and under Tongan law, minors can be sentenced to death or whipping. Contrary to the convention, it is lawful and permissible for children under the age of 18 to marry. Upon reviewing Tonga's first report on implementing the Convention on the Rights of the Child, the Committee on the Rights of the Child (2019) observed that one of the most urgent issues requiring legal reform in Tonga was violence against children.

Additionally, the FPA 2013 remains the most responsive piece of legislation to child protection issues in Tonga in the absence of any specific legislation for child protection. It is envisaged that Tonga will eventually address this huge gap in the interest of children who are mostly affected both mentally and physically as the result of family violence.

The absence of adequate and comprehensive services to complement the FPA 2013 to safeguard children only magnifies the challenges facing the Centre to effectively provide its services. The services to children demand the collaboration of other service providers and the Centre has often acknowledged the members of the Case Management Committee (CMC) for their support – Women and Children's Crisis Centre ("WCCC"), the Tonga National Centre for Women and Children ("TNCWC") and the Domestic Violence Unit ("DVU") (Police). An example of the challenges faced by the Centre in terms of effectively providing its services to children is when both natural parents are not in a position to care for their child, and it is in the best interest of the child to not be in their care. In such cases, there is no actual place for the children to be taken. A temporary arrangement is the utilization of the WCCC safe house, but this is not a long-term arrangement. A child in this situation is considered lucky if there are relatives willing to take them in. Even with this, the child's life is disrupted.

While there is legislation in place that prohibits corporal punishment in school, this still happens. The FPA 2013 cannot assist survivors of school violence, particularly those who are in boarding schools, from persons in authority. Section 4 of the FPA 2013 stipulates that a victim and a perpetrator must be in a domestic relationship to constitute any acts of violence as domestic violence. Children who are in boarding schools spend most of their time in school with teachers and prefects as the caretakers, only coming home for weekends. This relationship though is not recognized in the FPA 2013 as a domestic relationship and the students are subjected to violence and do not have the choice of applying for a protection order to ensure that these actions stop.

In March 2022, the Tonga National Child Protection Policy ("TNCPP") committee was formed, chaired by the Ministry of Justice. The members of this Committee included UNICEF, the Ministry of Education, the Police, the WCCC, Save the Children Australia, the Attorney General's Office, the Ministry of Health, SPC, and Auckland University. A children protection policy was developed, and many consultations were held with the community. It is anticipated that policy goals will be reached in collaboration with all sectors, stakeholders and communities, with the Government of Tonga focusing on the following Policy Priority Areas for the duration of the policy:

<sup>7</sup> Ministry of Internal Affairs, Tonga. (2019). *National Women's Empowerment and Gender Equality Tonga Policy and Strategic Plan of Action 2019-2025*. Ministry of Internal Affairs, Tonga & Pacific Community.



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1. Comprehensive legal and policy framework for child protection.
2. Child protection organizational structures at the national and community levels.
3. Families and communities are empowered to promote well-being of children and prevent abuse and neglect.
4. Continuum of child protection services for children and their families (prevention, early intervention and response).
5. Well-trained and resourced child protection workforce.

A final draft has been tabled with the Cabinet but for many months now, there has been no indication of endorsement of this policy by the government.

Furthermore, as a part of its services, the Centre conducts a series of awareness programmes which includes going out to the communities and schools, as well as conducting a series of television and radio talk-back shows. The talk-back shows were quite effective, in that it allowed the public to share their own views on the FPA 2013. However, there appeared to be a common misconception about the purpose of the FPA 2013 — that the legislation is dividing up families and is the main cause of much of the youth offending. It should be noted that the Domestic Violence Unit of the Ministry of Police was engaged to respond to issues raised by the public in respect of youth offending and to which the police did not agree with the perception that the FPA 2013 is a major contributing factor to youth offending.

Communication with the outer islands remains a recurring challenge due to the limited capacity of the Centre to reach clients in the outer islands and remote communities. There are only two offices, one in Tongatapu and Vava'u. It should be noted that the establishment of the Vava'u Office in 2022 has helped tremendously in reaching clients in Vava'u. However, the Centre will benefit from more staff and in particular two more lawyers to ensure that the Centre has the capacity to provide the legal services as its mandate, and to maintain a quality service.

It should be noted for future considerations that establishing offices in Ha'apai and 'Eua will improve the response to survivors and clients in these islands, considering that there are also smaller islands forming part of these islands.

The Centre's primary response to its clientele is the FPA 2013; however, there are other related laws used to assist clients, particularly those who experience economic abuse and need maintenance. There is a need to reform some of the family laws, particularly the Maintenance of Deserted Wives Act and the Maintenance of Illegitimate Children's Act. These laws need to be responsive to the needs of women and children at risk of economic abuse. The procedure for processing applications for maintenance is lengthy and complex. The enforcement of orders is also lengthy and costly. Women who seek assistance under these laws are already in financial hardship. These lengthy and costly processes serve as deterrence and a barrier to women coming forth to seek assistance.

### III. RECOMMENDATIONS AND POSSIBLE SOLUTIONS

The following recommendations are made as possible solutions to the challenges faced in preventing and responding to domestic violence:

- Tonga should evaluate and remove outmoded legislation that contradicts international human rights responsibilities, including the Convention on the Rights of the Child. To avoid unexpected repercussions, legislative reforms should involve engagement with civil society and major population groups, as well as a gender impact assessment.
- Family Law Reforms

- Develop a standalone, cost-effective national plan or strategy to prevent and respond to gender-based violence, coordinate with the Ministry of Health, and address GBV in emergencies (GBViE).
- Consider revising the Family Protection Act (2020 revised edition) to eliminate the criterion for violence to be “beyond reasonable expectations and acceptances of family and domestic life” from the definition of family violence (section 4).
- Consider revising the Family Protection Act to include children and teachers in boarding schools as having a domestic relationship.
- Endorsement of the Tonga National Child Protection Policy by the Government of Tonga.
- Establish Legal Aid Centres in the outer islands, Ha’apai and ‘Eua.

#### **IV. CONCLUSION**

It is clear that domestic violence (DV) is one of the most common and yet concealed human rights violations, affecting one's health, economy education and personal development. While the immediate impact is personal, the prevalence of DV means that it has terrible consequences in families, communities and around the world. Addressing violence against women is an issue for public health, human rights, economics and public policy. Domestic violence and gender-based violence reflect and perpetuate gender inequity. They limit women's ability to exercise their rights and freedoms. That is, violence against women undermines women's ability to participate in development and peace. Furthermore, it is an important public health issue, affecting women's health, especially sexual and reproductive health, as well as their mental health. Countries cannot achieve their full potential unless women are given equal opportunities to engage in society, and the cost of violence will continue to stymie national development efforts as violence against women undermines human and economic growth.

Therefore, a collective approach by all relevant agencies, individuals, families, communities, government ministries and non-government organizations must be made to eliminate domestic violence and gender-based violence in our society.

# **PART THREE**

## **RESOURCE MATERIAL SERIES No. 118**

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**Work Product of the 184th International Training  
Course**

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**UNAFEI**



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# REPORT OF THE COURSE

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## THE 184<sup>TH</sup> INTERNATIONAL TRAINING COURSE

### “COUNTERMEASURES AGAINST TRAFFICKING IN PERSONS, WITH A FOCUS ON TRAFFICKING IN PERSONS FOR SEXUAL EXPLOITATION”

#### 1. Duration and Participants

- From 9 to 29 May 2024
- 19 overseas participants from 18 countries
- 5 participants from Japan

#### 2. The Purpose of the Course

This course aimed to have participants learn the current situation of trafficking in persons in Japan and around the world and to explore effective countermeasures. In addition, this course also aimed to enhance the participants' mutual understanding and establish a global network among participants.

#### 3. Contents of the Course

##### (1) Lectures

- Overseas Experts
  - A) “Countermeasures against trafficking in persons, with a focus on trafficking in persons for sexual exploitation”  
Ms. Silke Albert (Crime Prevention Expert, Human Trafficking and Migrant Smuggling Section, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, UNODC)
  - B) “U.S. Countermeasures Against Trafficking in Persons”  
Ms. Kimberly Sokolich (Resident Legal Advisor for the Department of Justice, Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT), Prosecutor)
  - C) “Human Trafficking in Canada”  
Ms. Cinthya Rebaza (Director of Serious and Organized Crime Policy, Public Safety Canada)  
Ms. Lori-Ann Smith (Senior Policy Advisor on Public Safety Canada's Anti-human-trafficking Policy Team)  
Ms. Ellen Wiltsie-Brown (Counsel, Department of Justice, Canada)
- Lectures by Japanese Experts
  - A) “Measures against trafficking in persons in Japan”  
Mr. OKI Kuniaki (Superintendent, Safety Division, Community Safety Bureau, National Police Agency)
  - B) “Trafficking in persons cases at the Metropolitan Police Department”  
Mr. TAKEDA Nobukazu (Inspector, Safety Division, Community Safety Bureau of Tokyo Metropolitan Police Department)
  - C) “Countermeasures against Trafficking in Persons by the Immigration Services Agency”  
Mr. HOSHI Tomoya (Deputy Director of the Adjudication Division of the Immigration Services Agency of Japan)
  - D) “IOM's Roles in Assisting Victims of Trafficking”  
Mr. MOCHIZUKI Daihei (Chief of Mission, IOM, Mission in Japan)

(2) Individual Presentations

Each participant made an “Individual Presentation” describing the current situation and challenges in the participant’s country. Participants asked many questions to the presenters and an active discussion was held.

(3) Observation Visit

The participants visited Haneda Airport (Haneda Airport District Immigration Services Office, Tokyo Regional Immigration Services Bureau, Immigration Services Agency of Japan). They learned countermeasures against trafficking in persons through immigration control in the airport and observed the facilities and immigration control practices.

(4) Group Discussion

Participants were divided into three groups and engaged in group discussion about effective countermeasures against trafficking in persons based on the knowledge gained in the individual presentations, lectures and observation visit. For example, they focused on the difficulty of detection, the necessity of a trauma-informed approach and the importance of preventive measures, and they discussed various measures based on these factors. Each group presented an overview of its discussion and held a Q&A session with their fellow participants.

#### **4. Feedback from the Participants**

Most participants commented that this course was well-structured and that they learned a lot. On the other hand, there were also comments that a case study or role play could have been included. We appreciate all the feedback from the participants and will take it into consideration and try to improve our training courses.

#### **5. Comments from the Programming Officer (Professor Nakayama)**

Trafficking in persons occurs in every region of the world and its victims suffer physical, sexual, financial, psychological and/or social damage and harm. Especially, in terms of trafficking in persons for sexual exploitation, most victims are vulnerable people such as women and children. Therefore, various measures and considerations are necessary for their protection and for the prevention of secondary victimization. The participants deepened their understanding of the importance of a trauma-informed approach through the lectures by experts. For example, participants understood that interviews of victims should be made in a way of preventing secondary victimization and the credibility of their statements should not be underestimated even though the statements may appear inconsistent or irrational, considering their trauma etc. In addition, participants recalled that it is important to collect corroborant evidence.

Through this course, we recalled that trafficking in persons is one of the most serious global problems that impacts every country and that socio-economic factors such as poverty and immigration are root causes. At the same time, we learned that each country has various measures for detection, investigation and victim protection etc.

All participants were very active and engaged enthusiastically in the activities of the course. They learned the current situation, legal systems and good practices in other countries and around the world and discussed them. I learned a lot from the participants. For example, participants emphasized the importance of preventive measures, considering difficulty of detection and investigation and the gravity of harm to the victims.

I hope that the knowledge and information gained in this course will be utilized in the development and enhancement of each participating country.

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## PARTICIPANTS' PAPERS

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### CHALLENGES IN FIGHTING HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN BRAZIL AND AROUND THE WORLD - PROPOSALS FOR IMPROVEMENT

*Gustavo Nogami\**

#### I. INTRODUCTION

The United Nations Office on Drugs and Crime (UNODC) and the International Labour Organization (ILO) already indicated, in 2010, that human trafficking victimized around 2.5 million people, and generated approximately US\$32 billion per year, making it the third most profitable illicit business in the world, right behind drug and arms trafficking.<sup>1</sup> Still according to the UNODC, in 2016, official records revealed more than 26,000 cases of human trafficking, with a “black cipher” estimated to be much higher.

In as much as the “Palermo Protocol” defines human trafficking as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. Meanwhile, “[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Absolutely, there are various forms (registered around the world) to commit the crime, such as trafficking for exploitative begging, forced or fraudulent marriage, pornography, illegal adoption, forced criminal activity, removal of organs, recruitment of armed combatants in wars (“children-soldiers”), kidnapping babies (of pregnant women), among others. However, in general terms, trafficking for sexual exploitation and forced labour purposes stand out (the main activities are: livestock farming, heavy agriculture, industrial textile, mining, coal, civil construction, domestic work, etc.).<sup>2</sup>

In truth, the most common reasons for human trafficking around the world are sexual exploitation (38.7%) and forced labour (38.8%), as shown in the United Nations Office on Drugs and Crime report 2022.<sup>3</sup> Although sexual exploitation has decreased proportionally compared to forced labour, female victims continue representing 60 per cent of the identified trafficking in persons cases. In South America, 63 per cent of the victims are female: women and girls, even though forced labour is the most common form of exploitation experienced by detected victims of trafficking in Brazil. Regrettably, the country has the highest incidence of trafficking for sexual exploitation in South America, according to UNODC.

Human traffickers, lamentably, violate the most basic human right: to be free. Through violence, threat, or fraud, traffickers affect every country in the world, diminishing and destroying communities, the public's sense of safety, and the global economy. The impact of this evil has severe repercussions on the entire global structure, requiring joint work by all countries and the partnership of all people to effectively combat the crime.

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<sup>1</sup> United Nations Office on Drugs and Crime report 2010.

<sup>2</sup> United Nations Office on Drugs and Crime report 2018.

<sup>3</sup> The UNODC 2018 report shows different numbers for sexual exploitation (50%) and forced labour (38%), however, the most recent numbers cannot be attributed exclusively to the reduction in human trafficking for sexual exploitation, but rather due to the closure of public spaces (places where exploitation was more frequent) and the removal of the activity to hidden locations, making it difficult to detect this form of trafficking.

For all these reasons, almost all countries in the world currently have legislation in force criminalizing human trafficking, mostly based on the “Palermo Protocol”.

## II. THE BRAZILIAN EXPERIENCE

Brazil has a territorial area of 8,510,295 km<sup>2</sup>, boasting a maritime border of 7,367 km and approximately 16,886 km of land borders with 10 countries: Argentina, Bolivia, Colombia, “France” (French Overseas Department of French Guiana), Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela.<sup>4</sup>

In the past, Brazil was considered just a country of origin, preponderantly for prostitution of women in Europe. Currently, Brazil is the origin (for example, for prostitution/exploitation and illegal adoption in Europe and Asia), transit (from South America for drug trafficking and prostitution in North America and Europe, as well as from Africa and Asia to the USA), and destination (for instance, from Latin Americans to slave labour and prostitution) for thousands of victims.

Data from the National Human Rights Ombudsman’s Office of the Ministry of Women, Family and Human Rights of Brazil reveal that, in 2018, the dominant forms of human trafficking were internal and international, forced labour and sexual exploitation. Nonetheless, other reasons for human trafficking in Brazil are not rare, such as for illegal adoption<sup>5</sup> or forced criminal activity.<sup>6</sup>

“The World Childhood Foundation” – an NGO founded by Queen Silvia of Sweden – estimates that, in Brazil, there are significantly more than 20,000 cases of sexual exploitation of children and adolescents per year. In truth, data from the Ministry of Health from 2011 to 2017 revealed 141,105 notifications of sexual violence against children and adolescents, that is, more than 20,157 cases per year.<sup>7</sup> Likewise, the relationship between human trafficking and the sexual exploitation of minors is very strong. In fact, it is estimated that there are more than 240 national and international trafficking routes for sexual exploitation of women and girls across Brazil.<sup>8</sup>

In Brazil, the “Palermo Protocol” was promulgated through Decree #5,017, of 12 March 2004, following the best world practices, focusing on three areas of action: prevention and repression of crime, as well as protection for victims. Guided by the “Palermo Protocol”, Law #13,344, of 6 October 2016 – which provides for the prevention and repression of internal and international human trafficking – amended the Brazilian Penal Code, inserting article 149-A,<sup>9</sup> which requires the conjugation of “Conduct” + “Means” + “Purposes”

<sup>4</sup> See <<http://info.lncc.br/#:~:text=Com%20uma%20fronteira%20mar%C3%ADtima%20de,da%20ordem%20de%2016.886%20quil%C3%B4metros.>> accessed on 9 March 2024.

<sup>5</sup> “Case Deverra” (Penal Action #5010493-22.2023.4.03.6105) was launched, between 2023 and 2024, to combat an international organization created to traffic babies from Brazil to Europe for illegal adoption. In this case, the social network Facebook was used to create a bond between the traffickers and the pregnant women who sold the children.

<sup>6</sup> “Case White Sand” was developed, between 2022 and 2023, to combat an international criminal organization that enticed Brazilians, through social networks (Facebook and Instagram), with false promises of employment in Asia, aiming to traffic people to commit “cyber fraud” (forced criminal activity), in Cambodia, Laos, and Myanmar.

<sup>7</sup> See <<https://ch-wordpress.s3.amazonaws.com/uploads/2022/12/dadosviolenciassexualcontracriancase%20adolescentes2020-final.pdf>> accessed on 9 March 2024.

<sup>8</sup> According to the “Research on trafficking of women, children, and adolescents for sexual exploration purposes - PESTRAF - December 2002”, in <[https://andi.org.br/wp-content/uploads/2020/10/Pestraf\\_2002.pdf](https://andi.org.br/wp-content/uploads/2020/10/Pestraf_2002.pdf)> accessed on 9 March, 2024.

<sup>9</sup> “Article 149-A - Agency, entice, recruitment, transportation, transfer, purchase, host or shelter a person, through serious threat, violence, coercion, fraud or abuse, with the purpose of:

- I – remove organs, tissues, or parts of the body;
- II – subject her to work in conditions similar to slavery;
- III – subject him to any type of servitude;
- IV – illegal adoption; or
- V – sexual exploitation.

Penalty – imprisonment, from 4 (four) to 8 (eight) years, and fine.

§ 1º The penalty is increased from one-third to half if:

- I – the crime is committed by a public official in the exercise of his functions or under the pretext of carrying them out;



(See Figure 1, below).

Thereafter, at least in terms of criminalizing human trafficking, Brazil obeys the principles of the “Palermo Protocol”, minimally typifying the most common conduct. However, Brazil still needs to implement more preventive and assistance actions, in addition to improving criminal repression.

Incidentally, in Brazil, the Federal Prosecution Service (MPF) is the entity authorized to prosecute criminal cases of international human trafficking, being the exclusive holder of the criminal action in this matter. Nevertheless, inappropriately, the Brazilian Federal Prosecution Service has just partially specialized offices in human trafficking in the capital of the state of São Paulo, the biggest unit in Brazil. All the other units spread across Brazil are not specialized, which can be a major challenge in prioritizing cases involving human trafficking.

**Figure 1**

<b>Conduct</b>	<b>Means</b>	<b>Purpose</b>
1) Agency	1) Serious threat	1) Removal of organs, tissues and other parts of the body
2) Entice	2) Violence	2) Submission to work in conditions similar to slavery
3) Recruit	3) Coercion	3) Sexual exploitation
4) Transport	4) Fraud	
5) Transfer	5) Abuse	
6) Purchase		
7) Host		
8) Shelter		

In the same way, the Brazilian Federal Police (PF) – responsible for investigating cases of international human trafficking in Brazil – does not have teams specialized in the subject to conduct investigations, with cases being spread across the country (as in the MPF). This omission in specialization and prioritization – both in the MPF and PF – generates several problems, from simple unfamiliarity with the subject to the lack of preference of cases, which often remain invisible. Just to illustrate, according to data extracted from the MPF’s management data system (“Único”), in 2023, there were 317 investigations, 10 criminal actions, and 4 convictions relating to human trafficking (article 149-A of the Penal Code), besides 12 convictions under article 239 of Law # 8,069/1990<sup>10</sup> (Child and Adolescent Statute). These numbers are very timid for a country with the continental size and population of Brazil, as well as if compared to the estimates of several researchers.

