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**and**

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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 the Resource Material Series No. 87.

This volume contains the Annual Report for 2011 and the work produced in the 150th International Senior Seminar, conducted from 12 January to 9 February 2012. The main theme of the 150th Seminar was “Trafficking in Persons – Prevention, Prosecution, Victim Protection and Promotion of International Cooperation”.

The “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” which supplements the United Nations Convention against Transnational Organized Crime, recognizes human trafficking as a global problem. The Protocol entered into force on 25 December 2003, and its purposes are: (a) to prevent and combat trafficking in persons, paying particular attention to women and children; (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and (c) to promote cooperation among States Parties in order to meet those objectives (Article 2).

Human trafficking is difficult to detect and particularly difficult to investigate and successfully prosecute. It can often be difficult to obtain the full cooperation of its victims. Investigators and prosecutors need to know how to deal with these challenges. Further, a significant proportion of trafficking in persons cases are transnational, and even domestic cases may involve victims or offenders who originate from an outside jurisdiction. These transnational elements aggravate the complexity and difficulties of investigation and prosecution. Varying legal requirements and restrictions, jurisdictional problems, differences in criminal law and procedure, lack of coordination, and translation and language problems are some of the most frequently experienced barriers to international cooperation and mutual legal assistance. The Trafficking in Persons Protocol also requires States Parties to take certain measures to protect victims and prevent human trafficking.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Seminar to explore various issues that relate to anti-human trafficking measures and strategies.

In this issue, in regard to the 150th International Senior Seminar, papers contributed by visiting experts, selected Individual Presentation Papers from among the participants, and the Reports of the Seminar are published. I regret that not all of the papers submitted by the participants of the Seminar could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI’s international training programmes.

Finally I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular, the editor of Resource Material Series No. 87, Ms. Grace Lord.

August 2012



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Tatsuya Sakuma  
Director of UNAFEI



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**ANNUAL REPORT  
FOR 2011**

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**UNAFEI**

# **MAIN ACTIVITIES OF UNAFEI (1 January 2011 - 31 December 2011)**

## **I. ROLE AND MANDATE**

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1961 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime, and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars, and research projects.

## **II. TRAINING**

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of criminal justice discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding with the help of lectures and the advice of the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks in duration) and one international seminar (five weeks in duration). Over the same period, 149 government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA), an independent administrative institution for Official Development Assistance (ODA) programmes, to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America, and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in the criminal justice field.

During its 50 years of existence, UNAFEI has conducted a total of 149 international training courses and seminars, in which approximately 3,571 criminal justice personnel have participated, representing 117 different countries. UNAFEI has also conducted a number of other specialized courses, both country- and subject-focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and holding important posts in the fields of crime prevention and the treatment of offenders and in related organizations.

### **A. The 147th International Senior Seminar**

#### **1. Introduction**

The 147th International Senior Seminar was held from 13 January to 10 February 2011. The main theme was "Community Involvement in Offender Treatment." Ten overseas participants and six Japanese participants attended this Seminar.

#### **2. Methodology**

First, the Seminar participants introduced the current position regarding the role and function of criminal justice agencies in their respective countries in regard to the seminar's main theme. The participants were then divided into two group workshops as follows:

Group 1: Effective Measures for a Smooth and Sustainable Rehabilitation and Reintegration Process through Community Involvement

## Group 2: Effective Measures to Improve Treatment Programmes and Interventions through Community Involvement

Each Group elected a chairperson, co-chairperson(s), a rapporteur, and co-rapporteur(s) in order to facilitate the discussions. During group discussion, the group members studied the designated topics and exchanged views based on information obtained through personal experience, the Individual Presentations, lectures, and so forth. Later, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions where they were endorsed as the Reports of the Seminar. The full texts of these Reports are published in UNAFEI Resource Material Series No. 84.

### 3. Outcome Summary

#### (i) *Effective Measures for a Smooth and Sustainable Rehabilitation and Reintegration Process through Community Involvement*

Group One discussed community involvement under three headings: (i) Obstacles to the Reintegration of Offenders; (ii) Institutional Treatment of Offenders; and (iii) Community-based Treatment of Offenders. The fourth topic they addressed was (iv) Measures/Recommendations to enhance Community Involvement in the Treatment of Offenders.

Beginning their discussion, several participants said treatment of offenders was not a priority in many developing countries, as there are many basic problems to be addressed first. Also, prisons traditionally operate as closed communities, which fuels public mistrust and discourages openness and transparency. The situation is worsened by the media that only highlights negative occurrences. Participants agreed that communities often fail to see any beneficial link between themselves and offenders and so are not motivated to become involved in their treatment. In addition, society views treatment of offenders as an exclusive function of government and believes that what is most needed for offenders is punishment. All participants agreed that public perception of prisons and prisoners was the single greatest barrier that militates against community involvement in the treatment of offenders and agreed that the following intervention strategies could be used to reduce obstacles: (i) public campaigns utilizing politicians, public figures, celebrities, and ex-offenders to increase awareness of the treatment of offenders; (ii) using the media to promote rehabilitation efforts to help change public perception; and (iii) to allow or encourage private organizations and NGOs to lobby government for legislative/policy changes to improve openness and transparency in prisons and promote public confidence. It was generally agreed that private organizations' and NGOs' support is invaluable, as governments struggle to adequately provide many critical requirements for the successful reintegration of offenders. Individuals, private organizations, and NGOs can be useful resources to help motivate offenders during rehabilitation.

The group agreed that poor socio-economic conditions, low self-esteem, and poor attitude were factors impinging on prisoners' levels of motivation to rehabilitate. Participants from Japan added that education was also critical to improve motivation levels and reduce recidivism. The Chairman remarked that both self-esteem and stable jobs are critical to levels of motivation, as are close family relationships and a connection with the community. Participants expressed the view that it is the responsibility of different tiers of government and criminal justice practitioners to engage the community in the treatment of offenders rather than waiting on the community to make the initial contact. To encourage support, the community must be convinced of the benefits to be achieved, and said benefits should be evidenced by tangible results.

Participants supported the view that the economic independence of ex-offenders contributes to a decisive reduction in recidivism rates and a safer society in which to live and work. The Group further agreed that the first six months after release are the most critical for ex-offenders, who are often estranged from family and without economic support, and, as such, accommodation and job placement are most important.

The group identified the following five issues as the main obstacles to community involvement in the treatment of offenders: (i) stigmatisation of offenders; (ii) lack of public awareness of the relation between rehabilitation and crime reduction; (iii) inadequate approaches to the community by criminal justice

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practitioners; (iv) limitations in legal frameworks; and (v) social exclusion of offenders. Following their comprehensive discussions, they agreed upon the following recommendations to respond to the aforesaid obstacles.

1. In each country, the State organ responsible for justice and law and order should be the leader in offender treatment. The first step is to ensure that judicial, police, and correctional officers understand the necessity of giving treatment to inmates consistent with their inevitable return to society;
2. All correctional institutions should develop public relations strategies based on partnership with electronic and print media;
3. Public campaigns, including commercial spots on TV and radio, should also emphasise programmes related to victims, especially compensation;
4. Educational awareness should be developed and extended to schools and universities showing the correlation between reintegration of ex-offenders and low recidivism. Reduction in social and financial costs should be highlighted.
5. Successful strategies, such as Singapore's Yellow Ribbon project, should be implemented, although national strategies must reflect and respect the culture of the country for which they were developed;
6. Present-day business analyses, such as SWOT and PESTLE, should be considered by judicial and correctional officers;
7. Administrative frameworks of correctional facilities should allow correctional managers to search for and implement local solutions to specific problems;
8. Correctional managers should be encouraged to be proactive in garnering the support of both individuals and community organizations;
9. Legal frameworks should be tailored to enhance community involvement in offender treatment as well as to emphasise diversion and restorative-justice mechanisms;
10. Systems such as the Japanese Volunteer Probation Officer arrangement, which have been successfully adopted by the Thai, Korean and Philippine criminal justice systems, should be considered, especially by countries with minimal community involvement in the treatment of offenders;
11. Correctional facilities should provide training focusing on employability skills, specifically related to cottage industries, in order to facilitate self-employment;
12. Government should provide tax incentives and subsidies for those private companies that accept ex-offenders as their employees.

### *(ii) Effective Measures to Improve Treatment Programmes and Interventions through Community Involvement*

The group was assigned to discuss "effective measures to improve treatment programmes and interventions through community involvement" and agreed to conduct its discussion in accordance with the following agenda: 1) effective measures to rehabilitate offenders; 2) institutional treatment of offenders; 3) community-based treatment of offenders; 4) measures to enhance community involvement.

Regarding the rehabilitation of offenders, many participants stated that they are facing many difficult problems because of their different social conditions, legal matters, governmental funding, etc. Many countries wish to implement rehabilitation programmes, but they are expensive and priority has to be given to other demands. Some countries are concentrating on matters such as pardon, amnesty, and gun control to both prevent crime and to hasten the return of offenders to their communities. However, it is still important to ensure that some rehabilitation should take place before offenders are released into their communities.

The Group discussed possible solutions to the problems in the institutional treatment of offenders. All participants noted that the hesitance of institutional agencies to adopt open-door policies arises out of fear and negative public perception. Participants therefore felt that private companies, non-governmental, and faith-based organizations and individuals can play an important role in offender treatment and called for an open-door policy to incorporate them. The group also noted that the family has a great role to play to

facilitate offender treatment and resettlement and to curb recidivism. Another participant also suggested the importance of proper criminogenic assessment of offenders' needs, to stimulate participation of private companies, organizations, and individuals.

All participants agreed that in some developing countries that have no alternatives to imprisonment, review of existing legislation and enactment of new legislation should be introduced. Participants shared the views that intensive media and public enlightenment campaigns should be implemented, like Singapore's Yellow Ribbon Project and the Japanese Movement for a Brighter Society, Thailand's media and diplomats' open day visit to prisons, and the U.K.'s National Offender Management programmes. These programmes have been proved to be effective in garnering community support in their respective countries.

All participants agreed that continuous community outreach should be reviewed to raise social awareness and acceptance of offenders in society.

Additionally, some participants stated that HIV infection raises serious problems in offender treatment and that the government and NGOs can support HIV infected inmates and help to reduce the stigma attached to their diagnoses.

Following their discussions, the Group reached a set of conclusions, listed below, upon which they then based a set of recommendations, also listed below.

### **Conclusions**

1. From the lectures given by Visiting Experts, international evidence has clearly established that offender treatment programmes are improved and more effective when appropriate cultural input is allowed. Therefore all programmes adopted must be adapted to the cultural and socio-economic situations of each country.
2. Categories of serious crimes vary in each country. This depends on each country's social conditions, legal matters, and other realities. The levels of treatment of offenders are also varied from one place to the other. Most developing countries are still faced with challenges that limit standards and rehabilitative assistance to offenders.
3. The importance of offender rehabilitation needs to be emphasised throughout criminal justice procedure.
4. The role of an offender's family is important and needs to be included as early as possible in the criminal justice process.
5. Private organisations and individuals can play more important roles in institutional and community-based offender treatment. Private enterprises can provide many services effectively or at low cost. The huge resources derived from charitable organizations, voluntary associations, NGOs, community-based organizations, including multi-national corporations, e.g. the Toyota Programme in the U.K., should be harnessed to assist in offender treatment and management.
6. Thorough needs assessment is important to guide community participation in offender treatment.
7. Public relations campaigns, incentives, and awards are veritable motivational tools that can encourage community participation in offender treatment.
8. Victim-offender reconciliation is necessary to enhance integration of offenders into society.
9. Ex-offenders face difficulties in finding jobs and resettling after their prison terms due to stigmatisation, social exclusion, and rejection. Aftercare services for ex-prisoners are therefore critical to help with reintegration.
10. Other obstacles that impede community involvement are: fear, stigmatisation, lack of understanding, indifference to offenders, sensational reporting by the media, lack of regulation or legislation, poor funding, and inadequate resources.

### **Recommendations**

#### **1. Institutional Treatment Stage**

- To re-orientate the mindsets of the prison staff and offenders to allow the community to partner with

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them, especially in the developing countries;

- To ensure thorough assessment of the needs of offenders to guide the involvement of the community;
- To promote vocational training for prisoners to increase their employability, including self-employment;
- To recommend an open-door policy for correctional institutions to enhance community involvement.

### 2. Community-Based Treatment Stage

- To promote victim–offender reconciliation;
- To promote government and community partnership in offender-aftercare services;
- To recommend that the government support the community at the local level by providing funding to NGOs or CBOs, especially for the treatment of juvenile offenders;
- To recommend that organizations, such as the U.N., promote voluntary associations targeted at offender treatment;
- To recommend that communities harness resources to establish and manage community-based rehabilitation centres such as halfway houses and skill acquisition centres.

### 3. All Stages of Criminal Justice Procedure

- To promote public-relations activities to raise public awareness;
- To garner media support in public-relations activities;
- To seek support for offenders’ families and offenders from relevant organizations;
- To revise legislation and regulation to allow for community involvement;
- To encourage charitable associations, NGOs, and multi-national corporations to be involved in offender treatment;
- To give incentives to organizations that employ ex-prisoners;
- To educate young people about the harmful effects of crime and offer them a second chance;
- To introduce collaborative court proceedings that involve lay people in sentencing;
- To involve the community in the planning and delivery of offender treatment to encourage ownership of the programmes;
- To promote collaboration on human resources between the courts and the community;
- To recommend that the government and NGOs support HIV infected inmates in an effort to reduce stigmatisation.

## **B. The 148th International Training Course**

### 1. Introduction

The 148th International Training Course was held from 11 May to 17 June 2011. The main theme was “Drug Offender Treatment: New Approaches to an Old Problem.” Eight overseas participants, two international observers, and eight Japanese participants attended this Course.

### 2. Methodology

The objectives of the Course were primarily realised through the Individual Presentations and Group Workshop sessions. In the former, each participant presented the actual situation, problems, and future prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into two groups to discuss the following topics under the guidance of faculty advisers:

Group 1: The Criminal Justice Response to Treatment of Drug-Dependent Offenders

Group 2: Effective Interventions for Drug-Dependent Offenders

The two groups elected a chairperson, co-chairperson(s), rapporteur, and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures, and so forth. During the course, Plenary Meetings were held to discuss the interim outline of the Group Workshop

reports and to offer suggestions and comments. During the final Plenary Meeting the drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions where they were endorsed as the reports of the Course. The full texts of the reports are published in full in Resource Material Series No. 85.

### 3. Outcome Summary

#### (i) *The Criminal Justice Response to Treatment of Drug-Dependent Offenders*

The Group's discussions mainly focused upon treatment for drug-dependent offenders in the view of criminal justice policy rather than medical policy, which views drug addiction as a chronic and relapsing disease. The criminal justice model of treatment considers drug-dependent offenders "criminals", while the medical model considers them "patients." Each country represented in the discussions has a "criminal model" of treatment, but only three — Thailand, Indonesia, and Afghanistan — have already introduced the "patient model" in conjunction with the "criminal model." The Group agreed that drug-dependent offenders are indeed patients suffering from chronic disease and in need of appropriate treatment. Such understanding, however, did not lead directly to a conclusion that national policies should be switched to a solely "patient model." Some participants presented different views referring to the actual situation of each country, such as the national budget or public consciousness; others gave their opinions that some circumstances may disturb the immediate transition to the "patient model." The direct and simple question of which model is more appropriate to a particular country is to be decided through long-term and comprehensive discussions nationwide in each country. Furthermore, even in countries that adopt the patient model, it is not that the criminal model must be abandoned. Punishment of offenders is imposed if needed. It is not a matter of choosing one or the other; the crucial point is to maintain the proper balance in choosing either punishment or treatment.

The Group decided to exchange opinions about criminal justice policy from a viewpoint of "initial intervention" (intervention at the earliest possible stage of dependency, which the Group considered the most effective form of intervention) and "through care" for drug-dependent offenders, by comparing the "criminal model" and "patient model." In particular, the Group examined: (1) diversion programmes, as one outcome of the "patient model"; (2) drug courts, one option which has been adopted in the "criminal model" countries; and (3) partnership with governmental and non-governmental organizations. Each of these concepts was discussed with reference to both above-mentioned models of treatment, "patient" and "criminal." The Group considered the advantages and challenges of each concept.

In terms of diversion programmes, the Group listed advantages including the reduction of reoffending; the minimizing of the label "criminal"; early reintegration of offenders; and reduced government expenditure. With regard to drug courts, they noted that this allowed "initial intervention" within a "criminal model," as well as motivating offenders. Finally, the Group noted that partnering with NGOs mobilises the human and material resources of the private sector and can continue to engage offenders after the conclusion of the criminal process.

In conclusion, the Group advocated a balance between the "criminal" and "patient" models of treatment. They agreed that diversion systems, drug courts, and partnerships with NGOs are factors which can help in the treatment of drug-dependent offenders; however, they felt that introducing such elements of treatment into existing legal frameworks would be difficult. Despite this, they concluded that the advantages of these programmes, particularly "initial intervention," merited efforts to incorporate them into existing frameworks. Regarding "through-care," the Group highlighted the importance of cooperation with NGOs. They noted that lack of transparency can be a problem in dealing with NGOs, but cautioned that excessive attempts to regulate NGOs can erode the advantages of partnering with such organizations.

#### (ii) *Effective Interventions for Drug-Dependent Offenders*

Prior to the discussion, the group agreed that the drug-dependency situation differs substantially among countries and regions. Therefore, treatment or intervention should be provided considering each country's specific situation. Treatment can be viewed in four different perspectives: the legal, spiritual, medical, and cognitive-behaviour models. There are treatment options under different models and in order to enhance the treatment, the process must be implemented properly, with a focus on the individual's background. The Risk-Need-Responsivity (RNR) Model is perhaps the most influential model for the assessment and

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treatment of offenders.

The Group then engaged in an in-depth discussion of the intervention programmes for the treatment of drug-dependent offenders currently provided in the participating countries. They elaborated upon various models of treatment.

First, they addressed the therapeutic community (TC) modality programme, which is a self-help social learning treatment model for clients with drug-abuse problems and other problems such as alcoholism, stealing, and other anti-social tendencies. It is also used in working with special groups of individuals, such as those in prisons. Although it contains five treatment modules, it does not specifically address drug offender treatment. It is applied in the Maldives, the Philippines, and Thailand, although the discussion reflected that it is a broad treatment programme that does not actually contain a specific module for the treatment of drug-dependent offenders.

Cognitive Behaviour Therapy (CBT), applied in Japan, with the introduction of Narcotics Anonymous, the Matrix Model, and Workbook, allows the patient to monitor his or her own thoughts and cognition and to control his or her behaviour. It is even possible for the inmate to change his or her behaviour to desired behaviour. Since it is a package model, it is effective in the treatment of drug offenders. CBT is implemented easily all over Japan using the Workbook. Although it is difficult to maintain in the community, Japanese probation officers find a way to effectively implement it with support from civil society.

For the purpose of stopping drug abuse, CBT directly benefits the offender by teaching a specific skill through training, while the therapeutic model indirectly benefits the patient, because it has to first create a community conducive to improving the patient's self-esteem. In fact, the latter model addresses drug-dependency and drug-addiction problems only haphazardly.

The group discussed the participation and utilization of family members in the treatment of drug offenders, since all the participants agreed that the family, as a basic unit of human behaviour, plays an important role in the treatment process. The Group acknowledged that there are uncooperative families, too.

Facilities and equipment were considered major components in the treatment process. Ideally, they require a large budget allocation, but treatment programmes can still be regulated and implemented based on available resources. Cooperation with social resources, specialist-like-self-help groups, authorities that offer employment and social welfare, halfway houses, etc., is very important, thereby making use of the talents, skills, and other abilities of the wider community. While being treated in the community, it is still important to strongly and continuously motivate the ex-prisoner, probationer, or parolee to sustain an ideal life, prevent relapse, and to be a dynamic member of the community. This means, for example, that the offender is offered several choices rather than simply being given the necessities of life without requiring him or her to make decisions.

The Group summarised its long discussion with this conclusion:

Treatment of drug-dependent offenders must be consistent and continuous and should have the following characteristics:

- E – Easy to implement and easy to train staff or operators
- F – Focus on treating drug offenders in prison, jail, on parole and probation
- F – Fair assessment of clients/inmates
- E – Efficiently carried out by staff and supported by clients/inmates
- C – Cost-benefit friendly or less costly
- T – Tested well as model treatment in a particular period
- I – Implemented well and prevents relapse and recidivism
- V – Variety of approaches to address particular needs of client/inmate
- E – Evidence-based evaluation is conducted

The group also made the following recommendations:

1. Intensify the implementation of the treatment programmes for drug-dependent offenders presently administered and conduct in-depth research on its effectiveness.
2. Adopt and adapt useful intervention programmes in the treatment of drug-dependent offenders that were learned and validated from the proponents and practitioners during the group discussions, lectures, and site visits to different facilities.

### **C. The 149th International Training Course**

#### **1. Introduction**

The 149th International Training Course was held from 25 August to 30 September 2011. The main theme was “Measures to Secure Protection and Cooperation of Witnesses and Whistle-blowers.” Ten overseas participants and six Japanese participants attended.

#### **2. Methodology**

The participants of the 149th Course explored the topic primarily through a comparative analysis of the current situation and the problems encountered. The participants’ in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realised through the Individual Presentations and the Group Workshop sessions. In the former, each participant presented the actual situation, problems, and future prospects of their country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into two groups.

Each Group elected a chairperson, co-chairperson, rapporteur, and co-rapporteur(s) to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures, and so forth.

Group 1: Effective Measures to Secure Protection and Cooperation of Witnesses and Whistle-blowers with Special Attention to Organized Crime and Corruption

Group 2: Effective Measures to Secure Protection and Cooperation of Witnesses

The Groups presented their reports in the Report-Back Sessions where they were endorsed as the reports of the Course. The reports will be published in full in UNAFEI Resource Material Series No. 86.

#### **3. Outcome Summary**

##### ***(i) Effective Measures to Secure Protection and Cooperation of Witnesses and Whistle-blowers with Special Attention to Organized Crime and Corruption***

The group discussed the current situation of witness and whistle-blower protection and cooperation in each of the participating countries with regard to the following subtopics: legislation for witness and whistle-blower protection; criminalisation and punishment of obstruction of justice; and mitigation of punishment and/or immunity grants for persons who provide substantial cooperation in an investigation or prosecution.

They found that among the participating countries there is no formal legislation for witness protection, save for in Indonesia and El Salvador. As for whistle-blower protection legislation, Japan has specifically legislated for such matters, while other countries have provisions in various other pieces of criminal or labour legislation. For countries with such patchy legislation, not all types of common and serious organized crimes are addressed, while even for countries with specific witness-protection legislation, the legislation is not easily upheld due to budget constraints, shortage of human resources, and poor technology and other infrastructure. However, in all countries, there are various informal countermeasures, such as police protection on an ad hoc basis.

With regard to criminalisation and punishment of obstruction of justice, participating countries reported no specific legislation. However, all participating countries address this issue in other general pieces of legislation. For example, some countries’ penal or criminal codes criminalise and provide punishment for obstruction of justice, while others have an obstruction of justice clause in most of their separate pieces of

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legislation. However, there is still much room for improvement to meet the requirements of Article 23 of the UNTOC and Article 25 of the UNCAC, which provide for criminal sanctions against the use of threats, physical force or promise, offering or giving undue advantage to induce false testimony, or interfering with testimony or the production of evidence in a proceeding.

With regard to mitigation of punishment and/or immunity grants for persons who provide substantial co-operation in an investigation or prosecution, no specific legislation exists in the participating countries.

In discussing challenges to securing witness and whistle-blower protection and co-operation, the Group noted the following issues:

1. Lack of legislation is the major setback to successful implementation of protection programmes. Most protective measures are implemented on ad hoc bases, and experience has shown that once these ad hoc measures fail, there is no formal way of dealing with such issues. Legislation is required to take care of this situation. Informal measures can create problems. For example, since most cooperating witnesses are themselves criminals, accusations of corruption and conflict of interest can arise against officials of the justice system.
2. Witness protection programmes are capital intensive and most countries do not have the resources needed to sustain them.
3. For small countries, it is difficult or almost impossible to relocate witnesses within the country.
4. Since there is no dedicated personnel for witness-protection programmes in the participating countries, the issue remains in the hands of personnel who perform this job in an ad hoc manner without any expertise.
5. Since there is not one agency to co-ordinate amongst different departments, lack of adequate information and ineffective communication often leads to failure in providing proper protection.
6. There are acts that are not described as obstructions of justice but nevertheless have the power of intimidating a witness, for example, an accused offender driving a car or loitering near the victim's home, work place, school, or family members and relatives.
7. In countries with no whistle-blower and witness-protection legislation, there has been a rise in serious criminal acts, as many offenders are not caught, because witnesses hesitate to cooperate with law enforcement agents for fear of their safety and undue treatment.
8. Lack of legislation for mitigation of punishment and grant of immunity in these nations has worsened the situation as junior members of crime gangs never volunteer to disclose any information that may lead to the apprehension of the heads of those gangs.
9. There is a need to balance the protection of witnesses with the upholding of the defendant's right to a fair trial.
10. One of the challenges that some of the countries with witness-protection programmes are facing is the absence of any international/regional agreement/treaty with other countries. Thus, when it is difficult to relocate witnesses within the country, it is not possible to relocate them outside the country. Lack of any agreement also results in no effective cooperation in investigation of crime and control of criminals. Since organized crime has no boundaries, member states should not allow criminals the luxury and advantage of a borderless field of operation.
11. Slow disposition of cases can contribute to a witness's unwillingness to cooperate.

In response to these challenges, the group agreed on a number of recommendations, summarised below:

1. Whistle-blower and witness-protection legislation should be enacted in all participating states, and each country should seek to ratify the UN conventions (UNTOC and UNCAC).
2. Mitigation-of-punishment, grant-of-immunity, separate-criminalisation, and punishment-for-obstruction-of-justice legislation should be enacted by participating countries, including prohibitions against actions, gestures, and any psychological threats to the witness.

3. There is a need for participating countries without witness-protection and whistle-blower protection laws to, in the interim, formulate policies to guide the implementation of countermeasures.
4. Since many participating countries, save for Japan, are developing countries with scarce resources, in the short-term, emphasis should be on procedural kinds of witness protection that are cost and time effective.
5. Bi-lateral, regional, and international co-operation is much needed and should be formalised in the form of signed treaties and/or protocols, which should help in the relocation and protection of witnesses, the cooperation in criminal investigations, the extradition of criminals, and mutual legal assistance in controlling transnational organized crime.
6. Better coordinating efforts from various stakeholding agencies and professionals, for example police, judiciary, prosecutors, social welfare departments, etc. All should function under the umbrella of one department for streamlining the functioning of the programme.
7. There is a need to emphasise the human-resource capacity building of stakeholders.
8. Member States are urged to review infrastructure available in court buildings or prosecutors' offices with a view to providing separate waiting rooms or separate entrances for witnesses. This would not require a large budget and would increase the psychological and physical comfort of the witness.
9. Member States should fast track all serious crimes, especially those involving witnesses needing protection. A time frame for the disposal of the case should be formalised and adhered to, save under special circumstances with due permission from the court.

*(ii) Effective Measures to Secure Protection and Cooperation of Witnesses*

The Group addressed the topic "Effective Measures to Secure Protection and Cooperation of witnesses," with particular attention on non-organized crimes such as sex crimes, crimes involving child victims, and violent crimes. The discussions were based on the following agenda: 1) effective legislation and measures to protect witnesses; 2) criminalisation and punishment of obstruction of justice.

The Group verified that the police department of each respective country has responsibility for securing protection and cooperation of witnesses as one of their primary functions, and most countries have guidelines for their police forces in executing this duty. The Group agreed that it was important for police officers to be specially trained to deal with this duty. Most represented countries had established procedural measures at the trial stage to limit witnesses' psychological stress. However, only El Salvador has legislated for a standardised witness-protection programme. However, that country still faces problems with international relocation resulting from the ineffective implementation of treaties.

Most represented countries have measures to limit witnesses' exposure to the public or to psychological stress, and many countries have various kinds of measures to reduce fear through avoidance of face-to-face confrontation with the defendant and measures to make it difficult or impossible for the defendant to trace the identity of the witness. For example, existing legislation in Japan permits the use of screens during the testimony of witnesses. All participants' countries consider it important to balance witness safety with the defendant's right to a fair trial.

In the matter of criminalisation and punishment of obstruction of justice, the Group noted that, with one exception, all participating countries had criminalised this offence on the basis of the provisions of the UNTOC and UNCAC. Again, with one exception, all countries define the offence of witness interference as obstruction of justice. However, of those countries that have legislated for this issue, some experience difficulties in enforcement.

Following their discussions, the Group made recommendations under each subtopic.

In the matter of effective legislation and measures to protect witnesses, the Group made the following recommendations.

1. The police should protect witnesses when necessary.

## MAIN ACTIVITIES OF UNAFEI

2. It is crucial that countries legislate for and establish the organizational structure of witness-protection measures.
3. Witness-protection measures are necessary for all countries; those who lack such measures should consider their introduction; those who have such measures should consider their improvement.
4. A comprehensive protection programme is effective in protecting witnesses, but it is financially onerous and should be considered as a measure of last resort; if not introduced, other specific measures should be taken to protect witnesses.
5. Protection programmes require a sufficient budget; countries should legislate to allow the proceeds of crime to be utilized to fund witness protection.
6. For victims of sex crimes, it is important to prevent secondary victimisation; for child victims it is important to implement specific measures to allow them to testify as comfortably as possible.

In the matter of criminalisation and punishment of obstruction of justice, the Group made the following recommendations:

1. To ensure the cooperation and protection of witnesses, it is necessary to criminalise obstruction of justice; countries with inadequate legislation in this regard must improve.
2. Where legislation is adequate but enforcement is not, enforcement must be improved so that the legislation functions effectively.

### **D. Special Seminars and Courses**

1. The Eleventh Country-Focused Training Course on the Juvenile-Delinquent Treatment System for Kenya  
The Eleventh Country-Focused Training Course on the Juvenile-Delinquent Treatment System for Kenya was held from 15 February to 11 March 2011. The main theme of the Course was “Capacity-Building of Child Care and Protection Officers in the Juvenile Justice System of Kenya.” Fifteen criminal justice officials from Kenya attended.
2. The Seventh Seminar on Criminal Justice for Central Asia  
The Seventh Seminar on Criminal Justice for Central Asia was held from 2 to 14 March 2011. The main theme was “Addressing Corruption which Hinders Countermeasures for Drug Offences and Others; Especially, Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials.” Seven criminal justice officials from Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan) attended.
3. The 14th UNAFEI UNCAC Training Programme  
The 14th UNAFEI UNCAC Training Programme was held from 13 October to 10 November 2011. The theme of the course was “Effective Legal and Practical Measures against Corruption.” In this Course, 16 overseas participants and six Japanese participants, all of whom were officials engaged in corruption control, comparatively analysed the current situation of corruption, methods of combating corruption, and measures to enhance international co-operation.
5. The 17th Seminar on Crime Prevention and Criminal Justice for the People’s Republic of China  
The 17th Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China was held from 15 to 30 November 2011. The main theme was “Public Dissemination of Legal Knowledge.” Fourteen criminal justice officials from the People’s Republic of China attended.
6. The Fifth Regional Seminar on Good Governance for Southeast Asian Countries  
The Fifth Regional Seminar on Good Governance for Southeast Asian Countries, hosted by UNAFEI with the support of the Ministry of Foreign Affairs of Japan, was held from 7 to 9 December 2011 in Tokyo, Japan. The main theme was “Preventing Corruption: Administrative and Criminal Justice Measures.” Approximately 25 senior criminal justice officials from eight South-East Asian countries and two visiting experts attended.

### III. TECHNICAL COOPERATION

#### A. Regional Training Programmes

##### 1. Short-Term Experts in Kenya

Two UNAFEI professors were dispatched to Kenya, from 5 August to 10 September 2011, to provide technical assistance to the Project for Capacity Building of Child Care and Protection Officers in the Juvenile Justice System of Kenya.

### IV. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies, and the treatment of offenders from Asia, the Pacific, Africa, Europe, and the Americas and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes, and researchers, both domestic and foreign.

### V. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts, and participants of UNAFEI courses and seminars. In 2011, the 82nd, 83rd and 84th editions of the Resource Material Series were published. Additionally, issues 134 to 137 of the UNAFEI Newsletter (from the 147th Seminar to the 149th Course, respectively) were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's website <http://www.unafei.or.jp/english>.

### VI. OTHER ACTIVITIES

#### A. Public Lecture Programme

On 28 January 2011, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the 147th International Senior Seminar participants. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues through comparative international study by inviting distinguished speakers from abroad. In 2011, Mr. Steve Pitts, Head of International Relations and External Programmes, National Offender Management Services, Ministry of Justice, UK, and Mr. Desmond Chin Kim Tham, Deputy Director of Prisons/Chief of Staff, Singapore, were invited as speakers. They presented papers entitled "Changing Lives and Making Communities Safer: Strengthening Rehabilitation through Involving Communities in England and Wales" and "The Yellow Ribbon Project: Advocating Community Acceptance and Enhancing Community Involvement," respectively.

#### B. Follow-Up Meeting to the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities

UNAFEI held the Follow-up Meeting on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities, which was attended by the participants of the 147th Senior Seminar. The Meeting aimed to disseminate the outcome of the Workshop on "Strategies and Best Practices against Overcrowding in Correctional Facilities," organized by UNAFEI and held in Brazil on 16 April 2010 within the framework of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice. The main theme of the Meeting was "community involvement in offender treatment," the importance of which was recognised by the panellists and audience of the Workshop.

UNAFEI invited five prominent experts to this Follow-up Meeting: Sir Judge David Carruthers, Chairman of the New Zealand Parole Board; Prof. Yvon Dandurand, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Canada; Mr. Desmond Chin Kim Tham, Deputy Director of Prisons/Chief of Staff, Singapore Prison Service; Mr. Steve Pitts, Head of International Relations

## MAIN ACTIVITIES OF UNAFEI

and External Programmes, National Offender Management Service, Ministry of Justice, UK; and Ms. Elinor Wanyama Chemonges, National Coordinator, Paralegal Advisory Services Project, Foundation for Human Rights Initiative, Uganda. Some of the experts had served as panellists and moderators at the Workshop, and others are experts on issues very relevant to the theme of this Meeting.

### **C. Assisting UNAFEI Alumni Activities**

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

### **D. Overseas Missions**

Deputy Director Haruhiko Ukawa and Ms. Makiko Sasabe (Staff) visited Bangkok, Thailand from 28 February to 5 March 2011. Deputy Director Ukawa visited executive officers of various authorities, with whom he held meetings to discuss recent activities of UNAFEI and criminal justice and anti-corruption issues of mutual interest. Offices visited included the Supreme Court of Justice, the Office of the Attorney General, the Ministry of Justice, the Office of the National Anti-Corruption Commission, the Anti-Money Laundering Office, and the UNODC Regional Centre for East Asia and the Pacific. He also delivered lectures on “The Role of Prosecutors in the Japanese Criminal Justice Process” at the Office of the Attorney General.

Deputy Director Haruhiko Ukawa and Professor Kumiko Izumi visited Vienna, Austria from 7 to 17 April 2011 to attend the 20th Session of the Commission on Crime Prevention and Criminal Justice held in the United Nations Office in Vienna. They also participated in a symposium on “Public-Private Partnerships against Transnational Organized Crime” on 8 April, organised by the UNODC in conjunction with the Commission. At the symposium, Deputy Director Ukawa served as the moderator for the session on “Cyber Crime: Working Together to Combat On-Line Child Exploitation.”

Professor Ayako Sakonji, Professor Mayu Yoshida, and Chief of Secretariat Takashi Hagiwara visited China from 5 to 12 July 2011 to meet Chinese criminal justice officials in preparation for the 17th Seminar on Crime Prevention and Criminal Justice for the People’s Republic of China, to be held at UNAFEI in November 2011.

Professor Ryo Tsunoda and Professor Yuichiro Wakimoto were dispatched to Nairobi, Kenya, from 12 August to 10 September 2011, and from 5 August to 3 September 2011, respectively, to provide technical assistance to the Project for Capacity Building of Child Care and Protection Officers in the Juvenile Justice System of Kenya.

Professor Ryo Tsunoda and Professor Yuichiro Wakimoto attended the 13th International Corrections and Prisons Association Annual General Meeting and Conference in Singapore from 11 to 17 September 2011.

Director Tatsuya Sakuma visited Cambridge, England from 3 to 7 September 2011 to attend 29th International Symposium on Economic Crime. Director Sakuma made a keynote address at the Symposium.

Mr. Yuichi Tada (Professor) visited Courmayeur, Italy, from 30 November to 6 December 2011 to attend the annual Co-ordination Meeting of the United Nations Crime Prevention and Criminal Justice Programme Network and the ISPAC International Conference.

### **E. Assisting ACPF Activities**

UNAFEI cooperates and collaborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of ACPF’s membership consists of UNAFEI alumni, the relationship between the two is very strong.

## VII. HUMAN RESOURCES

### **A. Staff**

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections, probation, and the police. UNAFEI also has approximately

15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers, and related agencies in conducting its training programmes.

#### **B. Faculty Changes**

Mr. Toru Kawaharada, formerly a professor of UNAFEI, was transferred and appointed to Senior Probation Officer of the Sendai Probation Office on 1 April 2011.

Mr. Junichi Watanabe, formerly a professor of UNAFEI, was transferred to the Correction Bureau of the Ministry of Justice on 1 April 2011.

Mr. Ryo Tsunoda, formerly Chief Probation Officer at the Yokohama Probation Office, was appointed as a professor of UNAFEI on 1 April 2011.

Ms. Mayu Yoshida, formerly a corrections officer of Kasamatsu Prison, was appointed as a professor of UNAFEI on 1 April 2011.

Director Masaki Sasaki was transferred and appointed to Chief of the Sapporo Public Prosecutor's Office on 1 August 2011.

Mr. Tatsuya Sakuma, formerly Chief of the Otsu Public Prosecutor's Office, was appointed as the new Director of UNAFEI and took office on 5 August 2011.

### **VIII. FINANCES**

The Ministry of Justice primarily provides the Institute's budget. UNAFEI's total budget for its programmes is approximately ¥70 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

## UNAFEI WORK PROGRAMME FOR 2012

### I. TRAINING

#### A. The 150th International Senior Seminar

The 150th International Senior Seminar was held from 12 January to 9 February 2012. The main theme of the Seminar was “Trafficking in Persons – Prevention, Prosecution, Victim Protection and Promotion of International Cooperation.” Twelve overseas participants, two overseas observers, and seven Japanese participants attended.

#### B. 151st International Training Course

The 151st International Training Course was held from 16 May to 22 June 2012. The main theme of the Course was “Evidenced-Based Treatment of Offenders.” Fifteen overseas participants, two overseas observers, and seven Japanese participants attended.

#### C. 152nd International Training Course

The 152nd International Training Course commenced on 23 August to 28 September 2012. The main theme of the Course was “Trafficking in Persons – Prevention, Prosecution, Victim Protection and Promotion of International Cooperation.” Sixteen overseas participants and six Japanese participants attended.

#### D. The Twelfth Training Course on the Juvenile-Delinquent Treatment System in Kenya

The Twelfth Training Course on the Juvenile-Delinquent Treatment System for Kenya was held from 14 February to 9 March 2012. Fourteen participants from Kenyan criminal justice agencies reviewed their progress in regard to establishing a scheme of capacity-building for officers of their country’s juvenile-delinquent justice system.

#### E. The Eighth Seminar on Criminal Justice for Central Asia

The Eighth Seminar on Criminal Justice for Central Asia was held from 29 February to 15 March 2012. The main theme of the Seminar was “Addressing Corruption which hinders Countermeasures for Drug Offences and Other Crimes: Especially, Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials.” Nine government officials from four Central Asian countries – Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan – attended.

#### F. The 15th UNAFEI UNCAC Training Programme: “Effective Legal and Practical Measures against Corruption”

The 15th UNAFEI UNCAC Training Programme: “Effective Legal and Practical Measures against Corruption” will be held from 11 October to 14 November 2012. In this Course, Japanese and overseas officials engaged in corruption control will comparatively analyse the current situation of corruption, methods of combating corruption, and measures to enhance international co-operation.

#### G. Sixth Regional Seminar on Good Governance for Southeast Asian Countries

The Sixth Regional Seminar on Good Governance for Southeast Asian Countries will be held in early December 2012, in Tokyo, Japan. The main theme of the Seminar will be “International Cooperation: Mutual Legal Assistance and Extradition.” Approximately 25 participants from South-East Asian countries will attend.

### II. TECHNICAL COOPERATION

#### Regional Training Programmes

##### 1. Short-Term Experts in Kenya

Two UNAFEI professors will be dispatched to Kenya in August and September 2012. The professors will assist the Children’s Department of the Vice-President and Ministry of Gender, Children and Social Development in the Project for Capacity Building of Child Care and Protection Officers in the Juvenile-Justice System.

### **III. OTHER ACTIVITIES**

#### **Fiftieth Anniversary Ceremony**

As UNAFEI will celebrate its 50th anniversary in 2012, the 50th Anniversary Ceremony will be held on 12 December 2012, along with the Sixth Regional Seminar on Good Governance for Southeast Asian Countries. This celebration will be held together with the ACPF (Asia Crime Prevention Foundation), which will celebrate its thirtieth anniversary at the same time. The celebrations will be held at the Ministry of Justice in Tokyo. Distinguished guests and UNAFEI alumni from Japan and abroad will be invited to this occasion.

## APPENDIX

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### MAIN STAFF OF UNAFEI

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#### Directorate

Mr. Tatsuya Sakuma	Director
Mr. Haruhiko Ukawa	Deputy Director

#### Faculty

Mr. Motoo Noguchi	Professor
Mr. Haruhiko Higuchi	Professor
Mr. Naoyuki Harada	Professor
Ms. Kumiko Izumi	Professor
Mr. Fumihiko Yanaka	Professor
Mr. Yuichi Tada	Chief of Training Division, Professor
Mr. Yuichiro Wakimoto	Chief of Research Division, Professor
Mr. Ryo Tsunoda	Chief of Information & Library Service Division, Professor
Ms. Ayako Sakonji	Professor
Ms. Mayu Yoshida	Professor
Ms. Grace Lord	Linguistic Adviser

#### Secretariat

Mr. Takashi Hagiwara	Chief of Secretariat
Mr. Katsuhiko Jimbo	Co-Deputy Chief of Secretariat
Mr. Seiichi Sugiyama	Co-Deputy Chief of Secretariat
Mr. Hiroki Miyazaki	Chief of General and Financial Affairs Section
Ms. Yoshiko Tani	Chief of Training and Hostel Management Affairs Section
Mr. Shinichi Yamamoto	Chief of International Research Affairs Section

AS OF 31 DECEMBER 2011

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**2011 VISITING EXPERTS**

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**THE 147TH INTERNATIONAL SENIOR SEMINAR**

Mr. Yvon Danduang	Senior Associate International Centre for Criminal Law Reform and Criminal Justice Policy Canada
Ms. Elinor Wanyama Chemonges	National Co-ordinator Paralegal Advisory Services Project Foundation for Human Rights Initiative Uganda
Mr. Desmond Chin Kim Tham	Deputy Director of Prisons/Chief of Staff Singapore Prison Service Singapore
Mr. Steve Pitts	Head of International Relations and External Programmes National Offender Management Service Ministry of Justice United Kingdom
Sir Judge David Carruthers	Chairman New Zealand Parole Board New Zealand
Mr. Kittipong Kittayarak	Permanent Secretary for Justice Ministry of Justice Thailand

**THE 148TH INTERNATIONAL TRAINING COURSE**

Dr. Anne Bergenstrom	Coordinator (Expert/Adviser) UNODC Regional Centre for East Asia and the Pacific
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**THE 149TH INTERNATIONAL TRAINING COURSE**

Ms. Karen Kramer	Senior Expert Division for Treaty Affairs UNODC
Mr. Robert E. Courtney III	Department of Justice Attaché Embassy of the United States in the Philippines USA

APPENDIX

Mr. Severino H. Gaña

Deputy Prosecutor General  
National Prosecution Service  
Department of Justice  
Republic of the Philippines

**THE SEVENTH SEMINAR ON CRIMINAL JUSTICE FOR CENTRAL ASIA**

Ms. Olga Zudova

Senior Regional Legal Adviser  
United Nations Office on Drugs and Crime  
Regional Office for Central Asia

**THE 14TH INTERNATIONAL TRAINING COURSE  
ON THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION**

Mr. Koh Teck Hin

Deputy Director  
Corrupt Practices Investigation Bureau  
Singapore

Mr. Tony Kwok Man-wai

Anti-Corruption Consultant  
Former Deputy Commissioner of the  
Independent Commission against  
Corruption  
Hong Kong Special Administrative  
Region  
China

Mr. Dmitri Vlassis

Chief, Corruption and Economic Crime  
Section  
Division for Treaty Affairs  
United Nations Office on Drugs and Crime

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**2011 UNAFEI PARTICIPANTS**

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**THE 147TH INTERNATIONAL SENIOR SEMINAR**

**Overseas Participants**

Mr. Mohammad Zahidul Hasan	Additional Superintendent of Police Bangladesh Police Bangladesh
Ms. Keamogetse Letsatle	Psychology Unit Coordinator Prisoner Administration and Rehabilitation Office Botswana Prison Service Botswana
Mr. Márcio Schiefler Fontes	Judge Turvo District Court Santa Catarina State Judicial Branch Brazil
Mr. Hotma Victor Sihombing	Head Sub Division for International Organization and Cooperation Affairs, International Relations Division Indonesian National Police Indonesia
Ms. Joyce Stone	Superintendent Department of Correctional Services Ministry of National Security Jamaica
Mr. Yadab Ghimire	Registrar Appellate Court Biratnagar Nepal
Mr. Janardan Nepal	Registrar Appellate Court Tulsipur Nepal
Mr. Marlon Babatunde Ekundayo Shemfe	Head of Training and Staff Development Administration Nigerian Prisons Service Nigeria
Mr. Ahmed Ishaque Jehangir	Senior Superintendent of Police Traffic Headquarters Punjab Police Pakistan

APPENDIX

Mr. Frank Men Tunduwa

Deputy Director  
Community-Based Corrections  
Department of Justice and Attorney General  
Papua New Guinea

**Japanese Participants**

Mr. Yuichi Endo

Director  
General Affairs Division  
Tohoku Regional Parole Board

Ms. Yuko Furuhashi

Deputy Superintendent  
Morioka Juvenile Training School

Mr. Shinji Higami

Judge  
Sapporo High Court

Ms. Motoko Kurisu

Special Assistant to the Superintendent  
Haruna Juvenile Training School for  
Girls

Mr. Yasuhiko Maezawa

Public Prosecutor  
Tokyo District Public Prosecutor's Office

Mr. Noboru Yamamoto

Director  
Planning and Coordination Division  
Hiroshima Probation Office

**THE 148TH INTERNATIONAL TRAINING COURSE**

**Overseas Participants**

Mr. Mohammad Karim Anwari	Childhood Prison Officer Khost Provincial Public Health Directorate Ministry of Public Health Afghanistan
Mr. Musakar Kamba	Chief of Cooperation Sub Division CID Operation Development Bureau Indonesian National Police Indonesia
Ms. Mariyam Shazly	Assistant Parole Officer Rehabilitation and Treatment Department of Penitentiary and Rehabilitation Services Ministry of Home Affairs Maldives
Mr. Hassan Zilaal	Assistant Superintendent Parole Unit Department of Penitentiary and Rehabilitation Services Ministry of Home Affairs Maldives
Mr. Gilbert Drilon Peremne	Chief Human Resource and Records Management Division Bureau of Jail Management and Penology
Mr. Yokwe Thomas Cirilo	Probation Officer Probation Prison Services Sudan
Mr. Montri Boonnak	Penologist (Senior Professional Level) Central Correctional Institution for Drug Addicts Department of Corrections Ministry of Justice Thailand
Mr. Montol Kaewkaw	Director Drug Addicts Rehabilitation Center Department of Probation Ministry of Justice Thailand

## APPENDIX

### Observers

Mr. Chan-wook Wee	Inspector Busan Detention Center Korea Correctional Service Ministry of Justice Republic of Korea
Ms. Sumalee Madam	Senior Probation Officer/Director Drug Addicts Rehabilitation Coordination Section Department of Probation Ministry of Justice Thailand

### Japanese Participants

Mr. Satoshi Hamada	Chief Treatment Supervisor Program Coordination Unit (Education) Mine Rehabilitation Program Center
Ms. Rie Ishikawa	Public Prosecutor Nagoya District Public Prosecutor's Office
Ms. Yumi Komiya	Chief Probation Officer Tokyo Probation Office
Mr. Shinnosuke Oki	Public Prosecutor Osaka District Public Prosecutor's Office
Ms. Chiaki Takahashi	Specialist Juvenile Treatment Division Ministry of Justice
Mr. Kentaro Tanaka	Chief Probation Officer Chiba Probation Office
Mr. Naoki Tsunemitsu	Assistant Judge Tokyo District Court
Mr. Tadahisa Urakawa	Family Court Probation Officer Tokyo Family Court

**THE 149TH INTERNATIONAL TRAINING COURSE**

**Overseas Participants**

Mr. Roland Cornelius Cobbler	Sergeant Community Policing Royal Barbados Police Barbados
Mr. Rafael Armando Ascencio Menjivar	Head of Administration Victim and Witness Protection Program Executive Technical Unit of the Justice Sector El Salvador
Mr. Amitabh Thakur	Superintendent Anti-Corruption Branch Department of Personnel Central Bureau of Investigation India
Mr. Igusti Ngurah Agung Suandika	Head of Subsection Planning and Activity of Peace and Humanity International Relations Division Indonesian National Police Indonesia
Mr. Krishna Murari Shiwakoti	Under Secretary (Bench Officer) Full Bench Division Supreme Court of Nepal Nepal
Mr. Narayan Prasado Panthee	Deputy Registrar Litigation Department Supreme Court of Nepal Nepal
Mr. Azael Samaniego Ivaldy	Mayor Officer III Auxiliary Public Prosecutor's Office Public Minister Panama
Mr. Brian Kipling Samuel	Inspector in Charge Drug Squad Royal Saint Lucia Police Force Saint Lucia
Mr. Barnabas David Mwakalukwa	Crime Analyst (Superintendent) Police Operations Crime Prevention Unit Tanzania

APPENDIX

Mr. Ayub Yusuf Mwenda

Senior State Attorney  
Directorate of Public Prosecution  
Attorney General's Chambers  
Tanzania

**Japanese Participants**

Ms. Masako Kariya

Public Prosecutor  
Kobe District Public Prosecutor's Office  
Himeji Branch

Ms. Shiori Nakagawa

Narcotic Agent  
Narcotic Control Department  
Kyushu Regional Bureau of Health and  
Welfare

Mr. Tomoyuki Nakahata

Public Prosecutor  
Shizuoka District Public Prosecutor's  
Office

Mr. Kazuaki Watanabe

Assistant Judge  
Akita Family Court, Odate Branch

Mr. Kousuke Yokomaku

Public Prosecutor  
Branch Chief  
Gifu District Public Prosecutor's Office  
Tajimi Branch

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**THE SEVENTH SEMINAR ON CRIMINAL JUSTICE FOR CENTRAL ASIA**

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Mr. Faizullin Zhanat	Inspector Department of Internal Affairs The Police Department of Astana City Kazakhstan
Mr. Yeraliyev Arman	Deputy Chief Investigation Department Ministry of Interior Affairs Kazakhstan
Mr. Ismoilov Yusufali	Principal Deputy Justice Decisions of Criminal Affairs Department General Prosecution Office Tajikistan
Mr. Khotamov Muzaffar	Head of the Staff Office Drug Control Agency of the President Tajikistan
Mr. Sharipov Khurshed	Judge The Court of the Sino District of Dunshanbe City Tajikistan
Mr. Aliev Farruh	Prosecutor of Division International Legal Division Prosecutor General's Office Uzbekistan
Mr. Umirzakov Ilyos	The Elder Investigator on Trafficking in Narcotic Drugs Main Investigation Department Ministry of Interior Uzbekistan

APPENDIX

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**THE 17TH SPECIAL SEMINAR FOR SENIOR CRIMINAL JUSTICE  
OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA**

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Mr. Zhi-Lu Li	Deputy Director General Legal Publicity Department Ministry of Justice of the People's Republic of China
Ms. Yue-Nian Sun	Director Legal Publicity Department Ministry of Justice of the People's Republic of China
Ms. Xiao-Hong Li	Director Division of Bilateral Exchanges Department of Judicial Assistance and Foreign Affairs Ministry of Justice of the People's Republic of China
Mr. Wei Cheng	Division Chief Department of Legislative Affairs Ministry of Justice of the People's Republic of China
Mr. Guo-Dong Kuang	Deputy Chief Division Department of Personnel Ministry of Justice of the People's Republic of China
Ms. Shen-Si Zhang	Director International Department Legal Daily
Mr. Tie-Wei Zang	Deputy Director Criminal Legislation Department Legislative Affairs Commission The Standing Committee of the National Congress of the People's Republic of China
Ms. Chong Zheng	Deputy Director Research Department Legislative Affairs Commission The Standing Committee of the National Congress of the People's Republic of China
Mr. Jian Ye	Division Director Personnel Department Publicity and Education Division The Supreme People's Court of the NPC of the People's Republic of China
Mr. Zhong-Biao Ji	Consultant General Office, Information Office The Supreme People's Court of the NPC of the People's Republic of China
Mr. An-Ling Zhu	Deputy Researcher The Political Department The Supreme People's Procuratorate of the NPC of the People's Republic of China