### III. DIFFICULTIES AND COUNTERMEASURES

The difficulties in holding those involved in human trafficking criminally responsible are many due to numerous factors, especially the poor communication among authorities responsible for repressing the crime, the lack of specialized units and professionals involved in combating the problem, as well as even cultural

II – the crime is committed against a child, teenager, or elderly, or disabled person;

III – the agent invokes kinship, domicile, coexistence, hospitality, economic dependence, authority, or hierarchical superiority inherent to the exercise of employment, position, or function; or

IV – the victim of human trafficking is removed from national territory.

§ 2º – The penalty is reduced by one to two-thirds if the offender is a first-time offender and is not part of a criminal organization.”

<sup>10</sup> Article 239 - Promote or assist in carrying out an act aimed at sending a child or adolescent abroad without complying with legal formalities or aiming to obtain profit:

Penalty - imprisonment of four to six years, and fine.

Single paragraph - If there is violence, serious threat, or fraud:

Penalty - imprisonment, from 6 (six) to 8 (eight) years, in addition to the penalty corresponding to violence.

and socioeconomic issues.

It is common for victims to stop seeking help and refrain from reporting delicate facts because they do not want their names involved in such a practice, mainly they do not consider themselves victims, or they are afraid for their physical safety and families, or even they are just ashamed. In other cases, the large time lag between the consummation of the facts and the arrival of the news to the competent authorities for repression and criminal liability of criminal agents ends up hindering precautionary measures that could strengthen the process.

For example, many cases of international human trafficking are reported to the State Police Stations, which initiate investigations related to trafficking in persons as if they were false imprisonment, ruffianism, or sexual harassment. Additionally, the State Police fail to send information to the competent federal authorities (MPF and PF) about a possible international human trafficking crime. These repeated delays in reaching the authorities responsible for repressing trafficking in persons make it extremely difficult to repress criminal agents and hold them accountable.

For instance, in 2020, the MPF was informed by Latin American counterparts (Prosecution Service of Paraguay) about two cases of human trafficking that occurred in Brazil (and were not being adequately investigated): 1) Paraguayan women trafficked for prostitution in São Paulo (only discovered when they tried to cross the border back to Paraguay due to the pandemic), and 2) Paraguayan men brought, through fraud, to forced labour in the (counterfeit) tobacco industry in Rio Grande do Sul (more than 35 individuals were held captive in a basement without windows, natural light and exit route, for weeks, being served by a single latrine, with the investigation focusing exclusively on slave labour and ignoring the trafficking of workers and their perpetrators).

The news reached the Prosecution Service of Paraguay through some of the victims who returned to the country (and were blocked during the Covid-19 pandemic) and the press (newspaper article published in Paraguay about the rescue of Paraguayan workers by the Civil Police in Rio Grande do Sul). After direct communication through the Ibero-American Network of Specialized Prosecutors against Human Trafficking and Migrant Smuggling (REDTRAM) of the Ibero-American Association of Prosecution Services (AIAMP),<sup>11</sup> and a survey with the local police, it was possible to observe that the cases had been communicated to the Brazilian authorities; however, they had been limited to minor crimes, under state jurisdiction. Investigations and prosecutions for human trafficking simply had not been conducted. As communication was quick through REDTRAM, the two cases could be investigated. However, these are satisfactory exceptions, when the investigation could move forward despite the initial problem of communication, mostly due to the ease of reliable communication inside REDTRAM.

Furthermore, due to the high complexity of the criminal description of human trafficking, with 8 types of conduct, 5 means, and 5 specific purposes, which must be conjugated, most of the time criminal agents end up being investigated, prosecuted and convicted for other less complex types of crime, such as article 239 of the Child and Adolescent Statute. The same occurs with trafficking in persons for forced labour, which is usually just prosecuted as modern slavery.<sup>12</sup>

Unfortunately, Brazil shows modest efficiency in preventing, repressing and controlling trafficking in

<sup>11</sup> REDTRAM was created in 2011 within the scope of AIAMP, with contact points from each of the 21 participating Prosecution Services, to serve as an informal cooperation network to combat human trafficking and exploitation, through activities and actions that seek to improve communication between countries, promote preventive actions, reduce the delay in criminal repression, increase the efficiency of criminal prosecution and increase the real-time protection of victims. The main objective of trying to overcome the slowness and excessive formalism of international legal cooperation instruments is generally sought through the exchange of good practices (for instance, training on the crime of human trafficking from a gender and human rights perspective), paradigmatic cases and information (spontaneously exchange of relevant information through the web platform "IberRed" or, in case of urgency, through mobile phone and WhatsApp group), creation of joint activity plans (for example, common database), establishment of general or specific commitments (e.g., minimum standards related to the protection, assistance and repatriation of victims of trafficking, confiscation of assets resulting from the crime in order to guarantee adequate and comprehensive reparation to victims, etc.), Joint Investigation Teams, among others.

<sup>12</sup> See second example above.

## PARTICIPANTS' PAPERS

persons, with a very low number of initiatives of prevention against the crime and assistance to victims, as well as criminal prosecutions and convictions against the traffickers. Undeniably, the Federal Prosecution Service itself does not appropriately prioritize the fight against this kind of crime, as it should. Thus, the future JICA/UNAFEI's training (conveying a greater specialization) is intended to be a tool to reduce this lack of prioritization.

The Federal Prosecution Service is already trying to strengthen the fight against human trafficking through the creation of a "Special Action Group to Combat International Trafficking in Persons and Smuggling of Migrants (GAEETCO)", still in progress in the Superior Council of the Federal Prosecution Service (CSMPF) through Resolution Project #147/2022.

Certainly, the installation of specialized offices for privately fighting against human trafficking (in the MPF and the PF) would significantly improve the quality of the work, since data collection (to be used strategically in defining actions) to the development of investigations and criminal proceedings, as well as freezing and forfeiture of resources arising from and intended for the crime. However, the expertise of the GAEETCO's members is essential for the success of the strategy.

In addition, other possible solutions could favour the liability of criminal agents (or, at least, decrease the challenges), such as promoting controlled listening to the accounts of victims of trafficking in persons, and better coordinating institutions that work on the front line of repressing this criminal practice would also be very helpful.

Indeed, the approbation of project Resolution # 147, of 19 September 2022, in analyses at the CSMPF for the creation of the GAEETCO – which will be made up of offices with national assignment, specialized in human trafficking, migrant smuggling, and related crimes – would greatly improve the repression against trafficking in persons in Brazil, giving the necessary priority to the problem inside the criminal prosecution.

Moreover, the engagement with survivors of human trafficking – listening, learning and protecting victims – can be a real driving force in combating the crime, allowing a precise understanding of the context and causes of the illicit, as well as the way traffickers operate. While on the subject, active and sensitive listening proves to be fundamental in this scenario, chiefly in cases of sexual exploitation, which, as a rule, occurs in the dead of night and in hidden places.

Finally, from the attentive and receptive hearing of victims, many ideas can be extracted for the development and implementation of public policies aiming for the social reintegration of those rescued, taking into account their peculiar traumatic situations, and facilitating their readaptation to society.

## IV. CONCLUSION

To sum up, human trafficking must be combated with a focus on the three "Ps": 1) prevention; 2) prosecution, and 3) protection (assistance to victims). In this sense, to be very pragmatic, countries should focus on actions that address the problem holistically, such as:

- 1) disseminate to the general public the most common forms of human trafficking and the means to report it;
- 2) train employees of airlines, public transport (buses), airports, immigration, borders, taxis, transport apps, among others involved in transporting people and/or crossing borders to identify cases of human trafficking;
- 3) qualify vulnerable groups on forms of trafficking in persons, ways to identify traffickers and contacts for help;
- 4) train operators and agents responsible for law enforcement in identifying cases and victims, avoiding undue penalization of the latter in cases when different conduct is unenforceable (crimes committed

by victims who were forced to commit it);

- 5) investigate, prosecute, and vigorously punish (with significant penalties) cases of trafficking in persons regardless of the purpose for which it is intended, but in particular for sexual exploitation and child abuse;
- 6) prosecute and convict officials/authorities complicit in trafficking, including for any related corruption offences (even cases of “sextortion”);
- 7) increase the specialization of criminal prosecution teams – police and members of the Prosecution Service – creating units designed to exclusively combat the problem at a national level, as well as maintaining coordination with external bodies and partner countries;
- 8) compile and use strategically comprehensive data on, among others:
  - a) investigations, prosecutions and convictions involving human trafficking, identifying cases of sexual exploitation, slave labour, forced servitude, organ removal and illegal adoption;
  - b) identification of victims;
  - c) assistance offered and social reintegration of those rescued;
  - d) among others;
- 9) adequately criminalize the trafficking in persons, including children sexual exploitation, regardless of the use of violence, coercion or fraud, due to the special condition of vulnerability of minors;
- 10) implement programmes to protect victims and witnesses of human trafficking, avoiding threats and pressure from traffickers;
- 11) develop assistance and social reintegration programmes for victims of human trafficking in the community and in the formal job market;
- 12) confiscate assets and resources originating from or used in trafficking in persons, seeking to financially stifle traffickers and make the crime very costly;
- 13) investigate possible money-laundering arising from the lucrative crime of human trafficking.

# **CRIMINAL JUSTICE (FOCUS ON INVESTIGATION, PROSECUTION, ADJUDICATION AND INTERNATIONAL COOPERATION)**

*Khamtan Phosombath\**

## **I. OVERVIEW ON TRAFFICKING IN PERSONS IN LAOS**

It is known widely that trafficking in persons is a serious social problem because it poses a very large threat to fundamental human rights, the right to life, to free movement and the right to be free of torture. It is a serious organized transnational crime problem with many forms, many methods, transnational networks, and a complex nature. The main purpose of trafficking in persons is to exploit labour and sex, which generates enormous profits to traffickers.

A country's involvement in trafficking in persons may be classified as that of an origin, transit or destination country. The Lao PDR is one of many countries experiencing issues of trafficking in persons in which in most cases is considered as an origin country. For instance, trafficking in persons occurs from the Lao PDR to Thailand, People's Republic of China, Malaysia, Indonesia, and the Socialist Republic of Vietnam. The Lao PDR is also considered as a destination country which involves cases where people are trafficked from Vietnam to the Lao PDR and as a transit country for cases of trafficking in persons moving from Vietnam through Laos and finally to China. According to the geographical position of the Lao PDR, as it shares borders with many countries such as China, Thailand, Vietnam, Cambodia and Myanmar, due to its strategic location which makes it simple for both foreigners and Lao locals to enter and exit the country, as well as its rapid economic development and rising labour needs.

Trafficking in persons crimes in Laos are caused by a number of factors including poverty, a lack of awareness of the law, a lack of vigilance and a limited comprehension of the practice. Over time, trafficking in persons has increased and occurred in various forms, through which victims are deceived and lured by offers of travel, work in restaurants and enter fraudulent marriages with foreigners through means of engagement as well as promise of work for migrant labourers illegally without going through the official process in which these people were subjected to high risks of becoming victims of trafficking in persons. Another apparent risk lays within entertainment venues, cafes, massage parlours, bars, nightclubs, guest houses, hotels and other establishments that provide a cover for prostitution. This phenomenon is occurring nationwide in which the underlying root causes are due to social trends, unsecured and unstable family livelihoods, limited level of education, and labour skills mismatch with labour market demands. All of the issues mentioned above are the underlying factors that have propelled the youth to seek job opportunities in larger districts and cities within the country or abroad so that they can generate income to secure their families or in hopes of acquiring a better life.

It is considered that most cases of trafficking in persons in Laos are due to great poverty of the country as an origin country and the good conditions or labour demands in the destination countries. Traffickers entice victims through job offers in which women are lured through the promise of high pay, good working conditions and the chance to escape oppressive conditions. Traffickers also use fraud, deception, false marriage, intimidation, threats, beatings, outright kidnapping, torture, rape and sexual exploitation, and traffickers also make use of Lao territory to transport foreign victims to other countries in the region. Laos is primarily a source country for human trafficking.

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## II. THE LEGAL SYSTEM DEALING WITH TRAFFICKING IN PERSONS IN LAOS

The Law on Anti-Trafficking in Persons was enacted and promulgated in 2015. The law defines the principles, rules and measures regarding the administration, monitoring, supervision and inspection of anti-trafficking in persons activities in order for them to be systematic and effective with a view to protecting the rights, interests, lives, health, dignity, freedom of the citizens and fine national traditions and customs aiming at keeping the society safe and secure, in good order and contributing to the national development and protection.

Both the law on Anti-Trafficking in Persons and the Penal Code state that trafficking in persons shall mean recruitment, abduction, movement, transportation or transfer, harbouring or receipt of persons, by means of persuasion, recommending, deception, payment or 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 other, forced begging, producing, showing and publishing pornographic materials or by other forms for the labour exploitation, sexual exploitation, slavery, prostitution, involuntary prostitution, removal of organs for purpose of trade and other forms of unlawful conduct contradicting the national culture and traditions or for other purposes to gain benefits. Also, with the focus on sexual exploitation, the law states that sexual exploitation shall mean forcing another person into sexual slavery, prostitution, pornography activities or to provide other forms of sexual services (article 3).

The law also defined various forms of trafficking in persons such as the recruitment, abduction, movement, transportation or transferring or receipt of persons in the country or abroad, harbouring (article 10). In addition, means of trafficking in persons under this law shall mean persuasion, recommending, deception, payment or 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 other, forced begging, producing, showing and publishing pornographic materials or other forms (article 11). Finally, the purposes of offence shall include labour and sexual exploitation, slavery, prostitution, involuntary prostitution, removal of organs for the purpose of trade and other forms of unlawful conduct contradicting to the laws and national culture and traditions (article 12).

There are three main activities for combating trafficking in persons, which include the following activities:

- 1) Control – by stipulating methods and measures as provided for in the laws and regulations to control the relevant stakeholders not to commit trafficking in persons, as well as to control the target groups not to fall into victims.
- 2) Monitoring the targeted persons which are targeted groups of trafficking in persons
- 3) Prohibition – by applying the methods and taking measures as provided for in the laws and regulations in order to forbid individuals, legal entities and organizations to remain free from any act of trafficking in persons.

### A. The Characteristic of a Case Proceeding on Trafficking in Persons

Trafficking in persons cases shall proceed as follows: 1. Case reporting; 2. Receiving of case reporting; 3. Documentation of case reporting; 4. Proceedings against offenders.

#### 1. Case Reporting

A report of trafficking in persons can be made orally or in writing. The persons who have the right and obligation to report are the following: 1. Victims of trafficking in persons; 2. Family members of victims of trafficking in persons; 3. Close relatives, neighbours, other persons, domestic and international organizations that know, see or receive information or a source of information on trafficking in persons.

#### 2. Receiving of Case Reporting

The persons who have authority to receive case reporting are police officers. In case of necessity and urgency, individuals, legal entities or other organizations can receive the reports and then submit to the police officers immediately in order to rescue and assist the victims of trafficking in persons and initiate the

criminal proceedings against the offenders in accordance with the laws.

3. Documentation of Case Reporting

The police officer that receives a case report shall prepare a record that should contain the following key information: 1. Place, date, time, name and surname, and position of the person receiving the case report; 2. Name and surname, age, occupation, place of residence or workplace of the victim, victim's parents and the reporter; 3. Name and surname, age, occupation, place of residence or workplace of the accused person; 4. Description of the incidence as reported by the reporter, such as: time, date and place of incidence, witnesses, clues, relevant photos, and other evidence. When a report has been recorded, the receiver must read all contents of the records to the reporter and other participants sign and put their fingerprints on that record.

4. Case Proceedings against Offenders

When a report on trafficking in persons is given by individuals, legal entities or organizations or the offender had reported him- or herself or a suspicious incidence about trafficking in persons was found, relevant officers shall inspect, verify information, take statements from the victims or the reporter, including witnesses, and apply investigation-interrogation methods and measures in accordance with the law on criminal procedures, while maintaining confidentiality and safety of those who are involved.

Trafficking in persons proceedings are almost the same as criminal proceedings in Laos. However, the differentiation is that the trafficking in persons case allows other relevant stakeholders to receive the report in a necessary case other than the police. This will facilitate the case proceeding in time. According to the report on the implementation of the national plan of action on trafficking in persons 2023, 11 cases were successfully prosecuted in court including 12 accused and 23 victims in which women under 18 years old accounted for 23, and there are 10 cases being investigated.

**B. Victim Assistance**

The victims of trafficking in persons shall have rights to access to the necessary assistance provided by relevant authorities including: 1. Temporary shelter; 2. Legal assistance; 3. Medical treatment; 4. Education and vocational training; 5. Economic support; 6. Reintegration support.

**III. RAISING AWARENESS, PROTECTION AND ASSISTANCE MEASURES FOR VICTIMS OF TRAFFICKING IN PERSONS**

**A. Awareness-Raising Campaigns**

The ministries and organizations in charge of trafficking in persons organized campaigns to raise awareness about trafficking in persons in many forms and methods, such as the development of a television and radio programme on combating trafficking in persons, as well as creating and posting awareness-raising advertisements on billboards to disseminate information on the negative impacts of trafficking in person at border checkpoints and airports in 13 provinces and sticker advertisements on the government's bus transportation system. In addition, Laos created the National Committee on Anti-Trafficking in Persons website, url: [laosncatip.gov.la](http://laosncatip.gov.la), and a YouTube channel to publish communication materials on anti-trafficking in persons so that the public is aware, understands, and can protect themselves from becoming victims of trafficking in persons.

Significantly, the meetings, trainings, seminars and outreach activities were organized along the borders and in areas where there are risks of trafficking in persons. Information has also been disseminated nationwide on domestic laws, the laws of destination countries, safe migration and contact information for organizations that offer assistance to victims abroad. Finally, we completed the development and revision of relevant laws and legislation on trafficking in persons, namely the introduction of Article 215 on Trafficking in Persons in the Penal Code, the Law on Anti-Trafficking in Persons, the Guidelines on Victim Identification and the Textbook on Conducting Investigations on Trafficking in Persons cases.

**B. Protection and Assistance Measures for Victims**

According to the implementation of trafficking-in-persons measures so far, the ministries have applied various forms to provide necessary assistance to victims, such as temporary safe accommodations, including

food, clothing, mental rehabilitation treatment, legal assistance, medical assistance, education and professional training, and repatriation to family and society. Based on the statistics for 2023, there were 135 victims and vulnerable groups from trafficking in persons, including 122 women, and there were 132 victims of trafficking in persons, of whom women account for 199 victims who entered the rehabilitation centre.

### **C. Cooperation on Trafficking in Persons in Regions**

In order to tackle trafficking in persons, the government of the Lao PDR cooperated with neighbouring countries as part of a bilateral and multilateral cooperation project on anti-trafficking in persons, such as the Laos-Vietnam Cooperation Agreement for the Prevention, Combat of Trafficking in Persons, and Assistance of Victims of Trafficking in Persons signed on 3 November 2010; cooperation between the Lao PDR and China; and cooperation between the Lao PDR and Thailand.

The Lao PDR has also attached importance to enhancing the Party's foreign policies to facilitate multilateral cooperation. A significant highlight was the Lao PDR's ratification of the ASEAN Convention against Trafficking in Persons especially for Women and Children in 2017. Furthermore, the Lao PDR also participated in the Senior Officials Meeting on Combating Transnational Crimes, the Technical Working Group Meetings on Anti-TIPs for the 6 Greater Mekong Sub-Region countries as well as the Workshop for Law Enforcement Authorities in ASEAN; Management of Investigations of Cross-Border Trafficking in Persons Cases.

The Lao PDR cooperates with various international organizations and NGOs to implement projects to prevent and combat trafficking in persons namely: cooperation with the Government of Australia to implement the ASEAN-Australia Counter Trafficking (ASEAN-ACT), cooperation with UN-ACT to implement projects to enhance coordination and synergies on combating TIPs. Furthermore, the Lao PDR also cooperates with UNODC, UNICEF, and IOM to implement the Global Action Against Trafficking in Persons and the Smuggling of Migrants (GLO-ACT).