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Ms. Xiao-Yu Shang

Director  
Business Development Department  
Procuratorial Daily of the NPC of the  
People's Republic of China

Mr. Bin Yang

Deputy Director General  
Department of Publicity  
Ministry of Public Security of the NPC of  
the People's Republic of China

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**THE ELEVENTH TRAINING COURSE ON THE JUVENILE-  
DELINQUENT TREATMENT SYSTEM FOR KENYA**

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Mr. Noah Mokaya Omambia Sanganyi	Senior Assistant Director Department of Children Services Ministry of Gender, Children and Social Development
Ms. Anne Wambere Waichinga	Principal Children's Officer Department of Children Services Ministry of Gender, Children and Social Development
Ms. Anne Wambui Thiongo	Chief Children's Officer Department of Children Services Ministry of Gender, Children and Social Development
Ms. Martha Kerebi Nyangena	Chief Children's Officer Department of Children Services Ministry of Gender, Children and Social Development
Mr. Thomas Otieno Naam	Senior Child Care Assistant Department of Children Services Ministry of Gender, Children and Social Development
Mr. Evans Kiago Makori	Principal Magistrate Judiciary
Ms.Carolynn Akinyi Ocharo	Senior Resident Magistrate Judiciary
Mr. Clement Otunga Okech	Assistant Director Probation and Aftercare Services Office of the Vice President and Ministry of Home Affairs
Ms. Elizabeth Wanjiku Githaiga	Assistant Director Probation and Aftercare Services Office of the Vice President and Ministry of Home Affairs
Ms. Josephine Muthoni Murege	Chief Probation Officer Probation and Aftercare Services Office of the Vice President and Ministry of Home Affairs
Mr. Jason Mmeli Abukuse	Chief Probation Officer Probation and Aftercare Services Office of the Vice President and Ministry of Home Affairs

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Ms. Evelyn Njeri Mbugua	Chief Inspector, Psychologist Counselling Department Kenya Police Service

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**THE 14TH INTERNATIONAL TRAINING COURSE  
ON THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION**

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**Overseas Participants**

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Mr. Stavos Diniz Douglas Moreno	State Attorney (Legislative) Legal Department House of Representatives of Pernambuco State Brazil
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ANNUAL REPORT FOR 2011

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Mr. Toshio Hirano	Public Prosecutor Osaka District Public Prosecutor's Office
Mr. Atsushi Maekawa	Investigator Investigation Division, Executive Bureau Securities and Exchange Commission
Mr. Masanori Mizuno	Judge Sapporo High Court
Mr. Shinji Yamaguchi	Public Prosecutor Tokyo District Public Prosecutor's Office

APPENDIX

**Japanese Observers**

Mr. Hiroyuki Ito

Government Attorney  
International Cooperation Department  
Research and Training Institute  
Ministry of Justice

Mr. Syusaku Tatara

Assistant Judge  
Saitama District Court

## DISTRIBUTION OF PARTICIPANTS BY PROFESSIONAL BACKGROUNDS AND COUNTRIES

*(1st International Training Course – 149th International Training Course)*

Professional background Country/Area	Judicial and Other Admin- istration	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investi- gation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Afghanistan	7	9	6	4		1							27
Bangladesh	21	13		18	5		4			5		2	68
Bhutan				9									9
Brunei	4				2								6
Cambodia	1	2	1	7	1								12
China	13	5	5	10							8		41
Georgia				1									1
Hong Kong	16			12	29	3	9		1	3	1		74
India	15	10		54	7	1	1			2	6	4	100
Indonesia	23	22	33	31	14		3			6		2	134
Iran	5	12	8	8	6						2	1	42
Iraq	6	3	3	7	5	5					2		31
Jordan		1	1	5									7
Korea	13	3	53	6	29	4					3		111
Kyrgyzstan	1			1									2
Laos	10	6	7	10									33
Malaysia	21	2	7	46	35	8	3		1	5	3	1	132
Maldives	1	3	2	1			2						9
Mongolia	1		1	2									4
Myanmar	7	1	1	4	1								14
Nepal	36	15	12	32								3	98
Oman			1	4									5
Pakistan	20	10	2	42	8	1	2				2	2	89
Palestine	2		1	1			1			1			6
Philippines	19	9	25	39	9	3	13	3	1	7	5	7	140
Saudi Arabia	5			7	3						1	1	17
Singapore	10	18	5	12	10	3	10			3	1	1	73
Sri Lanka	22	20	17	22	20	1	11		1	3		1	118
Taiwan	12	4	2	2	1								21
Tajikistan	1												1
Thailand	24	40	40	17	19	9	14	1		8	5	1	178
Turkey	2	1	1	2							1	1	8
United Arab Emirates	1												1
Uzbekistan												1	1
Vietnam	14	5	3	8	1					4	2		37
Yemen	1			2									3
<b>A S I A</b>	<b>334</b>	<b>214</b>	<b>237</b>	<b>426</b>	<b>205</b>	<b>39</b>	<b>73</b>	<b>4</b>	<b>4</b>	<b>47</b>	<b>42</b>	<b>28</b>	<b>1,653</b>
Algeria		4	2										6
Botswana	2		1	5	2					1			11
Cameroon	4		1										5
Cote d'Ivoire		2		1									3
Democratic Republic of the Congo	1	1	1	1									4
Egypt	1	3		3							3	1	11
Ethiopia	3			2									5
Gambia				2									2
Ghana	1		1	5	1								8
Guinea			1	3									4
Kenya	7	4	1	12	7		7				2		40
Lesotho				1			2						3
Liberia											1		1
Madagascar				1									1
Malawi			1										1
Mauritius		1											1
Morocco			1	4								1	6
Mozambique	1			1	1								3
Namibia			1		1								2
Niger			1										1
Nigeria	1			6	6							1	14
Seychelles				4	3					1	1		9
South Africa				3			1						4
Sudan	2		1	13	1		1				2		20
Swaziland				2									2
Tanzania	4	3	6	8	2								23
Tunisia		1		1									2
Uganda			1	5								1	7
Zambia		1		6									7
Zimbabwe	1		3	8									12
<b>AFRICA</b>	<b>28</b>	<b>20</b>	<b>23</b>	<b>97</b>	<b>24</b>	<b>0</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>9</b>	<b>4</b>	<b>218</b>

APPENDIX

Professional background Country/Area	Judicial and Other Admin- istration	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investi- gation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Australia			1				1			1			3
Fiji	6	1	9	21	17					1			55
Kiribati	1												1
Marshall Island	1			4									5
Micronesia				1			1						2
Nauru				1									1
New Zealand	1			1									2
Palau				1	1								2
Papua New Guinea	10	1	4	19	10		5			1		2	52
Samoa	1			2			1					1	5
Solomon Islands	3		2	2	1								8
Tonga	2	1		7	3		3				1		17
Vanuatu				4									4
<b>THE PACIFIC</b>	<b>25</b>	<b>3</b>	<b>16</b>	<b>63</b>	<b>32</b>	<b>0</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>157</b>
Antigua and Barbuda				1			1						2
Argentina	2	2		2								1	7
Barbados				2			1						3
Belize	1			2									3
Bolivia		1										1	2
Brazil	2	1	6	26	2				1	1			39
Chile	1		1	4	2								8
Colombia	3	1	2	4					1			1	12
Costa Rica	3	5	5								1	2	16
Dominican Republic				1									1
Ecuador			1	4		1							6
El Salvador	2	1		2	1						1	1	8
Grenada				1									1
Guatemala	1			1	1							1	4
Guyana				3	1								4
Haiti				1									1
Honduras			1	8									9
Jamaica	3			1	4	1							9
Mexico	1			2								1	4
Nicaragua		1											1
Panama			5	3								1	9
Paraguay	1		1	9		1							12
Peru	4	10	4	4	1						1	2	26
Saint Christopher and Nevis			1	1									2
Saint Lucia	1			1	1								3
Saint Vincent				2									2
Trinidad and Tobago	1				1								2
U.S.A.								1					1
Uruguay				3									3
Venezuela	1		1	12							1		15
<b>NORTH &amp; SOUTH AMERICA</b>	<b>27</b>	<b>22</b>	<b>28</b>	<b>100</b>	<b>14</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>11</b>	<b>215</b>
Albania	1			2									3
Bulgaria				1									1
Estonia			1										1
Former Yugoslav Republic of Macedonia	2												2
Hungary	1												1
Lithuania				1									1
Poland				1									1
<b>EUROPE</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>
United Nations Office on Drugs and Crime												1	1
<b>JAPAN</b>	<b>115</b>	<b>185</b>	<b>295</b>	<b>99</b>	<b>97</b>	<b>90</b>	<b>207</b>	<b>67</b>	<b>38</b>	<b>2</b>	<b>48</b>	<b>74</b>	<b>1,317</b>
<b>TOTAL</b>	<b>533</b>	<b>444</b>	<b>600</b>	<b>790</b>	<b>372</b>	<b>132</b>	<b>304</b>	<b>72</b>	<b>44</b>	<b>55</b>	<b>104</b>	<b>121</b>	<b>3,571</b>



**PART TWO**

**RESOURCE MATERIAL SERIES**

**No. 87**

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**Work Product of the 150th International Senior Seminar**

**“Trafficking in Persons – Prevention, Prosecution, Victim Protection and  
Promotion of International Cooperation”**

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**UNAFEI**



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**VISITING EXPERTS' PAPERS**

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**HUMAN TRAFFICKING PROSECUTIONS**

*Karima Maloney\**



**HUMAN TRAFFICKING  
PROSECUTIONS**

**UNAFEI  
January 2012**

**Karima Maloney  
Civil Rights Division  
U.S. Department of Justice**

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\* Deputy Chief of the Criminal Section, Civil Rights Division, Department of Justice of U.S.A.

## Today's Goals

- Discuss the U.S.'s approach to combating the human trafficking problem
- Debunk Myths about Human Trafficking
- Understand U.S. Human Trafficking Statutes
- Review the Investigation & Prosecution Model

## The Big Picture: The Global Anti-Trafficking Movement

- **Prevention**
- **Protection**
- **Prosecution**

## Approach to Human Trafficking Problem

- **Protect** human trafficking victims by debilitating traffickers
- **Prevent** human trafficking offenses by dismantling and disabling human trafficking networks
- **Prosecute** to declare human trafficking conduct intolerable under the laws and norms of the nation

### The 3 "Ps":

PREVENT	PROTECT	PROSECUTE
Efficient outreach	Victim-centered approach to law enforcement investigations	Successful law enforcement investigations
Effective education	Immigration relief	Punishment

## **A Rights-Based Approach: Victim-Centered Prosecutions**

- **Victim-centered criminal justice process:**
  - **Vindicates victim's *individual rights***
  - **Non-Prosecution of Victims**
  - ***Empowers victim as an active participant***
  - **Aids transition from *traumatized victim to empowered survivor***
- **Transformation of law enforcement culture**
  - **Abandonment of pre-conceptions**
  - **Evolution of trauma-informed approaches**

## **U.S. Human Trafficking Strategy**

**Outreach**  
**Coordination Building**  
**Coalition Building**

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## **Role of Human Trafficking Prosecution Unit**

- **Specialized Unit in DOJ's Civil Rights Division since 2007**
- **Prosecutorial expertise enforcing involuntary servitude and slavery laws and Trafficking Victims Protection Act**
- **Criminally prosecute novel, complex, multi-jurisdictional and international trafficking cases in partnership with United States Attorney's Offices**
- **Coordinate with federal, state, local, international and non-governmental partners**

## **Partnering Regionally**

- **United States Attorney's Office**
- **Federal Law Enforcement: ICE, FBI, DOL**
- **Human Trafficking Task Forces**
- **Forthcoming ACTeams**
- **Local Law Enforcement**
- **Government Agencies**
- **NGOs**

## What is Human Trafficking Under the U.S. Criminal Code?

- **Compelling or coercing a person's labor, services, or commercial sex acts; or commercial sexual exploitation of a minor**

## What is Human Trafficking?

### **Working Definition**

“Human Trafficking” is **compelling** someone to work **or** to engage in a commercial sex act.

## What Human Trafficking Is Not!

- Illegal Child Adoption
- Trade in Human Organs
- Child Pornography
- Prostitution (Not a Federal Vice Squad)
- Labor Violations
- Poor Working or Living Conditions
- There are other statutes that deal with these offenses.

## Trafficking vs. Smuggling

### Trafficking

- Focus is coercion and exploitation; no movement required
- Victim can be citizen, documented migrant, or undocumented migrant
- Crime against individual rights
- *Criminalized in Title 18*

### Smuggling

- Focus is transporting or harboring undocumented person
- Must involve undocumented migrant
- Crime against integrity of border
- *Criminalized in Title 8*

### **In a Nutshell....**

- **Core of the crime is coercion**
- **Can occur in any industry, legal or illegal**
- **Victims can be men, women, children; undocumented, guestworkers, or citizens**
- **Coercion can be psychological**
- **Victims are often ‘hidden in plain sight’ and reluctant to confide: *case identification requires detection of subtle indicators***

## **Myths About Human Trafficking**

## Human Trafficking Myths

### **Slavery is a historical blight that no longer exists.**

- 12.3 Million victims of human trafficking  
U.S. Department of State, Trafficking in Persons Report 2010
- 27 million people held in slavery worldwide  
Free The Slaves 2011
- 100,000 children in U.S. are in sex trade  
Polaris Project 2011

## Human Trafficking Myths

### **There are no foreigners in the case**

- The law does not require foreign victims or defendants.
- United States v. Evans, 476 F.3d 1176 (11th Cir. 2007) (both the Defendant and the human trafficking victim were United States citizens).

## Human Trafficking Myths

### Trafficking Involves Movement and Borders

- No Borders Needed
- No Legal Requirement
- *Trafficking* is Misleading
- Coercion not Movement

## Human Trafficking Myths

### Trafficking Involves Movement and Borders

Trafficking	Smuggling
Exploitation Focus	Transportation Focus
Crime Against a Person	Crime Against a Border
Coerced / Involuntary	Voluntary
Citizen or Undocumented	Undocumented

## Human Trafficking Myths

### **This case does not involve prostitution or sex.**

“Recent studies show the majority of human trafficking in the world takes the form of forced labor.” Dept. of State’s 2010 Trafficking in Persons Report.

Restaurant Workers

Domestic Servants

Farmers

Hotel Employees

Factory Workers

Restaurant Workers

**Don’t Forget About the Labor Cases**

## Federal Laws

### **Involuntary Servitude and Slavery Crimes**

- 18 U.S.C. § 1581 (Peonage)
- 18 U.S.C. § 1583 (Enticement Into Slavery)
- 18 U.S.C. § 1584 (Involuntary Servitude)

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### **Trafficking Victims Protection Act**

- 18 U.S.C. § 1589 (Forced Labor)
- 18 U.S.C. § 1590 (Trafficking Into Servitude)
- 18 U.S.C. § 1591 (Sex Trafficking)
- 18 U.S.C. § 1592 (Document Servitude)

Forms of Coercion

	ISS [ § § 1581-84]	TVPA [ § § 1589-94]
Physical Harm	YES	YES
Physical Restraint	YES	YES
Legal Coercion	YES	YES
Psychological Harm	NO	YES
Harm to Others	NO	YES
Scheme, Plan, Pattern	NO	YES

Two Flagship TVPA Crimes

**Forced Labor § 1589**

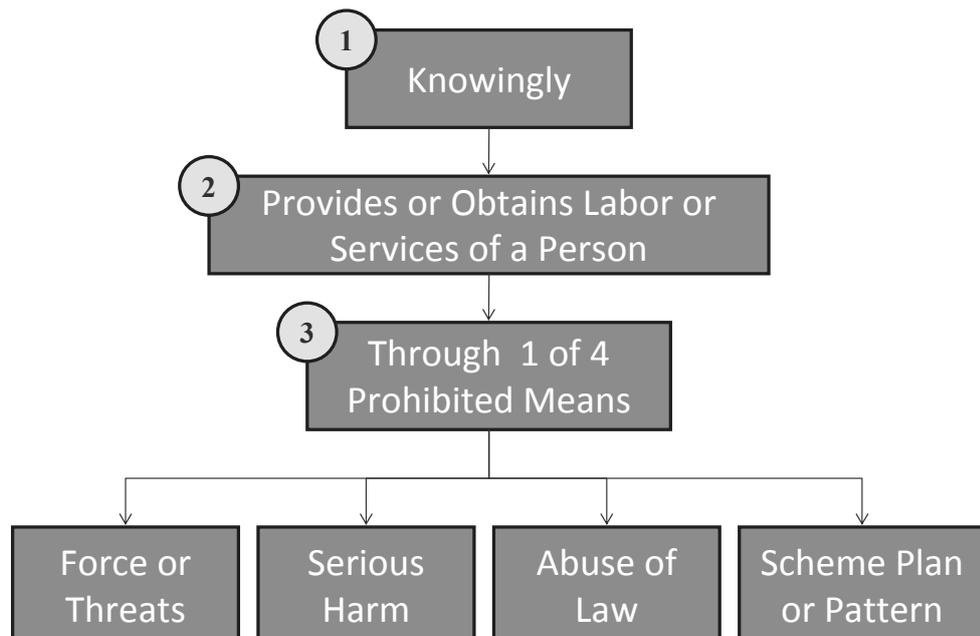
**Sex Trafficking § 1591**

## Forced Labor | § 1589

### 3 Elements:

- Provided or obtained the labor or services of a person;
- Did so through one of the four prohibited means; and
- Did so knowingly

## Forced Labor | 18 U.S.C § 1589



## Forced Labor | § 1589

### Labor of Services

- Broad Definitions of “Labor or Services”
- The Tenth Circuit rejected a limited definition of “labor and services” to “work in an economic sense. Instead, the Court upheld jury instructions defining “**labor**” as “**the expenditure of physical or mental effort**” and “**services**” as “**conduct or performance that assists or benefits someone or something.**” United States v. Kaufman, 546 F.3d 1242, 1262-63 (10th Cir. 2008) (involving mentally disabled adult farm workers forced to perform videotaped sex acts).
- Labor and services should **not** be narrowed to only mean “**work for which compensation is ordinarily given.**” United States v. Marcus, 487 F.Supp.2d 289, 300 (EDNY 2007) (involving recorded acts of bondage, domination, and sadism).

## Forced Labor | § 1589

### Four Prohibited Means

1. Force, or Threats of Force or Physical Restraint
2. Serious Harm or Threats of Serious Harm
3. Abuse or threatened abuse of law or legal process
4. Scheme, plan, or pattern intended to instill fear of serious harm or physical restraint to any person

***Only Need 1 Prohibited Means.***

## Forced Labor | § 1589

### **Prohibited Means: Serious Harm:**

- “that is **sufficiently serious**, under all the surrounding circumstances, to compel **a reasonable person** of the **same** background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.” 18 U.S.C. § 1589(c)(2)

#### **Physical Harm**

- \* Threats
- \* Beatings
- \* Sexual Violence

#### **Nonphysical Harm**

- \* Psychological Harm
- \* Financial Harm
- \* Reputational harm

## Forced Labor | § 1589

### **Prohibited Means: Abuse of Legal Process**

- Threat of deportation, arrest, detention, institutionalization
- “Warnings” unlawful where used to coerce.

## Forced Labor | § 1589

### **Prohibited Means: Abuse of Legal Process**

- The term “**abuse or threatened abuse of law or legal process**” means the use or threatened use of law or legal process, whether administrative, civil, criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

▪ 18 U.S.C. § 1589(c)(1)

## Forced Labor | § 1589

### **Prohibited Means: Scheme, Plan, Pattern**

#### Totality of Circumstances from the Victim’s Perspective

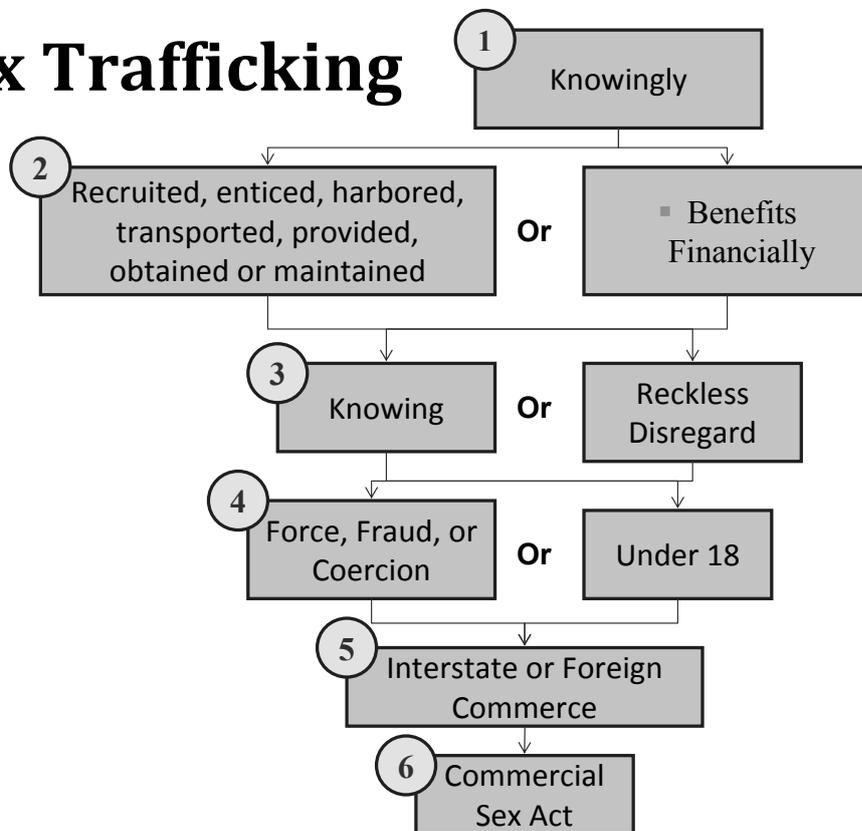
- Manipulation of debts
- Verbal abuse and intimidation
- Demeaning and demoralizing conduct
- Psychological manipulation and control
- Confiscation of identification documents
- Inhumane living and working conditions
- Ominous comments
- Monitoring and surveillance
- Sexual Abuse

## Forced Labor | § 1589

### Penalties

- **Imprisonment up to Life**
  - If death results; OR
  - If acts include kidnapping (or attempt), aggravated sexual abuse (or attempt), or an attempt to kill
- **Imprisonment up to 20 years**
  - No aggravating factors

## Sex Trafficking



## Sex Trafficking | § 1591

### ▪ 2 Knowledge Requirements

- **“Knowingly”** recruits, entices, harbors, transports, provides, obtains, or maintains a person for a commercial sex act or benefits financially.
- **“Knowing, or reckless disregard”** of the fact that force, fraud or coercion would be used or that victim was under 18
  - Knowledge of age is required to prove crime but not for victim status
  - Reasonable Opportunity to Observe

## Sex Trafficking | § 1591

### **By Force, Fraud, or Coercion**

18 U.S.C. § 1591(e)(2) defines “coercion” as

- threats of **serious harm** to or physical restraint against any person
- any **scheme, plan, or pattern** intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint
- abuse or threatened **abuse of the legal process**
- **\*\*Basically the same as the prohibited means in § 1589\*\***

## Sex Trafficking | § 1591

### ▪ Sex Trafficking of a Minor

- Under 18 (“not attained the age of 18”)
- Knowing or in Reckless Disregard
- Reasonable Opportunity to Observe
  - 18 U.S.C. § 1591(c)

## Sex Trafficking | § 1591

- What is a “Commercial Sex Act”?
  - “any sex act, on account of which anything of value is given to or received by any person.” § 1591(e)(3).
  - No requirement that the Defendant had sex with the victim.
  - Compare 18 U.S.C. § 2246 (2) “sexual act” and 18 U.S.C. § 2246 (3) “sexual contact”
  - For “exotic” dancing or massage consider § 1589 Forced Labor

## Sex Trafficking | § 1591

### ▪ **In or Affecting Interstate or Foreign Commerce**

- Crossing state lines
- Interstate communications, facilities, or supplies,
- Aggregate affect on intrastate commercial or economic activity

**No One Has to Travel Across State Lines!**

## Sex Trafficking | § 1591

### **In or Affecting Interstate or Foreign Commerce**

- Victims crossing state lines
- Interstate communications, facilities, or supplies, e.g. hotels, cell phones, condoms, advertising, credit cards, wire transfers
- Aggregate effect of intrastate commercial or economic activity
- Develop all theories

## Sex Trafficking | § 1591

### Penalties

- **Imprisonment of 15 years to Life**
  - Force, fraud, or coercion used; OR
  - Defendant enticed, harbored, transported, provided, or obtained minor under 14 years old.
  - Mandatory Minimum of 15 Years.
- **Imprisonment of 10 Years to Life**
  - Defendant enticed, harbored, transported, provided, or obtained a minor who was at least 14 years old but under 18 years old.
  - Mandatory Minimum of 10 Years.

## Sex Trafficking | § 1591

### **Mandatory Life Imprisonment for Repeated Sex Offenses against Children § 3559(e)**

Mandatory life imprisonment if the defendant in a 1591 sex trafficking of a minor prosecution has a prior state or federal conviction for a sexual offense against a minor who has not attained the age of 17.

**FORFEITURE**

If convicted, any property, used or intended to be used to commit the crime – or any property derived from proceeds of the crime – shall be forfeited to the United States

**RESTITUTION**

A defendant can be ordered to pay the victim the full amount of losses as determined by the court and/or  
A victim may bring a civil action against the perpetrator in U.S. District Court and recover damages and reasonable attorney fees

## **Prosecuting Human Trafficking: The Challenges**

- **Hidden crime**
- **Victim trauma, shame, fear, loyalty, and distrust**
- **Complex, extended relationship with trafficker**
- **Intersection with violent crime, sex crime, organized crime, financial crime, immigration, labor exploitation, and visa fraud**

## Investigation & Prosecution Model

- **Why is the model different that most other crimes?**
  - Multiple Law Enforcement agencies
  - 2 types of Federal Prosecutors
  - Social Service providing NGOs
  - Legal Service providing NGOs or Pro Bono Victim Lawyers
  - Federally funded task forces
  - Multiple victims
  - Victim / Witness coordinators

All parties play an important part . . . but there are a lot of cooks in the kitchen

## Trafficking Indicators

- **Monitoring and surveillance**
- **Restricted or monitored communication**
- **'Spokesperson' for group**
- **Inconsistent or rehearsed stories**
- **Locks and fences positioned to restrict workers rather than to secure premises**
- **Employer control over identification documents and pay**
- **Overcrowded, substandard living or working conditions**

Possession of legal/identification documents

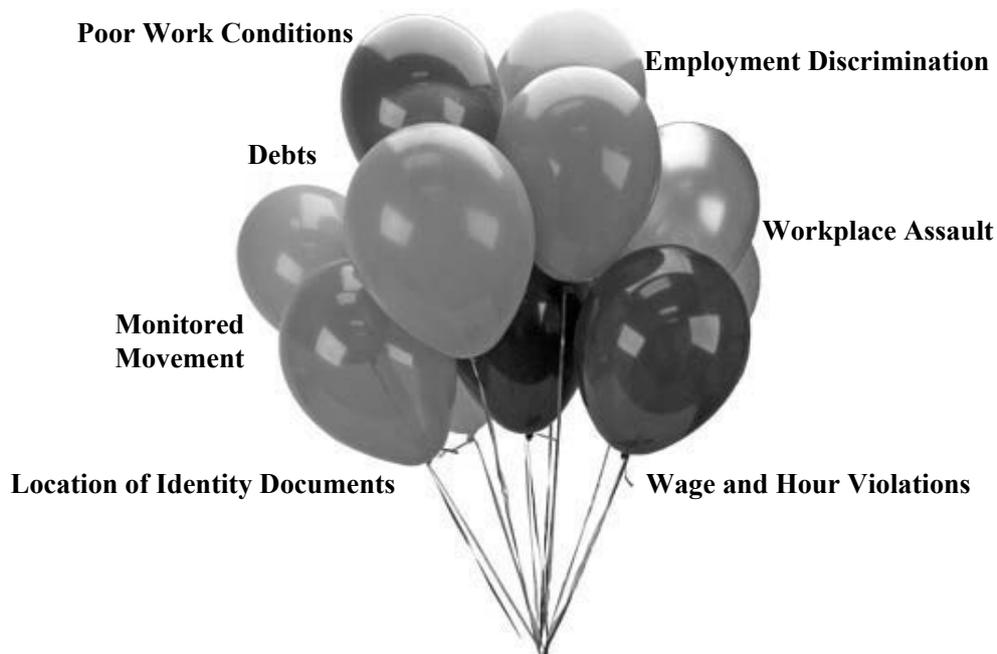
Security/confinement to restrain victims  
(Barbed wire, dogs, bouncer/guard)

Restricted/monitored/controlled movement

Physical abuse



**Think of Indicators Like Balloons.**



**Focus on how these things are tethered to the coercive scheme.**

## Investigation & Prosecution Model

### Four Aspects of the Investigation

- 1. The Objective Facts**
- 2. The Victim's Story**
- 3. Corroborating the Victim**
- 4. Anticipating Defenses**

## **Prosecution Model**

### **Initial Areas of Investigative Focus (Objective Factors)**

- Age of Victims
- Subject's opportunity to observe minor victims
- Type of Labor or Services
- Type of Force or Coercion: totality of conduct and conditions
- Victim's Vulnerabilities and Inequalities
- Movement of Victim

## **Prosecution Model**

### **Proving Coercion: Two Key Principles**

- **Climate of Fear: Totality of Conduct and Conditions**
- **Victim Vulnerabilities**

## **Prosecution Model**

### **Climate of Fear**

- Locks, fences, surveillance cameras
- Control over documents and pay
- Restricted movement; isolation
- Monitored communications
- Inhumane conditions
- Inadequate food, medical care
- Arbitrary penalties, rules, control
- Economically irrational and demoralizing working conditions
- Interactions with law enforcement

## **Prosecution Model**

### **Victim testimony is Crucial**

- Crime requires showing of  
“labor obtained by coercion”  
– subjective component
- Show vulnerabilities
- Expect evolving /  
contradicting statements
- In-person testimony
  - Lose case without it

## Corroborate the Victim

### ▪ **Witnesses**

- Background, vulnerability, recruitment
- Isolation witnesses & ‘negative’ witnesses
  - Never saw victim out alone
  - Never heard victim speak English
- Previous victims
- Outcry witnesses
- Witnesses to any interactions
  - Visitors
  - Customers

## Corroborate the Victim

### ▪ **Physical Evidence**

- Wire transfers, ledgers, bank records, receipts, computers
- Physical surroundings causing isolation and fear
- Visas, immigration and travel records
- Phone records
- Letters to victim’s family
- Photos, videotapes
- Medical records
- Leases, registrations linking subjects
- Prostitution paraphernalia: condoms, lubricant, lingerie, medications, tickets, business cards

## Defenses: Benefits Bias

### Making it up for Immigration Benefits

- Legal Status to stay in the United States
- Work authorization

▪“These women are not stupid. They may have some education. They may come in here dressed up and look pitiful. **In a lot of ways they are pitiful.** I submit to you that they are street smart. And anyone who lives on the street, who gets smuggled across the border, who uses a coyote and comes into this country for the same reason most people come in here is to make the big bucks. And they know how to con. I submit to you that **they conned the investigators** in this case, just like they conned their customers. . . . I submit to you that they have gone home after testifying here today feeling pretty damn satisfied with themselves.”

▪--Attorney for Def. “Santi” Villaman  
▪(May 18, 2011)

## Defenses: Benefits Bias

- Legal Status to stay in the United States
- Work authorization

“She exaggerated her case, and it suited everyone’s purpose to just go along with it.”

-- Attorney for Def. Evelyn Theodore  
New York Times (May 18, 2008)

- Front Issues in Voir Dire
- Outweighed by corroboration
- Compare Benefits to Coercion

## Defenses: Initial Consent

“If a person willingly begins work, but later desires to withdraw and is then forced to remain... by the use or threatened use of coercion, that person’s service becomes involuntary.”

Pattern Crim. Jury Instr. 11th Cir. § 59.

## Defenses: Payment of Wages

“Whether a person is paid a salary or wage is not determinative of whether that person has been held in involuntary servitude....[I]f a person is forced to labor against that person’s will by the use or threatened use of coercion, such service is involuntary even though the person is paid...”

Pattern Crim. Jury Instr. 11th Cir. § 59.

### **Anticipating Defenses**

#### The “Better Off” Defense

### **Anticipating Defenses**

#### The “Happy Slave” Defense

### **Anticipating Defenses**

#### The “Escape” Defense

“opportunity to flee is not determinative [if] defendants placed [victim] in such fear or circumstances that he did not reasonably believe he could leave”

Bradley, 390 F.3d 153

## **Anticipating Defenses**

### **Religious / Cultural Defense**

- “This is the way we do things in our country.”
- “According to our faith . . . .”

## **Prosecution Team**

- Civil Rights Division Prosecutor
- Assistant U.S. Attorney
- ICE Agent
- FBI Agent
- Translator
- V/W Coordinator
- Victim has a pro bono attorney and NGO representative

**ISSUES AND GOOD PRACTICES FOR IDENTIFYING  
POTENTIAL TRAFFICKING VICTIMS AND INTERVIEWING VICTIMS**

*Karima Maloney*

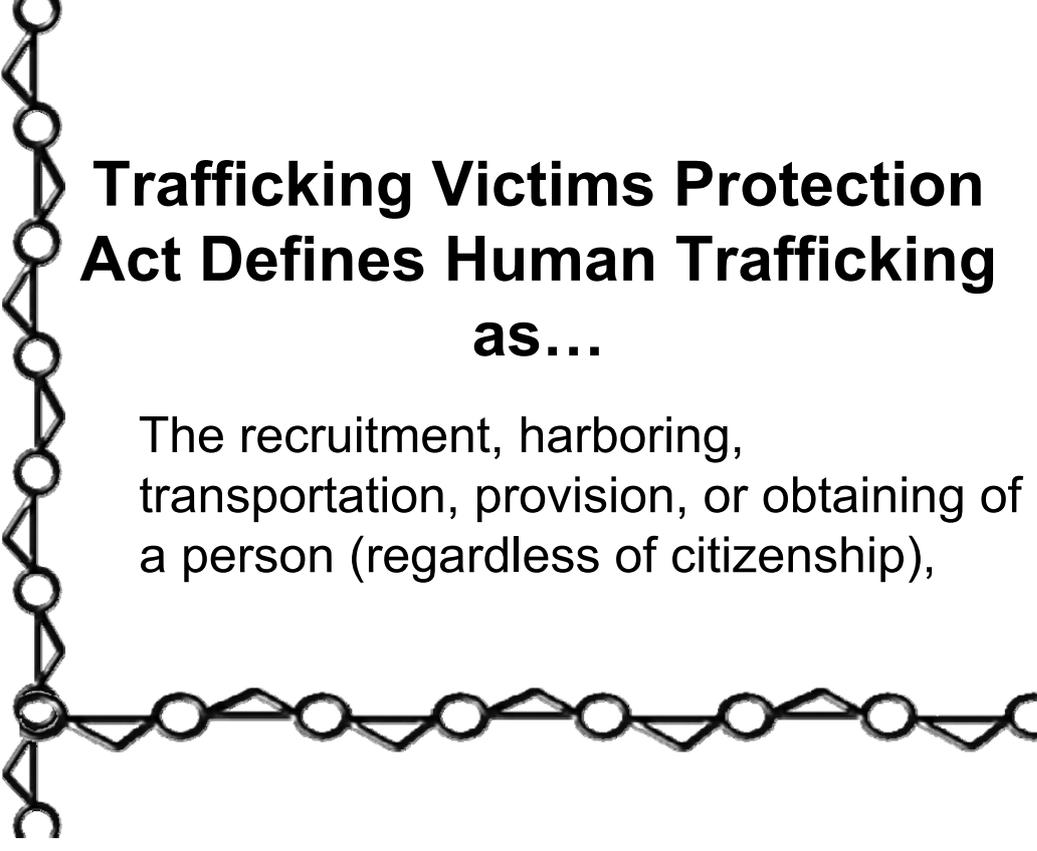


**Issues and Good Practices for  
Identifying Potential Trafficking  
Victims and Interviewing Victims**

*Karima Maloney*

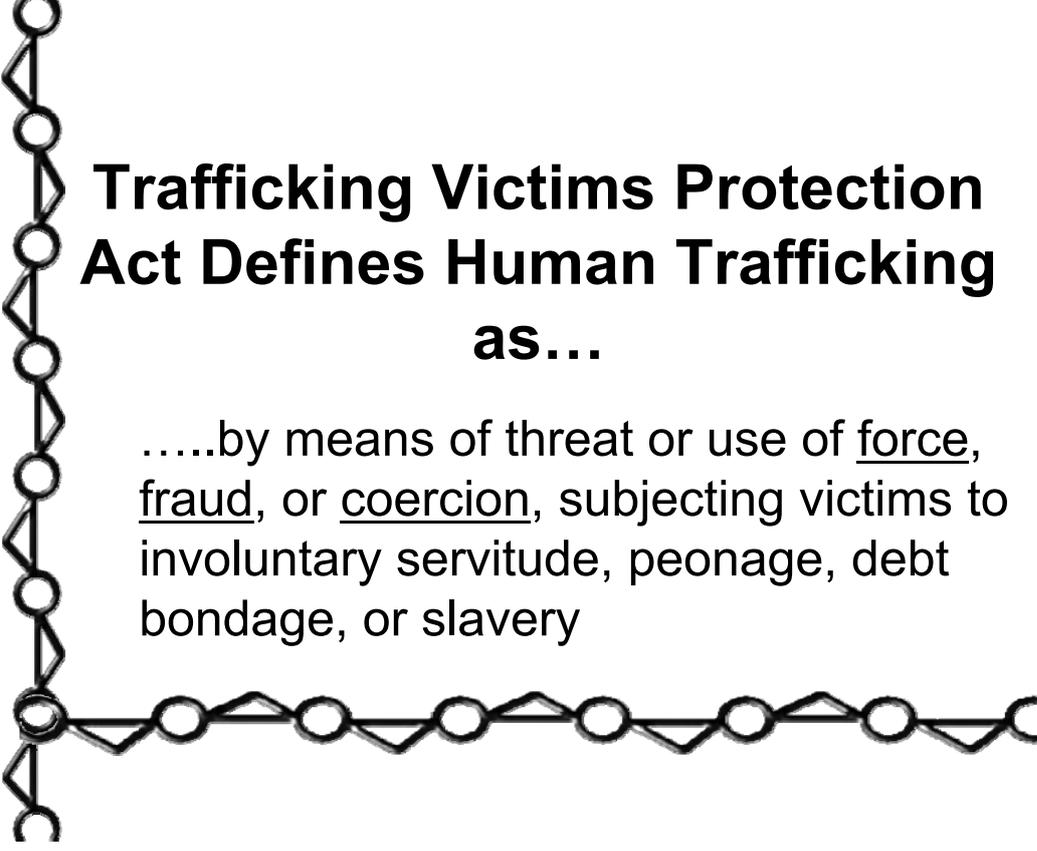
Civil Rights Division, U.S. DOJ





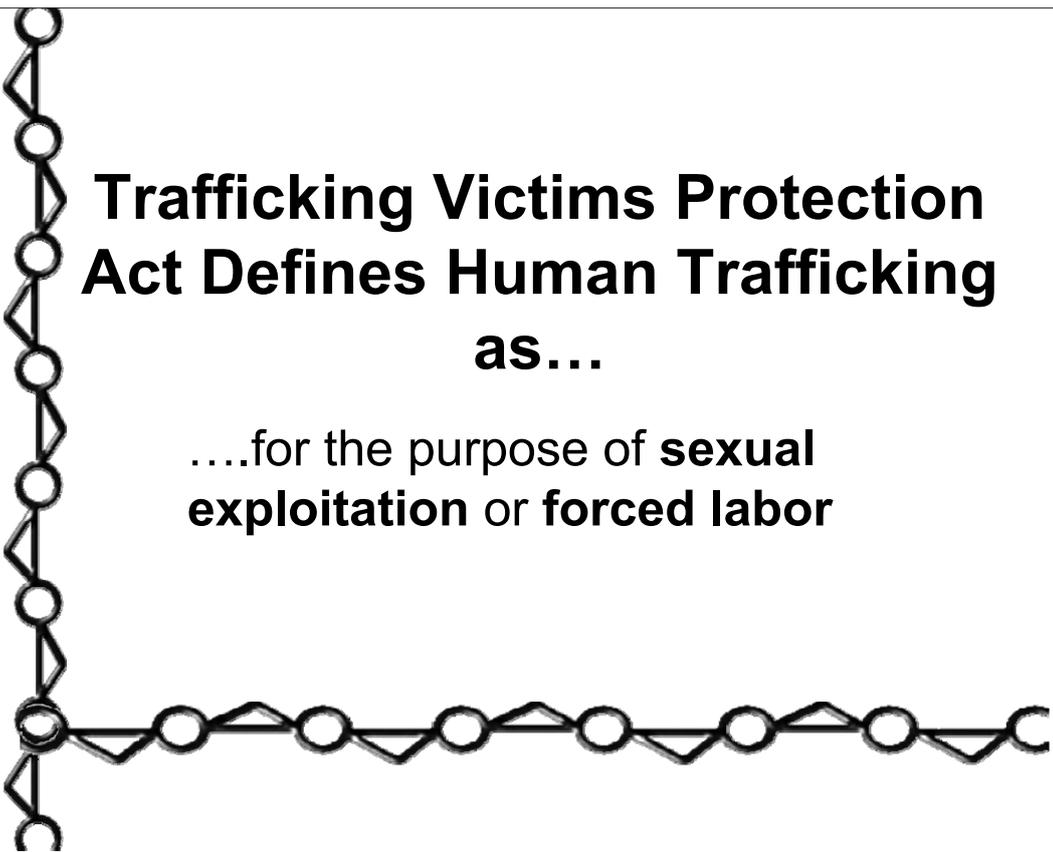
## Trafficking Victims Protection Act Defines Human Trafficking as...

The recruitment, harboring, transportation, provision, or obtaining of a person (regardless of citizenship),



## Trafficking Victims Protection Act Defines Human Trafficking as...

.....by means of threat or use of force, fraud, or coercion, subjecting victims to involuntary servitude, peonage, debt bondage, or slavery



## Trafficking Victims Protection Act Defines Human Trafficking as...

....for the purpose of **sexual  
exploitation** or **forced labor**

## Victim Identification Markets Where Human Trafficking Occurs



- Sexual Exploitation
  - Prostitution
  - Exotic Dancers
  - Massage Parlors
- Forced Labor
  - Sweat shops
  - Domestic
  - Agriculture
  - Restaurant

## **Who Engages in Trafficking?**

- **Individuals**
  - Pimps and panderers with commercial sexual motives
  - Diplomatic staff/foreign executives who arrive with “servants”
  - Neighbors, friends, or relatives of the victim

## **Who Engages in Trafficking?**

- **Family Operations**
  - Often will involve an extended family
  - Family will usually operate on both sides of the border
- **Independently owned businesses**
  - Contractors/agents that provide laborers for agricultural work, construction work, restaurants, janitorial services

## Who Engages in Trafficking?

- **International Organized Crime Syndicates**
  - “Diversified trafficking portfolios”: Criminal organizations that traffic humans in Eastern Europe often smuggle drugs and guns as well.

Smuggling routes for all three are often characterized as being the same

## Who are Trafficking Victims?

- Illegal Immigrants
- Impoverished
- Children
- Disabled
- Smuggling Debts
- Language Barriers
- Fear of Gov't Officials

## **THE VICTIMS**

**800,000-900,00 trafficked  
annually across  
international borders  
worldwide**

### **Trafficking in the United States**

- 18,000-20,000 trafficked annually
- More than half are CHILDREN
- Include both U.S. citizens and non-citizens
- Originate from Africa, Asia, India, Latin America, Eastern Europe, Russia, Canada, among other places

## **Victim Identification**

- Patrolmen
- Places of Worship
- Shelters
- Neighbors (ordinary citizens)
- Inspectors/Licensing Officials

## **HEIGHTENED VULNERABILITY**

- Human trafficking crimes often involve kidnapping, rape, beatings, trickery and threats. Victims are usually extremely vulnerable members of society – chosen for that very reason. Victims can be women, men and children.
- Traffickers identify and exploit a vulnerability
- Vulnerabilities can include age, isolation from family, limited education level, history of abuse, undocumented status, poverty, illiteracy, addiction, disability, or any combination

## **CHILD VICTIMS**

- Sex trafficking cases involving minor victims often involve the same circumstances as adults – beatings, threats, coercion, etc. But often times the traffickers use only promises of love, shelter or a brighter future to entice minors into prostitution.
- For adult victims, we must prove that force, fraud or coercion was used by the trafficker to compel the victim's sexual service. For minor victims, there is no such requirement. A minor's consent is a non-issue. Causing a minor to engage in commercial sex is prohibited, whether they agree or not.

## **Victims**

- Victim Testimony is Essential
- Only Victims Can Answer: “Why?”
- Crime requires showing of “labor obtained by coercion” - subjective component
- Only the Victim can explain the Climate of Fear
- We Lose Cases without Victims

## **The Victim Interview: Essential Evidence**

The sex trafficking investigation is unlike any other type of criminal investigation due to the uniquely intimate and invasive nature of the crime.

Unlike many other types of cases, the victim interview is the most essential piece of evidence you will have in your case.

## **Power of the Victim Interview?**

*“The role of the victim advocate is to believe a victim’s story, whereas the role of a police officer is prove it.”*

By corroborating as many facts as possible, no matter how insignificant they may seem, you can better help establish the validity of the victim’s story and improve the victim’s credibility even when there are other problems with the investigation.

## **Obstacles to Effective Interviewing**

Some obstacles intrinsic in the investigative process or to the investigator him- or herself serve as hindrances to an effective and accurate interview.

1. Asking for “Just the facts”
2. The police personality
3. The tough-guy facade
4. The police career path

## Effective Interviewing

### *First, do no harm...*

Any possible efforts should always be made to minimize potential further trauma to the victim.

## The Victim's Story

- Earn Trust
- Empower victim with choices – even small ones
- Victim trauma, shame, fear, loyalty, and distrust
- Avoid Direct Questions
  - “When did you illegally enter the United States?”
  - “How long have you been a prostitute?”
- Do not use cop-lingo
- Assume prostitution, illegal status
- Be prepared for bad judgment.
- **Expect evolving statements**

## **Setting the Stage**

There are many ways to “set the stage” for an effective victim interview...

### **1. Select an appropriate location**

- Safe and comfortable for the victim
- Private and free from distraction
- Maintain an equal or inferior physical position

## **Setting the Stage**

### **2. Ask the victim if she would like anyone to be present during the interview.**

- Should be determined privately with the victim
- Potential witnesses must be excluded
- Always include a support person when requested

## **Setting the Stage**

### **3. Explain the purpose of the interview and address immediate concerns.**

- The purpose is to gather evidence and the victim's statement, not to find fault or blame.
- There will be questions that the victim doesn't have the answers to.
- The victim does not need to make any immediate decisions about prosecution.

## **Setting the Stage**

### **4. Present yourself in an accepting and compassionate manner.**

- Acknowledge the gravity of the ordeal
- Allow the victim to vent
- Demonstrate empathy
- Help the victim regain control

## **Techniques: Creating and Maintaining an Open Interview**

### **1. Explaining the Questions.**

- Explaining questions dealing with sensitive issues helps put the victim's fears at ease.
- Use the law to explain why you need specific information.
- Asking about high risk behavior does not mean that you doubt the victim's story.

## **Techniques: Creating and Maintaining an Open Interview**

### **2. Physical Techniques**

- Eye contact
- Use inviting body language
- Avoid touching the victim

## **Techniques: Creating and Maintaining an Open Interview**

### **3. Use of Sexual Language.**

- Avoid using police terminology.
- Clarify any slang terms that the victim uses to ensure you understand what they mean.
- Mimic terms used by the victim without acting shocked or embarrassed by them.

## **Techniques: Creating and Maintaining an Open Interview**

### **4. Engage in Active Listening.**

- Without interrupting the flow of the victim's narrative, try to interject comments that indicate you have been listening.
- Encourage the victim to continue talking while knowing that the victim is being heard.

## The Victim's Narrative

The victim's narrative is the most vital part of the investigation.

Establish that you know of the existence of trafficking indicators, and that you are there to help individuals who may be in trouble. Then ask the victim to tell you what happened to her in her words and at her own pace. You can facilitate the interview while allowing the victim to tell the story (the victim's way) by:

1. Using open-ended prompts.
2. Allowing the victim to control the pace.
3. Avoiding leading questions.

## The Victim's Narrative

### Interruptions: Fatal Flaws

In a recent study, it was found that the average police interview had **3 open-ended questions and 26 closed-ended questions** with an average of only **1-second pauses** between each question. Most detectives **interrupted responses to open-ended questions after 7.5 seconds with an average of 4 interruptions per response**. Not one of the interviews studied had a victim that was allowed to complete an uninterrupted response.

## **After the Initial Narrative**

Upon completion of the initial narrative, go back and clarify specific points and gather additional details about the victim's experience using open-ended follow-up questions.

## **Information You Should Obtain During the Course of the Interview**

Essential elements in collecting information from the interview:

- Description of the victim's behavior and relationship with the suspect
- Description of the suspect's behavior
- Description of the labor and circumstances of the labor
- Documentation of the specific acts committed and whether any acts were repeated
- Description of the suspect's sexual behavior
- Establishing force, or threat of force, or climate of fear

## Conclusion of the Interview

- Ask the victim if he or she has any additional information that he or she wants to report, let the victim know there will be future opportunities.
- Reassure and thank the victim.
- Explain future procedures.

## Exercise

Officer training – in a class have officers pair off, one should play the part of a trafficking victim while the other plays the role of the investigating officer. Have the officer practice using the following techniques while the “victim” relates a fictitious story:

- **Open-ended questions**
- **Asking graphic questions in a sensitive, comfortable manner**
- **Empathetic statements**
- **Eye contact**
- **Refraining from interrupting**
- **Using follow-up questions to clarify points**

***DEFENSE – it was voluntary & didn't know they were underage***

Wanted to come to U.S. at any cost

Pictures of cook-outs; trips to lake

Left every night with driver and came back

Girls came with their boyfriend and willing to work as prostitutes.

**18 U.S.C. 1591 (a)**

- In our cases involving minors, the government had to establish beyond a reasonable doubt the following elements for each minor victim:
  - 1) Knowingly recruited, enticed, harbored, transported, provided, or obtained a person; OR knowingly benefitted, financially or by receiving something of value, from participating in a venture that did so;
  - 2) Knowing that the person was under 18 (or where the defendant had a *reasonable opportunity to observe* the minor, knowledge of age need not be proven; and
  - 3) Acts were in or affecting interstate commerce

## **Critical Challenge : Earning Victim's trust (adults and minors)**

- Fear of harm to self or family
- Shame, fear of exposure
- Loyalty to trafficker
- Distrust of law enforcement
- Denial of situation
- Cultural norms
- Linguistic hurdles
- Difficulty articulating complex emotions
- Psychological trauma

## **Roles and Partnerships**

### **Outreach, Victim Identification, Victim Assistance**

- Department of Health and Human Services – food and shelter
- Federal, State, and Local Government Agencies
- NGOs - can assist in finding housing, employment and ESL classes

# **Roles and Partnerships**

## **Victim Treatment**

- Necessary to Psychological Recovery
- Trauma-Sensitive Treatment

## **Expert Witnesses; Corroboration Witnesses**

- Symptoms Consistent with Victim Testimony
- Medical Neglect
- Physical Evidence of Juvenile Age

## **T Nonimmigrant Classification - Eligibility**

1. An alien who is or has been a victim of a severe form of trafficking in persons
2. Physically present in U.S., or U.S. Territory
3. Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking (or is under 15 years old)

## **Victim-Centered Assistance**

- Help stabilize the victim, which may contribute to a successful prosecution
- Provide or coordinate specialized (mental health, legal, shelter) or comprehensive services (including case management)
- Support application for immigration relief (CP, Certification, T/U Visas) and access to work permits
- Support victims' families (including T-visa derivatives and children)
- Safety and security planning
- Job training, education, life skills

## GLOBAL PROGRAMME AGAINST TRAFFICKING IN PERSONS

*Martin Fowke\**



# UNODC

United Nations Office on Drugs and Crime

## Global Programme

**Against Trafficking in Persons**

**International Senior Seminar,  
UNAFEI, Tokyo, January 2012**

\* Officer-in-Charge of the Anti-Human Trafficking & Migrant Smuggling Unit, Division of Treaty Affairs, United Nations Office on Drugs and Crime (UNODC).