## **IV. CURRENT SITUATIONS, CHALLENGES AND POSSIBLE SOLUTIONS TO TRAFFICKING IN PERSONS IN LAOS**

Over the past year, human trafficking has been found in Laos, including tricking Lao victims to go abroad or tricking foreigners into Laos to force labour and forced sex, as well as trafficking in persons in the form of live broadcasts involving nudity and having sex on social media, which occurs continuously. The most prominent situation regarding trafficking in persons is that group traffickers have lied and deceived through social media, causing young men and women to believe in and go to work with them, to get married, to travel, and then to be exploited sexually or through illegal labour practices.

The implementation of trafficking in persons in Laos still has challenges, particularly in advertising and organizing campaigns against trafficking in persons, which are not as broad as they should be and do not reach all target groups, and the collection of information, performance, and statistics on trafficking in persons cases is delayed and not detailed. Moreover, the rehabilitation centre for victims of trafficking in persons is still not sufficient in quantity and quality, and special examination rooms for victims in some hospitals are not yet available as well. Other than that, the monitoring and evaluation of the victims after returning to the family and society is not performed continuously and regularly.

Trafficking in persons will continue to happen because our country shares borders with five countries with different political conditions, economic development, and labour demand in this region, the growth of development is still high, and the remuneration from trafficking in persons is still high. The forms of trafficking in persons will also occur in various forms, such as forced labour, sexual coercion by means of offering high returns and lying to work in high-risk areas, hiring for pregnant women, illegal migration to get a job, fraudulently marrying a foreigner, and so on. The mentioned issues occur due to the fact that the trafficker utilizes various forms of high and modern technology to persuade the victims and utilize it to communicate with each other in committing crimes, which makes it difficult to monitor and bring them to trial, as well as the fact that the author of the crime commanding a gang in Laos is a foreigner living abroad, while those arrested and prosecuted are mostly mercenaries who were hired to commit crimes.



## PARTICIPANTS' PAPERS

The possible solutions to be applied for resolving trafficking in persons should be:

- Continue to increase efforts to disseminate, implement, and train police and border officials on the national victim protection and referral guidelines;
- Proactively screen for trafficking indicators among vulnerable groups, including Lao and foreign workers on large infrastructure, mining and agricultural projects;
- Further train law enforcement officials at the national and local level on the Lao Penal Code to improve their ability to investigate, prosecute and convict traffickers;
- Continue to strengthen efforts at diplomatic missions overseas to identify and assist Lao victims of sex and labour trafficking.



# ANTI-TRAFFICKING FRAMEWORK IN MONTENEGRO

*Dragana Babić\**

## I. INTRODUCTION

In recent years, the country of Montenegro has been recognized as a country of origin, transit and destination for men, women and children who were victims of human trafficking. The number of potential victims identified as being at risk of becoming victims of illicit marriage and sexual exploitation has increased.

By monitoring regional and international trends in the manifestation of this phenomenon, as well as by analysing statistical indicators at the state level, it was observed that young people, especially children without parental care, children with disabilities and difficulties in development, i.e. persons with disabilities, children with behavioural disorders, children and adults due to abuse of alcohol, drugs or other intoxicants, as well as children and adults if there is a risk of them becoming victims of or if they are victims of abuse, neglect, domestic violence and exploitation, workers engaged in occasional and temporary work, illegal migrants, foreigners who seek international protection, are especially vulnerable categories when it comes to human trafficking.

The Department for the Fight against Trafficking in Human Beings of the Ministry of the Interior (MoI) continuously implements activities aimed at combating human trafficking, both through a strategic framework and through specific activities that it implements in cooperation with competent institutions as well as with relevant civil society organizations and international partners.

## II. RELEVANT INTERNATIONAL DOCUMENTS

Regarding relevant international conventions, it is important to underline that Montenegro is a signatory to the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol), the United Nations Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography, the Council of Europe Convention on Action against Trafficking in Human Beings, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (also known as the Lanzarote Convention), as well as the UN Convention on the Elimination of All Forms of Discrimination against Women (also known as CEDAW), and in that part the MoI Department for Fight against Trafficking in Human Beings participates in reporting related to the implementation of these important international conventions.

## III. KEY NATIONAL LEGISLATION

Priorities in combating trafficking in human beings are ensured by passing a set of laws in the field of justice: the Criminal Code of Montenegro, the Criminal Procedure Code, the Law on Foreigners, the Law on Confiscation of Criminal Assets, the Law on Health Care, the Law on Social and Child Protection, the Law on International Legal Assistance in Criminal Matters. Specifically, trafficking in human beings is prescribed under Chapter XXXV of the Criminal Code of Montenegro as a criminal offence against humanity and other legal goods protected by international law. Consequently, the criminal-legal protective object of this crime is

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humanity, which should be understood here in the light of respect for human rights and fundamental freedoms that protect various legal goods: human life, their bodily integrity, fundamental freedoms and human rights, dignity of the human person, moral, health, property and other values.

Article 444<sup>1</sup> of the Criminal Code of Montenegro Trafficking in Human Beings reads as follows:

- (1) Whoever, by means of use of force or threat, or kidnapping, fraud or deception, of the abuse of power, trust, dependence, a position of vulnerability, withholding, taking away or destroying personal documents, counterfeiting personal documents, procuring or manufacturing of counterfeit documents or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, commits any of the following: recruits, transports, transfers, surrenders, sells, buys, negotiates the sale of, harbours or receipts another person for the purpose of exploitation of his labour, forced labour, submission to servitude, slavery or practices similar to slavery, commission of criminal activity, prostitution or other forms of sexual exploitation, beggary, exploitation for pornographic purposes, for conclusion of an unlawful marriage, removal of organs for transplantation, or for exploitation in armed conflicts, shall be punished by a prison sentence for a term from one to ten years.
- (2) The offence set forth in paragraph 1 of this Article shall be deemed committed against a child even where the perpetrator did not use force, threat or any other of the foregoing methods of commission.
- (3) Where the offence set forth in paragraph 1 of this Article is committed against a child, or where the offence set forth in paragraph 1 of this Article is committed by a public official while discharging his official duty or where the life of one or more persons is endangered with criminal intent, the perpetrator shall be punished by a prison sentence for a minimum term of three years.
- (4) Where the offence set forth in paragraphs 1 to 3 of this Article resulted in a serious bodily injury of a person, the perpetrator shall be punished by a prison sentence for a term from one to twelve years.
- (5) If the act set forth in paragraph 3 of this Article resulted in a serious bodily injury of a child, the perpetrator shall be sentenced to imprisonment of at least five years.
- (6) Where the offence set forth in paragraphs 1 and 3 of this Article results in the death of one or more persons, the perpetrator shall be punished by a prison sentence for a minimum term of ten years.
- (7) Whoever commits the criminal offence set forth in paragraphs 1 to 3 of this Article on a regular basis, or where the offence was committed in an organised manner by several persons, shall be punished by a prison sentence for a minimum term of ten years.
- (8) Whoever uses the services of a person knowing that the person was the subject of the offence set forth in paragraph 1 of this Article shall be punished by a prison sentence for a term from six months to five years.
- (9) Where the offence set forth in paragraph 7 of this Article is committed against a child, the perpetrator shall be punished by a prison sentence for a term from three to fifteen years.
- (10) The consent of victim who was the subject of the offence set forth in paragraphs 1 to 3 of this Article shall have no impact on the qualification of that criminal offence.
- (11) A person who, as a direct victim, was forced to participate in criminal activities set forth in paragraph 1 of this Article shall not be punished for the acts referred to in paragraph 1 of this Article.

In addition, it is important to underline that the article cited above is the amended version according to

<sup>1</sup> "Official Gazette of the Republic of Montenegro", No. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 64/2011 – another law, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 – another law, 44/2017, 49/2018, 3/2020, 26/2021 - correction, 144/2021 and 145/2021 and 110/2023

the recent Law Proposal on Amendments to the Criminal Code of Montenegro which was adopted by the Parliament of Montenegro on 11 December 2023. The Law Proposal entered into force on 12 December 2023, and it has contributed to further protecting the rights of human trafficking victims in the criminal justice system. The Law Proposal was aligned with the Council of Europe and UN conventions as sources of international criminal law. The Law Proposal is harmonized with all European Commission comments.

Article 25 amends the article that refers to the meaning of terms, that is, Article 142 of the Criminal Code. Thus, the term of child is harmonized with Article 1 of the UN Convention on the Rights of the Child. Namely, although the practice is fully harmonized with the requirements from Article 1 of the aforementioned Convention regarding the definition of a child as a person under the age of 18, terminological harmonization is also carried out in the Criminal Code in this way.

Article 81 of the Law Proposal, in addition to the terminological harmonization of the term of child, in the criminal offence referred to in Article 444 Trafficking in human beings, in paragraph 1, kidnapping is added, as one of the ways of committing this criminal offence. In addition, another more severe form of this crime has been added, which will exist if, as a result of the act referred to in paragraph 3 of this Article, serious bodily harm to a child occurred, and a prison sentence of at least five years is prescribed.

Appreciating the importance of the issue of impunity of the victim and in addition to the general provisions on coercion and extreme necessity contained in the Criminal Code of Montenegro, an explicit provision on impunity of the victim was added in the form of a new paragraph.

#### **IV. KEY NATIONAL STRATEGIC FRAMEWORK**

When it comes to the national strategic framework in relation to this phenomenon, the Government of Montenegro, at the session held in February 2019, adopted the Strategy for Combating Trafficking in Human Beings for the period 2019-2024.<sup>2</sup> The document in question defines the directions of the national policy of combating human trafficking in the areas of: prevention, protection of victims, criminal prosecution, as well as in the area of partnership, coordination and international cooperation.

The Strategy takes into account all the most important international conventions that deal with this area, as well as reports from relevant international partners who carefully monitor and analyse the efforts that countries undertake in the fight against human trafficking and provide useful recommendations for their improvement. At the same time, a functional connection with the adopted strategies and plans at the national level, which are important for the fight against human trafficking, was provided. The vision of the Strategy is a just, humane, gender-sensitive and empowered society that protects people from all forms of human trafficking. The mission of the Strategy is Montenegro's commitment to maintaining transparent, responsible and proactive initiatives against human trafficking in accordance with international human rights standards. By realizing the goals of the Strategy for the fight against human trafficking for the period 2019-2024, the efficiency and functionality of the system of prevention, identification, protection, assistance and monitoring of victims of human trafficking will be improved with a special focus on children, as well as the efficiency of investigations, criminal prosecution and adequate punishment in accordance with the criminal legislation of Montenegro.

The Strategy provides a victim-centred approach, which correlates with the goal of ensuring effective prosecution of perpetrators of human trafficking. Starting from the fact that it is very difficult to detect victims of human trafficking, of which children are the most vulnerable ones, but also to provide a quality model for their protection and reintegration, the Strategy focuses on the age and gender specificities of the crime itself, providing an adequate response to their vulnerability.

Since the adoption of the aforementioned Strategy for Combating Trafficking in Human Beings for the period 2019-2024, five Action Plans for the implementation of the Strategy have been adopted for 2019, 2020, 2021, 2022 and 2023, for which reports on their implementation were drawn up and adopted by the

<sup>2</sup> <https://www.gov.me/dokumenta/e0ada5d7-b0b4-4e84-a60c-12f6c4ddcf8a>

Government. The last, 2024 Action Plan for the implementation of the Strategy, was adopted on 17 May 2024.

The Coordinating Body for Monitoring the Implementation of the Strategy for Combating Trafficking in Human Beings for the period 2019-2024<sup>3</sup> is in charge of drafting the aforementioned documents, and it consists of representatives of state bodies, state administration bodies, judicial bodies, the Institution of the Protector of Human Rights and Freedoms, as well as a representative of an NGO. Representatives of the international organizations IOM, OSCE, UNICEF, the EU Delegation to Montenegro and the U.S. Embassy participate in the body's work as observers. When developing Action Plans, special attention is paid to recommendations from relevant international reports, such as recommendations from the Reports of the Council of Europe Group of Experts on Action against Trafficking in Human Beings on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, the U.S. Department of State Trafficking in Persons Reports, as well as from the Progress Reports of the European Commission.

## V. OPERATIONAL LEVEL

On the operational level, in order to achieve a better track record in the investigation and processing of human trafficking cases, the Supreme State Prosecutor and the Director of the Police Directorate of Montenegro formed (in 2018) the Operational Team for the fight against trafficking in human beings. In April 2024, the Supreme State Prosecutor of Montenegro and the Minister of the Interior of Montenegro extended the competences of this Team, in addition to the fight against trafficking in human beings, to the fight against illegal crossing of the state border and smuggling of persons. This Team consists of representatives of the State Prosecutor's Office, the Ministry of the Interior and the Police Directorate. The key tasks of the mentioned Team are:

- more efficient processing of human trafficking, illegal crossing of the state border and smuggling of persons cases;
- coordination of activities and harmonization of work with other participants in combating human trafficking, illegal crossing of the state border and smuggling of persons;
- identification of victims of human trafficking in the chain of human trafficking, illegal crossing of the state border and smuggling of persons and other criminal acts committed by criminal groups;
- gathering information about financial assets acquired through human trafficking, illegal crossing of the state border and smuggling of persons and other criminal acts for the purpose of conducting financial investigations;
- carrying out international cooperation through direct contact with police services, especially in countries in the region, as well as with other international organizations, initiatives and participation in joint investigative teams, etc.

The results of the aforementioned Team, during the previous year 2023 alone, amounted to 16 criminal charges filed covering 28 persons, 7 indictments against 12 persons, while in the work of the competent courts there were a total of 15 cases, of which three have been resolved — one through a final and enforceable decision, and two in the first instance.

Following the best international practice, and in the desire to improve the identification of victims of human trafficking, at the Ministry of the Interior (in 2019) the Team for the Formal Identification of Victims of Trafficking in Human Beings was established by the Minister of the Interior. Permanent members of the Team are a representative of the Department for the Fight against Trafficking in Human Beings of the Ministry of the Interior, a representative of the Ministry of the Interior/Police Directorate – Group for Countering Crimes of Human Trafficking, Smuggling and Irregular Migration, a representative of the

<sup>3</sup> The latest Coordination Body composition was established by the Decision of the Minister of the Interior No. 078/24-2410 of 31 January 2024.

Ministry of Labour and Social Welfare, who has a license to perform professional work, a representative of the organization of civil society that has a license to perform specialized professional work in social and child protection. If the person who is presumed to be a victim of human trafficking is a child, the expert worker of the Centre for Social Work – the case manager and/or guardian appointed by the Centre for Social Work – also joins the meetings. Team members are available 24 hours a day and, in case of need, will go to the field as support in a specific case. This Team grants the status of a victim of human trafficking after the implementation of certain standardized operational procedures contained in the National Plan for Formal Identification adopted by the Government, based on the violation of human rights and independently of the course of criminal proceedings.

Cooperation on the protection of victims is based on the Agreement on Mutual Cooperation in the Field of Combating Trafficking in Human Beings, which was signed in 2007 between state institutions and relevant NGOs. The Agreement was revised several times in order to be adapted to the current context and the competences of the institutions, and was last signed on 27 May 2024. The goal of this Agreement is cooperation on prevention, education, detection of perpetrators, prosecution of perpetrators, as well as identification, protection, integration, reintegration and rehabilitation of potential/victims of human trafficking, especially women and children, with full respect for their human rights. The Agreement will ensure the physical, psychological, health, social and child protection of victims of human trafficking, their integration into the new society, that is, reintegration, in case of voluntary return to the country of origin. The Signatories of the Agreement agree to provide assistance to victims of human trafficking, in accordance with this Agreement, regardless of the will of the victim of human trafficking to participate or not participate in the criminal proceedings for the criminal offence of human trafficking. The Signatories of the Agreement undertake to provide information on free legal assistance to the victim of human trafficking and other rights, in accordance with the jurisdiction and legal provisions.

Significant efforts in the fight against this issue are also reflected in the activities of regional cooperation, where bilateral cooperation with the countries of the region has been intensified in terms of prevention, identification of victims of human trafficking and prosecution of traffickers. In this regard, Montenegro signed bilateral protocols on cooperation in the fight against human trafficking with the countries of the region, i.e. with those countries whose citizens appear in the largest number of cases as (potential) victims or perpetrators of the criminal offence of human trafficking on the territory of Montenegro, namely with Albania, Kosovo, North Macedonia and Slovenia. These protocols regulate in a special manner the issues related to the identification of victims and potential victims of human trafficking and persons forced to work, especially during the construction and tourist season, cooperation in criminal proceedings and the procedure for the voluntary return of victims and potential victims of human trafficking, with special focus on child victims.

## **VI. PROTECTION OF (POTENTIAL) VICTIMS OF HUMAN TRAFFICKING**

The Ministry of Labour and Social Welfare is responsible for providing social and child protection to (potential) victims of human trafficking, both for Montenegrin citizens and foreign nationals, through the Centres for Social Work and Social and Child Welfare Institutions. Assistance mechanisms according to the Law on Social and Child Protection<sup>4</sup> include: Assessment of the social and economic situation, that is, the preparation of Findings and opinions as a basis for awarding one-time financial aid and other forms of protection in accordance with the law; Determining the legal basis for appointing a guardian; Development of individual service plans for potential victims of human trafficking; Accommodation in a shelter; Development of individual work plans with beneficiaries; Consulting services (counselling, therapy, mediation, SOS telephone and other services with the aim of overcoming crisis situations and improving family relations). In addition, the Ministry of Labour and Social Welfare provides financial resources for the financing of accommodation services in shelters through a public call, and it also provides funds on a monthly basis for each individual victim accommodated in shelter.

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<sup>4</sup> Official Gazette of Montenegro, No. 027/13 of 11.06.2013, 001/15 of 05.01.2015, 042/15 of 29.07.2015, 047/15 of 18.08.2015, 056/16 of 23.08.2016, 066/16 of 20.10.2016, 001/17 of 09.01.2017, 031/17 of 12.05.2017, 042/17 of 30.06.2017, 050/17 of 31.07.2017, 059/21 of 04.06.2021, 145/21 of 31.12.2021, 145/21 of 31.12.2021, 003/23 of 10.01.2023.

A state shelter for child and youth victims of human trafficking was opened in April 2024 for 10 beneficiaries and has access for persons with disabilities. The shelter was adapted in accordance with the international standards prescribed for the provision of this service, and a special emphasis will be placed on providing safety to the victims who will be accommodated in the shelter. The facility meets all safety standards in order to ensure the safety of the beneficiaries, namely: safety fence, as well as technical protection: video surveillance and access control to the facility. The interior of the building allows for unhindered separation of accommodation for users and in relation to gender.

Also in the beginning of 2024, the Ministry licensed a shelter for adult female victims of sexual exploitation, as a form of human trafficking. This shelter is run by an NGO and has three accommodation units.

## **VII. RELEVANT TRACK RECORD**

Regarding the relevant track record in the area of human trafficking, with specific focus on human trafficking for the purpose of sexual exploitation, it is important to underline the trafficking in human beings case when in 2019, two persons were sentenced by a final verdict to 17 and 15 years in prison, respectively, for trafficking in human beings for sexual exploitation of a minor girl, which is the highest sentence imposed so far in Montenegro for human trafficking. Also, regarding the victim statistics, the Team for Formal Identification of Victims of Trafficking in Human Beings has identified a total of 91 victims in the period 2019-2023, out of which there were 10 persons identified as victims of sexual exploitation, all female (7 adults and 3 minors – where 1 adult female was identified as a victim of both sexual exploitation and exploitation for pornographic purposes, and where 1 minor female was identified as a victim of both sexual exploitation and exploitation for commission of criminal activity). Also, in 2023, the analysis of cases that were in the work of the Team for formal identification of victims of human trafficking shows a form of exploitation that was recorded for the first time in the practice of the Team – exploitation for pornographic purposes.