## **Anti-Human Trafficking and Migrant Smuggling Unit**

- UNODC supports Member States to implement:

### **The Trafficking in Persons Protocol**

- to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

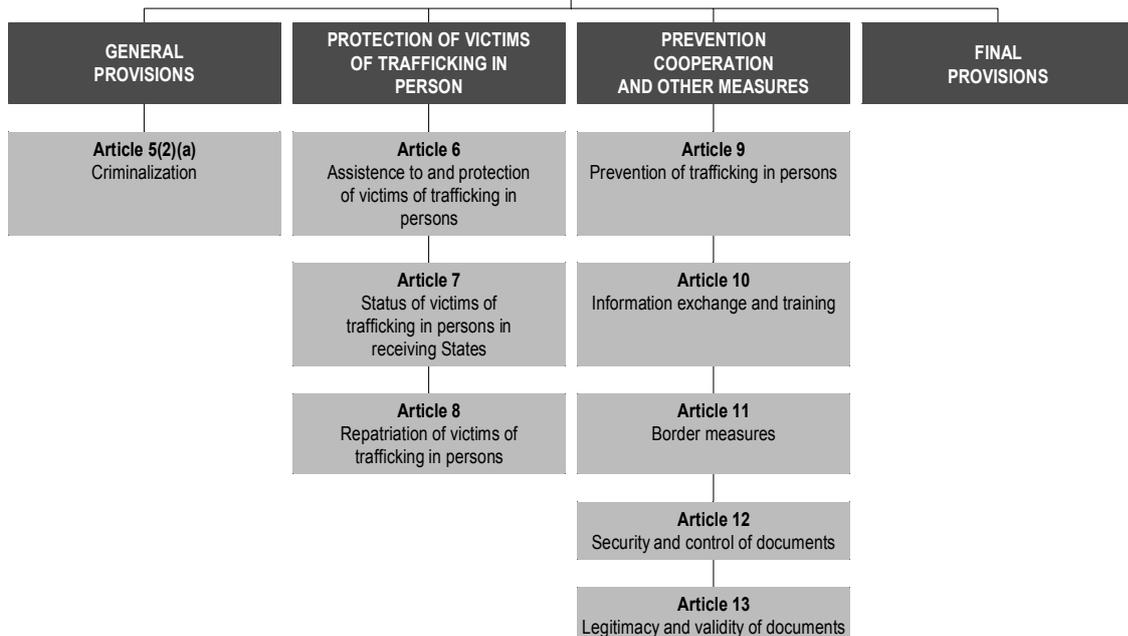
## **An International framework**

- **United Nations Convention against Transnational Organized Crime**
  - **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**
  - Protocol against the Smuggling of Migrants by Land, Sea and Air
  - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition
- \* General Assembly Resolutions 55/25, 15 November 2000 and 55/255, 31 May 2001

## Purposes of the Trafficking Protocol

- to prevent and combat trafficking, *paying particular attention to women and children* (=person under 18 years of age)
- to protect and assist victims, with full respect to human rights
- to promote cooperation among State Parties

### STRUCTURE OF THE PROTOCOL



## **Key obligations for State Parties\***

- Criminalization  
(TOCC Art. 5; TIPP Art. 5; SOMP Art. 6)
- Victim protection  
(TOCC Art. 25; TIPP Art. 6; SOMP Art. 16)
- Investigation
- Prosecution
- Adjudication

\* Notwithstanding the fact that these countries are countries of origin, transit or destination

## **Global Programme against Trafficking in Persons**

- Legislative assistance
- Planning and policy development
- Capacity building
- International cooperation
- Data collection and research
- Victim protection and support
- Prevention and awareness raising

## **Global Programme against Trafficking in Persons**

Focus on strengthening countries' criminal justice responses within a response to human trafficking.

- ratification and domestic implementation of Protocol;
- development of practical tools for: criminal justice actors, including law enforcement, victim assistance providers, prosecutors, judges, policy makers and administrators;
- implementation: providing technical assistance in more than 80 countries.

## **Tools and Publications**

- International Framework for Action to Implement the Trafficking in Persons Protocol
- Model Law against Trafficking in Persons
- First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking.
- A Handbook for Parliamentarians
- Toolkit to Combat Trafficking in Persons
- Anti-Human Trafficking Manual for Criminal Justice Practitioners

An overview of all tools  
can be found online at:

<http://www.unodc.org/unodc/en/human-trafficking/publications.html>

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## Module 1

### Definitions: Trafficking in Persons and Smuggling of Migrants

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### Module 1

#### Definitions of trafficking in persons and smuggling of migrants

By the end of this Module, users should be able to:

- Understand constituent elements of trafficking in persons and smuggling of migrants as defined by the relevant UN protocols
- Contrast the elements of the two phenomena
- Explain the meaning of the elements “act, “means” and purpose” in trafficking in persons cases
- Understand the issue of consent in a trafficking in persons case and how consent is vitiated
- List some of the underlying offences to trafficking in persons;
- Recall factors on deciding the jurisdiction for prosecution of trafficking in persons cases

## **Definition of trafficking (Art. 3.a)**

### **Trafficking in persons shall mean:**

- **[action:]** the recruitment, transportation, transfer, harbouring, or receipt of persons
- **[means:]** by means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- **[purpose:]** for the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.

## **Definition of trafficking/2 (Art. 3.b/c)**

- Consent of the victim is irrelevant where illicit means are established
- **Consent of a child is irrelevant.**
- **Trafficking in children (any person under 18) does not have to involve any of the specified means**
  - (i.e. threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim)

## What is “smuggling of migrants”?

“...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

Article 3(a), United Nations *Protocol against the Smuggling of Migrants by Land, Sea and Air*

Three Elements:

- illegal entry of another person;
- the other person is neither a national nor permanent resident of the country entered;
- agreement to receive a financial or other material benefit.

## Differences between trafficking and smuggling

- **Consent**
  - The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers
- **Exploitation**
  - Smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.
- **Transnationality**
  - Smuggling is always transnational, whereas trafficking need not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.

## Trafficking vs. Smuggling

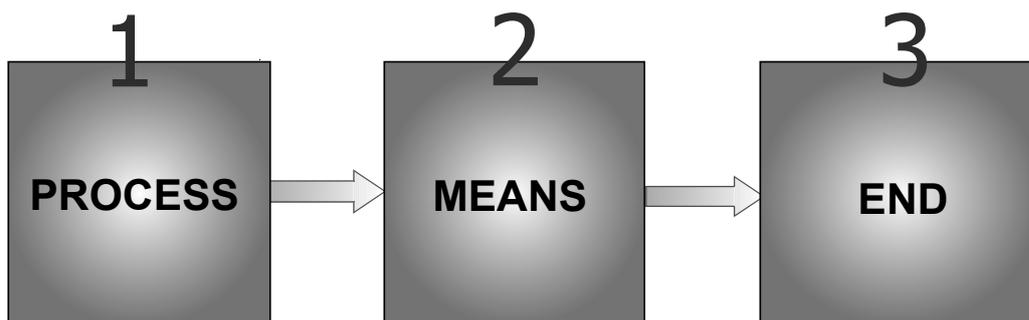
### Trafficking

- Crime or violation against a person
- Contains element of coercion (cannot consent to enslavement)
- Can include smuggling, plus subsequent exploitation and/or forced labor
- Trafficked persons seen as victims by the law

### Smuggling

- Unauthorized border crossing – crime or violation against a country or state
- No coercion
- Criminal income derived solely from smuggling
- Persons smuggled are not generally victims of crime

## Three Elements of Trafficking



- How did the person get to where they are?
- How did the person find out about the job?

- What happened when they arrived in the destination country?
- What was it like when they started to work?

- Was the person paid? How much? How often?
- Did the person try to leave his/her job? What happened?
- Is the person afraid of his/her employer? Why?

## **Case Study 1: Human Trafficking or Smuggling?**

- Samantha read an advertisement in the local paper about work as a domestic helper in another country.
- She did not pay a fee at time of application.
- At the airport, she was given a passport and instructions.
- A man and woman met her at the destination and took her passport. They told her they would return it when she has paid back the recruitment costs.

## **Cont.**

- She is driven to the home where she will work.
- The man and woman and the new employer exchange money.
- The man and woman told Samantha she will be paid, but has to pay for accommodation, food and recruitment fees.
- Her debt increases as time goes on because she is paid little and the cost of food etc. is high.
- She is physically abused for every mistake.

**Cont.**

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- Samantha works 7 days a week for 14 hours a day.

**Case 1**

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- What further questions do you have?
- Why is this trafficking?
- Or why is it not trafficking?

## **Case 2**

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- Peter runs a factory that weaves silk for dresses
- Peter needs workers who can do the fine work for very low wage
- Peter asks Robert to find young boys to do the work.
- Robert goes to the country and finds Dino, a young boy.
- Robert tells Dino's mother that Dino will be paid, have food and a bed.
- Robert pays Dino's mother a small sum for the boy.

## **Cont.**

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- Dino works at the factory with some older boys.
- He is given a weak stew most of the time.
- He sleeps on straw under the machines.
- He is paid a coin every week.

## **Case 2: Is it human trafficking ?**

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- What are the elements?
- What questions do you have?

## **Case 3**

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- Manuel sees an advertisement for travel to another country for work in agriculture, factories, and the food industry.
- Manuel contacts the agency and learns there is a large fee. He learns that they will travel by truck to airplane and that immigration documents will be provided.
- Manuel saved money from working and borrowed the rest from his family and paid the agency.

**Cont.**

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- Manuel and ten others traveled by truck to a seaport.
- They waited there without food for two days and then were smuggled aboard a ship.
- The group traveled by truck and ships for 12 months.
- One day the truck doors were opened and the group was told to get out and that they were on their own.
- No documents were provided to them.

**Case 3: Is it human trafficking or smuggling?**

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## **Case 4**

- Joy is from South-East Asia and recently lost her factory job.
- Joy is divorced and has two children to support.
- Joy hears of a job in a another Asian country in a hotel as a cleaning woman.
- She drives across the border with her friend's brother and is put into a van with other women and men.
- The group travels for six days in vans, boats and vans crossing several borders.

## **Cont.**

- The women are sometimes locked in apartments and are always under guard.
- The women are now afraid.
- The women are forced to strip in front of a group of men.
- Joy is sold to a bar owner who tells her she must work as a prostitute to pay off travel debts.
- The owner threatens her by telling her she will be arrested, beaten or sold to more dangerous men.

**Cont.**

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- Joy works every day for 12 hours and eats only once.
- She is fined for every infraction and has to pay for her own clothing and food.
  
- Is this human trafficking?
  
- Why or why not?

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## Module 2

### Indicators of Trafficking in Persons and Smuggling of Migrants

## **Why is Identification so Difficult?**

- Fear
- Isolation
- Hidden crime
- Blending in
- Distrust

## **Identifying Survivors**

- Under control of traffickers/pimps/gangs
- Trained to tell lies and false stories
- Distrust of law enforcement
- Reluctant to engage with social service providers
- Change of location frequently
- Difficult to tell age
- False I.D.s

## **Direct Reporting**

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- To law enforcement
- To NGOs
- To others
- To “good samaritans”
- To Clinics, hospitals

## **Routine police activity**

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- Traffic stops/accidents
- Border crossings
- Crime investigations
- Investigation of sites of potential exploitation
- Community policing
- Advertisements
- Embassies/consulates
- Missing children cases

## **Who Else Might Discover a Trafficked Person?**

- Community organizations
- Good Samaritans
- Consulates or embassies
- Other trafficked persons
- Witnesses
- Faith based organizations
- Clinics/hospitals
- Private attorneys
- Judges
- Customers/clients
- Mental health service providers
- Domestic violence advocates

## **Possible Indicators**

- Workers living on/near site in employer controlled housing
- Restricted and controlled communication and transportation
- No documents (held by someone else)
- Overly fearful
- Assumed identity/false documents
- Physically afraid, but attached to trafficker

### **Indicators cont.**

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- Inconsistencies in story
- Lack of knowledge of a given community or location
- Excess cash
- Hotel room keys
- Injuries/signs of physical abuse or torture
- Chronic runaway/homeless youth

### **Indicators (cont.)**

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- Presence of an overly controlling and abusive "boyfriend/husband"
- Rehearsed story
- Layers of abuse
- Age
- Gender

## **Indicators of Child Trafficking**

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- No access to parents or guardians
- Behavior not typical for age
- No friends
- No access to education
- No time for play
- Skimpy clothing
- Scared, unhappy
- Know sex related words in local language

## **Indicators**

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- Are not proof!
- Are the starting point for investigations
  - proactive investigations
  - reactive investigations

## **Proactive activity**

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- Targeted raids
- Going in with other agencies such as labor or health and safety inspectors
- Identification of routes and planning operations at transport facilities
- Surveillance and other proactive investigation techniques
- Planned border operations

## **Sexual exploitation**

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People who have been trafficked for the purpose of sexual exploitation may:

- Be of any age, although the age may vary according to the location and the market
- Move from one brothel to the next or work in various locations
- Be escorted whenever they go to and return from work and other outside activities
- Have tattoos or other marks indicating "ownership" by their exploiters
- Work long hours or have few if any days off
- Sleep where they work
- Live or travel in a group, sometimes with other women who do not speak the same language
- Have very few items of clothing
- Have clothes that are mostly the kind typically worn for doing sex work
- Only know how to say sex-related words in the local language or in the language of the client group
- Have no cash of their own
- Be unable to show an identity document

## **Forced Labour**

People who have been trafficked for labour exploitation may:

- Live in groups in the same place where they work and leave those premises infrequently, if at all
- Live in degraded, unsuitable places, such as in agricultural or industrial buildings
- Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing
- Be given only leftovers to eat
- Have no access to their earnings
- Have no labour contract
- Work excessively long hours
- Depend on their employer for a number of services, including work, transportation and accommodation
- Have no choice of accommodation
- Never leave the work premises without their employer
- Be subject to security measures designed to keep them on the work premises
- Be subjected to insults, abuse, threats or violence
- Lack basic training and professional licences

## **Domestic Servitude**

People who have been trafficked for the purpose of domestic servitude may:

- Live with a family
- Not eat with the rest of the family
- Have no private space
- Sleep in a shared or inappropriate space
- Be reported missing by their employer even though they are still living in their employer's house
- Never or rarely leave the house for social reasons
- Never leave the house without their employer
- Be given only leftovers to eat
- Be subjected to insults, abuse, threats or violence.

## Begging and Petty Crime

People who have been trafficked for the purpose of begging or committing petty crimes may:

- Be children, elderly persons or disabled migrants who tend to beg in public places and on public transport
- Be children carrying and/or selling illicit drugs
- Have physical impairments that appear to be the result of mutilation
- Be children of the same nationality or ethnicity who move in large groups with only a few adults
- Be unaccompanied minors who have been "found" by an adult of the same nationality or ethnicity
- Move in groups while travelling on public transport: for example, they may walk up and down the length of trains
- Participate in the activities of organized criminal gangs
- Be part of large groups of children who have the same adult guardian
- Be punished if they do not collect or steal enough
- Live with members of their gang
- Travel with members of their gang to the country of destination
- Live, as gang members, with adults who are not their parents
- Move daily in large groups and over considerable distances

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## Module 6

### International Cooperation



- ## Legal Basis
- Extradition/MLA treaties:
    - Bilateral
    - Multilateral (regional)
  - Crime/Terrorism conventions
    - UNTOC
    - UNCAC
    - 1988 Drug Convention
    - Terrorism conventions
- Complementary source: domestic law of Requested State
- Basis of reciprocity
  - Allowed under domestic legislation

## UNTOC

- Very comprehensive regime for international cooperation:
  - Extradition (Article 16)
  - Mutual legal assistance (Article 18)
  - Transfer of sentenced persons (Article 17)
  - International cooperation for purposes of confiscation (Article 13)
  - Smuggling of migrants by sea (Migrants Protocol, Articles 7-9)
- All of these provisions apply to the Protocols once ratified

## Extradition

- The surrender by one State of a person present in its territory to another State that seeks this person either:
  - for the purpose of prosecution or
  - for the purpose of enforcing a sentence
- → Ultimately, it's an act of the executive, not of the judicial authority



## **Extraditable Offences**

- Extradition Treaties:
  - A list added to the Treaty specifies which offences are covered; or
  - Conduct punishable under the laws of requesting and requested country by imprisonment for a maximum period of at least x years or by a more severe penalty
- International crime conventions such as UNTOC:
  - Offences under treaties are extraditable if accept as treaty base
  - Deemed as extraditable in existing treaties/included in future treaties
- Dual criminality: often required in domestic extradition laws
- Conduct-based test: Facts must constitute an offence in both States, no matter how those offences are qualified
- Importance of ratifying international instruments: offences harmonized among countries

## **Extraditable offences under UNTOC**

### UNTOC Offences

**Participation in an Organized Criminal Group**

**Laundering of Proceeds of Crime**

**Corruption**

**Obstruction of Justice**

**Other “serious crimes” punishable by a maximum deprivation of liberty of at least four years**

- If the offence involves an organized criminal group and
- The person is located in the territory of the requested State party

### TiP Protocol Offences

**Trafficking in persons**

### Migrant Protocol Offences

**Smuggling of migrants  
Fraudulent identity docs  
Enabling illegal stay**

### Firearms Protocol Offences

**Illicit trafficking  
Illicit manufacture  
Falsifying markings**

## **Standard provisions re . extraditable offences**

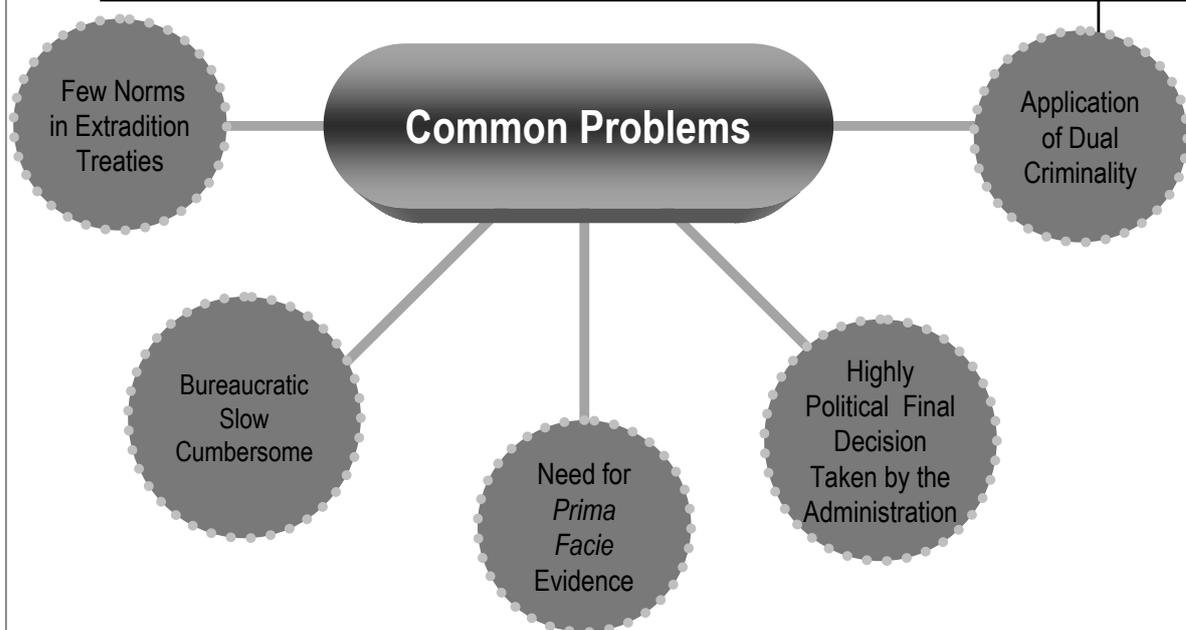
Offences deemed extraditable in existing treaties and to be included in future treaties

Convention basis for extradition at discretion of Requested State if treaty required

If not applying Convention as basis, seek to conclude treaties where appropriate

If no treaty required, recognize offences as extraditable as between states parties

## **Extradition Process: Common Problems**



## **Standard provisions**

Urges states to expedite and simplify

If domestic law permits offences, not political offence

## **Domestic law/treaty applies but**

Guarantee of fair process/protections

Provisional arrest recognized

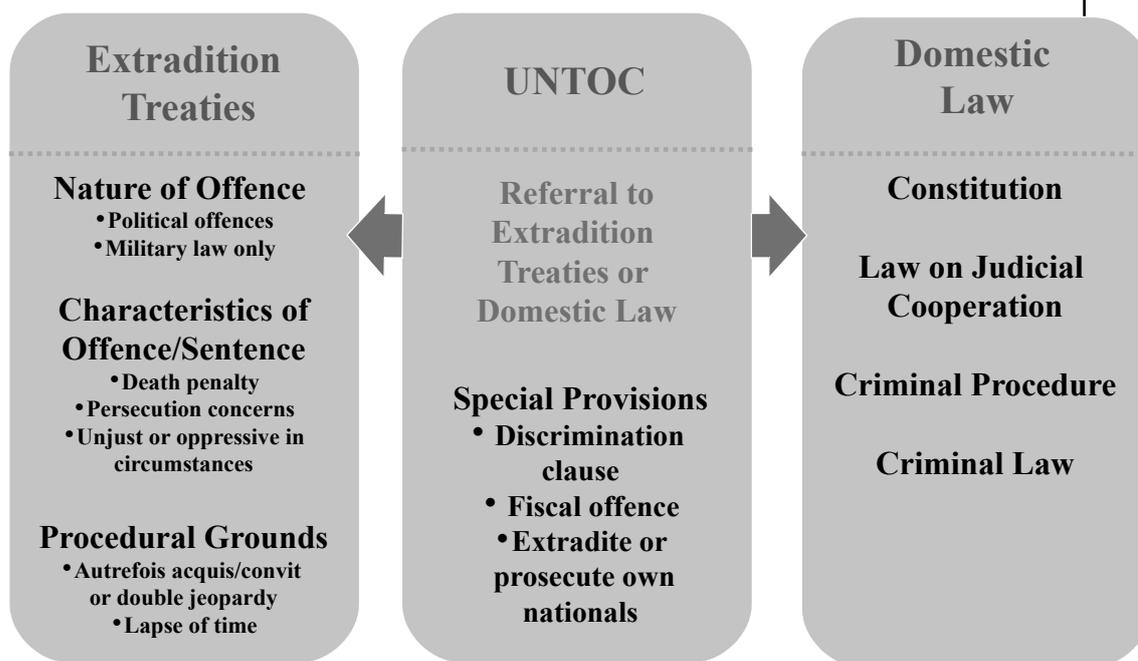
## **Extradition request – Content**

- Follow the requirements of the requested State's legislation
- Main elements:
  - Contact details of the authority submitting the request
  - Legal basis
  - Description, identity, location and nationality of the person sought
  - Statement of the facts
  - Legal qualification of the acts
  - Summary of incriminating evidence
  - Arrest warrant or judgment
  - Guarantee of respect to the rule of specialty
  - Signature of issuing authority, date, official stamp
  - Annexes: Arrest warrant or judgement; Legal texts; Essential evidence
- Formal requirements: language and mode of transmission

## Provisional arrest

- If urgent, the judicial authority of the requested State may issue an order for provisional detention of a person sought pending receipt of the formal extradition request
  - Strict time limits for extradition request
- Transmission of request for provisional detention ideally through:
  - Interpol
  - Directly to the competent authority

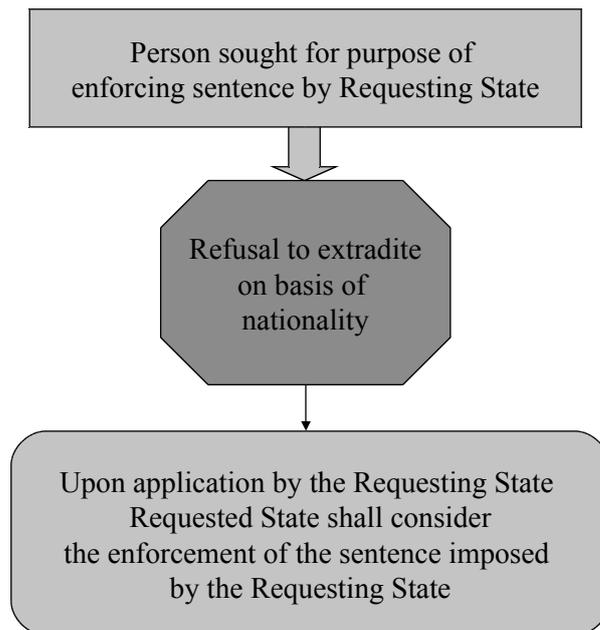
## Grounds for Refusal



## Extradite or prosecute



## Extradite or prosecute



## **Other grounds for refusal**

- Discrimination clause:
  - Can refuse if substantial grounds for believing request made for purpose of prosecuting on basis of sex/race/religion/nationality/ethnic origin/political opinion or would be prejudiced
- Fiscal matters:
  - Cannot refuse extradition on this ground
- Political offence exception:
  - Terrorism treaties require that extradition not be refused for these crimes
- Consultation: State must consult before refusing

## **Extradition Best Practice – Implementation**

- Modern flexible domestic law which provides for inter alia:
- deeming/recognition of offences
- use of Convention as a basis for extradition
- simplified process/evidence for requests
- full panoply of procedures, including provisional arrest
- limited grounds of refusal

## **Mutual Legal Assistance**

- Mechanisms by which States receive and provide assistance to gather evidence for investigations and criminal prosecutions
- → Vital tool within the criminal justice system: through request, one State authorizes another State to take measures, often coercive



## **UNTOC – Legal Basis**

- Legal bases for MLA are the same as those already identified
- UNTOC - Article 18:
  - Mini-treaty!
  - If the parties are not bound by a treaty, then UNTOC procedures apply
  - If there is a treaty, they can still agree to apply UNTOC procedures

## **UNTOC – MLA**

- Parties shall afford one another the widest measure of mutual legal assistance
- Applies to all offences in Convention and Protocols, if ratified:
  - Where there are reasonable grounds to suspect offence is transnational in nature and involves an organized criminal group

## **Types of Mutual Legal Assistance**

**Service of  
judicial  
documents**

**Execution  
of searches,  
seizures, freezing**

**Examining  
objects & sites**

**Provide  
information &  
evidentiary items**

**Provide  
documents  
and records**

**Identify & trace  
proceeds & property  
for evidence**

**Taking evidence  
or statements from  
persons**

**Facilitating  
voluntary  
appearances**

**Temporary  
transfer of persons  
in custody**

**+ ANY OTHER ASSISTANCE UNLESS PROHIBITED**

## Central Authority

*Designate a central authority competent to receive and execute requests or transmit them for execution*



*Role: ensure speedy execution/transmission of requests*

### Best Practices for Central Authorities:

- Up-to-date contact info disseminated
- Around-the-clock availability
- Same authority under different treaties
- Quality control, follow/up
- Guidelines for domestic/international use

## Making a Request

### Form of requests

- Written record
- Language acceptable to requested State
- Urgent cases: orally with later confirmation
- *Best practice: use of modern technology*

### Content of requests

- Checklist in Art. 18(15)
- Checklist for confiscation requests: Art. 13(3)
- Additional info may be requested by requested Party
- *Best practice: prior consultation before making a request*

***UNODC software: MLA Request Writer Tool***

## Executing a Request

- **Speedy execution of requests**
- ✓ **Respect deadlines given by State**
- ✓ **Consult on progress**

- **Limitation on use of information or evidence**
- ✓ *Best practice: reduce use limitations*
- **Confidentiality of requests**

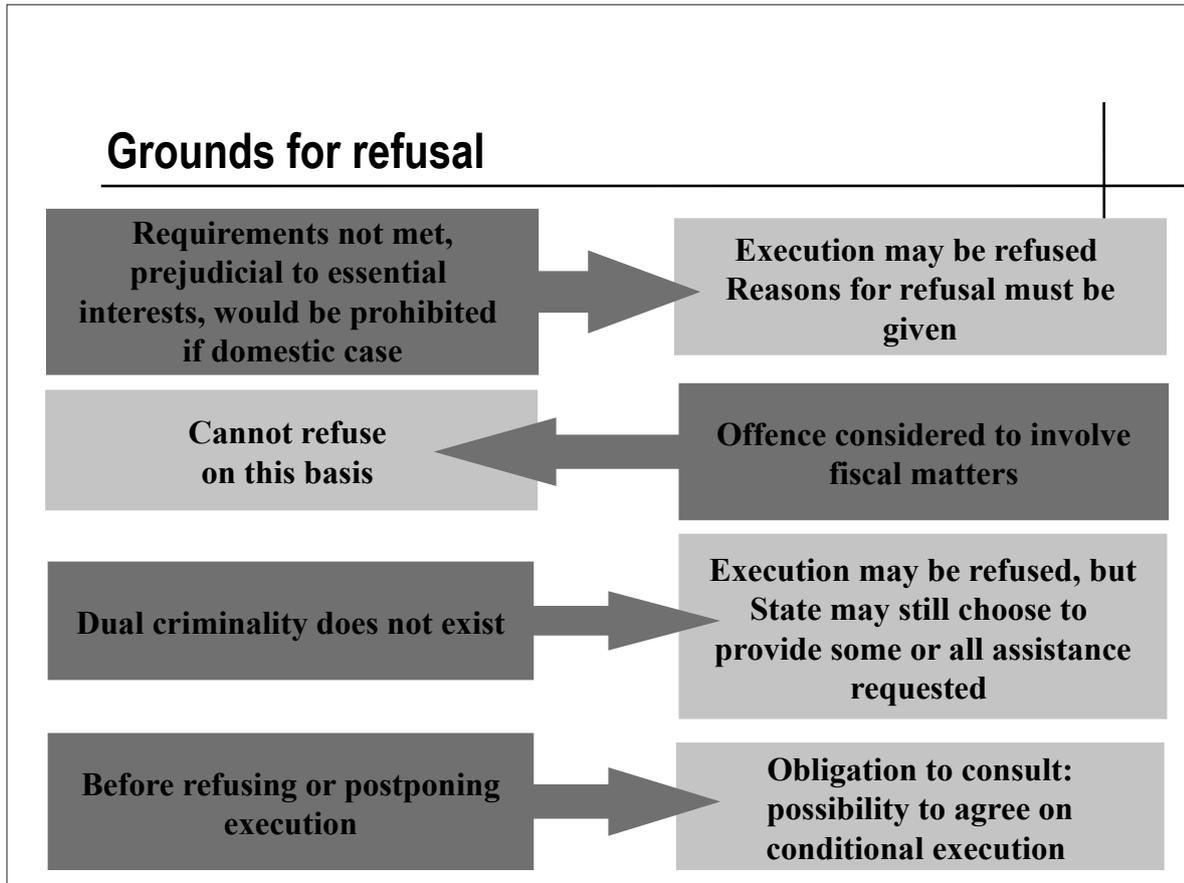
- **Costs of execution on requested State**
- ✓ **Consultation on substantial extraordinary costs**
- ✓ *Best practice: Assistance from requesting Party in case of lack of resources*

## Supporting the other State in prosecuting

- Request to be executed in accordance with domestic law of the requested State

BUT

- Need to respect specific procedures described in the request unless prohibited or impossible, so as not to pose obstacles to the prosecution



- ### MLA Best Practice – Implementation
- Modern flexible mutual assistance legislation permitting:
  - use of Convention as a basis for mutual legal assistance in the absence of a treaty
  - broad range of assistance measures
  - rendering of assistance in the absence of dual criminality
  - limited grounds of refusal

## **International cooperation for purposes of confiscation**

- Art. 13 UNTOC: Sets out regime for international cooperation regarding confiscation
  - One State enforces a confiscation order from another State or
  - One State obtains a confiscation order based on request by other State
  
  - Can also seek assistance of other State in tracing, freezing or seizing assets in view of their eventual confiscation

Can seize and confiscate:

- Proceeds of crime derived from offences covered by Convention
- Property, equipment or instruments used to commit offences covered by Convention

## **Smuggling of migrants by sea**

- States may call for assistance where vessels flying their flag or with no nationality are suspected of smuggling migrants (Art. 8.1)
  - If no nationality, can board and search
- States may request permission to board and search vessels of other States, where vessels suspected of smuggling (Art. 8.2)
  - Must inform flag State results of search and can take appropriate measures with authorization of flag State if evidence of smuggling found
  - States must designate national
    - authority for dealing with requests

## **Communicate with your counterparts**

- International cooperation is greatly facilitated by communication!
- Informal, direct and spontaneous contacts (e.g. tele/video-conferences)
- Simplify and speed up procedures
- UNODC can facilitate
- inter-State cooperation

## **UNODC Assistance**

- UNODC has developed a variety of tools to facilitate international cooperation:
  - Online directory of competent national authorities
  - Case Law Database
  - MLA Request Writer Tool
  - Legal database
- Training on international cooperation
- Facilitating regional networks
- Expert Working Group on International Cooperation a permanent part of Conference of the Parties



## Contact

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- For more information about UNODC's Anti-Human Trafficking and Migrant Smuggling Unit, contact:
  
- The Anti-Human Trafficking and Migrant Smuggling Unit
  - UNODC  
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  - Tel. (+43-1) 26060-5687  
Fax. (+43-1) 26060-5983
  
  - <http://www.unodc.org/unodc/en/human-trafficking/>
  - Email: [ahtmsu@unodc.org](mailto:ahtmsu@unodc.org)

# HUMAN TRAFFICKING: A CHALLENGE TO THAILAND AND THE WORLD COMMUNITY

Wanchai Roujanavong\*



## I. INTRODUCTION

Human trafficking, or trafficking in persons (TIP), is a heinous and widespread crime occurring around the world in nearly every society. It is considered to be a form of modern-day slavery that causes suffering to victims who are treated as badly as slaves were in the past. The majority of human trafficking crimes are transnational and most of them involve, are operated or are controlled by organized criminal groups.<sup>1</sup> This crime generates such a huge amount of money for the traffickers that it is ranked second after drug-related crimes in terms of profitability. The complexity, international characteristics, and human aspects involved in human trafficking, plus the lack of efficient laws, the lack of understanding of this crime by law enforcement officers, the powerful influence of organized criminals and the weak international cooperation among relevant countries make human trafficking a very low risk but very high profit crime.

Trafficking in persons challenges to the world community to find efficient and practical solutions to fight this serious crime against humanity. This paper will endeavour to highlight this crime, its *modus operandi* and solutions being used, and that should be used, to fight this crime. It must be resisted to prevent its victims from being forced, assaulted, exploited, tortured or even killed by the traffickers or exploiters. The paper will also demonstrate the need for modern legislation, strong political will and firm determination of law enforcement officers to fight this crime, the need to have sufficient measures and incentives to persuade the victims to cooperate with law enforcement officers, and the need to enhance international cooperation in order to make the suppression of TIP an attainable goal.

All the above-mentioned challenges are very serious challenges that countries around the world have encountered, so countries must work together to abolish this crime in the same manner used to suppress and abolish historical slavery. I strongly believe that if we were able to work together to eradicate the slave trade and slavery in the past, the global community can likewise work together again to put an end to human trafficking. It is our duty to take part in this battle to eliminate this crime against humanity for the betterment of the global community.

## II. DEFINITION AND TYPES OF TIP

### A. Definition of TIP

Human trafficking has been defined in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children as:

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or the position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

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<sup>1</sup> In accordance with the UN’s definition of organized criminal groups provided in the UN Convention against Transnational Organized Crime or the Palermo Convention

The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;

'Child' shall mean any person under eighteen years of age.<sup>2</sup>

This definition of human trafficking is a bit complicated, but it covers all the acts that constitute TIP and is viewed as a fairly complete definition to identify trafficking in persons in modern society. The importance of the definition is that 124 countries are States Parties to this Protocol<sup>3</sup> and more countries are going to ratify the Protocol in the future. The Protocol requires States Parties to incorporate the definition prescribed in the Protocol into their own laws and to punish human trafficking in accordance with the definition of the Protocol. In other words, the definition in the Protocol has become the universal definition of human trafficking since countries around the world use the same or similar definition to combat human trafficking. Having the same meaning for the same crime leads to the establishment of offences of TIP with the same or similar elements, which benefits all parties dealing with the crime and makes international cooperation in the fields of information sharing, prevention, suppression, mutual legal assistance and extradition less complicated.

Many countries have enacted or amended their domestic laws based on the Protocol so that their laws not only cover the definition of TIP but also other obligations prescribed in the Protocol. Thailand has also enacted new legislation based on the Protocol. However, instead of incorporating the definition into the law, it used the definition to create offences of TIP, enabling Thailand to comply with all the compulsory obligations in the Protocol. The new law is called "the Prevention and Suppression of Human Trafficking Act of 2008" (the Anti-Human Trafficking Act). This new Act creates offences in accordance with the Protocol and the main focuses of the Act are on the protection of and the giving of assistance to victims while prescribing severe penalties for traffickers and those who take part in trafficking. The Act provides many measures to fight human trafficking in various forms.

## **B. Types of TIP in Thailand**

Trafficking in persons in Thailand can take various forms. There are three main types of trafficking in persons in Thailand, namely for exploitation through the prostitution of others or other forms of sexual exploitation, for forced labour or services and slavery or practices similar to slavery, and for exploitation through begging.

### 1. TIP for Sexual Exploitation

In Thailand, trafficking for sexual exploitation in the form of prostitution or in other forms is the most prevalent form of trafficking. This is a global phenomenon. According to the UNODC's "*Global Report on Trafficking in Persons*", the most common form of human trafficking (79%) is sexual exploitation. The victims of sexual exploitation are predominantly women and girls. The second most common form of human trafficking is forced labour (18%), although this may be a misrepresentation because forced labour is less frequently detected and reported than trafficking for sexual exploitation.<sup>4</sup>

Prostitution has been dubbed "the world's oldest profession," employing voluntary and trafficked sex workers. The differences between voluntary prostitution and exploitation of prostitution of others are that voluntary prostitutes consent to sex work for money, while trafficked victims are forced, coerced, or placed under undue influence to engage in prostitution. If one visits a place for prostitution, such as a brothel, one might assume that the prostitutes there are voluntary prostitutes. However, many methods are used to force and control unwilling prostitutes so that they cannot refuse providing sexual services to customers and appear voluntary.

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<sup>2</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Art. 3 (3 Aug. 2012), available at [http://www.no-trafficking.org/resources\\_laws.html](http://www.no-trafficking.org/resources_laws.html).

<sup>3</sup> Status as of 26/09/2008 as published in the UNODC website.

<sup>4</sup> UNODC's "Global Report on Trafficking in Persons" published in February 2009, pp 50.

One method of control commonly used by traffickers is claiming an excessive amount of debt from the victims, which is known as “debt bondage.” Many victims are deceived with the promise of a decent and well-paying job in a foreign country, such as in a factory or a restaurant, but end up being sold to brothel owners and forced to work as prostitutes under debt bondage. Such victims are often forced to pay back at least twice the amount of money that the brothel owners paid to buy them from the traffickers.

Some women go abroad having been informed correctly that they will work in the commercial-sex business. Such initially voluntary prostitutes believe that they will work with freedom of movement and receive a fair share of earnings from the sexual services they provide. Some pay for their own travel costs, but often traffickers pay for all the travel costs and expect the debt to be paid back by these women. What these women are not told is that they will be in heavy debt bondage, kept in detention with no freedom of movement, and receive no payment until all their debt is paid off through their services. These victims normally come from poor families in rural areas with low education and are easily deceived. These vulnerable women had originally looked forward to having a well-paid job and were willing to take a risk in an unknown land, but instead became victims of human trafficking.

Another method of control is by placing the victim in a helpless situation. Once they reached the destination in a foreign country, the victims tend to be very vulnerable and totally dependent on the traffickers or the exploiters. They are unfamiliar with the area, the language, the culture and the legal system in that country. Their passports and money are confiscated by the exploiters, and the victims are detained in brothels under the control of pimps or ‘mama-sans’ (brothel madams). Moreover, they are told that without a passport they are considered illegal immigrants and would be arrested by the police if they ask them for help. Under these conditions, the victims are trapped and discouraged from escaping.

A small proportion of victims of human trafficking are subject to other forms of sexual exploitation besides prostitution. For example, some girls are sold off to marry aging men for a period of time (six months to one year or more) for a considerable sum of money. These sexual exploiters pay money to the parents, or the traffickers, in the pretext of dowry. In actual fact, these girls are sent off to become sex slaves of those aging men.

Due to the complex situations described above, law enforcement officers have difficulty in distinguishing between voluntary prostitution and forced prostitution. Even though voluntary prostitution and human trafficking are illegal under the laws of most countries, the severity of punishment for each differs. Prostitution is considered to be an immoral offence and a public nuisance that has existed since ancient times. Voluntary prostitution is normally tolerated by law enforcement officers in most countries due to it being a petty offence and/or because of corruption. On the contrary, human trafficking is a very serious crime against humanity and carries severe penalties.

Identifying who is a voluntary prostitute and who is a victim of trafficking is not an easy task. Thus, law enforcement officers need intensive training to look for the traits of the use of force, deception, coercion, detention, undue influence or any other means that compel women to work as prostitutes. If any of such means have been used, then the women are victims of human trafficking and not voluntary prostitutes and the traffickers and their exploiters must be arrested and charged with the offences of trafficking in persons.

## 2. TIP in the Forms of Forced Labour and Slavery

The victims of trafficking in the category of forced labour or services and slavery or practices similar to slavery are often considered illegal economic migrants. There are more than two million illegal migrants in Thailand. Some illegal economic migrants become victims of human trafficking. Most of these victims are men and women living in poverty in rural areas and look forward to finding a well-paying job in an urban area or in a foreign country. The majority of them have low education and lack the skills required by well-paying jobs. When the traffickers offer them a well-paying job in other countries, providing false information about the income and/or conditions of work, the victims ignorantly accept and do whatever the traffickers tell them.

When they cross the border, some victims are sent to factories with high walls and locked gates and some are sent to farms. The factory or farm owners who paid the traffickers to smuggle them then deduct the amount paid from the salary earned by the workers. These factories or farms are often unhygienic

and require hard labour that very few local people would accept. During the initial stage, the workers are prohibited from leaving the workplace and, in some cases, are detained within the factories or farms until the amount paid to the traffickers is fully deducted. Even after this repayment, the workers receive less than the minimum wage set forth in the labour laws and regulations. These illegal immigrants end up underpaid and work long hours with deficient sanitation and inhumane living conditions.

Besides factories or farms, the massive fishing industry in Thailand employs many foreign migrants (both legal and illegal migrants) as part of ships' crews. It is an honest business like other industries and most of them are good employers who hire migrants with good pay and fair work conditions. However, a few greedy owners of fishing trawlers exploit illegal migrants. The victims of this form of trafficking comprise quite a small minority of the several hundred thousand foreign workers who worked willingly in the fishing industry. Additionally, they are considered to be illegal economic migrants, not victims, until the facts concerning the exploitation are revealed to the authorities.

Another form of forced labour is domestic servitude. Many domestic servants are brought by the traffickers from their countries of origin to the countries of destination and delivered to the masters for a price. The majority of domestic workers receive fair treatment and pay. However, some domestic workers become victims of trafficking when they are exploited by their masters using violence, sexual assault or sexual harassment, or other illegal means. In some cases, the workers are not allowed to go out of the house or are violently abused, while receiving low wages for their work.

In a case of trafficking for domestic servitude with violent exploitation, a 14-year-old girl was hired from a remote rural area in Thailand for domestic work in the house of the defendant. The victim was forced to do housework from 4.30 a.m. until midnight everyday without adequate rest, food or wages. The victim was not allowed to leave the house. On various occasions, the female exploiter used violence against the victim by beating her on the head, back and knees with a wooden stool, stabbing her chest with an iron rod, and other means of violence which inflicted serious wounds, bruises and some severe bleeding on the victim. This exploiter was arrested and prosecuted. The exploiter was convicted and sentenced to nine years and 42 months of imprisonment and was ordered to pay compensation of 200,000 Baht (approximately US \$6,330) to the victim. The verdict was affirmed by the Appeal Court.<sup>5</sup>

### 3. TIP in the Form of Forced Begging

The begging business in Thailand generates good income for beggars. According to many studies and surveys conducted by the Ministry of Social Development and Human Security (MSDHS), the media and various NGOs, it has been found that begging earns on average US \$1,000-2,000 per month, which is over two to four times the salary that the average recent Thai university graduate makes. Many beggars live a normal life off the street. When they go to work as beggars, they don ragged clothes, changing their appearances to appeal to the sympathetic nature of the passersby. Because of the good income of this business, traffickers take advantage of the opportunity to earn easy money by bringing infants, children, aged persons or lame persons from neighbouring countries to work as beggars. Forced begging, however, is one of the most visible forms of human trafficking.

### 4. TIP for the Removal of Organs

In accordance with the definition set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, removal of organs to collect human body parts is one form of human trafficking. It is an expansive underground business in line with the progress of medical knowledge. The transplantation of malfunctioning organs, such as livers and kidneys, is a normal medical procedure used to help human beings live longer. However, the buying and selling of such organs are illegal in most countries. The only legal means of getting a new organ to replace the old ineffective one is through donation, but the demand is overwhelmingly higher than the supply.

For the rich who do not want to be part of the growing waiting list and wait year after year with little hope of getting a suitable donated match, the only means to get the organs is to buy from an illegal market through clinics or hospitals willing to perform such illegal operations for money. Orders are sent to traffickers (in developing countries) to procure the organs with the necessary qualities. The traffickers will

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<sup>5</sup> *Public Prosecutor v. Wipaporn Songmeesap*, Court of Appeals (Sarm Uthorn) No. 12213/2552 (6 Nov. 2009).

kidnap young persons and take them to illegal clinics for removal of the ordered organs. The traffickers then immediately deliver the collected organs to the clinics or hospitals that will perform transplants for the rich. Such sale of human organs taken from a living person in such manner is classified as an offence of TIP in the law of all States Parties to the Trafficking Protocol. Nevertheless, the crime of organ theft from living persons is not widespread because the alternatives of stealing and illegally buying human organs from the deceased are already quite big businesses around the world.<sup>6</sup> However, there is no report of human trafficking for the removal of organs in Thailand.

### III. SITUATION OF TRAFFICKING IN THAILAND

Countries can be classified by the problems of TIP that they encounter, i.e. as a sending country or country of origin, as a receiving country or destination country, or as a transit country. Most countries have one status, few countries have two statuses and it is rare to find countries with all three statuses. Thailand is one of the few countries that is faced with all three statuses of TIP.

#### A. As a Country of Origin

Many Thai women are trafficked to work overseas. In many previous cases where Thai women were trafficked abroad, victims were told that they were in debt bondage of approximately US \$75,000 or more. Moreover, the victims had to pay interest and all the expenses incurred during their time working at the brothel, e.g. food, clothes, cosmetics, room, etc. All of these expenses would continuously be added to their debt and in turn they would have to sleep with even more customers to get out of the increasing debt bondage. The normal practice is that each prostitute has to render services to at least 500 customers in a limited period of time before she would receive her share from the services. If she cannot service 500 customers in the set period of time, the number of minimum customers would be raised. If the victim refuses to work as a prostitute, she would be detained without food until she yields to the demands of the procurer and 'mama-san'. In some cases the victim is assaulted or raped until she gives in.

The main destinations for Thai victims of trafficking are Japan, Germany, the United States, the United Kingdom, South Africa, Australia, etc. The most frequent destination of Thai victims is Japan. Each year, approximately 25,000 Thais overstay their tourist visas in Japan, and approximately 90% of them are females.<sup>7</sup> These victims tend to be undereducated, ignorant, and easily deceived. The following case example demonstrates how ignorant one actual victim was. One woman was lured with a promise of well-paid job in a restaurant in "America" (the US). When she checked in at the airport, she noticed that the destination was South Africa instead. Out of suspicion, she asked the trafficker why she was going to South Africa, not America. She was told that South Africa had a common border with America, so they had to fly to South Africa first and then take a bus to America. The victim believed what she was told and ended up in a brothel in Johannesburg, South Africa.<sup>8</sup>

Some of the victims are deceived to pay for their own travel and other expenses in advance. One victim, who was told that she could work in a restaurant but was instead sold to be a prostitute in South Africa, mortgaged her father's land for 40,000 Baht (approximately US\$ 1,300) to pay the trafficker. Upon arrival in South Africa, she was sold to a Thai 'mama-san' and was forced to pay back the money the 'mama-san' paid to the traffickers by sleeping with 500 customers at the rate of 200 Rands (approximately US\$25) per 45-minute session. After being rescued from the brothel, she told that she was strictly under the control of the 'mama-san' the entire time and had no liberty to speak to others except her customers. She used a mobile phone of one of her customers to call the Thai Embassy in Pretoria and was rescued by the Thai Embassy and the special taskforce of the South African police.<sup>9</sup>

<sup>6</sup> Ron Laytner, *Black Market Body Parts*, Edit International (3 Aug. 2012), at <http://www.editinternational.com/read.php?id=47ddb51262c7>.

<sup>7</sup> The information was from a confidential official report of a Japanese government agency of which the author was not allowed to reveal the name of the agency.

<sup>8</sup> The information was derived from a statement given to an investigator by a victim in a trafficking case.

<sup>9</sup> The information was derived from a live interview of a Thai girl and two other Thai victims by the author in Pretoria, South Africa in August 2011.

The *modus operandi* of traffickers of Thai women has grown more and more complicated because traffickers have to counter more stringent-prevention measures of the destination countries, particularly stricter immigration control. The facts of one particular case in which traffickers brought several Thai women to sell to brothels in Japan on several occasions provide good examples to help us understand the strategies used by traffickers.

In this case, the main trafficker opened a travel company with four to five staff. He and another female trafficker advertised that they could arrange for women to work in karaoke bars or restaurants in Japan and that the victims would receive high income. Many victims believed their advertisement and fell prey to their lies. His staff arranged shelter, passports and air tickets for the travelling of the victims. The main trafficker and another female trafficker took turns trafficking victims to Japan several times. The traffickers knew that if they took the victims directly to Japan, there was a high probability that the Japanese immigration would not allow them to enter Japan and would deport them. The possibility of entry came as a result of making all the victims look like genuine tourists by taking them round-trip from Malaysia to Singapore and then booking a flight from Malaysia to Europe via Japan. They toured several countries in Europe (France, Germany, Switzerland etc.) and then boarded the plane back to Malaysia via Japan. While they were waiting for transit in Japan, the traffickers told the victims not to board the connecting plane. The plane took off without them. Then they notified Japanese immigration officers that they had missed their connecting flight and applied for a temporary permit to leave the airport to stay in a hotel while awaiting the arrangement for the next flight. Once they received temporary visas, the trafficker sold the victims to several brothels in Japan for a considerable amount of money and only the trafficker returned to Thailand. The victims were detained in the brothels and told that they had to work as prostitutes to pay back a debt of 5,000,000 Yen before they could be freed, receive some share of the income, and return home. These two traffickers and their staff were prosecuted in the Bangkok Criminal Court. The main trafficker was convicted and sentenced to 39 years' imprisonment while the female trafficker was convicted and sentenced to 28 years' imprisonment. Their two staff were convicted and sentenced to six years' and 14 years' imprisonment, respectively.<sup>10</sup> The Office of the Attorney General of Thailand sent a request to the Japanese authorities for the extradition of one brothel owner in Japan of Taiwanese nationality for prosecution in Thailand.

## **B. As a Destination Country**

Although Thailand is a developing country, it is relatively more economically advanced than some of its neighbouring countries. Thus, many illegal immigrants from neighbouring countries have entered Thailand for better-paid jobs, or to escape from unrest within their own country. It is estimated that more than 2,000,000 illegal immigrants are in Thailand working in the construction sector, the fishing and seafood industries, factories, restaurants, and in houses as domestic workers. The majority of these migrant workers are Burmese and other ethnic minority groups from Myanmar.

The methodologies used in smuggling illegal immigrants across the border into Thailand, in some cases, are dangerous. In many instances, the victims are hidden in a vehicle in order to avoid inspection by law enforcement officers at the border or along the travel routes. Several victims have died of suffocation due to being packed in cramped spaces, placed under heavy loads of goods, or put in an air-tight container with a malfunctioning air conditioner.

A considerable number of female illegal immigrants have been brought to work in commercial-sex businesses, e.g. brothels, massage parlours, bars, and karaoke bars. Victims are told by the exploiters that if they ask for assistance from the police, they will be arrested, imprisoned and deported because they are illegal immigrants.

One interesting case of trafficking foreign women into Thailand for sexual exploitation is the case of surrogate mothers who produced children for customers. In 2011, a Taiwanese gang was detected and arrested for using Bangkok as the base for committing this type of crime. They established an illegal company, rented two houses, and advertised their service on a website. Their service was to produce a child for a couple or any persons who wanted a child but faced fertility difficulties. After the customers sent sperm

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<sup>10</sup> *Public Prosecutor v. Theerapong or Pa-Kack Khemthong et al.*, Criminal Court of First Instance (Sarn Aya) No. 1316/2552 (2009).

or sperm and eggs to this gang, the medical process of producing a baby began. To locate surrogate mothers, the gang cooperated with traffickers in Vietnam to lure young women to Bangkok with a promise of decent and well-paying jobs. Once the women had arrived in Bangkok, their travel documents were confiscated, and they were told that there were no other jobs except as surrogate mothers for hire. The victims had no choice but to accept the offer. The victims were taken to a private hospital to perform the medical process of artificial insemination or the implantation of fertilized eggs into the victims' uteruses. The victims carried the fetuses until birth.

Throughout the duration of the pregnancy, they were locked up in the two rented houses. In order to help them pass the pregnancy period comfortably, the exploiters provided the surrogate mothers with computers with internet connection, one of which was used by a victim to contact the Vietnamese Embassy in Bangkok for help. The result was that all of these women were rescued by the MSDHS and the Thai police, and many traffickers were arrested. Their networks in Vietnam were also arrested by the Vietnamese authorities through cooperation between Thai and Vietnamese cooperation. The case is now awaiting trial in the Criminal Court of Bangkok. The victims have been brought to testify in Court already<sup>11</sup> and have been repatriated back home with the children born from the surrogate process.<sup>12</sup>

Labour exploitation of illegal immigrants is another problem in Thailand. The Thai government, for the purpose of regulating these illegal immigrants, allows them to register as legal immigrants who can work legally for a fixed period of time. Up to November 2011, 1,248,064<sup>13</sup> from two millions illegal immigrants, or around 60%, came out to register. The problem is that the illegal immigrants do not want to pay the 2,000 Baht (approximately US \$70) fee for medical examination, health insurance and registration. Some employers also do not want to pay this cost, because the illegal immigrants might move to another factory as soon as they obtained the working permits.