## **VIII. CHALLENGES THAT NEED TO BE FURTHER ADDRESSED**

Despite the above defined national framework, and the achieved results in practice, there are challenges remaining to be addressed. This refers in particular to the necessity of further defining activities aimed specifically at protecting female victims of trafficking in human beings for the purpose of sexual exploitation, and continue with awareness raising activities in order to ensure that professionals have a more proactive approach in identifying (potential) victims of sexual exploitation and apply a gender-sensitive approach when dealing with (potential) victims. The challenges also remain in the part of the criminal procedure for human trafficking cases, where all actors need to carry out actions in order to avoid re-victimization and to ensure that the victims have access to all procedural rights. Another particular aspect is to find the best responses in order to reduce the demand for services of victims of sexual exploitation.

Finally, practice has also shown that the rise of online technologies and social media has created new avenues for traffickers to recruit and exploit victims, and the anonymity provided by the Internet facilitates the trafficking process, which renders detecting (potential) victims of human trafficking even more challenging. Therefore, in the upcoming period, the national anti-trafficking efforts will comprise more activities in this direction.



# COUNTERMEASURES AGAINST TRAFFICKING IN PERSONS, WITH A FOCUS ON TRAFFICKING IN PERSONS FOR SEXUAL EXPLOITATION

*Rebecca Aderonke Enwusoyele\**

## I. INTRODUCTION

Trafficking in Persons is a complex activity that usually requires a group of criminal accomplices working together to achieve the ultimate purpose of producing continuing streams of income from exploitation of vulnerable persons. Trafficking in Persons can also be compared to a modern-day form of slavery involving the exploitation of people through force, coercion, threat and deception. It also involves human rights abuses, such as debt bondage, deprivation of liberty, orphanage trafficking, organ harvesting and lack of control over freedom and labour.

However, from the year 2000, things began to change. The United Nations adopted an International Convention against Transnational Organized Crime (TOC) and its Protocol to prevent, suppress and punish Trafficking in Persons, especially women and children. The Federal Republic of Nigeria as a State party signed and ratified the United Nations Transnational Organized Crime (TOC) Convention and the supplemental protocol which was subsequently domesticated through an Act of Parliament known as the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, which was amended in 2005. This Act established the National Agency for the Prohibition of Trafficking in Persons and other related matters (NAPTIP) as Nigeria's focal agency in the fight against trafficking in persons. This same Act was re-enacted in 2015 as the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

The term Trafficking in Persons was defined in the International Law by the UN Protocol also known as the Palermo Protocol thus:

Trafficking in Persons (TIP) shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The 2015 Trafficking in Persons Act also defines Trafficking in Persons thus:

All acts and attempted acts involved in the recruitment within or across Nigeria borders, purchase, sales, transfer, receipts or harboring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labor, or in slavery-like conditions.

In order to understand the concept of Trafficking in Persons, we shall consider the key elements, which are: i. Act; ii. Means and iii. Purpose. The act includes the recruitment, transportation, harbouring, or receipt of a person, while the means includes, threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefit to a person in control of the victim. The third element is purpose which is the exploitation of victims through exploitation of prostitution of others, sexual, forced labour, slavery or similar practices and removal of organs.

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## II. LEGAL SYSTEM

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015 empowers the Agency (NAPTIP) to arrest, investigate and prosecute the offence of trafficking in persons. Section 36 of the Act, vests jurisdiction in the High Court to hear, and determine proceedings arising under it. However, trafficking in persons cases can also be instituted in the Federal High Courts across the 36 states of the Federation. Trafficking in persons cases are filed in court in form of a charge when a prima facie case is established in a particular reported case. Subsequently the case is assigned to a particular court in that jurisdiction and the offender/defendant is arraigned and subsequently tried in the Court, which is usually presided by a single judge who sits as both the jury and the judge that determines issues of fact and of law at the same time.

The victim(s) are called to testify, so also witness(s), exhibit(s) are tendered and other material evidence to substantiate the case. While the defendant too will be allowed to put in his defence. At the end, both parties will adopt their written addresses, and the matter will be adjourned for judgment. The Defendant has a right of appeal up to the Supreme Court, the highest Court in the hierarchy of Courts in Nigeria. The same applies for the prosecution. Since inception, the Agency has secured the conviction of 721 offenders prosecuted in various Courts across the country. During the trials, the Constitution of the Federal Republic of Nigeria (1999) as amended, the Administration of Criminal Justice Act 2015 and the Evidence Act are often referred to in the prosecution of cases.

## III. PRACTICES

The process of trafficking in persons begins with the abduction or recruitment of a person(s) and countries with the transportation of same from one place to the other. In case of transnational trafficking, the process continues with the entry of the individual into another country. While in the case of internal trafficking, victims are moved from one state in Nigeria to another. After recruitment, victim(s) are sometimes taken to shrines where they meet with a juju priest (witch doctor) and oaths are administered on them. They will be requested to bring some of their personal items such as fingernails, pubic hair, menstrual pads, etc. Some are given raw heart of chicken to eat and drink the blood. Others have incisions made on their bodies. All these are done to instil fear in the victim(s) to deter them from running away from their madams and to fulfil their side of the agreement. Most times, victims are not told the exact job they are going for or to do. Some of them will be told that they are going to work as hair stylists or as a sales girl, but on getting to their destination, which could be a European or African country, the victim(s) travel document will be seized and their movement restricted or monitored by their madams before they are forced into prostitution, in which their madam will receive the proceeds. They are equally to pay back all their madam spent on them while bringing them to their destination, which results into bonded slavery, so also because of the clandestine and transnational nature of the crime, the traffickers are usually members of a well sophisticated and organized group that are also involved in money-laundering, drug trafficking, smuggling of migrants, weapons and fire-arm dealings.

There was a case that a particular victim was recruited and trafficked to Burkina Faso for prostitution. The victim was recruited in a remote area in Edo State, Nigeria, and was sexually exploited until she gained her freedom and started recruiting girls for the same purpose. She came back to her country and recruited girls by informing them that they will work in salon as hair stylist, whereas she knew they were going to be exploited sexually. It was when the girls got to Burkina Faso that she introduced them into prostitution. Among the girls she recruited were two of her cousins who were under the age of 18 years at the time they were recruited. The two girls (her cousins) refused to engage in prostitution, and there was a very great fight that alerted the police. They were all arrested in the process and taken to the police station where afterward they were deported, NAPTIP was alerted and they were arrested at the airport and brought to the Agency. The matter was then prosecuted and the trafficker bagged ten (10) years' imprisonment, while the victims were counselled, rehabilitated and empowered.

There are two factors that encouraged the act of Trafficking in Persons, and they are classified into push

## PARTICIPANTS' PAPERS

and pull factors. They are as follows: (a) Poverty; (b) Harmful social practices; (c) Desire to earn a living; (d) Greed; (e) Ignorance / illiteracy; (f) Parental neglect / loss of cultural and family values; (g) Peer pressure; (h) Adult male "conspiracy" against women and children; (i) Gender-based violence; (j) Lack of opportunities / unemployment; (k) Globalization; (l) Conflicts etc; (m) High profits; (n) Low profits; (o) The strength of foreign currencies; (p) Need for low skilled labour; (q) Economic stability.

The insecurity trending recently in Nigeria has also triggered a lot of Trafficking in Persons cases. Most people who wish to move out of the country become vulnerable and are at the mercy of traffickers who used the advantage to lure people into all forms of exploitation which includes: (a) Labour exploitation; (b) Bonded labour; (c) Domestic work; (d) Sexual Exploitation; (e) Military conscriptions; (f) Forced marriages; (g) HIV/AIDS; (h) Illicit Adoption; (i) Sports; (j) Begging; (k) Organ Removal/Harvesting; (l) Rituals.

Trafficked victim(s) are taken into plantations, mines, quarries or are made to engage in hazardous conditions such as handling chemicals and pesticides operating dangerous machines or isolated within destination countries and are fearful of reporting the abusive work conditions to authorities. Most children are trafficked into bonded labour, while advance payments are given to parents, which are often structured payments so that "expenses" or interest are deducted from the child's earnings in such amounts that it is nearly impossible to repay the debt or "buy back" the child. The International Labour Organization (ILO) estimated that a majority of such children are girls.

Parents and children are often lured by promises of education and good jobs, but once trafficked, the victims' identification papers are locked up. They are dependent on their exploiters for safety, food and shelter, and most endure harsh working conditions, e.g. no health care and working long hours with little pay. Trafficked victims also work in brothels, massage parlours, prostitution rings or strip clubs, or are used to produce pornographic materials.

Trafficked children are also conscripted into the military to join fighting forces uses messengers, porters, cooks, "wives" (that provide sexual services to the officers) and as spies. Some of them are also used as camel jockeys, or what they called golf boys. They are often brutalized by their exploiters, deprived of their salary and food and mentally and physically abused.

The following are prevalent in various regions of Nigeria:

- a. Northern region of Nigeria – begging, child/forced marriage.
- b. North Central – prostitution, domestic servitude
- c. South-South – prostitution, domestic servitude especially in Ebonyi State and forced labour.
- d. South West – Domestic servitude (though mainly consumers)

## IV. CURRENT SITUATION

It is of great concern that due to the advancement in technology and new trends of traffickers modus operandi in the recruitment of vulnerable citizens, other forms of exploitation were introduced in arrears where a particular form of exploitation was being carried out in the past. For instance, Edo state which was known for trafficking in persons for sexual exploitation now engaged in the buying and selling of babies.

Recruitments are also done on YouTube, Instagram, Facebook etc., where advertisement for fake job opportunities were made to deceive people to fall into their trap. Other forms of trafficking are orphanage trafficking, where children in orphanages are being trafficked for purposes of labour exploitation, cryptic pregnancy, organ harvesting etc. Internal trafficking is more prevalent and prominent in Nigeria currently, and traffickers travel to the grassroots/remote area and recruit underage children after deceiving their parents that the children will be registered in school. But rather they will be given out to different people for different purposes of exploitation, most especially labour exploitation.

## **V. SOLUTIONS**

The Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 is in the process of being amended to include stiffer punishment for traffickers and to also accommodate more provisions to tackle new trends of trafficking in persons. There is also training and retraining for officers in combating the crime of human trafficking. There will be aggressive sensitization in schools, villages, markets and on social media. Both print and electronic media play a very big role in informing the citizenry on the ills of trafficking in persons. Furthermore, unemployment should be tackled by providing job opportunities for youths and to also avail those in business with soft loans or grants. The issue of gender-based violence, barbaric and harmful practices should be squarely addressed. Also, this JICA training is going to help the situation because, working with people from other countries, experience will be gathered to proffer far reaching solutions. Hence all hands have to be on deck towards the successful eradication of trafficking in persons in Nigeria and the world at large.

# **ADVANCEMENTS IN COUNTERING HUMAN TRAFFICKING: COMPARATIVE ANALYSIS IN THE CONTEXT OF PAKISTAN**

*Atiq-Ur-Rehman\**

## **I. ABSTRACT**

This paper examines the legal framework and challenges surrounding the issue of human trafficking in Pakistan, drawing insights from relevant laws, regulations, different work done by researchers and international conventions. The paper examines the measures adopted by the Pakistani government to address human trafficking within its jurisdiction. Through a comprehensive analysis, the paper explores the multifaceted nature of human trafficking, including its forms, underlying causes, and the socio-legal challenges in prevention, prosecution and victim protection. Through an examination of governmental initiatives, law enforcement endeavours and civil society involvement, the paper underscores the strides achieved in boosting awareness, fortifying victim safeguards and augmenting law enforcement capabilities.

This paper will further shed light on the challenges hindering the effective combat against human trafficking in Pakistan, encompassing issues ranging from institutional coordination and resource allocation to socio-economic vulnerabilities and legal complexities. Through an exhaustive examination of the intricate challenges faced, the paper aims to shed light on the critical areas requiring attention and reform to strengthen the nation's response to human trafficking. Despite commendable progress in various aspects, persistent hurdles such as inadequate coordination mechanisms, societal stigmas and institutional deficiencies continue to impede efforts to eradicate human trafficking and safeguard the rights of vulnerable individuals.

## **II. METHODOLOGY**

The following methodology was adopted for formulating this research paper.

1. Literature Review  
Drawing insights from relevant laws, regulations, different work done by the researcher and international conventions.
2. Consultative meetings with stakeholders  
Consultative meetings were conducted with justice sector stakeholders in Khyber Pakhtunkhwa province to present findings of literature review for discussion and recommendation.
3. Recommendations and conclusion  
Based on literature review and consultative meetings with stakeholders, this paper has been drafted to contextualize governing justice sector institutions.

## **III. INTRODUCTION**

Human trafficking is generally defined as modern slavery. It is not only a violation of human rights but also an illegal act around the world. Human trafficking is a social as well as an economic problem that has recently attracted attention, but research conducted on this topic is very rare. Pakistan is well known for

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trafficking children and women as a destination, transit and source country. The identification remained an issue due to unreliable data sources which makes it difficult to extract the exact situation of human trafficking in Pakistan.

#### **IV. LEGAL FRAMEWORK**

Pakistan has enacted several laws and regulations to address human trafficking, including the Prevention of Trafficking in Persons Act (PTPA), 2018, the Prevention of Trafficking in Persons Rules, 2020 and Trafficking Victim's Protection Act, 2000. These legal instruments criminalize various forms of trafficking, including sexual exploitation, forced labour, and organ trafficking, and prescribe penalties for offenders. Additionally, Pakistan is a signatory to international conventions and protocols, such as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), which provide a framework for cooperation and coordination in combating trafficking.

#### **V. DOMESTIC LEGAL AND POLICY FRAMEWORK ON HUMAN TRAFFICKING**

##### **A. Special Anti-Trafficking and Anti-Smuggling Laws**

Pakistan is party to the United Nations Convention against Transnational Organized Crime (hereinafter "UNTOC") and its supplementary protocol, that is, the Palermo Protocol. Owing to its obligations under the said international legal instruments, Pakistan ought to have a domestic legislative framework on the matter. Until 2018, the Prevention and Control of Human Trafficking Ordinance 2002 was the only specialized legal instrument being used to fight human trafficking. The said law, however, had some crucial loopholes as it did not make distinction between trafficking and smuggling, did not protect victims against criminal liability and failed to address the issue of internal trafficking. However, in 2018, Pakistan made another specialized law on the issue, that is, the PTPA, thus repealing the older law on the subject. For the effective implementation of the PTPA, Prevention of Trafficking in Persons Rules (hereinafter the "PPTA Rules") were notified in 2020. Since the discussion here is focused on the issue of child trafficking, the PTPA will be discussed in detail in latter sections of the brief. Moreover, the Federal Investigation Agency (hereinafter "FIA") in collaboration with United Nations Office on Drugs and Crime (UNODC) had also developed the National Action Plan (2021-2025) against Human Trafficking and Migrant Smuggling, which is an important step to further solidify the efforts to curb human trafficking. The 4P's framework, that is, 1) Protection, 2) Prevention, 3) Prosecution and 4) Partnership, has formed the basis of the said five-year plan with the aim to strengthen key institutions through capacity-building, awareness raising, coordination and international cooperation.

Migrant, smuggling although distinct from human trafficking, may sometimes lead to it. People going into and out of Pakistan are illegally migrated and, thereafter, become the victims of human trafficking. Migrant smuggling is mostly looked at from the lens of human trafficking, so it is important to mention the law on the subject. Pakistan has enacted the Prevention of Smuggling of Migrants Act 2018, which provides punishments for different migration offences. The offences are made cognizable, non-bailable and non-compoundable and shall be tried by the Magistrate of the First Class. Of further relevance in this regard is the Emigration Ordinance 1979, which regulates the emigration of Pakistanis for employment abroad. It criminalizes illegal emigration either through forging of documents or through intoxication, coercion or fraud. This law is enacted to save the interests of Pakistani nationals abroad as such people often become the victims of human trafficking. The Foreigners Act 1946 is also to be mentioned here as it concerns the entry, stay and employment of foreign nationals in Pakistan as they too can become victims of trafficking.

##### **B. Constitutional Provisions Relating to Trafficking and Forced Labour**

There are also some other general laws that contain provisions relevant to child trafficking labour which merit discussion. The Constitution enshrines the rights of all people in the country and puts unequivocal obligations on the government to value, protect and fulfil these rights. Most of the rights provided therein are relevant for the trafficking victims as well. For instance, Article 3 (Elimination of Exploitation); Article 11 (Slavery, Forced Labour, etc., Prohibited); Article 25 (Equality of Citizens); Article 25A (Right to Education); Article 35 (Protection of Family, etc.); and Article 37 (Promotion of Social Justice and Eradication of Social

Evils).

### **C. Provisions in the Pakistan Penal Code (hereinafter the “PPC”) Relating to Trafficking**

The PPC holds particular importance in combating human trafficking. Various relevant provisions are embodied in it for combating human trafficking, prostitution, forced labour and other similar acts. Chapter XVI-A of the PPC is relevant in this regard. The provisions of this chapter are either directly applicable to the practice of human trafficking or to many acts that form part of the entire phenomenon. These provisions include section 364A-Kidnapping or Abducting under Age of 14; section 365-B Kidnapping, Abducting or inducing Women to Compel for Marriage etc; section 366A-Procurement of a Minor Girl; section 366 B-Importation of Girl from Foreign Country; section 367-Kidnapping or Abducting in order to Subject Person to Grievous Hurt, Slavery, etc; section 367A-Kidnapping or Abducting in order to Subject Person to Unnatural Lust; section 369- Kidnapping or Abducting Child under Ten Years with Intent to Steal from its Persons; section 369A- Trafficking of Human Beings; section 370-Buying or Disposing of any Person as a Slave; section 371- Habitual Dealing in Slaves; section 371A-Selling Person for Purpose of Prostitution, etc; section 371B-Buying Person for Purpose of Prostitution, etc; and section 374-Unlawful Compulsory Labour.

### **D. Child Protection Laws**

There are numerous laws enacted about child protection with the aim to safeguard children from any exploitative practice or situation. These laws include Sindh Children Act 1995; Sindh Child Protection Authority Act 2011; The Punjab Destitute and Neglected Children Act 2004; The Khyber Pakhtunkhwa Child Protection and Welfare Act 2010, The Baluchistan Child Protection Act 2016; and The Islamabad Capital Territory Child Protection Act 2018. These Acts provide measures for the care and protection of destitute and neglected children and ensure the safety of the rights of the children in need of special protection. They further include provisions laying out the measures for prevention of any child related offence and prosecution of offenders once the offences created therein are committed.

### **E. Child Marriage Laws**

Since trafficking in children also results in forced or underage marriages, so it is relevant to mention here the Child Marriages Restraint Act 1929, which criminalizes child marriages with imprisonment and fine. Punjab and Sindh have their own laws on the matter, whereas Islamabad, Baluchistan and Khyber Pakhtunkhwa are still in the process of drafting a law on the matter to replace the colonial-era Child Marriages Restraint Act 1929. However, the problem with these laws, except the Sindh Child Marriage Restraint Act 2013, is that they define different ages for a male and female child, which in case of female children is below sixteen years and for male children is below eighteen years. This reflects a bigger problem in our legislation be it our child protection laws, labour laws or any other child specific law and that is the non-uniformity of how a child is defined under these laws in terms of age. This leads to conflicting application of these laws and creates a problem where some of the laws overlap, or more than one law applies to a specific situation leading to anomalous results. This concern will be addressed in detail later in the legislative reforms section.