The problem of forced labour stems from the fact that the owners of factories employing illegal immigrants have to pay smugglers to smuggle these illegal immigrants into Thailand.<sup>14</sup> The amount paid for smuggling is deducted from the salary of the immigrants. Some illegal immigrants, after working for a couple of days, change their minds about working and run away. To prevent illegal immigrants from escaping, some factory owners detain them in the factories until the smuggling debt is fully deducted. Upon complete payment, the owners then allow them stay outside the factory and come to work during working hours. Such detention against their will is considered to be exploitation constituting a trafficking offence. The Ministry of Labour has been working hard to solve the problem of forced labour in factories, and the result so far is satisfactory. Several factory owners were arrested, prosecuted and convicted with severe penalty.

On September 16, 2006, Thai police and immigration authorities raided a shrimp processing factory in Samut Sakhon based on the information provided by workers who had escaped from the factory. The factory was built with 16-foot high, barbed-wire-capped walls and had an internal closed-circuit television system. The authorities found 280 migrant workers inside the compound living in unhygienic conditions who had to work long hours. After interviewing all the workers, 63 women and 3 men were identified as victims of trafficking and were taken to a shelter for protection. The factory owner and other two exploiters were arrested and prosecuted in the Criminal Court of Bangkok. During the trial the three exploiters made an agreement with the victims and paid 3.6 million Baht (approximately US \$ 120,000) to the 66 victims for unpaid wages and compensation. All three offenders were convicted and sentenced to 20 years' imprisonment.<sup>15</sup> All the victims had received their wages and compensation and had been repatriated to Myanmar with the cooperation of the Thai and Myanmar government agencies in accordance with the MOU between Thailand and Myanmar on Human Trafficking.

<sup>11</sup> All the victims had been brought to give testimonies in the Criminal Court of Bangkok ahead of the trial in accordance with a special measure in the Anti-Trafficking Act and the Criminal Procedure Code. The testimonies of all the victims are kept in during deposition by the Court and will be retrieved to be used in the trial of the case later on.

<sup>12</sup> Bangkok Post (25 Feb. 2010), <http://202.172.225.42/news/local/223392/Taiwanese-arrested-over-surrogate-mums>.

<sup>13</sup> This statistic is from an officer of the Ministry of Labour. The statistic has not been published, because it is for internal use within the Ministry.

<sup>14</sup> The information was obtained from interviews with employers, migrant workers, and NGOs.

<sup>15</sup> *Public Prosecutor v. Ranya Praew et al.*, Criminal Court of First Instance (Sarn Aya) No. 4154/2553 (2010).

Besides factory work, labour exploitation of illegal immigrants in the fishing industry is much more complicated and is not easy to solve. Working in a fishing trawler is hard work, physically and mentally, often in dangerous or unpredictable conditions. The labourers have no fixed working hours and have to work in the damp and limited space of the ship. It takes a great deal of endurance to get used to the severe conditions of this kind of work. Due to the hardship faced, some fishing trawlers cannot find enough seamen to man the boats, therefore, some owners use every possible way to put the minimum number of workers onboard to operate their trawlers. Each boat needs approximately 15–30 crew members depending on the type and size of the boat. Illegal immigrants are persuaded, brought, bought, lured, deceived or even kidnapped onto some fishing boats, departing before they can change their minds. Victims constitute a small minority among voluntary crew members who have been working for a long time in the fishing industry.

In many of the cases being investigated, the victims have stated that they wanted to quit after the first try but were not allowed to leave the boats because the money paid to the traffickers (US \$250-330) had not been fully deducted from their salary. Some boats had not come to shore for a whole year. Supply ships provide these trawlers with food, fresh water, fuel and other necessities on the high seas, as well as take the caught fish back to shore. Thus, the workers had no chance to leave the boats. If they resisted and did not work, violence was a normal means of coercing them to work.<sup>16</sup>

In response, the Thai government has seriously tackled this problem and established a subcommittee to solve the problem of forced labour in fishing trawlers. The recommendations for solving the problems will be forwarded to the National Committee for Prevention and Suppression of Human Trafficking, chaired by the Prime Minister, for consideration and implementation.

Last but not least, many children and elderly persons from Cambodia are trafficked into Thailand to be beggars. Investigation in some cases revealed that the *modus operandi* of such traffickers, who mostly were illegal immigrants themselves, was to lure the victims away from their homes. Some infants were purchased from the parents and brought illegally across the border to be used in begging. Each trafficker controls several beggars placed in a rented house. In the mornings, the traffickers take them by car and place each of them on a particular spot. The traffickers return to collect them in the evenings, and each victim would have to beg to make approximately \$35 per day. All the money earned was confiscated by the traffickers. The trafficker normally takes half of the money earned from the beggars, plus the cost of the rented house, food and other expenses. In case of children, many of them are given only a small portion of the money earned. If the beggars try to escape or hide the money earned, or earn less than the minimum amount of money set by the trafficker, they would be punished by several means including assault. It was found that approximately 80% of beggars in Thailand are illegal immigrants.<sup>17</sup>

### **C. As a Transit Country**

Thailand is located in the centre of the South-East Asian region and is a travelling hub for that reason, providing international flights to nearly everywhere in the world. These are some reasons why Bangkok is a place traffickers use to traffic victims to other countries around the world. Chinese human traffickers and smugglers of illegal migrants use Thailand as a transit place for transporting trafficking victims and illegal migrants from the southern part of China. These Chinese migrants and/or victims are transported via Myanmar into the northern part of Thailand and then to Bangkok. It is easier to use this route than to go through the vast Chinese land in the north-eastern parts of China that have many travel restrictions from city to city. Bangkok has a considerably large China Town area, and a great number of Thai people are of Chinese ancestry. Once these migrants and/or victims reach China Town, it is easy for them to blend in with the local people. They are kept in shelters while waiting to get counterfeit passports to fly out of Bangkok to other destinations around the world, e.g. USA, Europe, UK, Canada, Australia, etc. The improvement of the security of passports by using new technology has effectively reduced the numbers of Chinese victims of human trafficking and smuggled illegal migrants from being transited through Bangkok.

## **IV. LEGAL MEASURES USED TO COMBAT TIP**

Thailand uses several legal tools to fight human trafficking, namely the Prevention and Suppression of

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<sup>16</sup> The information was from the statement of a victim in a human trafficking case.

<sup>17</sup> In a major roundup of beggars throughout Bangkok on the charge of being beggar that caused nuisance to the public several years ago, the authority found that around 80% of the arrested beggars were Cambodian illegal immigrants.

Trafficking in Persons Act, the Penal Code,<sup>18</sup> the Criminal Procedure Code, the Child Protection Act, the Prevention and Suppression of Prostitution Act, the Anti-Money Laundering Act, the Witness Protection Act, the Labour Protection Act, the Extradition Act and the International Cooperation in Criminal Matters Act. However, the major legal tool used to fight human trafficking in Thailand is the Prevention and Suppression of Trafficking in Persons Act of 2008 (the Anti-Human Trafficking Act).

The Anti-Human Trafficking Act was drafted based on several UN instruments, i.e. the UN Convention Against Transnational Organized Crime (the Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol), the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, and the ILO Convention on the Worst Forms of Child Labour. The Anti-Human Trafficking Act translates the UN definition of trafficking in persons provided in the Trafficking Protocol into various offences of human trafficking in Article 6. It also strictly follows the aims and purposes of the Trafficking Protocol in providing effective protection and assistance to victims of trafficking.

The Anti-Human Trafficking Act also provides that all offences under the Act shall be predicate offences under the Anti-Money Laundering Act. This means that the authorities can seize, freeze, and confiscate proceeds of crime derived from human trafficking from the possession of a trafficker when the trafficker is arrested and charged with a human trafficking offence. Confiscation of the proceeds of crime using anti-money laundering measures is recognized by law enforcement agencies worldwide to be one of the most effective tools to fight not only drug traffickers but also human traffickers because all traffickers work solely for money. Therefore, confiscation of all the assets derived from committing trafficking offences is as strong a deterrent as imprisonment. However, the Anti-Money Laundering Office (AMLO) has been paying more attention to confiscating properties of drug traffickers than human traffickers. Officers of AMLO should be trained to better understand human trafficking in order to understand the severity of this crime, to raise their awareness and to enhance the effectiveness of anti-money laundering measures against the human traffickers.

On the aspects of providing assistance and protection to the victims of trafficking, the Ministry of Social Development and Human Security (MSDHS) has the duty to provide assistance as appropriate to the victims. The assistance provided is food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the safe return to the country of origin or domicile, and assistance with the legal proceeding to claim compensation according to the regulations. In doing so, the officers have to take human dignity, sex, age, nationality, race, and culture of the victims into consideration.<sup>19</sup> The officials of the MSDHS have to provide protection for the trafficked persons under their care and they have to provide safety protection to the family members of the trafficked persons as well.<sup>20</sup> In cases where the victims are willing to give statements or testify as witnesses in the criminal proceeding, the victims are protected under the Witness Protection Act of 2003.

In giving assistance to victims of human trafficking in accordance with the Trafficking Protocol and Articles 33 to 39 of the Anti-Human Trafficking Act, the MSDHS is the main agency in implementing these Articles. In practice, when exploited persons are rescued and are identified as victims, they are placed under protection in a shelter home of the MSDHS. At the shelter home, social workers take care of the victims by providing them with food, clothes, and shelter. Medical examination and care by physicians are also provided for the victims throughout the time they are in the shelter home. Physical and mental treatments are available for the victims that need healing. Education and vocational training are also available for the victims in the shelter home to equip them with knowledge and vocational skills. The victims have access to information on the progress of their cases and legal aid for getting compensation from the traffickers or exploiters. There is no time limit for the assistance, and it is provided until the victims are safely repatriated back home. The Thai government allocates a budget to the MSDHS to provide all the assistance. As stated above, in giving assistance to the victims, their human dignity, sex, age, race, nationality, and cultures have

<sup>18</sup> Most of human trafficking offences are also offences under the Penal Code, for example, the Penal Code Articles 282 and 283 have similar contents with the offences of human trafficking for sexual exploitation.

<sup>19</sup> The Anti-Trafficking in Persons Act, B.E. 2551, Art. 33 (2008) (Thai) (The Anti-Trafficking in Persons Act was drafted and legislated as a new law to repeal and replace the Prevention and Suppression of Human Trafficking in Women and Children Act. Therefore the Anti-Trafficking in Persons Act did not amend the old Act but replaced it.)

<sup>20</sup> *Id.* at Art. 36.

to be taken into consideration. In case the victims are willing to cooperate with the authorities in criminal litigation and have to stay in Thailand for a long time, the MSDHS can grant them rights to legally stay and work in Thailand by informing the Immigration Bureau to grant the victims temporary visas and the Ministry of Labour to issue the victims work permits.

In order to successfully convict human traffickers, the cooperation of the victim in giving information, statements and testimonies throughout the criminal proceeding is very significant. The reason for such significance is that the crime was committed against the victims; therefore, the victim is the most important eyewitness in the case to tell the court of how s/he was trafficked and exploited. Without the testimony of the victim, it is very difficult to convince the court to convict the traffickers and sentence in accordance with the severity of the punishment prescribed by the Act. Thus, it is very crucial to encourage the victims to cooperate with the authorities in the criminal proceeding. However, criminal proceedings of investigation, prosecution, and trial normally take a long time, and the victims do not want to sit idly in the shelters throughout this long process. To provide incentives for the victims to cooperate with putting the traffickers in jail, the authorities can grant the cooperative victims permission to legally stay in Thailand temporarily and can allow them to work with a temporary work permit. Victims can then make use of their time waiting through the long legal process by working legally. Cooperative victims receive temporary visas from Immigration and temporary work permits from the Ministry of Labour.

One thing sexually exploited victims are afraid of is their identity and involvement in the sex industry being exposed to the public through the media or other means of transmitting of information. Since the victims were seriously exploited by the traffickers, they do not want to be re-victimized by the media. They do not want the people in their community to know what they have been through. The general public would forget the names and faces in the news after a few seconds. On the other hand, for the people who know the victims, the personal information of the victim would remain in their minds forever, and they will never forget the fact that the victims have been sexually exploited and have been in commercial-sex businesses. This exposure destroys the victims' dignity and honour in their communities because being in the commercial-sex businesses (even involuntarily) is shameful. After such exposure and stigmatization, it is extremely difficult for victims to reintegrate into their communities and to lead a normal life again.

Due to the immense effect on the lives of the victims, the right to privacy of the victims is extremely important, and officials have to take into consideration this right. Officials have the duty to protect the victims' privacy to the best of their ability. In every stage of the process, the information about the victims must be kept secret and shall be known only among those officials who have duty to work with the victims. The importance of maintaining the privacy of the victim is reflected in Article 56 of the Anti-Human Trafficking Act, which stipulates that whoever violates the right to privacy of the victim is liable to six months of imprisonment. The purpose of this article is to prevent the media from exposing the victims to the public.<sup>21</sup> It is observed that this article is very effective in preventing the media from publishing information that will lead to identifying the victims. With their right to privacy being strictly protected, it has been easier to persuade and encourage the victims of trafficking for sexual exploitation to cooperate with the authorities in prosecuting the traffickers.

According to the Anti-Human Trafficking Act, the officials not only provide protection but will also work with the victims and the prosecutors in order to get compensation for the victim from the traffickers. As provided in Article 35, "In cases where the trafficked person has the right to compensation for damages resulting from the commission of trafficking in persons and expresses his/her intention to claim compensation,

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<sup>21</sup> *Id.* at Art. 56.

*Whoever commits or undertake[s] to have the following acts ... committed shall be liable for the punishment of imprisonment not exceeding six months or a fine not exceeding sixty thousand Baht, or both;*

- (1) *taking a picture, circulating a picture, printing a picture, recording or airing voice of any person, at any stage, which may lead to the identification of the trafficked person;*
- (2) *publishing or disseminating the content appearing in the course of inquiry of the inquiry official or the course of hearing of the court, which may make the other person to know the first name and last name of the trafficked person, or the family members of such trafficked person, through whatever type of information communication media;*
- (3) *publishing or disseminating the content, picture or voice, through whatever type of communication media, disclosing personal history, place of living, place of work, or place of education of the trafficked person.*

...

the Public Prosecutor [. . .] being informed by the officials of the MSDHS shall, on behalf of the trafficked person, claim for compensation thereof.”<sup>22</sup> The prosecutor will petition the court that tries the trafficking case to give order for the offender to pay compensation to the victim at the end of the criminal case in the judgment made by the court. Many victims have received compensation through this process. In the past, before the criminal procedure was amended to allow claims for compensation in a criminal court, the victim had to file a separate lawsuit in a civil court for compensation through a very complicated and time consuming procedure; thus, very few victims of compensable crimes had made the effort to file complaints in civil courts.

Another important protection measure that Thai officials provide to the victims is immunity from some illegal activities committed by the victim during the trafficking process. Once a trafficked person is verified to be a victim of trafficking through the screening and classification processes, the investigator is barred from charging the victim with the offence of entering, leaving, or residing in Thailand without permission under the laws on immigration. She or he will not be charged with the offence of giving false information to officials or forging or using forged travel documents under the Penal Code. The victim will not be charged with the offence of being a prostitute under the Prevention and Suppression of Prostitution Act or the offence of being an alien working without a work permit under employment laws. The victim can be charged with the above mentioned offences only with permission in writing from the Minister of Justice.<sup>23</sup> So far, the Minister has never given any permission to charge a victim of trafficking with the above-mentioned offences.

Since human trafficking is a type of modern slavery and is considered a very serious crime, the Anti-Human Trafficking Act prescribes a heavy penalty of 4-10 years of imprisonment for traffickers. If the victim is a child over 15 but not over 18 years, the penalty is 6-12 years of imprisonment; if the victim is not over 15 years, then the penalty is 8-15 years of imprisonment.<sup>24</sup>

Apart from the Anti-Human Trafficking Act, the Penal Code has been effectively used against trafficking for sexual exploitation. Many traffickers have been heavily sentenced with long term imprisonment under the Penal Code. One serious offence in the Penal Code is the offence of “procuring a person for sexual gratification of another person” which has very similar criminal elements as the offence of human trafficking for sexual exploitation. This provision in the Penal Code can be applied to charge, prosecute and convict human traffickers as well. Procuring a person, even with consent of the procured person, is an offence punishable with 1-10 years’ imprisonment. If the consenting person is a child aged 15-18 years, the penalty is 3-15 years of imprisonment. If the child is under the age of 15 years, the penalty is 5-20 years of imprisonment.<sup>25</sup> However, if threat, force, deception or extortion is used against a procured adult, the penalty is harsher (5-20 years of imprisonment). To procure a child age 15-18 years with the use of threat, force, deception or extortion the penalty is 7-20 years of imprisonment. If the procured child is under 15, the penalty is 10-20 years’ or life imprisonment.<sup>26</sup> A person who knowingly receives a procured person will be punished with the same penalty as the procurer.<sup>27</sup>

It is obvious that the penalties prescribed in the Penal Code are more severe than those in the Anti-Human Trafficking Act. Nevertheless, both laws are used against the traffickers. Whenever, a trafficker for sexual exploitation is arrested, he or she is charged with both the trafficking offence in the Anti-Human Trafficking Act and the procuring offence in the Penal Code. It is the duty of the court trying the case to choose the law that has the more severe penalty to convict the trafficker. Moreover, if the trafficker has trafficked victims on several occasions, each incident would be convicted separately as one count of the offence, and the penalty of each count is added to the other counts. Thus, many traffickers have been convicted and sentenced to considerably long terms of imprisonment. In the case mentioned in 3.1 where two traffickers brought several women to Japan and sold them to several brothels, the Criminal Court of Bangkok sentenced the first and the second defendants to totals of 39 and 28 years of imprisonment, respectively.<sup>28</sup>

<sup>22</sup> *Id.* at Art. 35.

<sup>23</sup> *Id.* at Art. 41.

<sup>24</sup> *Id.* at Art. 52.

<sup>25</sup> The Penal Code of Thailand, Art. 283, as amend by the Penal Code Amendment Act (No.14) B.E. 2540 (1997) (Thai).

<sup>26</sup> *Id.* at Art. 283 bis.

<sup>27</sup> *Id.* at Arts. 283 and 283 bis.

<sup>28</sup> *Public Prosecutor v. Theerapong or Pa-Kack Khemthong et al.*, Criminal Court of First Instance (Sarn Aya) No. 1316/2552 (2009).

## V. PREVENTION

Prevention is widely accepted as the best way to solve the problem of human trafficking. The Thai government has paid much attention, allocated a large budget, and made much effort to fight human trafficking, in particular on prevention. Many prevention programmes and measures have been actively implemented.

According to the Anti-Human Trafficking Act, MSDHS is the key agency, and acts as the coordinating agency in gathering and integrating efforts of all other agencies involved in combating human trafficking. Every Thai government in the last decade has placed the policy to fight against human trafficking, as well as the policy against narcotic drugs, at the top of its agenda. The government set up two committees at the national level, in accordance with the Anti-Human Trafficking Act. The first committee is the Committee for Prevention and Suppression of Human Trafficking (PHT Committee) and the second committee is the Committee for Coordinating and Monitoring the Performance in Prevention and Suppression of Human Trafficking (CMP Committee).

The Committee for Prevention and Suppression of Human Trafficking (PHT Committee) is the highest level committee and is chaired by the Prime Minister. The members of the PHT Committee comprises of the Deputy Prime Minister, seven other relevant Ministers,<sup>29</sup> and four experts on the human trafficking issue. The main functions of the PHT Committee are to provide recommendations to the Cabinet concerning the government's policy on the prevention and suppression of human trafficking, and on the revision of laws, rules and regulations to better combat human trafficking. It also has the duty to lay down strategies and measures and guidelines for the prevention and suppression of human trafficking.<sup>30</sup> The PHT Committee has to organize at least three meetings per year as prescribed by the Anti-Human Trafficking Act.

The Committee for Coordinating and Monitoring the Performance in Prevention and Suppression of Human Trafficking (CMP Committee) is chaired by a Deputy Prime Minister and its members comprise of the Minister of Social Development and Human Security, the Attorney General, the Police Commissioner-General, eight Permanent Secretaries from eight relevant ministries, six Directors-General and eight experts on the human trafficking issue. The main functions of the CMP Committee are establishing plans to prevent and combat human trafficking and monitoring the implementation of the plans, laws, rules and regulations and the performance of relevant agencies and officials in preventing and fighting this crime. Both committees have set up several sub-committees to perform various functions as needed and to report back to the committees. The overall effect is that the issue of human trafficking in all of its aspects can directly reach, and be dealt with by, the Prime Minister and the Cabinet.<sup>31</sup> The CMP Committee has to organize at least six meetings per year.

Through these two committees, the highest level authorities in government administration, i.e. the Prime Minister, ministers, permanent secretaries, and other senior officials, closely deal with and tackle the problem of human trafficking as a highly prioritized national agenda and with a considerable budget and support from various government agencies. Moreover, these committees are beneficial to the combat of human trafficking because the awareness of the highest level authorities has been sufficiently raised to understand the problems and the seriousness of human trafficking.

The MSDHS has the duty to propose prevention programmes to the PHT Committee and has the duty to implement the prevention programmes. Many campaigns have been implemented throughout the country in this decade. However, the victims have the tendency to give more credence to the traffickers, who often have some connection with their relatives or peers in their villages, than to the government's campaigns. Many NGOs have also made great efforts in working with vulnerable groups in various parts of the country on campaigns and raising awareness of potential victims of the dangers and ploys used by the traffickers.

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<sup>29</sup> The seven Ministers who are members of the Committee are the Minister of Defense, the Minister of Foreign Affairs, the Minister of Tourism and Sports, the Minister of Social Development and Human Security, the Minister of Interior, the Minister of Justice, and the Minister of Labour.

<sup>30</sup> The Anti-Trafficking in Persons Act, B.E. 2551, Arts. 15 and 16 (2008)(Thai).

<sup>31</sup> *Id.* at Arts. 22 and 23.

Despite these efforts, the traffickers still manage to convince the victims that they will get good and decent jobs with better pay abroad. Traffickers also make victims believe that they will not be the unlucky ones to fall into a trafficking ring.

Education is a highly effective measure in human trafficking prevention. About ten years ago, compulsory education in Thailand was raised from 6 to 9 years' duration, with 12 years of free education throughout the country. Moreover, the government has provided education loans with very low interest rates to all students who have financial difficulties and want to further their study in colleges. Students who take out such loans have the duty to pay back the loans in installments after graduating and finding employment and income. This measure helps keep women in schools and colleges, encouraging higher education with good prospects for their future. Better educated women are less likely to fall for the tactics used by human traffickers.

## **VI. SUPPRESSION**

Suppression is a very essential measure to fight against human trafficking. The goal is to incapacitate the human traffickers and their networks by jailing them and preventing them from continuously trafficking other victims while concurrently creating a deterrent effect on the traffickers. However, suppression of human trafficking is not easy due to several difficulties in the suppression process.

### **A. Criminal Process in TIP Cases**

The criminal process against the human traffickers is the same as the process used for prosecuting other serious crimes. When the police or officials of the Department of Special Investigation (DSI) receive information from MSDHS, NGOs, victims, the victims' relatives, or any individual stating that someone is being trafficked, a rescue operation will be launched to extract the victim and to arrest the traffickers and exploiters. The victim will be interviewed by the police and the social welfare officials of the MSDHS to determine if he or she is an actual victim of trafficking. After being verified a victim, he or she will be taken to a shelter house of the MSDHS and cared for by social workers. The victim will be interviewed to obtain information so that the authorities can arrest the traffickers and those involved with human trafficking. The traffickers and the exploiters will be prosecuted in court when the trial dates are set. However, as in other countries, the criminal process takes quite a long time, possibly up to one to two years, due to the backlog of cases awaiting court trial. This time factor is a big obstacle to the suppression of human trafficking.

The most important witness in a human trafficking case is the victim, who witnessed the abuse and exploitation firsthand. The prosecutor needs the testimony of the victims in court in order to convince the court of what had happened. With the victim's testimony, the court will not hesitate to punish the traffickers severely. However, there are several factors that deter victims from giving testimony in court. Most victims are undereducated, ignorant, and come from rural areas. They do not know nor understand the complicated legal process and do not want to be involved in such a very complicated and lengthy process in intimidating environments like in court. Victims of sexual exploitation feel shame about their experiences and just want to forget the incident as soon as possible and continue with a normal life. Having to wait for a long period of time before they can give their testimonies in court and get on with their lives bothers victims so much that many decide not to cooperate.

Another important factor is that victims are afraid of the traffickers, whom the victims believe are influential persons or organized criminals and whom they believe can harm the victims and members of their families. Even though the authorities can arrange for the victims to be under a witness protection programme, the victims still do not fully believe that they and their families will be safe. If the authorities cannot convince victims to cooperate and testify in court, their cases will end in failure and the traffickers will be acquitted due to the lack of evidence.

### **B. The Difficulties and Challenges in Handling TIP Cases**

From my decades of experience as a prosecutor, I found that handling a human trafficking case is much more difficult than handling a drug trafficking one for many reasons. In a drug trafficking case, the most important piece of evidence is the narcotic drug, which never changes its characteristics during arrest, investigation, prosecution or trial. All that is needed is to send the seized drug for lab testing to prove that it is a narcotic drug. The drug does not need food, clothes, shelter, physical and medical care, and other human necessities. What it needs is only a small space in a safe place, and it can stay dormant for years awaiting

trial. When the trial dates arrive, the prosecutor presents the drug in front of the judge as evidence together with the report of the lab test. The drugs never deny being drugs, and the drug traffickers are severely convicted due to clear evidence.

Handling a human trafficking case is much more difficult. First of all, the officials must try their best to gain the trust of the victims to reveal their true story. Beyond revealing their experience, the officials also have to convince and encourage the victims to cooperate with them in investigation, prosecution, and trial. The officials have to provide food, shelter, clothes, physical and medical care, protect their safety, and provide for many other human needs. As humans, they cannot patiently stay for years in a shelter, inactive, awaiting trial. They or their families might be threatened or bribed by the traffickers or their networks. Some victims might disappear or change their story during the trial.

Going through the long and tough examination and cross-examination by the prosecutor and the defence lawyer is not a pleasant experience at all. Thus, it is understandable why most victims do not want to cooperate and instead just want to forget their painful experience as soon as they can. The officials cannot force them to cooperate, and cases have had to be dropped because of the lack of evidence.

To solve the problem of the lengthy wait to give testimony in court, the Anti-Human Trafficking Act provides the following solution to the problem. The Act authorizes the court to take the testimony of the victim of trafficking even before the case is indicted in court. The court will keep the testimony of the victim in deposition until the offender is prosecuted and the trial begins. Then the court will retrieve the testimony of the victim and use it as the witness testimony in the case. Article 31 of the Anti-Human Trafficking Act states:

In case of necessity for the benefit of prevention and suppression of trafficking in person, before prosecuting the offender to the Court, the public prosecutor by himself or by receiving a request from an inquiry official, may bring the trafficked person or a witness to the Court and file a petition specifying all the facts alleged to have been committed and the necessary cause why the testimony must be taken promptly.