### **F. Overview and Gap Analysis of the PTPA**

The PTPA stands to be the landmark legislation regarding human trafficking crimes. It aims to provide for effective measures to prevent and combat TIP, especially of women and children; to promote and facilitate national and international cooperation in the matter, and to protect the trafficking victims. A brief overview of the PTPA will be given for ease of understanding of its substance which will also prove useful in its critical evaluation. Section 3 of the PTPA criminalizes labour and sexual trafficking and provides punishments for the same which may extend to seven years of imprisonment or a fine up to one million rupees or both. However, if the offence of trafficking is committed against a child or a woman, the person who commits the offence shall be punished with imprisonment which may extend to ten years, and which shall not be less than two years or with fine which may extend to one million rupees or with both. The PTPA enhances the punishments up to fourteen years of imprisonment which shall not be less than three years and a fine up to two million rupees for the offence of trafficking if it involves (a) serious injury, life threatening illness or death of the victim or another person; (b) activity of an organized criminal group; (c) confiscation or destruction of any travel document of the victim, or (d) repetition of the offence by the same offender. The said law has also introduced provisions regarding abetment in trafficking and criminal conspiracy to commit trafficking and has provided punishments for the same to create stronger deterrence. The PTPA makes it clear that investigations for internal trafficking and external trafficking shall be carried out by the local police

and the FIA, respectively. It goes a step further and provides for the protection of trafficking victims and witnesses so that fair trial can be ensured, and the offenders can be brought to justice. Furthermore, the PTPA underscores the importance of raising awareness regarding trafficking crimes and emphasizes national and international cooperation in the matter to curb the menace of trafficking. It further discusses the significance of data collection on the matter to identify not only the factors that lead to trafficking but also the offenders and the victims.

Despite having a comprehensive set of laws to combat human trafficking, the situation of trafficking within Pakistan has not improved much. In the following paragraphs, the brief will highlight and discuss the legislative gaps which may be responsible for diluting the effect of this legislation. A much stronger and integrated approach to combat human trafficking is still required based on prevention, prosecution of traffickers and protection for victims.

Section 3 of the PTPA defines “trafficking in persons” as “any person who recruits, harbours, transports, provides or obtains another person, or attempts to do so, for compelled labour or commercial sex acts through the use of force, fraud or coercion, commits an offence of trafficking in persons.” “Compelled labor” is further defined later in the same section as including “involuntary servitude, slavery or practices similar to slavery, or debt bondage and forced labour. This demonstrates that many internationally recognized forms of child trafficking in the country like domestic servitude, forced marriages, beggary, pornography, organ trafficking and usage of children in drug trafficking remain outside the ambit of trafficking in persons as defined under the PTPA. This definition restricts the ambit of human trafficking to forced labour and commercial sex, thus narrowing its scope and adversely affecting its potential to effectively deal with all forms of human trafficking.

Furthermore, there is multiplicity of laws on the same offences as covered under the PTPA. For instance, certain sections of the PPC about kidnapping, abduction, slavery and forced labour (see various sections between 354 to 374) contain some specific offences that explicitly or implicitly overlap with the offence of trafficking in persons as contained in the PTPA. Since these laws provide different punishments for the same offences, this creates unnecessary complication in sentencing and provides the defendant with increased defences and loopholes in those laws to get lenient punishments. Not only that, but it also gives law enforcement agencies (hereinafter “LEAs”) wide ranged power to choose the law under which to register cases of human trafficking and, consequently, the forum at which the case is to be tried as they differ under the PPC and the PTPA. The same goes for different labour laws overlapping with the definition of “compelled labor” as provided under the PTPA but prescribing different punishments from the ones under the PTPA. As a result of the said overlap, LEAs continue to use sections of the PPC or labour laws rather than that of the PTPA, which criminalizes some forms of human trafficking and forced labour, respectively.

Adding to the above complication is the fact that there is no non-obstante clause, or a clause that gives the PTPA an overriding effect over all other laws, that either overlap with it or are contradictory to it. The presence of such a clause can help in reconciling the overlapping effect of the multiple laws. It is important to note that a special law like the PTPA provides special protection measures for the safety of victims and witnesses in the cases of human trafficking. Moreover, the concept of aggravating circumstances as given in section 4 of the PTPA (also discussed earlier) is important for enhancement of punishments if the offender is a habitual criminal or if the offence falls under the category of organized crime. This framework is only available when the PTPA is invoked and not under the general provisions of the PPC or any other overlapping law.

Section 4(b) of the PTPA addresses the enhancement of punishment wherein an organized criminal group is involved in committing the offence of human trafficking. The explanation given in the same section defines organized criminal group as “a structured group of two or more persons”. However, no further definition is provided as to what qualifies as a structured group, which is an important element to establish the involvement of an organized criminal group.

Section 13 of the PTPA deals with the compensation to be provided to the victim of trafficking. However, the said provision of compensation is made contingent upon the conviction of the offender. This goes against the very definition of victim as provided under section 2(g) of the law wherein victim “means a person against whom an offence under this Act is committed regardless of whether the perpetrator is identified,



apprehended, prosecuted or convicted", meaning that no condition of conviction whatsoever is attached to the said definition.

The PTPA, while criminalizing sex and labour trafficking, prescribes penalties of up to seven years of imprisonment, a fine of up to 1 million rupees, or both, for trafficking crimes involving adult male victims and penalties of up to ten years' imprisonment or a fine of up to 1 million or with both for those involving adult female or child victims. By allowing for a fine in lieu of imprisonment, these penalties are made less stringent, and they do not correspond to the gravity and heinous nature of trafficking crimes.

In human trafficking crimes, apprehending the offender is not the only object; instead the nature of this offence is such that it requires immunity of the victim from the criminal liability as well. As provided by the Office of the High Commissioner for Human Rights (hereinafter "OHCHR") in its Recommended Principles on Human Rights and Human Trafficking, the non-punishment principle sets out that "trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as a trafficked person" (Principle no. 7). Section 6 of the PTPA contains a provision in this regard, which prohibits the liability of the victim under this offence. While the PTPA recognizes victims of human trafficking and eliminates criminal culpability for offences thereunder, it does not absolve victims of human trafficking from criminal liability for offences prescribed under other laws. For instance, an individual who was trafficked to transport drugs could technically still be prosecuted and convicted under the Control of Narcotics Substances Act 1997 for offences that may carry the death penalty.

The above critical evaluation of the PTPA brings to the surface certain cracks and gaps in the law that may help the offenders slip through. It will be later discussed in detail as to how the said gaps can be filled to ensure that the law achieves the effect it is enacted for. Despite notable achievements, Pakistan faces several challenges in combating human trafficking. These include inadequate coordination among stakeholders, insufficient allocation of funds, region-specific human rights violations, poverty, lack of education, demand for cheap labour, cultural norms, conflict and instability, and a lack of awareness among citizens. Additionally, issues such as political instability, exploitation of vulnerable populations like Afghan refugees, and difficulties in identifying and rehabilitating victims further compound the challenge of eradicating human trafficking in the country.

## VI. CHALLENGES

### A. Fragmented Coordination among Stakeholders

Efforts to combat trafficking in persons are hampered by inadequate coordination and communication among relevant stakeholders, including law enforcement agencies (LEAs), prosecutors, and victim service providers. The lack of a cohesive approach undermines the prevention, prosecution and protection efforts against human trafficking.

### B. Ineffectiveness of the National Referral Mechanism (NRM)

Although a National Referral Mechanism (NRM) exists, comprising national, provincial and district-level anti-trafficking committees, its operational structure is inefficient and inadequately represented. The loose coordination within the NRM inhibits the seamless referral of trafficking cases and hampers victim assistance and protection efforts.

### C. Resource Allocation and Funding Constraints

A dearth of appropriate funds and resources allocated to combat human trafficking poses a significant challenge in addressing this organized crime effectively. Limited financial resources hinder the implementation of comprehensive anti-trafficking strategies and impede efforts to strengthen institutional capacities.

### D. Impact of Political Instability

Political instability in the country diverts the attention of law enforcement agencies from combating trafficking in persons to addressing internal political affairs. The resultant diversion of resources and focus compromises efforts to prevent and prosecute human trafficking cases effectively.

**E. Exploitation of Socio-economic Vulnerabilities**

Traffickers exploit various region-specific human rights violations, including early child marriages, child labour, domestic violence, and bonded labour traditions prevalent in Pakistan. These vulnerabilities exacerbate the risk of trafficking and perpetuate the cycle of exploitation within marginalized communities.

**F. Lack of Public Awareness**

A pervasive lack of awareness among the general populace about the prevalence of human trafficking, signs of victimization and reporting mechanisms contributes to the perpetuation of this crime. Insufficient public awareness initiatives impede efforts to identify and report trafficking incidents promptly.

**G. Vulnerability of Afghan Refugees**

Afghan refugees residing in Pakistan are particularly vulnerable to trafficking due to their lack of proper legal identification documents and residential status. This vulnerability exposes them to exploitation by traffickers and complicates efforts to provide adequate protection and assistance.

**H. Inadequate Victim Referral and Support**

Due to inadequate coordination among stakeholders, trafficking victims often do not receive proper referrals for essential support services, including shelter, medical assistance and psychological care. The absence of a robust victim support system exacerbates the challenges faced by trafficking survivors.

**I. Economic Pressures and Hyperinflation**

Economic pressures, exacerbated by hyperinflation, drive individuals to seek alternative means of livelihood, increasing their susceptibility to trafficking. Rising unemployment rates and economic hardships compel individuals to migrate in search of better opportunities, exposing them to exploitation by traffickers.

**J. Identification Challenges and Misclassification**

The inability of relevant stakeholders, especially law enforcement agencies, to differentiate between trafficking victims and other forms of exploitation, such as bonded labour and violence against women and children, complicates efforts to identify and assist victims effectively.

**VII. ACHIEVEMENTS**

Pakistan has made significant progress in combating human trafficking following the enactment of the Prevention of Trafficking in Persons Act 2018 (PTPA-2018). Through coordinated efforts between government agencies and civil society organizations, awareness campaigns have been intensified, victim services have improved, and there has been an increase in the prosecution of trafficking cases. Despite retaining Tier 2 status, Pakistan's acknowledgment of the severity of human trafficking and its proactive measures represent a notable advancement in addressing this global issue.

**A. Awareness Campaigns and Collaborative Ventures**

Governmental bodies and non-governmental organizations have launched campaigns to raise awareness about trafficking in persons (TIP) since the implementation of the Prevention of Trafficking in Persons Act 2018 (PTPA-2018). Collaborative ventures between law enforcement, labour and social welfare departments, alongside various stakeholders, have been pivotal in disseminating awareness about the gravity of the issue.

**B. Strides Towards Adhering to International Standards**

While Pakistan remains categorized under Tier 2 according to the Trafficking Victims Protection Act (TVPA), substantial endeavours have been made to tackle human trafficking within the nation. The acknowledgment of the issue and ongoing endeavours to counter trafficking demonstrate a commitment to aligning with international standards.

**C. Registration and Prosecution of TIP Cases**

Law enforcement agencies across all provinces have intensified efforts to register and prosecute TIP cases, resulting in the registration of hundreds of cases both domestically and internationally over the past

three years. This reflects a proactive approach in addressing the issue at both national and global levels.

**D. Establishment of the National Referral Mechanism (NRM)**

Pakistan has instituted a national referral mechanism to aid and shield trafficking victims. The NRM, comprising national, provincial and district-level anti-trafficking committees, bolsters victim protection and assistance efforts nationwide.

**E. Bilateral Agreements and Collaboration**

Pakistan has entered into bilateral agreements with other nations to combat trafficking in persons, facilitating information exchange, joint investigations and the repatriation of victims. These agreements underscore the importance of international collaboration in addressing transnational crimes like human trafficking.

**F. Focus on Internal Trafficking**

With the implementation of PTPA-2018, there has been a shift in focus from transboundary trafficking to internal trafficking. This underscores a recognition of the growing issue of internal trafficking within the nation and highlights the need for targeted interventions.

**G. Capacity-Building and Training**

Government institutions, in collaboration with non-governmental organizations, have prioritized training and capacity-building initiatives as part of their achievements in combating human trafficking. Law enforcement authorities, labour departments, prosecution departments and social welfare departments have conducted awareness-raising campaigns at various levels, targeting police officers, prosecutors, government officials and community leaders. Furthermore, initiatives led by civil society organizations and NGOs have complemented these efforts, conducting awareness campaigns at grassroots levels and advocating for the rights and protection of trafficking victims. Overall, these training and capacity-building endeavours have contributed to a more informed and responsive approach towards addressing human trafficking in Pakistan.

**H. Continued Awareness-Raising Efforts**

The Social Welfare Department and civil society organizations continue to raise awareness about TIP, especially with a child-focused and gender-sensitive approach. This ongoing awareness-raising effort is crucial in sensitizing the masses and preventing trafficking.

**I. Correlation between Trafficking and Terrorism**

Law enforcement agencies have begun recognizing the correlation between human trafficking and terrorism, particularly concerning child-soldier recruitment and financing for terrorist activities. This understanding underscores the need for a comprehensive approach to addressing trafficking-related security threats.

**J. National Citizen Portal for Reporting**

While Pakistan lacks a dedicated National Hotline for reporting TIP cases, the establishment of a National Citizen Portal provides a platform for reporting crimes and issues, including trafficking. This digital initiative enhances accessibility and facilitates the reporting of trafficking incidents.

## VIII. RECOMMENDATIONS

- a. Conduct a comprehensive mass awareness campaign at the state level to educate the general populace about human trafficking, targeting root causes such as poverty, lack of education and discrimination.
- b. Engage academia in leading research efforts and integrating special subjects on human trafficking into curricula and courses to increase understanding and awareness.
- c. Provide robust support and protection mechanisms for victims through collaborative efforts between government agencies and civil society organizations.

- d. Develop innovative and engaging educational videos in local languages to inform potential migrants about the risks of human trafficking, utilizing formats like dramas for effective communication.
- e. Implement the National Action Plan against Trafficking in Persons and Smuggling of Migrants (2021-2025) developed by the Federal Investigation Agency (FIA) to combat human trafficking effectively.
- f. Provide extensive training to law enforcement officers at all levels, focusing on victim-centred approaches, victim identification, outreach and service referral strategies.
- g. Integrate criminal records of human traffickers with the National Database & Registration Authority (NADRA) to identify and track their criminal history.
- h. Improve focus on both cross-border and internal trafficking cases within the country, enhancing data collection and sharing mechanisms between agencies and districts.
- i. Encourage educational institutions to include human trafficking in their curricula and utilize social media platforms for awareness campaigns.
- j. Recruit and train more specialized officers for law enforcement agencies to effectively combat human trafficking.
- k. Allocate adequate resources for law enforcement agencies to enhance their capacity in investigating and prosecuting human trafficking cases, including the establishment and training of specialized units.
- l. Provide budgetary support to the public and private sectors for victim services, including medical care, psychological counselling, income support and legal assistance, along with establishing specialized shelters.
- m. Launch public awareness campaigns to educate communities about the risks of human trafficking, emphasizing identification and reporting mechanisms through targeted programmes in schools and communities.
- n. Foster constructive partnerships with national and international actors to exchange knowledge, adopt best practices, and coordinate efforts in investigating and prosecuting human trafficking cases.
- o. Ensure regular oversight of efforts to combat human trafficking, evaluate the effectiveness of legal and policy frameworks, and issue periodic reports aligning with the Sustainable Development Goals (SDGs) Task Forces.
- p. Consider language barriers while drafting legislation and policies to ensure accessibility and understanding among all segments of the population.
- q. Mandate labour sectors to provide employment benefits, legal documentation facilities and a safe work environment to all workers, ensuring their protection against exploitation and trafficking.
- r. Encourage political parties to include commitments against modern slavery in their manifestos and pledge to refrain from endorsing candidates involved in labour rights violations.
- s. Consolidate various legal provisions related to combating human trafficking and bonded labour in Pakistan under a single comprehensive law, blending provisions from existing laws such as the Pakistan Penal Code, provincial Bonded Labor Abolition Acts, Prevention of Trafficking in Persons Act 2018 and Prevention of Smuggling of Migrants Act 2018.
- t. Establish separate courts or benches dedicated to implementing the Prevention of Trafficking in Persons Act 2018, ensuring specialized attention and expeditious adjudication of human trafficking cases.
- u. Incorporate orientation programmes on the new legal framework on trafficking in persons into the curriculum of judicial academies, targeting prosecutors, legal professionals and judicial officers to enhance

their understanding and effective application of the law.

- v. Ensure that the investigation and prosecution system remains free from political influence and pressure, safeguarding the integrity and impartiality of legal processes in human trafficking cases.
- w. Facilitate better coordination between Investigation Officers (IOs) and Prosecutors to strengthen the preparation of robust case files (*challans*) for trial and conviction in court, enhancing the likelihood of successful prosecution.
- x. Hold police accountable for prosecution-related responsibilities to improve investigation standards and witness management, thereby contributing to an increase in the conviction rate for human trafficking offences.

## IX. CONCLUSION

Given the magnitude of human trafficking in Pakistan, there is a dire need to address the dilemma of human trafficking. The government should start by conducting comprehensive surveys to decipher the magnitude of trafficking in all its forms. Without a realization of its scale, it is not possible to devise an actionable plan. The provincial governments, in conjunction with the national government, should set up vocational and educational schemes to empower the poor families by imparting vocational skills to them. Simultaneously, rehabilitation programmes should be set up for the victims of human trafficking as well as a national fund should be maintained to provide an alternative source of income for these poor families who are forced to sell their children and women for money.

The necessary amendments in legislation such as the Prevention of Trafficking in Persons Act 2018 and the Prevention of Smuggling of Migrants Act 2018 shall be made to enable stakeholders to counter this menace with a stronger hand. Moreover, training and capacity-building initiatives play a crucial role in equipping stakeholders with the knowledge and skills needed to combat human trafficking effectively. Moving forward, sustained efforts, enhanced collaboration, and a multidimensional approach are essential to further progress in the fight against human trafficking in Pakistan.



# TRAFFICKING IN PERSONS IN SRI LANKA

*Sajeevani Dilka Lakmali Karunanayake\**

## I. INTRODUCTION

Human trafficking is a global issue that continues to affect many lives. Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain.<sup>1</sup> Trafficking can occur within a country or may involve movements across borders.<sup>2</sup> Due to the increase and ease of movement of people across borders and due to the advancement of technology and the increase of usage of social media, trafficking of persons remains at a steady rise.

Why is trafficking in persons, irrespective of gender and age, objectionable and to be resisted in all its forms? According to the first report of the Special Rapporteur on Trafficking, especially women and children:

Trafficking represents the denial of virtually all human rights: the right to liberty and integrity and security of the person; the right to freedom from torture and other cruel, inhuman or degrading treatment; the right to freedom of movement; the right to home and family; the right to highest attainable standard of health; the right to education.<sup>3</sup>

Under the Rome statute of the International Criminal Court, trafficking in some circumstances can be a crime against humanity or a war crime.<sup>4</sup> While human trafficking affects both men and women, the overrepresentation of women and children as victims in global statistics reflects their particular and continuing vulnerability in many parts of the world.<sup>5</sup>

So, what is trafficking in persons? The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime defines trafficking in the following manner:

### ARTICLE 3 (A)

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by *means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*

*Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.*

The Protocol provided the first internationally agreed definition of “Trafficking in persons”.

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\* Senior Deputy Solicitor General, Attorney General's Department of Sri Lanka.

<sup>1</sup> Human Rights and Human Trafficking – Fact Sheet No. 36, p. 1. United Nations Human Rights, Office of the High Commissioner, Geneva, 2014.

<sup>2</sup> Ibid.

<sup>3</sup> Appointed at the 60<sup>th</sup> session of the UN Commission on Human Rights and mandated to focus specially on Human Rights aspects of the victims of trafficking in persons.

<sup>4</sup> Ibid.

<sup>5</sup> National Strategic Action Plan to Monitor and Combat Human Trafficking of Sri Lanka (2021-2025) p. 8

## II. TRAFFICKING IN PERSONS IN SRI LANKA

Sri Lanka is primarily a source country with men, women, and children being trafficked primarily for labour and also for commercial sexual exploitation, including domestic child sex tourism and at times a transit and a destination country for victims of trafficking.<sup>6</sup> Sexual exploitation of women and children is the most common form of trafficking that takes place within Sri Lanka and forced labour coming in second. Men, women and children are trafficked from Sri Lanka to the West, South, and East Asian countries and to Europe for commercial sexual exploitation and forced labour. There have been instances when women from South East and South Asia and the former Union of Soviet Socialist Republic were trafficked into Sri Lanka for commercial sexual exploitation.

As a country of origin, Sri Lankan men and women often voluntarily migrate through official recruitment agencies to Middle Eastern countries (Bahrain, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia and the United Arab Emirates), and Asian countries (Malaysia, Singapore) to work as domestic workers, garment factory workers and as construction workers.<sup>7</sup> Although employment has been obtained through official channels, some migrant workers end up in exploitative situations. According to the Sri Lanka Bureau of Foreign Employment (SLBFE) statistics, the majority of migrant workers migrate to Middle Eastern countries for semi or less skilled categories of employment and can be exposed to the risk of human trafficking.<sup>8</sup>

It has come to light that some workers choose to travel on visit visas instead of work visas in order to avoid strict regulations that the country has placed on women who must meet numerous requirements before being granted permission to work in a foreign country. In some of these cases it has been reported that these migrant workers had been subjected to physical and sexual abuse and some have been placed under forced labour conditions.

Sri Lankan women have been subjected to forced sex work in countries such as Jordan, Singapore and the Maldives. There have been reported cases of women from Thailand, China and the former Soviet Union, particularly from Uzbekistan, being trafficked into Sri Lanka for sexual exploitation.

It has also been reported that narcotics are being used to lure children and women into commercial sex work. The unregulated proliferation of spas around the country which double as places offering sexual services which leads to the sexual exploitation of women and at times children, and the possible exploitation of unregulated foreign labour migrants who enter the country on temporary visa are some trends that have been observed and which may reveal trafficking in persons.<sup>9</sup>

An increase in online forms of exploitation was observed during and after the Covid-19 pandemic, presumably due to the increased use of social media apps brought about by the several lockdowns that were imposed in the country. Early last year a new form of trafficking where persons were forced to engage in criminal activities was reported in Sri Lanka. It was reported that several young men and women who were promised lucrative jobs in the IT industry in Bangkok, Thailand, were later forced to engage in cyber scamming and other cybercrimes in Myanmar, Cambodia and Lao PDR with Thailand as the main transit country.

## III. INTERNATIONAL COMMITMENTS

Sri Lanka signed the United Nations Convention against Transnational Organized Crime (UNTOC) as well as its two protocols related to trafficking in persons and smuggling of migrants in the year 2000.

<sup>6</sup> UNODC, Legal and Policy Review, Responses to Human Trafficking in Bangladesh, India, Nepal, and Sri Lanka (2011)

<sup>7</sup> International Organization for Migration, Handbook for the Sri Lanka Bureau of Foreign Employment (SLBFE) on identification, Protection and Referral of Victims of Human Trafficking (2016).

<sup>8</sup> SLBFE Annual statistical report of foreign employment, 2017.

<sup>9</sup> Resource package on Trafficking in Persons published by The Asia Foundation (2020) p. 14.



UNTOC was ratified by Sri Lanka in September 2006. Sri Lanka ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in June 2015 and has ratified the SAARC Convention preventing and combating the trafficking in women and children for prostitution. Additionally, Sri Lanka has become a party to several other conventions to eliminate forced labour and slavery and to protect the rights of migrant workers and children. Among these instruments are:

- The UN Convention on the protection of the rights of all migrant workers and members of their families.
- Slavery convention.
- Co-conventions of the ILO including those on minimum age for employment (C138), worst form of child labour (C182), forced labour convention (C29), abolished of forced labour convention (C105), Protocol of 2014 to the forced labour convention (P29).
- Hauge convention on protection on children and corporation in respect of inter-country adaption.
- SAARC convention on child welfare.

#### **IV. DOMESTIC LEGAL FRAMEWORK RELATING TO TRAFFICKING IN SRI LANKA**

##### **A. Constitutional Safeguards**

At the national level, the constitution does not expressly prohibit trafficking in persons, slavery, forced labour or other forms of exploitation. However, the constitution does guarantee a number of fundamental rights and freedoms including: Freedom of thought, conscience and religion (Article 10); Freedom from torture (Article 11). The right to equality and non-discrimination on a number of prohibited grounds including sex (Article 12); Article 12(4) authorizes the government to take affirmative action for the advancement of women and children.

Article 27 of the Constitution carries the Directive Principles of State Policy. Directive Principles of State Policy direct the State to eliminate economic and social privilege and disparity and exploitation (Article 27(7)). These principles also direct the State to promote the special interests of children and youth and to protect them against discrimination and exploitation (Article 27(13)).

##### **B. Key National Legislation on Trafficking in Persons**

The government of Sri Lanka has two main criminal laws relating to trafficking in persons:

- The Penal Code (Amendment) Act No. 16 of 2006;
- The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (Act No. 30 of 2005) although this act was brought in, it is not yet in operation.

##### **1. The Penal Code**

The Penal Code Act No. 2 of 1883, which was promulgated during the British occupation, still remains as the principal statute of Criminal Law. Over the years it was realized that this Act was not adequate to deal with the increasing number of incidents of crime and their complexities especially in relation to sexual offences, child abuse, trafficking of women and children etc. This realization led to many amendments being brought into the Penal Code. "Trafficking" was first criminalized by section 360(C)(1) of the Penal Code by Amendment Act No. 22 of 1995. The focus of this section was only on buying, selling, bartering of persons including children.

The most significant change in the domestic criminal law relating to trafficking in persons was brought in the year 2006 as an amendment to aforementioned section 360(C). Section 360(C)(1), which criminalizes varied forms of trafficking in its present form, was brought in by an amendment made to the Penal Code by

Act No. 16 of 2006. The manner in which trafficking is defined in this section is in line with the definition in the trafficking protocol. This new section reads as follows:

*Whoever-*

*(a) buys, sells or barter or instigates another person to buy, sell or barter any person or does anything to promote, facilitate or induce the buying, selling or bartering of any person for money or other consideration;*

*(b) recruits, transports, transfers, harbours or receives any person or does any other act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law;*

*(c) recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation, or any other act which constitutes an offence under any law, shall be guilty of the offence of trafficking.*

*Punishment, Section 360(C) (2),*

*Any person who is guilty of the offence of trafficking shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding twenty years and may also be punished with fine and where such offence is committed in respect of a child, be punished with imprisonment of either description for a term not less than three years and not exceeding twenty years and may also be punished with fine.*

*Section 360(C)(3)*

*In this section, —*

*“child” means a person under eighteen years of age*

*“forced or compulsory labour” has the same meaning as in section 358A*

*“slavery” has the same meaning as in section 358A*

*“exploiting the vulnerability of another” means impelling a person to submit to any act, taking advantage of such person's economic, cultural or other circumstances.”*

This definition includes elements which are not included in the Trafficking Protocol such as buying and selling of any person and the reference to any other act which permits the inclusion of other exploitative practices. The definition of “means” used is narrower, as means such as abduction referred to in the protocol are not included in the Penal Code definition.

## 2. The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (Act No. 30 of 2005)

This Act was passed by parliament to give effect to the South Asian Association Regional Cooperation (SAARC) Convention on Trafficking in Women and Children for Prostitution. However, this Act has not been operationalized to date.<sup>10</sup>

### C. Related Legislation

The following legislation contains provisions which prohibit acts with elements of trafficking in persons:

- The National Child Protection Authority Act No. 50 of 1998 (NCPA Act)
- The Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 (SLBFE Act)
- The Immigrants and Emigrants (Amendment) Act No. 31 of 2006
- Prevention of Money Laundering Act 05 of 2006

The provisions in the Foreign Employment Bureau Act No 21 of 1985 aims to prevent the offence of

<sup>10</sup> The Act comes into operation on a date published by the Minister in charge of the subject in an order in the Gazette which has not been published as yet.

forced labour, some of the key provisions are as follows:

- S. 62 (1) - Unauthorized recruitment
- S. 62 (2) - Operating without a license
- S. 63 (b) - Forgery or inducement to leave
- S. 64 - Unauthorized fees
- S. 67 A - General penalty
- S. 67 B - Aiding and abetting an offence under the Act
- S. 68 - Repeat offending under sec. 63 and 64

The Amendment Act No. 29 of 2017 brought to the Prevention of Crimes Ordinance has included human trafficking as a finger-printable offence.<sup>11</sup> This amendment facilitates expeditious and accurate identification of offenders. It also contributes to maintaining accurate records on human trafficking.

## V. CHALLENGES

The clandestine nature of human trafficking makes it difficult for the investigators to detect cases of human trafficking. Due to the layered and nuanced nature of the offence of trafficking and due to the law relating to this offence being relatively new and complex, the investigators sometimes encounter issues in detecting this crime and identifying the victims. In Sri Lanka the investigating agencies often find investigating cases of trafficking challenging primarily due to the complex nature of section 360(C)(1).

The lack of cooperation of the victims also makes detection and the investigations difficult. In Sri Lanka due to the stigma that is attached to sexual exploitation, most victims of sexual exploitation do not seek help from law enforcement agencies and sometimes although an initial complaint is made, and when summoned to testify in court, they stay away due to shame and social repercussions.

The victims who have been exploited after being promised employment in foreign countries too at times have been found to be wanting to stay away from the criminal justice processes due to economic reasons. As Sri Lanka is currently undergoing an economic crisis, victims who are economically motivated may view taking part in legal processes as a barrier to seeking new employment and going in search of a better life. Even the victims who have taken steps to go to a law enforcement agency after being subjected to a form of exploitation sometimes are compelled to stay away from court proceedings. Often these cases end up in acquittals due to the unavailability of the victim and witnesses.

Long delays within the legal redress machinery also discourage victims from seeking legal redress. Delays at the level of investigations, at the level of filing of Indictment and during trial have become part of the formal justice process in Sri Lanka and may be even at times considered “normal”. These delays have a detrimental effect on the victims and victims are deterred from taking part in the criminal justice processes.

The investigators have encountered difficulties in identifying and capturing the perpetrators who reside overseas in cases that take place across borders. A criticism that is made against the investigators is that they do not apprehend the offenders who orchestrate the crime and that they get only the persons who are easily detected and this has led to a culture of impunity for the perpetrators who are more complicit in the crime than the ones who are apprehended within the country.

The prosecutors prosecuting TIP cases also encounter challenges as the law is relatively new and complex and also due to the lack of precedent in case law.

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<sup>11</sup> Section 7, Prevention of Crimes (Amendment) Act, No. 29 of 2017.

## VI. COUNTERTRAFFICKING MEASURES TAKEN BY THE GOVERNMENT OF SRI LANKA

The Sri Lankan government is committed to preventing, investigating and prosecuting trafficking in all its forms. Sri Lanka strives to address the full cycle of human trafficking through the four pillars of the whole-of-government strategy which are: prevention and deterrence, detection and investigation, prosecution and compliance, and victim support and protection. Sri Lanka has introduced stringent laws with a mandatory term of incarceration through Act no. 16 of 2006 (Sec 360 C (1)).

The National Anti-Human Trafficking Task Force (NAHTTF) was established to address issues related to trafficking in persons in order to strengthen the coordination and collaboration of all key stakeholders in addressing human trafficking. The NAHTTF is responsible for making submissions to the TIP Report.<sup>12</sup> According to TIP rankings, Sri Lanka is at Tier 2. The NAHTTF meets on a monthly basis to discuss and initiate policy decisions and to promote interventions on Human Trafficking. Training programmes, with the objective of enhancing the capacity of investigators and prosecutors are regularly being organized on the recommendations of NAHTTF.

Another significant countertrafficking measure initiated by the government of Sri Lanka is developing Sri Lanka's National Strategic Plan (NSP) to Monitor and Combat Human Trafficking. The NSP endeavours to bring together the stakeholders to work in coordination and collaboration on targeted interventions to effectively address human trafficking. The action plan is predicated on four pillars – namely prevention, protection, prosecution and partnership, and it is a guiding tool for implementing actions to combat trafficking in persons in Sri Lanka.<sup>13</sup>

The Standard Operating Procedure (SOP) on the identification, referral and protection of victims of human trafficking was endorsed by the Cabinet of Ministers in 2015. The State Ministry of Women and Child Development developed SOPs with a focus on child trafficking. Further, the Department of Immigration and Emigration has also developed SOPs. The Department of Labour has a separate SOP on special investigations of child labour.<sup>14</sup>

A special unit in the Criminal Investigation Department (CID) has been established as the “Human Trafficking, Smuggling, Investigation and Maritime Crime Investigation Unit”. This unit has been established to investigate incidents of trafficking in persons. This is the ultimate authority vested with the powers to investigate allegations of trafficking in persons and the complaints received by other investigative agencies including the local police, the Department of Immigration and Emigration, the Sri Lanka Bureau of Foreign Employment, and also the complaints received by civil society organizations are referred to this unit for investigation.

## VII. CONCLUSION

Trafficking is a grave crime where exploitation of men, women and children lies at its core. Exploitation erodes human dignity, inflicts serious wounds and leaves indelible scars of trauma in the minds of the victims. Every government needs to endeavour to prevent and suppress this heinous crime by strengthening their countertrafficking efforts, which should necessarily include strengthening their national legislation, strict enforcement of the law and building the capacity of investigators and prosecutors. As trafficking is a transnational crime, the international community too has a moral obligation to join hands with high-risk countries to prevent and suppress human trafficking. Strong international cooperation is needed if human trafficking is to be eradicated from the world.

<sup>12</sup> The Trafficking in Persons (TIP) Report is the U.S. Government's principal diplomatic tool to engage foreign governments on human trafficking U.S. Department of State – <https://www.state.gov>

<sup>13</sup> National Strategic Action Plan to Monitor and Combat Human Trafficking of Sri Lanka (2021-2025) p. 2.

<sup>14</sup> Ibid., p. 10.

**PART FOUR**

**RESOURCE MATERIAL SERIES  
No. 118**

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**Supplemental Material**

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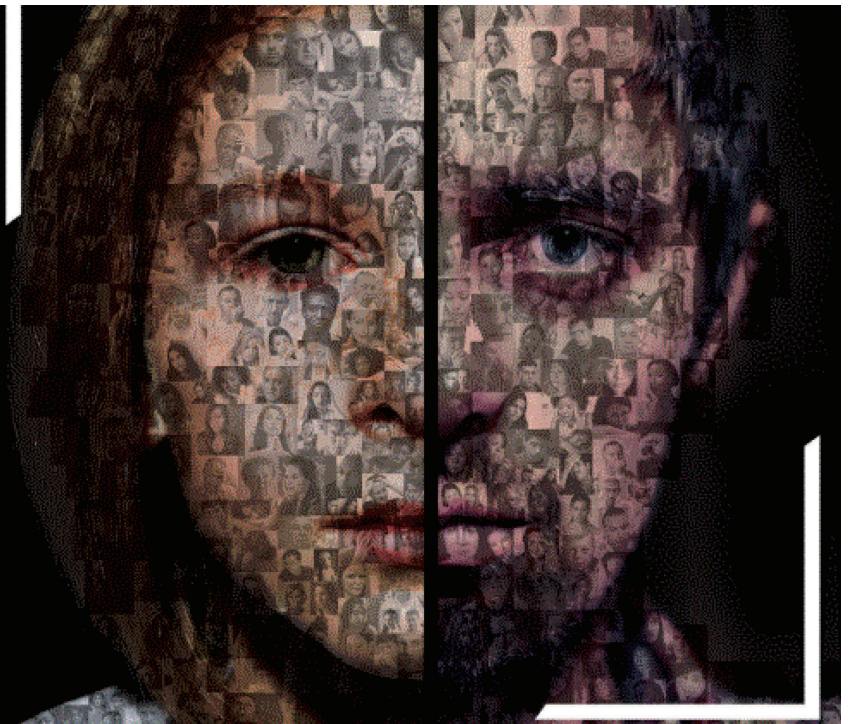
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**UNAFEI**



## U.S. Countermeasures Against Trafficking in Persons

Kim Sokolich  
U.S. Department of Justice,  
Office of Overseas  
Prosecutorial Development  
Assistance and Training



## Defining Human Trafficking in the United States



Human Trafficking does not require:

- ▶ Transportation
- ▶ Movement
- ▶ Kidnapping
- ▶ Border crossing
- ▶ Ownership
- ▶ Captivity

Human trafficking is a *crime of exploitation*: compelling a person through force, fraud, or coercion for labor services or commercial sex acts





Human Smuggling is a crime of transportation –  
no exploitation required



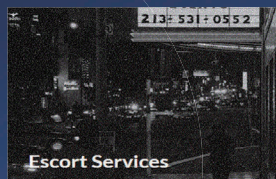
Can smuggled migrants be or become the victims of human trafficking?

**Absolutely**

Victims are found in legitimate and illegitimate industries, including:



Health Care



Escort Services



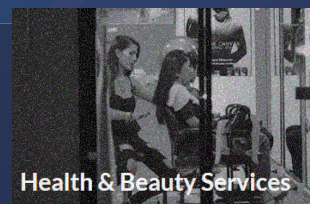
Hotels & Hospitality



Commercial Cleaning Services

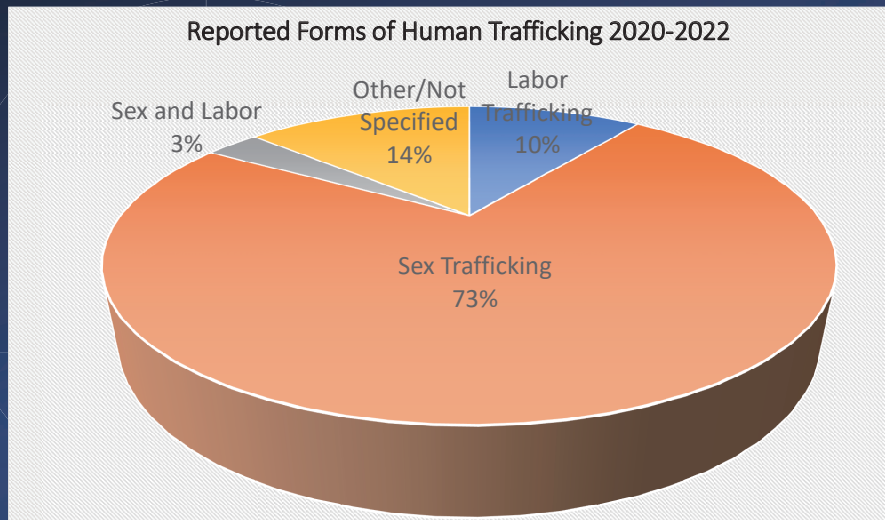


Restaurants & Food Service



Health & Beauty Services

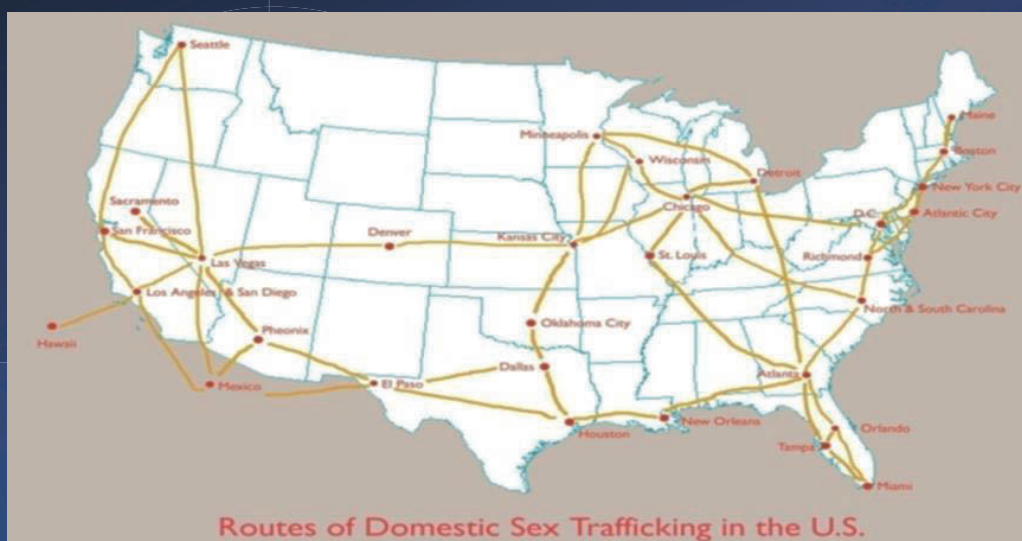
# Human Trafficking in the United States



Source: Hotline Trends Report 2023, Polaris Project.org

Image credit: Polaris Project.org

## Sex Trafficking in the United States





Human trafficking victims can be any age, race, gender identity, sex, ethnicity, nationality, immigration status and socio-economic class.



## Human Trafficking Vulnerabilities

Mental Health Disorders

Lack of Education

Past Sexual, Emotional, and Physical Abuse

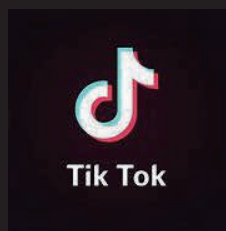


Homelessness and Under-resourced

Involvement with Criminal Justice System

Familial or Personal Substance Abuse

Family Rejection due to religion or LGBT Identification



## Recruitment Methods

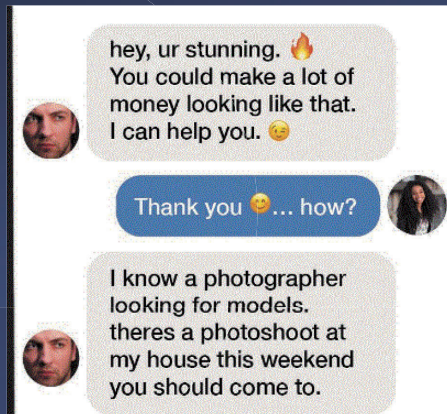


# The Exploitation

Promises of romance, love, and acceptance

Promises to meet basic needs such as food, clothing, shelter

Exploiting a position of authority or a close relationship



Offers of Independence, Luxury Items, Cash

Exploiting Vulnerabilities (substance abuse) or Depression

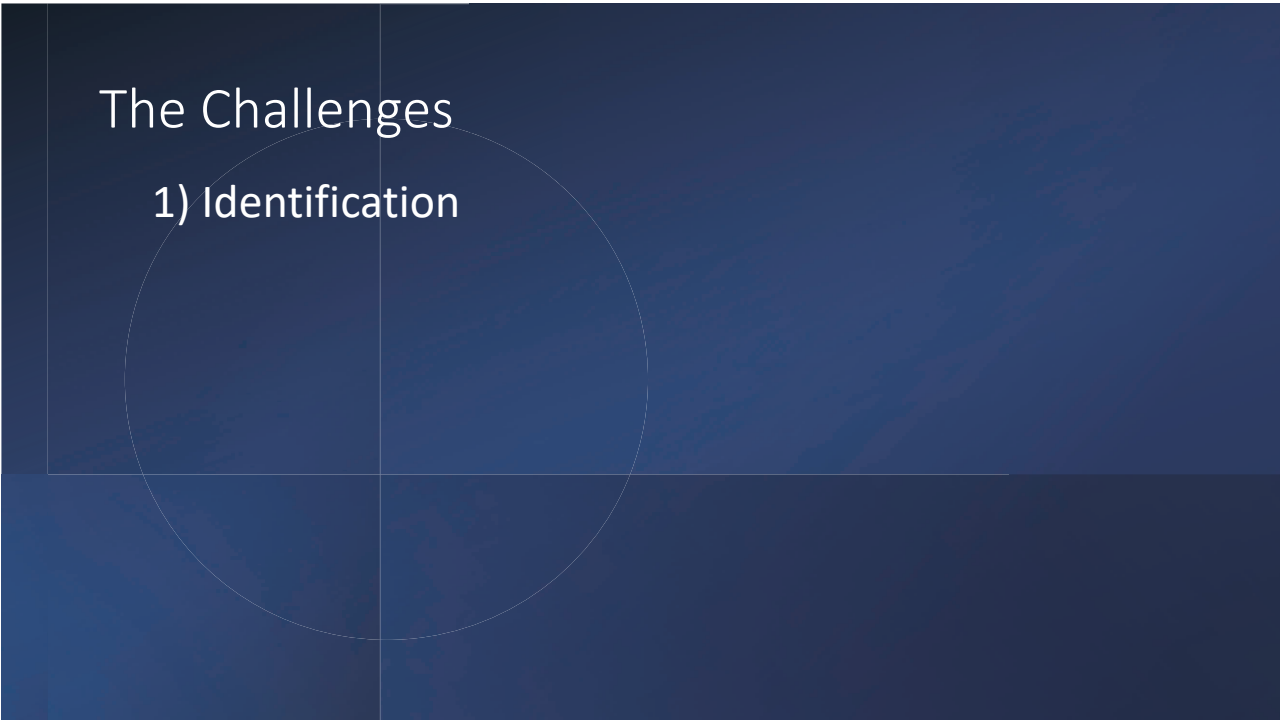
Promises of job opportunities, travel, visas

## Victims bond with their Traffickers

- Daddy says stay in pocket<sup>7</sup>
- Daddy says im a princess
- Daddy says he loves me
- Daddy says were forever
- Daddy says im hos (illegible)
- Daddy says hes my king
- Daddy says I own him
- Daddy says that's my dick
- Daddy says never leave
- Daddy says im gorgeous
- Daddy says im his mami
- Daddy says don't fag off<sup>8</sup>
- Daddy says im his one and only
- Daddy says don't do drugs
- Daddy says finish school
- Daddy says make him proud
- Daddy tells me soo much he just wants the best for me. I want to give daddy everything he deserves in me. One day were gonna be square and do good. Together my daddy said.<sup>9</sup>



# Investigating and Prosecuting Human Trafficking in the United States



## The Challenges

### 1) Identification



## Indicator Cards

- Law Enforcement
- Medical Providers
- Transportation Industry
- Hospitality Industry
- Schools

Victims of human trafficking may look like many of the people you help.

### Classic presentations found in trafficking victims:

- Bruises in various stages of healing caused by physical abuse
- Scars, mutilations, or infections due to improper medical care
- Urinary difficulties, pelvic pain, pregnancy, or rectal trauma caused from working in the sex industry
- Chronic back, hearing, cardiovascular, or respiratory problems as a result of forced manual labor in unsafe conditions
- Poor eyesight and/or eye problems due to dimly lit work sites
- Malnourishment and/or serious dental problems
- Disorientation, confusion, phobias, or panic attacks caused by daily mental abuse, torture, and culture shock

Report suspicious activity to local law enforcement, or call 1.866.347.2423



[www.dhs.gov/bluecampaign](http://www.dhs.gov/bluecampaign)

Human trafficking is happening  
**IN OUR COMMUNITY**

**GET INFORMED**

DHS.GOV/BLUECAMPAIGN



FORCED LABOR | SEX TRAFFICKING | DOMESTIC SERVITUDE

REPORT SUSPECTED TRAFFICKING | VICTIM SUPPORT CALL  
**1-866-347-2423** | **1-888-373-7888**  
or text INFO or HELP to BeFree (233733)

Human trafficking is happening  
**IN OUR COMMUNITY**

**GET INFORMED**

DHS.GOV/BLUECAMPAIGN



FORCED LABOR | SEX TRAFFICKING | DOMESTIC SERVITUDE

REPORT SUSPECTED TRAFFICKING | VICTIM SUPPORT CALL  
**1-866-347-2423** | **1-888-373-7888**  
or text INFO or HELP to BeFree (233733)

## Identification through Investigations

PROACTIVE

V  
S

REACTIVE



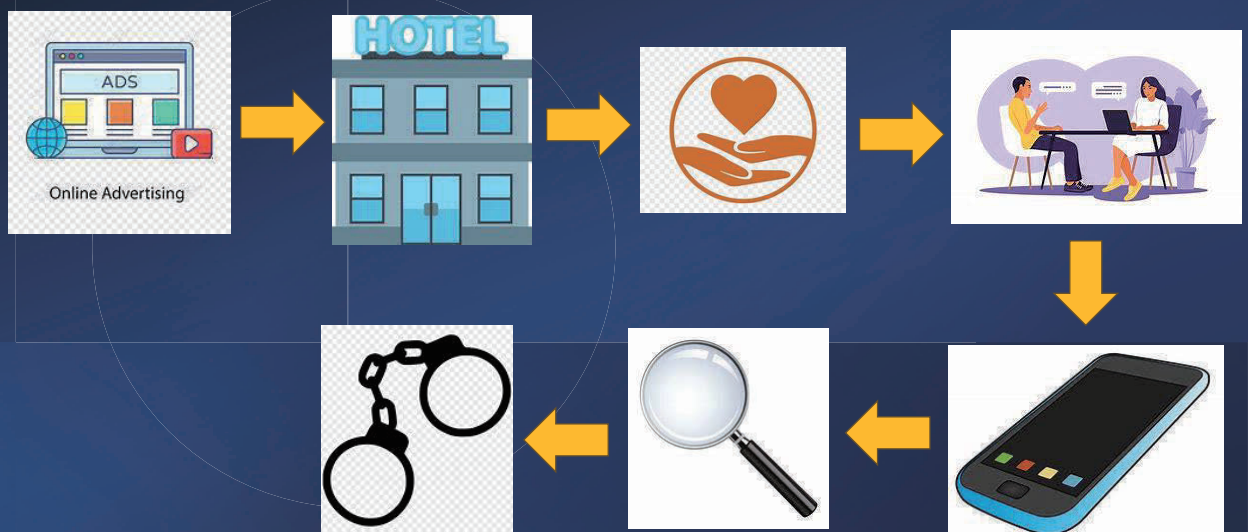
## Proactive Sex Trafficking Investigations

**\*\*Priority is always victim rescue and safety\*\***

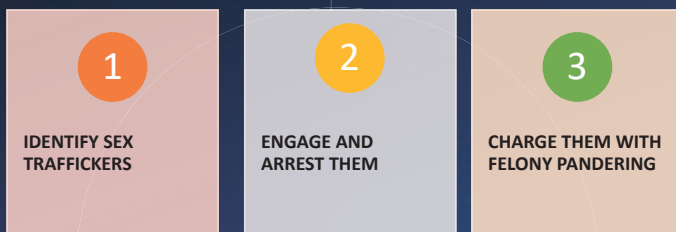
### Rescue Operations

- Provide Victim Services (no arrest)
- Obtain Statement
- Identify Trafficker
- Follow up with additional Investigation

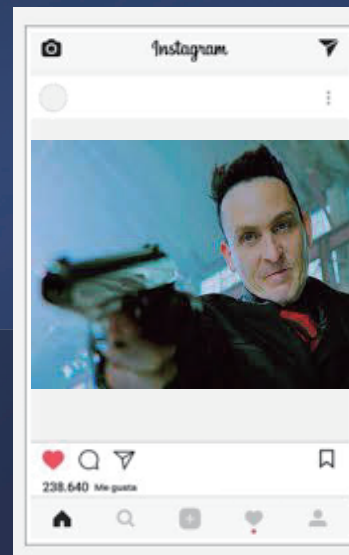
## Proactive Sex Trafficking Investigations



## “Pandering” Proactive Investigations

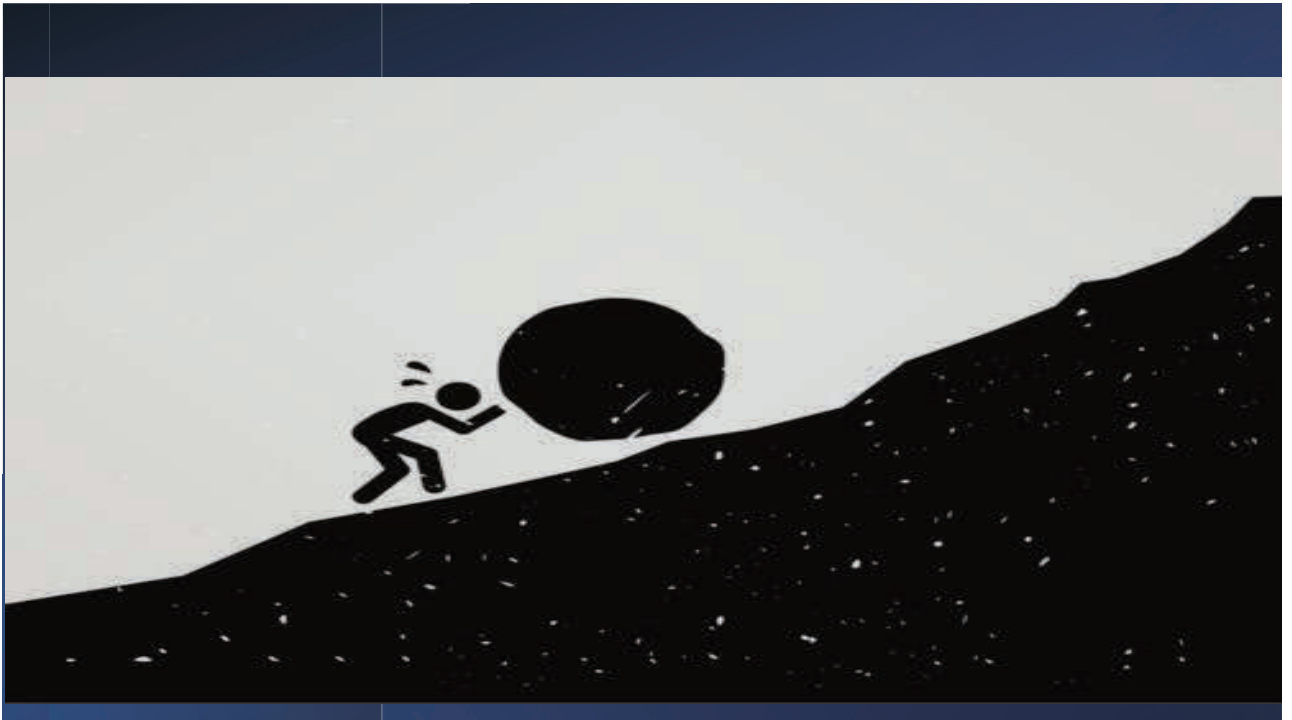


## Felon in Possession Firearm Investigations



## Challenges

- 1) Identification
  - Educating Community Partners
  - Community Awareness
  - Proactive Investigations
- 2) Victim Cooperation



## A Trauma-Informed Approach

- Understand trauma and how it affects victim responses



## A Trauma-Informed Approach

Problem Focused Perspective	Trauma-Informed Perspective
Aggressive Behavior	Always Aware of Threats and Relies on Anger to Stay Safe
Refuses Help	Shame or Fear is triggered when help is offered
Returns to Abuser	Trauma bonded to Abuser
No motivation	Has depression or PTSD and avoidance is a way to manage discomfort
Avoids law enforcement	Fear of law enforcement or a way to manage stress and re-triggering
Disengaged	Could be experiencing dissociation from trauma

## A Trauma-Informed Approach

- Understand trauma and how it affects victim responses
- Avoid re-traumatization
- Increase effectiveness and efficiency of interaction with victims
- Improves victim cooperation and leads to better investigations

## The Challenges

### 1) Identification

- Educating Community Partners
- Community Awareness
- Proactive Investigations

### 2) Victim Cooperation

- Trauma-Informed Approach
- Victim Rights and Services

## Crime Victim's Rights Act 18 USC § 3771

- Right to be reasonably protected from the accused
- Right to reasonable, accurate and timely notice of any public proceedings
- Right to not be excluded from such public proceedings unless the court, after receiving clear and convincing evidence, determines that victim's testimony would be materially altered
- Right to be reasonably heard
- Right to confer with the attorney for the government in the case (prosecutor)
- Right to restitution (mandatory in trafficking cases)
- Right to proceedings free from unreasonable delay
- Right to be treated with fairness and with respect for the victim's dignity
- Right to be informed in a timely manner of any plea bargain or deferred prosecution agreement

## Visas for Victims of Trafficking in Persons



Victims of human trafficking may be eligible for relief under U.S. immigration law through a Victims of Trafficking in Persons (T) Visa if they assist in investigations or prosecutions of human trafficking violators.

## Victim Services through NGOs

Crisis Response

Transportation Assistance

Assistance  
Obtaining Medical  
Care

Safety Planning

Counseling

Coordination with  
other Entities

Relocation  
Assistance

Housing  
Assistance

Educational  
Services

Case Management

Court Support

Assistance  
obtaining  
identification

## Challenges

- 1) Identification
  - Educating Community Partners
  - Community Awareness
  - Proactive Investigations
- 2) Victim Cooperation
  - Trauma-Informed Approach
  - Victim Rights and Services
  - Corroboration

## Avenues of Corroboration

- **Digital devices (phones, computers, etc.)**
- **Surveillance Footage, Hotel Records**
- **Journals, contracts, records**
- **Airport/travel docs**
- **Physical evidence: cash, condoms, drugs, passports**
- **Geolocation information**
- **Social media (PRESERVE)**
- **Prostitution Advertisements**





## Avenues of Corroboration

### Witnesses

- Family/Friends/other victims
- Hotel Staff, Neighbors, Property Managers
- Rideshare drivers
- Doctors/SANE Nurses
- Law Enforcement/First responders



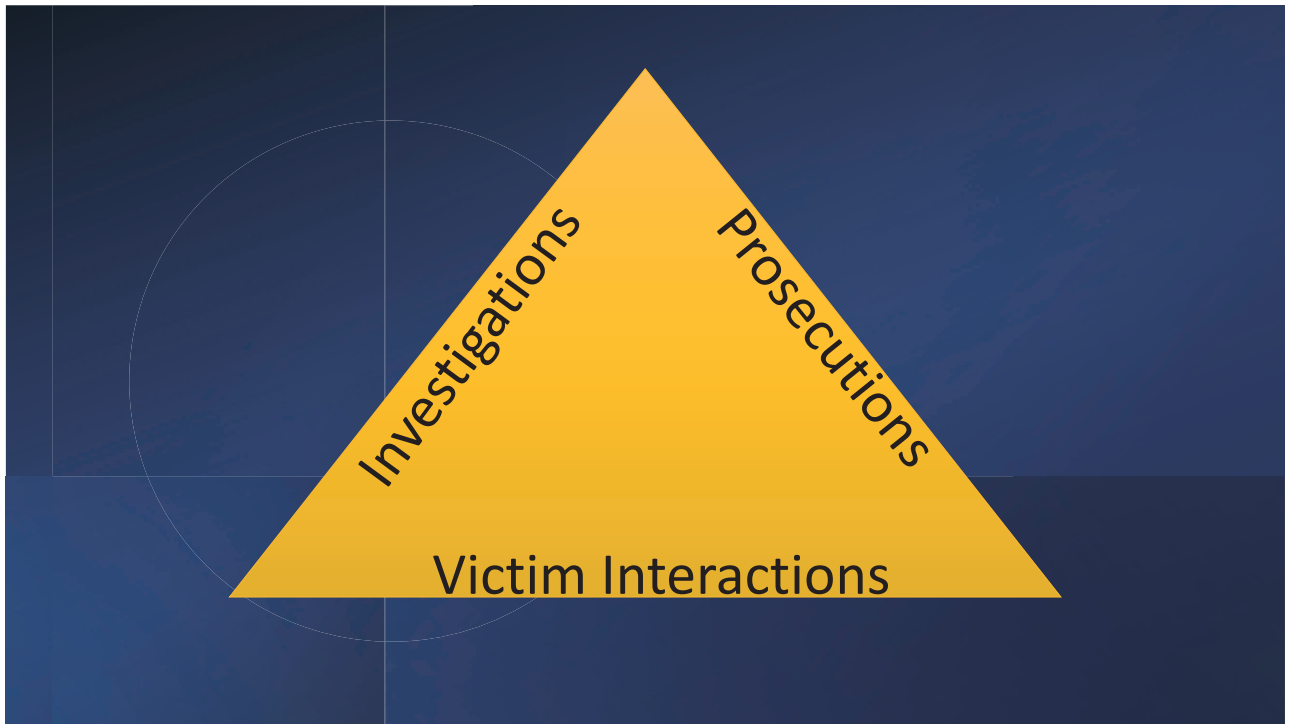
### Expert Testimony

- Can describe effects of trauma
- Explain why a victim recants or is inconsistent

## Are other Offenses Available?

- Child Pornography Offenses
- Money Laundering
- Tax Offenses
- Fraud
- Drug Offenses
- Felon in Possession of a Firearm
- Witness Tampering/ Retaliation/ Obstruction







**RESOURCE MATERIAL SERIES**  
**No. 118**

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**APPENDIX**

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**UNAFEI**



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## PHOTOGRAPHS

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### THE 183<sup>RD</sup> INTERNATIONAL SENIOR SEMINAR



### THE THIRD INTERNATIONAL TRAINING COURSE ON BUILDING INCLUSIVE SOCIETIES



## THE 184<sup>TH</sup> INTERNATIONAL TRAINING COURSE





# APPENDIX

RESOURCE MATERIAL SERIES INDEX			
Vol.	Training Course Name	Course No.	Course Dates
1	Public Participation in Social Defence	25	Sep-Dec 1970
2	Administration of Criminal Justice	26	Jan-Mar 1971
3	[Corrections]	27	Apr-Jul 1971
	[Police, Prosecution and Courts]	28	Sep-Dec 1971
4	Social Defence Planning	29	Feb-Mar 1972
	Treatment of Crime and Delinquency	30	Apr-Jul 1972
5	United Nations Training Course in Human Rights in the Administration of Criminal Justice	n/a	Aug-Sep 1972
	Administration of Criminal Justice	31	Sep-Dec 1972
6	Reform in Criminal Justice	32	Feb-Mar 1973
	Treatment of Offenders	33	Apr-Jul 1973
7	[Administration of Criminal Justice]	34	Sep-Dec 1973
8	Planning and Research for Crime Prevention	35	Feb-Mar 1974
	Administration of Criminal Justice	36	Apr-Jun 1974
9	International Evaluation Seminar	37	Jul 1974
	Treatment of Juvenile Delinquents and Youthful Offenders	38	Sep-Nov 1974
10	The Roles and Functions of the Police in a Changing Society	39	Feb-Mar 1975
	Treatment of Offenders	40	Apr-Jul 1975
	NB: Resource Material Series Index, Nos. 1-10 (p. 139)	n/a	Oct 1975
11	Improvement in the Criminal Justice System	41	Sep-Dec 1975
12	Formation of a Sound Sentencing Structure and Policy	42	Feb-Mar 1976
	Treatment of Offenders	43	Apr-Jul 1976
13	Exploration of Adequate Measures for Abating and Preventing Crimes of Violence	44	Sep-Dec 1976
14	Increase of Community Involvement	45	Feb-Mar 1977
	Treatment of Juvenile Delinquents and Youthful Offenders	46	Apr-Jul 1977
15	Speedy and Fair Administration of Criminal Justice	47	Sep-Dec 1977
	Prevention and Control of Social and Economic Offences	48	Feb-Mar 1978
	Report of United Nations Human Rights Training Course	n/a	Dec 1977
16	Treatment of Offenders	49	Apr-Jul 1978
	Dispositional Decisions in Criminal Justice Process	50	Sep-Dec 1978
17	Treatment of Dangerous or Habitual Offenders	51	Feb-Mar 1979
	Community-Based Corrections	52	Apr-Jul 1979
18	Roles of the Criminal Justice System in Crime Prevention	53	Sep-Dec 1979
19	Arrest and Pre-Trial Detention	54	Feb-Mar 1980
	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
20	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
	Integrated Approach to Effective and Efficient Administration of Criminal Justice	56	Sep-Nov 1980
	NB: Resource Material Series Index, Nos. 1-20 (p. 203)		Mar 1981
21	Crime Prevention and Sound National Development	57	Feb-Mar 1981

	Integrated Approach to Effective Juvenile Justice Administration (including Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration: A draft prepared by UNAFEI on the basis of the reports of the study groups at the 58th International Training Course)	58	May-Jul 1981
22	Contemporary Problems in Securing an Effective, Efficient and Fair Administration of Criminal Justice and Their Solutions	59	Feb-Mar 1982
	Securing Rational Exercise of Discretionary Powers at Adjudication and Pre-adjudication Stages of Criminal Justice Administration	60	Apr-Jul 1982
23	Improvement of Correctional Programmes for More Effective Rehabilitation of Offenders	61	Sep-Nov 1982
24	Promotion of Innovations for Effective, Efficient and Fair Administration of Criminal Justice	62	Feb-Mar 1983
	Community-Based Corrections	63	Apr-Jul 1983
25	The Quest for a Better System and Administration of Juvenile Justice	64	Sep-Dec 1983
	Documents Produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice	n/a	Nov 1983
26	International Cooperation in Criminal Justice Administration	65	Feb-Mar 1984
	Promotion of Innovation in the Effective Treatment of Prisoners in Correctional Institutions	66	Apr-Jul 1984
27	An Integrated Approach to Drug Problems	67	Sep-Dec 1984
28	Contemporary Asian Problems in the Field of Crime Prevention and Criminal Justice, and Policy Implications	68	Feb-Mar 1985
	Report of the Fifth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Mar 1985
	Report of the International Workshop on the Role of Youth Organizations in the Prevention of Crime Among Youth	n/a	Jul 1985
	Follow-up Team for Ex-Participants of UNAFEI Courses	n/a	Dec 1985
	Community-Based Corrections	69	Apr-Jul 1985
29	In Pursuit of Greater Effectiveness and Efficiency in the Juvenile Justice System and Its Administration	70	Sep-Dec 1985
30	Promotion of Innovation in Criminal Justice Administration for the Prevention of New Criminality	71	Feb-Mar 1986
	The Quest for Effective and Efficient Treatment of Offenders in Correctional Institutions	72	Apr-Jul 1986
31	Economic Crime: Its Impact on Society and Effective Prevention	73	Sep-Nov 1986
	Report of the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Aug 1986
32	Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration	74	Feb-Mar 1987
	Non-institutional Treatment of Offenders: Its Role and Improvement for More Effective Programmes	75	Apr-Jun 1987
33	Evaluation of UNAFEI's International Courses on Prevention of Crime and Treatment of Offenders, and Drug Problems in Asia	76	Aug-Sep 1987
	Crime Related to Insurance	77	Oct-Dec 1987



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	Report of the Sixth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Sep 1987
	Report of the Workshop on Implementation Modalities for the Twenty-Three Recommendations Adopted by the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Sep 1987
34	Footprints, Contemporary Achievements and Future Perspectives in Policies for Correction and Rehabilitation of Offenders	78	Feb-Mar 1988
	Search for the Solution of the Momentous and Urgent Issues in Contemporary Corrections	79	Apr-Jul 1988
	Resolution of the Asia and Pacific Regional Experts Meeting	n/a	Mar 1988
	Report of the Meeting of Experts on the United Nations Draft Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)	n/a	Jul 1988
35	Quest for Effective International Countermeasures to Pressing Problems of Transnational Criminality	80	Sep-Nov 1988
36	Advancement of the Integration of Criminal Justice Administration	81	Feb-Mar 1989
	Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders	82	Apr-Jul 1989
	Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region	n/a	Aug 1989
37	Crime Prevention and Criminal Justice in the Context of Development	83	Sep-Nov 1989
	International Workshop on Victimology and Victim's Rights	n/a	Oct 1989
38	Policy Perspectives on Contemporary Problems in Crime Prevention and Criminal Justice Administration	84	Jan-Mar 1990
	Wider Use and More Effective Implementation of Non-custodial Measures for Offenders	85	Apr-Jun 1990
39	Search for Effective and Appropriate Measures to Deal with the Drug Problem	86	Sep-Dec 1990
40	Development of an Effective International Crime and Justice Programme	87	Jan-Mar 1991
	Institutional Treatment of Offenders in Special Categories	88	Apr-Jul 1991
	NB: Resource Material Series Index, Nos. 21-40 (p. 333)	n/a	n/a
41	Effective and Innovative Countermeasures against Economic Crime	89	Sep-Dec 1991
42	Quest for Solutions of the Pressing Problems of Contemporary Criminal Justice Administration	90	Jan-Feb 1992
	Further Use and Effectual Development of Non-Custodial Measures for Offenders	91	Apr-Jul 1992
43	Quest for Effective Methods of Organized Crime Control	92	Sep-Nov 1992
44	Policy Perspective for Organized Crime Suppression	93	Feb-Mar 1993
	Current Problems in Institutional Treatment and Their Solution	94	Apr-Jul 1993
45	Effective Countermeasures against Crimes Related to Urbanization and Industrialization—Urban Crime, Juvenile Delinquency and Environmental Crime	95	Sep-Dec 1993
46	Promotion of International Cooperation in Criminal Justice Administration	96	Jan-Mar 1994

	Effective Treatment of Drug Offenders and Juvenile Delinquents	97	Apr-Jul 1994
47	Economic Crime and Effective Countermeasures against It	98	Sep-Dec 1994
48	The Effective Administration of Criminal Justice: Public Participation and the Prevention of Corruption	99	Jan-Mar 1995
	The Institutional Treatment of Offenders: Relationships with Other Criminal Justice Agencies and Current Problems in Administration	100	Apr-Jul 1995
49	The Fair and Efficient Administration of Criminal Justice: The Proper Exercise of Authority and Procedural Justice	101	Sep-Dec 1995
50	Crime Prevention through Effective Firearms Regulation	102	Jan-Mar 1996
51	Improvement of the Treatment of Offenders through the Strengthening of Non-custodial Measures	103	Apr-Jul 1996
	International Cooperation in Criminal Justice Administration	104	Sep-Nov 1996
52	The Effective Administration of Criminal Justice for the Prevention of Corruption by Public Officials	105	Jan-Feb 1997
	The Quest for Effective Juvenile Justice Administration	106	Apr-Jul 1997
53	The Role and Function of Prosecution in Criminal Justice	107	Sep-Nov 1997
	The Ninth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Oct 1997
54	Current Problems in the Combat of Organized Transnational Crime	108	Jan-Feb 1998
	Effective Treatment Measures for Prisoners to Facilitate Their Reintegration into Society	109	Apr-Jul 1998
55	Effective Countermeasures against Economic and Computer Crime	110	Aug-Nov 1998
	The Role of Police, Prosecution and the Judiciary in the Changing Society	111	Jan-Feb 1999
56	Participation of the Public and Victims for More Fair and Effective Criminal Justice	112	Apr-Jul 1999
	The Effective Administration of Criminal Justice for the Prevention of Corrupt Activities by Public Officials	113	Aug-Nov 1999
57	International Cooperation to Combat Transnational Organized Crime—with Special Emphasis on Mutual Legal Assistance and Extradition	114	Jan-Feb 2000
	Current Issues in Correctional Treatment and Effective Countermeasures	115	May-Jun 2000
58	Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes	116	Aug-Nov 2000
	Current Situation and Countermeasures against Money Laundering	117	Jan-Feb 2001
59	Best Practices in the Institutional and Community-Based Treatment of Juvenile Offenders	118	May-Jul 2001
	Current Situation of and Countermeasures against Transnational Organized Crime	119	Sep-Nov 2001
60	Effective Administration of the Police and the Prosecution in Criminal Justice	120	Jan-Feb 2002
61	Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process	121	May-Jul 2002

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62	The Effective Administration of Criminal Justice to Tackle Trafficking Human Beings and Smuggling of Migrants	122	Sep-Oct 2002
63	The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process Specifically Considering Restorative Justice Approaches	123	Jan-Feb 2003
64	The Effective Prevention and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process	124	Apr-Jun 2003
65	Effective Countermeasures against Illicit Drug Trafficking and Money Laundering	125	Sep-Oct 2003
	Sixth International Training Course on Corruption Control in Criminal Justice	6th UNCAC	Nov 2003
66	Economic Crime in a Globalizing Society—Its Impact on the Sound Development of the State	126	Jan-Feb 2004
67	Implementing Effective Measures for the Treatment of Offenders after Fifty Years of United Nations Standard Setting in Crime Prevention and Criminal Justice	127	May-Jun 2004
	Measures to Combat Economic Crime, Including Money Laundering	128	Aug-Oct 2004
68	Crime Prevention in the 21st Century—Effective Prevention of Crime Associated with Urbanization Based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency	129	Jan-Feb 2005
69	Integrated Strategies to Confront Domestic Violence and Child Abuse	130	May-Jun 2005
	Seventh Special Training Course on Corruption Control in Criminal Justice	7th UNCAC	Oct-Nov 2005
70	The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power—Twenty Years after Its Adoption	131	Aug-Oct 2005
71	Strengthening the Legal Regime for Combating Terrorism	132	Jan-Feb 2006
	Eighth International Training Course on Corruption Control in Criminal Justice	8th UNCAC	Oct-Nov 2005
72	Effective Prevention and Enhancement of Treatment for Sexual Offenders	133	May-Jun 2006
73	Challenges in the Investigation, Prosecution and Trial of Transnational Organized Crime	134	Aug-Oct 2006
	Ninth International Training Course on Corruption Control in Criminal Justice	9th UNCAC	Oct-Nov 2006
74	Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders: An Examination of Best Practices	135	Jan-Feb 2007
75	Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society	136	May-Jun 2007
76	Corporate Crime and the Criminal Liability of Corporate Entities	137	Sep-Oct 2007
	Tenth International Training Course on the Criminal Justice Response to Corruption	10th UNCAC	Oct-Nov 2007
77	Effective Legal and Practical Measures for Combating Corruption: A Criminal Justice Response	138	Jan-Feb 2008
78	Profiles and Effective Treatment of Serious and Violent Juvenile Offenders	139	May-Jun 2008

79	The Criminal Justice Response to Cybercrime	140	Sep-Oct 2008
	Eleventh International Training Course on the Criminal Justice Response to Corruption	11th UNCAC	Oct-Nov 2008
	The Improvement of the Treatment of Offenders through the Enhancement of Community-Based Alternatives to Incarceration	141	Jan-Feb 2009
80	Effective Countermeasures against Overcrowding of Correctional Facilities	142	May-Jun 2009
	Twelfth International Training Course on the Criminal Justice Response to Corruption	12th UNCAC	Jul-Aug 2009
	Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials	143	Sep-Nov 2009
81	The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process	144	Jan-Feb 2010
82	Effective Resettlement of Offenders by Strengthening "Community Reintegration Factors"	145	May-Jun 2010
83	Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures	146	Aug-Oct 2010
	The 13th International Training Course on the Criminal Justice Response to Corruption	13th UNCAC	Oct-Nov 2010
84	Community Involvement in Offender Treatment	147	Jan-Feb 2011
85	Drug Offender Treatment: New Approaches to an Old Problem	148	May-Jun 2011
86	Securing Protection and Cooperation of Witnesses and Whistle-blowers	149	Aug-Sep 2011
	Effective Legal and Practical Measures against Corruption	14th UNCAC	Oct-Nov 2011
87	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	150	Jan-Feb 2012
88	Evidence-Based Treatment of Offenders	151	May-Jun 2012
89	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	152	Aug-Sep 2012
	Effective Legal and Practical Measures against Corruption	15th UNCAC	Oct-Nov 2012
90	Treatment of Female Offenders	153	Jan-Feb 2013
91	Stress Management of Correctional Personnel—Enhancing the Capacity of Mid-Level Staff	154	May-Jun 2013
92	Effective Collection and Utilization of Evidence in Criminal Cases	155	Aug-Oct 2013
	Effective Measures to Prevent and Combat Corruption and to Encourage Cooperation between the Public and Private Sectors	16th UNCAC	Oct-Nov 2013
93	Protection for Victims of Crime and Use of Restorative Justice Programmes	156	Jan-Feb 2014
94	Assessment and Treatment of Special Needs Offenders	157	May-Jun 2014
95	Measures for Speedy and Efficient Criminal Trials	158	Aug-Sep 2014
	Effective Measures to Prevent and Combat Corruption Focusing on Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corruption	17th UNCAC	Oct-Nov 2014
96	Public Participation in Community Corrections	159	Jan-Feb 2015
97	The State of Cybercrime: Current Issues and Countermeasures	160	May-Jun 2015
98	Staff Training for Correctional Leadership	161	Aug-Sep 2015
	Effective Anti-Corruption Enforcement and Public-Private and International Cooperation	18th UNCAC	Oct-Nov 2015

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99	Multi-Agency Cooperation in Community-Based Treatment of Offenders	162	Jan-Feb 2016
100	Children as Victims and Witnesses	163	May-Jun 2016
101	Effective Measures for Treatment, Rehabilitation and Social Reintegration of Juvenile Offenders	164	Aug-Sep 2016
	Effective Anti-Corruption Enforcement (Investigation and Prosecution) in the Area of Procurement	19th UNCAC	Oct-Nov 2016
102	Juvenile Justice and the United Nations Standards and Norms	165	Jan-Feb 2017
103	Criminal Justice Procedures and Practices to Disrupt Criminal Organizations	166	May-Jun 2017
104	Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists	167	Aug-Sep 2017
	Effective Measures to Investigate the Proceeds of Corruption Crimes	20th UNCAC	Nov-Dec 2017
105	Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms	168	Jan-Feb 2018
106	Criminal Justice Practices against Illicit Drug Trafficking	169	May-Jun 2018
107	Treatment of Illicit Drug Users	170	Aug-Sep 2018
	Effective Criminal Justice Practices through International Cooperation and Engagement of Civil Society for Combating Corruption	21st UNCAC	Oct-Nov 2018
108	Criminal Justice Response to Crimes Motivated by Intolerance and Discrimination	171	Jan-Feb 2019
109	Criminal Justice Responses to Trafficking in Persons and Smuggling of Migrants	172	May-Jun 2019
110	Tackling Violence against Women and Children through Offender Treatment: Prevention of Reoffending	173	Aug-Sep 2019
	Detection, Investigation, Prosecution and Adjudication of High-Profile Corruption	22nd UNCAC	Oct-Nov 2019
111	Prevention of Reoffending and Fostering Social Inclusion: From Policy to Good Practice	174	Jan-Feb 2020
112	n/a (Training programmes postponed due to the Covid-19 pandemic)	n/a	n/a
113	Tackling Emerging Threats of Corruption in the Borderless and Digitalized World	23rd UNCAC	Sep-Oct 2021
	Treatment of Women Offenders	175	Oct-Nov 2021
	Achieving Inclusive Societies through Effective Criminal Justice Policies and Practices	176	Nov-Dec 2021
114	Preventing Reoffending through a Multi-stakeholder Approach	177	Jan-Feb 2022
	Protection of the Rights of Crime Victims Including Children	First Inclusive Societies	Mar 2022
	Cybercrime and Digital Evidence	178	Jun-Jul 2022
115	Juvenile Justice and Beyond – Effective Measures for the Rehabilitation of Juveniles in Conflict with the Law and Young Adult Offenders	179	Sep 2022
	Chair's Summary, Enhancing Technical Assistance to Reduce Reoffending and Promote Inclusive Societies	n/a	Oct 2022

RESOURCE MATERIAL SERIES No. 118

	UNAFEI's 60th and ACPF's 40th Anniversary Event	n/a	Oct 2022
	Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corruption: Challenges and Solutions	24th UNCAC	Nov 2022
116	Promoting Legal Aid for Offenders and Victims	180	Jan-Feb 2023
	Rehabilitation and Social Reintegration of Offenders with Substance Use Disorders	Second Inclusive Societies	Mar 2023
	Countermeasures against Transnational Organized Crime – The 20th Anniversary of UNTOC –	181	May-Jun 2023
117	Effective Support for Reintegration of Released Inmates – Towards Seamless Support for Employment, Housing and Medical Care	182	Sep 2023
	Effective Corruption Investigation Utilizing International Cooperation	25th UNCAC	Nov 2023
	Symposium on a Comparative Approach to a Culture of Lawfulness	Side Event, ASEAN-Japan Special Meeting of Justice Ministers	Jul 2023
118	Management of Correctional Institutions in the 21st Century – With a Focus on the Nelson Mandela Rules	183	Jan-Feb 2024
	Effective Measures for Preventing and Responding to Domestic Violence	3rd Inclusive Societies	Mar 2024
	Countermeasures against Trafficking in Persons, with a Focus on Trafficking in Persons for Sexual Exploitation	184	May 2024