In case the initiation to testify in Court is of the trafficked person or witness, after such person informed his intention to the public prosecutor, the public prosecutor shall immediately submit a petition to the Court.

Having received the petition under paragraph one or two, the Court shall take the testimony of the witness promptly. During the taking testimony, if an interested person in the case files a petition to the Court citing a reason or necessity to cross-examine or to appoint a counsel for cross-examination, the Court may grant permission . . .

If the alleged offender is indicted later as a defendant with the charge of any offence stipulated in Chapter 1, the deposited testimony of the witness shall be admitted as evidence in the trial and in making judgment of that case.

With this measure, many victims need not wait long to testify in court. Foreign victims can be repatriated back to their countries after their testimonies are taken into deposition of the court. In some cases where authorities can demand compensation from offenders, the compensation is paid to them with cooperation between Thailand and the country of origin. In labour exploitation cases, the MSDHS files a complaint to the Labour Court on behalf of the victim in each case to collect unpaid wages in addition to the compensation for damages in the Criminal Court.

In cases where victims cooperate with the authorities and appear in court to testify as eyewitnesses, there is a high tendency for the traffickers to be convicted. Thus, working to persuade and encourage the victims to cooperate with the authorities is the key to success in combating human trafficking. However, getting victim cooperation is not an easy task because the traffickers are also aware of the importance of the victims' testimonies. Thus, traffickers try every way they can to prevent victims from being witnesses in the case.

In one particular case, two females were deceived into going to London to work in a Thai restaurant. Once they reached London, they were detained and forced to take nude photos, both with and without sexual activities. They were told by the traffickers that if they escaped and went to the police, the pictures would

be posted in their village so that everyone in the village would know that they had been in the prostitution business. Nonetheless, the two victims escaped and sought help from the Thai Embassy in London. The embassy sent both women back home to Thailand and notified officials at MSDHS to receive and look after them at the airport.<sup>32</sup> However, the two victims gave their statements to the police but did not want to cooperate further and were unwilling to identify the traffickers. Thus, their case had to be dropped and they were sent back home.

According to the standard practice of MSDHS, if victims do not want to cooperate and are unwilling to identify the traffickers, then the victims, particularly foreign victims, are taken to a shelter home. There social workers work with the victims and explain to them their rights and the benefits they would receive, e.g. protection, compensation, unpaid wages, the legal visa and work permit, etc., in hopes of persuading them to work with the authorities in arresting and convicting the traffickers. If the traffickers are not arrested and jailed, they will recruit other persons to be victims, continuing the vicious circle of human trafficking. The best and most efficient solution is to arrest, prosecute and punish the traffickers severely. In case the victims still do not want to cooperate, safe repatriation is arranged for them.

Safe repatriation to send victims back to their home or country of origin is another important aspect of protection. In order to make sure that they safely reach home, the MSDHS have concluded several MOUs on cooperation to fight against human trafficking with many neighbouring countries, i.e. Cambodia, Lao PDR, Myanmar and Vietnam. Thus, the repatriation process is well coordinated between the relevant officials of both countries involved, with the safety of the victim being the most important point of consideration.

### **C. Gaps in Cooperation between the Countries of Origin and Destination**

One of the main challenges in the field of suppression of transnational human trafficking is the lack of coordination among law enforcement agencies of the relevant countries. Often when a victim is rescued and a trafficker is arrested in the country of destination, no information is given to the country of origin. Thus, the trafficker in the country of origin is not arrested and prosecuted. Likewise, when a victim returns home and the authorities in the country of origin are informed of the trafficking and exploitation, no information is sent to the country of destination. In some cases, the information is shared with the other country involved, but without victim information and details about the traffickers and exploitation, the authorities do not have enough information to make an arrest or initiate a criminal case. International cooperation, therefore, is very important and plays a very crucial role in eliminating the whole human trafficking syndicate.

In establishing effective international cooperation to combat human trafficking, an agreement is needed so that the authorities of the two countries can share information, act in concert, reveal and provide evidence in the case, give mutual legal assistance (MLA), extradite non-national traffickers, or simultaneously prosecute the traffickers in both countries using the same set of witnesses and evidence. The agreement can be made in the form of a treaty, MOU, or in any other form that will render successful cooperation. Apart from the agreement, knowing your counterparts in another country and trusting in each other are very essential to successfully combat transnational human trafficking, particularly that committed by organized criminal groups.

International cooperation should be done both through formal and informal channels. In investigation, in which speed is essential, informal cooperation should be used to collect the information needed to arrest the traffickers and to provide assistance at this stage. However, once formal evidence or documents are required for trial in court, the formal MLA is the only means to obtain admissible evidence from another country. Thus, close international cooperation is vital in fighting transnational human trafficking.

Extradition is another means that can be used to suppress the traffickers. Even though most of the countries that use the Civil Law system do not extradite their own nationals for prosecution in another country, they can still prosecute their own people who committed a trafficking offence in a foreign jurisdiction. However, there are many instances where the traffickers or the exploiters are not the citizens of the requested country and can be extradited. From my experience, particularly with cases of trafficking for sexual exploitation, the traffickers and the exploiters tend to be of the same nationality as the victims. Many of the so called mama-sans in Europe, South Africa and elsewhere are women who were originally

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<sup>32</sup> This information is from the statements given by one of the two victims to the police investigator.

trafficked to work as prostitutes in the foreign country. These women have stayed there long enough to upgrade themselves to be mama-sans or procurers or even brothel owners. They tend to traffick women from their own country to work for their commercial-sex businesses. In such cases, the traffickers or exploiters should be extradited so that both the traffickers and the exploiters can be prosecuted in their own country.

## VII. CONCLUSIONS

Human trafficking or trafficking in persons is a very heinous crime that seriously erodes human dignity, inflicts serious wounds, and instills unforgettable traumas in the minds of the victims. Humans should not be for sale, and the international community has the moral obligation to prevent and suppress this crime. Prevention and suppression should be exercised by modernizing and strengthening national laws and regulations, by putting all available efforts to prevent and suppress this crime, and by working together and assisting each other to assist and protect victims and to arrest traffickers. Furthermore, the enhancement of international cooperation is needed so that the traffickers are punished no matter where they are.

Human trafficking is classified as a crime against humanity. However, it is not easy to abolish this crime from our global community because it is a very low risk crime that yields a huge amount of money to traffickers. Human trafficking is a low-risk crime in the eyes of the traffickers because the fight against human trafficking is very much dependent on vulnerable victims, who tend to be ignorant, undereducated, and afraid of the traffickers. Some victims and their families have been intimidated or bribed by the traffickers. The majority of the victims of sexual exploitation do not want to live with the painful memories; they just want to start a new life.

The criminal justice system, on the other hand, wants clarity, solid evidence, and valid witness testimony. This system is afraid of making mistakes. Thus, each criminal case takes a considerably long time, which is discouraging for the victims. Government officials have difficulties with taking care of and protecting the victims for the long period of time until the case is finalized.

Moreover, international cooperation has not been developed well enough to fight transnational human trafficking. Many gaps and obstacles exist and remain for the world community to tackle before it can effectively combat this heinous crime. One single nation cannot efficiently fight transnational human trafficking alone, therefore, strong international cooperation is the key to success. We all have to work together to achieve the goal of abolishing human trafficking, similar to the way the world community successfully abolished the slave trade and slavery of prior centuries.

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## PARTICIPANTS' PAPERS

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### TRAFFICKING IN PERSONS IN PAPUA NEW GUINEA: AN EMERGING ORGANIZED TRANSNATIONAL CRIMINAL ACTIVITY

*Anthon Billie\**

#### I. INTRODUCTION

*Trafficking in Persons* is heard of in Papua New Guinea but barely visible, given the insufficient attention by the government on crimes against human beings. However, due to the current trend in movement or migration of people from country to country over the last 20 years or so, it is becoming a reality in Papua New Guinea with the influx of foreigners entering the country. The first recruitment of natives by colonizers in the early 1930s was purely for economic growth with only natives being recruited to work on coconut, coffee or cocoa plantation as laborers to construct roads, schools, hospitals or as guides or trekkers and interpreters. Currently, Papua New Guinean and foreign men and women and children have been trafficked mostly into the mining and logging areas to be engaged in forced labor, prostitution and sexual exploitation.

In Papua New Guinea, trafficking in persons has become a major political issue, but many aspects of the phenomenon remain poorly understood. The information available about the magnitude of the problem is limited given the difficulties in measuring and monitoring. Generally, the knowledge of trafficking in persons, recruitment, transportation, harboring, transfers and receiving gave raise to public consciousness about the issue, but remains insufficient for government support to a more comprehensive action program for addressing different dimensions of the problem.

#### II. DEFINITION OF TRAFFICKING IN PERSONS

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.<sup>1</sup>

#### III. THE ACTUAL SITUATION OF TRAFFICKING IN PERSONS IN PAPUA NEW GUINEA

##### A. The Current Situation of Trafficking in Persons in Papua New Guinea

Papua New Guinea becomes a source of destination and transit country for men and women to be trafficked into the country for commercial sexual exploitation and forced labor and domestic servitude. Men are trafficked into logging and mining camps and plantations for the purpose of forced labor, while women and children from Malaysia, Thailand, and the People's Republic of China and the Philippines are trafficked to PNG for forced prostitution and production of pornographic materials.<sup>2</sup>

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<sup>1</sup> Article 3 UN “Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.”

<sup>2</sup> U.S. State Dept Trafficking in Persons Report, June 2009.

Government officials facilitate trafficking by accepting bribes to allow illegal migrants to enter the country or to ignore victims forced into prostitution or labor; by receiving female trafficking victims in return for political favors, and by providing female victims in return for votes.

The government of Papua New Guinea does not fully comply with the minimum standards for the elimination of trafficking and is not making a significant effort to do so. The Government acknowledged the existence of forced labor in PNG, but denies the widespread sex trafficking of women and children.

Some corrupt government and law enforcement officials accept bribes to ignore trafficking related activity. Despite evidence of a trafficking problem, to date no suspected trafficking offender has been arrested, prosecuted, or convicted of a human trafficking offence. The Government lacks a systematic procedure to identify victims of trafficking in vulnerable populations, such as foreign women or children in prostitution, and has done very little or nothing to prevent trafficking in Papua New Guinea.

### **B. Forms of Exploitation**

Forms of exploitation are sexual exploitation, such as forced prostitution and production of pornography, and forced labor of young women who are employed as waitresses and bar girls by Chinese businesses, such as operating hotels, taverns, night clubs and poker machines in the cities and towns. In the mining and logging camps, foreigners and nationals work in very dangerous conditions. Frequently with no safety gear, excessive hours with very little pay.

In a known logging camp in the East New Britain Province of Papua New Guinea, local children, especially young girls at the age between 12 and 15 are being employed in kitchens as cooks and have been sexually exploited. Eventually a few of them end up pregnant and gave birth to mixed raced children. No one knows who fathered the children.

### **C. Analysis of the Causes of Trafficking in Persons**

As is increasingly recognized, there are many analytical causes for trafficking in persons crime to be committed, a crime that is perpetrated mainly against women and children. The most common causes for trafficking in persons in Papua New Guinea is poverty, unemployment, lack of opportunities and the practice of poor families entrusting children to affluent relatives or acquaintances. While on the other hand Papua New Guinea has no legislation, other legislation has weak penalty, corruption by government agencies that are entrusted to monitor the movement of people and the attraction of huge financial profit with low investment.

## **IV. MEASURES OF PROSECUTION**

### **A. Criminalization of Trafficking in Persons and Related Acts**

Papua New Guinea, being a member of the state party to the United Nations Convention against Transnational Organized Crime, and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, has reported very little and done almost nothing against trafficking offenders over the years. There is nothing in the Criminal Code on trafficking adults, or children for commercial sexual exploitation, slavery, and abduction. Labor laws prohibit fraudulent recruiting and employment practices and prescribe very weak penalties for offenders. Prostitution is prohibited in PNG, but the relevant laws are either selectively or rarely enforced even in cases involving children. The government should adopt legislation to establish criminal offences as set forth in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. In a recent investigation report compiled by the National Intelligence Organization said, "trafficking in person is a world wide problem becoming a threat to Papua New Guinea, as it is being used as a transit point to Australia and other pacific countries."<sup>3</sup>

### **B. Obstacles to the Investigation of Trafficking in Persons**

In Papua New Guinea, the law does not prohibit trafficking in persons. Most government officers and law enforcement agencies remain weak as the result of corruption, cronyism, a lack of accountability, and a promotion system based on patronage. There have been unconfirmed reports of trafficking in persons domestically within some parts of the country, but when authorities enquire to establish the facts, the people

<sup>3</sup> Draft report to the Minister for Foreign Affairs on Abuses and Violations of PNG Migration, Passport and Citizen Acts. July to September 2001, pp 8.

are reluctant to co-operate.<sup>4</sup> Such is that it is customary for the family of the groom to pay a “Bride Price” to the family of the bride. While marriages are usually consensual, women and female children are sometimes sold against their will.

Papua New Guinea, having an extended family unit, has always found it difficult to investigate trafficking in persons when it is organized within the family units by very close relatives. Child marriage is a major problem in PNG, and it forms the basis of demand for internal trafficking of children. Miriam Wilngal, an 18-year-old girl, refused to be sold in marriage to meet customary demand of compensation.<sup>5</sup>

### **C. Detecting Trafficking in Persons**

In August 2008, the Police Transnational Crime Unit rescued a group of about 20 women forced to work in prostitution at a Chinese restaurant; no charges were filed against their alleged trafficker as none of the women were willing to co-operate with police investigators.<sup>6</sup>

Detection of trafficking in person in the rural areas of Papua New Guinea becomes an obstacle as most cases are not reported to authorities due to a number of reasons. Some victims live far away from authorities. Others are in fear of being recognized. Still others have been bribed not to report; however, the basic reason for not reporting is that there is not enough awareness. The general public, including potential victims, does not understand what is trafficking in persons in Papua New Guinea as it is something unheard of before in their country.

### **D. Victim Related Issues**

The Government of Papua New Guinea has yet to take a proactive approach in identifying trafficking victims among vulnerable populations. When potential victims of trafficking sought assistance from the Government, they were often jailed, and some were sexually abused by police officers. Immigration Inspectors routinely refused entry into potential trafficking victims identified at the borders. Other government officials, however, would more likely refer identified victims to social groups, churches, or NGO's for assistance.

### **E. Special Investigation Techniques**

Law enforcement agents and judicial officials need comprehensive training in order to understand the parameters of modern trends of forced labor, which is so often an outcome of trafficking in persons. As PNG is a member of the global community, soon it will experience such situation in its door step and it is proper that it shares its information on local trafficking in persons with the outside community in a collective effort to stamp down the crime of trafficking in persons.

### **F. Victims' Protection and Measures to Encourage Co-operations**

The Papua New Guinea Government demonstrated increased efforts to protect and assist victims of trafficking. However, due to severe resource constraints, the government continued to rely on international organizations or NGO's to provide victims' services. The Country's Operations Plan for 2007 was to strengthen the capacity of Local Partners in PNG, including GoPNG to provide effective protection and assistance to persons of concern. The United Nation Human Rights Commission should continue to conduct workshops on the role and core mandate of UNHRC, and on the Refugee Convention in relation to migration and Human Trafficking training for GoPNG officials from Immigration, the Police, the Judiciary, and Customs.

## **V. MEASURES FOR PROTECTION**

### **A. Immigration Status**

The International Organization for Migration (IOM) opened a country office in Port Moresby, PNG in 2007 at the request of the PNG Government. The opening of this office followed a major country assessment undertaken by IOM in 2004 in relation to migration management and border control in PNG, and subsequent signing of a Tripartite Agreement between the Government of Australia and PNG, and IOM in 2005.

<sup>4</sup> U.S. State Dept Trafficking in Persons Report, June 2009.

<sup>5</sup> Coalition Against Trafficking in Women.

<sup>6</sup> *Loc. cit.*

The role of IOM was initially to focus on supporting the PNG Government efforts in enhancing migration management through the provision of training to the PNG Immigration and Citizenship Service (PNGICS), implementation of care, Maintenance and Assisted Voluntary Return Program in PNG, and support for the Development and testing of Border Management System for PNG.

**B. Assistance for Living (Residence, Translations, Medical Care, Psychological Care, etc)**

To assist the victims of trafficking in persons for a living, the Government of Papua New Guinea has shown increasing efforts, but is faced with resource constraints and continues to rely on International Organization and NGO's to provide assistance services. The Government provides funds to shelter victims of domestic violence in Port Moresby and Lae which could also provide Legal Aid to trafficking victims who are foreign and local victims.

Support Centers were also set up by the Health Department with assistance from NGOs in major hospitals throughout the country for victims of domestic violence which could provide trafficking victims direct counseling and treatment.

Therefore responsible organizations should co-operate and remember that they are dealing with victims subjected to exploitation, and as such should deal with them in a most decent way by implementing measures to provide physical, psychological and social recovery of the victims.

**C. Reintegration (Education, Vocational Training, etc)**

Papua New Guinea advocates strongly but has yet to support the victims by, providing services to reintegration such as educational and vocational training to encourage the victims, especially young children, to learn and make full use of their abilities and talents to become what they want to become in their life times. Therefore, they should not be seen to miss out on their basic legal rights under Article 6(4) which calls for State Parties to consider the special needs of children, including appropriate housing, education and care.

**D. Assistance for Restitution and Compensation**

Trafficking related cases in rural areas were referred to village courts that administer customary laws rather than criminal law and resolve cases through restitution paid to the victims, rather than through criminal penalties assigned to the trafficking offender.

## VI. MEASURES FOR PREVENTIONS

The Government continues to rely on international organizations and NGOs for the bulk of its trafficking prevention activities, such as efforts to raise public awareness about trafficking combined with education campaigns on child prostitution, HIV/AIDS, and domestic violence. The Government is increasing co-operation with Australia and the New Zealand Federal Police, as well as other international law enforcement and customs agencies, to draft laws, investigate, and prevent transnational crimes including human trafficking.

Papua New Guinea is yet to ratify Article 9 of the 2000 UN Trafficking in Persons Protocol, which calls for "States Parties to establish comprehensive policies, programs and other measures to prevent and combat trafficking in persons; and protect victims of trafficking in persons, especially women and children from re-victimization."

Preventive measures to be taken by ratifying States include research, information, mass media campaigns, and social and economic initiatives. Also it stipulates co-operation with civil society, developmental measures, and other strengthening measures in concluding bilateral labor agreements, educational, social or cultural measures, to discourage demand for victims of trafficking and to prevent and detect trafficking at borders.

## VII. CONCLUSIONS

In conclusion, PNG is a transit point for the trafficking of men, women, and children for the purpose of commercial sexual exploitation and forced labor. Women and children are trafficked within the country for commercial sexual exploitation and domestic servitude. Men are trafficked to logging and mining camps for forced labor. Women and children from the Asian region are trafficked into Papua New Guinea for forced

prostitution and forced labor. Yet the Government is yet to draw up a responsive policy to meet such illegal networks with the assistance from neighboring Pacific countries, including the ratification of the 2000 United Nations Trafficking in Persons Protocol.

### RECOMMENDATIONS

In essence, it is recommended that the government's immediate priority is to fast track legislation to criminalize the Trafficking in Persons, by enacting the *Trafficking in Persons Act* and increase cooperation with Australia and New Zealand, as well as other international neighboring countries, in seeking assistance to enhancing migration management through the provision of training to Papua New Guinea Immigration, Customs, Labor and Police agencies.

The seeking of support and assistance from the United Nations High Commissioner for Refugees and the International Organization for Migration to improve the capacity building of their existing networks in Papua New Guinea to enhance supporting the government's efforts to raise public awareness about trafficking in persons, combined with educational campaigns on trafficking in persons, should be a priority.

The law enforcement agencies, judicial officials and other related organizations directly involved in the trafficking of persons need comprehensive training in order to understand the parameters of the trend in trafficking in persons.

As a matter of pilot project Regional Offices be established throughout the regions under the established Transnational Crime Unit of the Constabulary and related enforcement agencies in preparation for the enactment of necessary legislations to be enforced.

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# PREVENTING HUMAN TRAFFICKING IN THE PHILIPPINES OVERVIEW AND CURRENT ACTIVITIES

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## I. INTRODUCTION

As a signatory to the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” which supplemented the United Nations Convention against Transnational Organized Crime, the Philippines is actively engaged in combating human trafficking – an international problem that is an affront to the basic human rights of individuals worldwide. Combating human trafficking is a challenging endeavor, one that requires a multi-stakeholder approach both domestically and internationally.

This paper discusses the Philippines’ ongoing efforts to actively fight human trafficking. It first presents an overview of (1) the legal framework relative to human trafficking in the Philippines, and (2) the domestic multi-stakeholder entity tasked with fighting human trafficking, the Inter-Agency Council Against Trafficking (IACAT). Next, it outlines the actions of the Department of Justice of the Philippines, which leads the IACAT. Finally, it concludes with some observations on how the Philippines can improve its ongoing efforts, including the need for better international coordination.

## II. LEGAL FRAMEWORK

### A. Governing Law

The basic law that instituted policies to prevent human trafficking is Republic Act No. 9208, also known as the “Anti-Trafficking in Persons Act of 2003,” which was passed on May 12, 2003 and took effect on June 19, 2003. Section 3(a) of this law defines trafficking in persons as:

“the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.”<sup>1</sup>

R.A. No. 9208 further provides that “[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth [above].”<sup>2</sup> The Act provides penalties for three categories of trafficking: (1) acts of trafficking in persons,<sup>3</sup> (2) acts that promote trafficking in persons,<sup>4</sup> and (3) qualified trafficking in

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<sup>1</sup> Anti-Trafficking in Persons Act of 2003, R.A. No. 9208 (May 2003).

<sup>2</sup> *Id.*

<sup>3</sup> *E.g.*, (1) introducing or matching for money or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipina, to a foreigner, for marriage for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, (2) involuntary servitude or debt bondage; undertaking or organizing tours and travel plans consisting of tourism packages or activities for the purpose of prostitution, pornography or sexual exploitation; and (3) offering or contracting marriage, real or simulated, for the purpose of prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage. See Office of the President of the Philippines, Commission on Filipinos Overseas, Anti-Trafficking in Persons Act of 2003, Primer on R.A. 9208, 2nd Ed. (2009), available at <http://www.cfo.gov.ph>

<sup>4</sup> *E.g.*, (1) knowingly leasing or subleasing property for trafficking purposes; and (2) producing, printing, issuing or distributing un-issued, tampered or fake counseling certificates, registration stickers and certificates of any government agency used for regulatory and pre-departure requirements for the purpose of promoting trafficking in persons; *Primer on R.A. 9208*.

persons.<sup>5</sup> The penalties are as follows:

Act	Penalty
Acts of Trafficking	20 years' imprisonment and a fine of P1 to 2 million
Acts that Promote Trafficking	15 years' imprisonment and a fine of P500,000 to P1 million
Qualified Trafficking	Life imprisonment and a fine of P2 to 5 million

### **B. Procedure for the Filing of Trafficking in Persons (TIP) Cases**

A criminal action for violation of R.A. No. 9208 is commenced or instituted by the filing of the complaint by any person who has personal knowledge of the commission of any offence under said Act; the trafficked person, parents, spouse, siblings, children, legal guardian of the trafficked person; or by referral from or upon the request of the law enforcement agency that investigated the incident, with the Department of Justice or the office of the prosecutor that has jurisdiction over the offense charged. The complaint shall state the full names and addresses of the complainant/s and respondent/s, offense/s charged and the place and approximate date of commission. It shall be accompanied by the affidavits of the witnesses, as well as other supporting documents to establish probable cause. The complaint is either filed for preliminary investigation or inquest proceeding.

Preliminary investigation is an inquiry or proceeding to determine whether there is a sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.<sup>6</sup> In a preliminary investigation, the investigating prosecutor makes a determination if there is probable cause to file an indictment in court. Probable cause is a reasonable ground of presumption that a matter is so or may be well-founded; such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.<sup>7</sup> A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged, as there is a trial for the reception of evidence of the prosecution in support of the charge.<sup>8</sup>

Generally, a prosecutor is afforded wide latitude of discretion in the conduct of preliminary investigation. The prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of the criminal information. The prosecutor's findings are, however, subject to review by the Secretary of Justice.<sup>9</sup> In turn, judicial review of the resolution of the Secretary of Justice is allowed only in clear cases of grave abuse of discretion, that is, when the exercise of the discretion was done in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in the contemplation of law.<sup>10</sup>

A preliminary investigation is not required in cases of "warrantless arrests." When a person is lawfully arrested without a warrant involving an offense for violation of R.A. No. 9208, the indictment may be filed by a prosecutor without need of such investigation, provided an inquest proceeding has been conducted.

<sup>5</sup> Qualified trafficking in persons occurs when: (1) the trafficked person is below 18 years old; (2) the adoption is effected through Republic Act No. 8043 or the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; (3) the crime is committed by a syndicate, or in large scale; (4) the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee; (5) the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies; (6) the offender is a member of the military or law enforcement agencies; and (7) by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS); *Primer on R.A. 9208*.

<sup>6</sup> Section 1, Rule 112, Revised rules on Criminal Procedure.

<sup>7</sup> Revised Manual for Prosecutors, p. 79 (2008).

<sup>8</sup> Paredes, Jr. vs. Sandiganbayan, G.R. No. 108251, January 31, 1996 cited in the Revised Manual for Prosecutors, p. 79 (2008).

<sup>9</sup> Spouses Artemnio and Esperanza Duran vs. Levi Chong, g.R. No. 172796, July 13, 2009.

<sup>10</sup> *Id.*

Inquest is an informal and summary investigation conducted by a prosecutor involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and correspondingly be charged in court.<sup>11</sup> For acts of trafficking, acts that promote trafficking and qualified trafficking, the inquest proceeding must be terminated within thirty-six (36) hours from the time of arrest.

### III. INTER-AGENCY COUNCIL AGAINST TRAFFICKING (IACAT)

Section 20 of R.A. No. 9208 established the Inter-Agency Council Against Trafficking (IACAT), which follows a multi-stakeholder approach to combat human trafficking. It undertakes measures to prevent and suppress TIP and ensures the victims' recovery, rehabilitation and reintegration into mainstream society.

The members of the IACAT are composed of the following government agencies and non-government sectoral representatives, namely:

- Chairperson – Department of Justice
- Co-Chair – Department of Social Welfare and Development
- Members:
  - Department of Foreign Affairs
  - Department of Labor and Employment
  - Philippine Overseas Employment Administration
  - Philippine National Police
  - Bureau of Immigration
  - National Commission on the Role of Filipino Women
  - Children's Sector NGO Representative from End Child Prostitution, Pornography and Trafficking (ECPAT Philippines)
  - Women's Sector NGO Representative from Coalition Against Trafficking in Persons – Asia-Pacific (CATW-AP)
  - OFW Sector Representative
- Ex-Officio Members
  - National Bureau of Investigation
  - Department of the Interior and Local Government
  - Philippine Center for Transnational Crime
  - Council for the Welfare of Children (CWC)
  - Commission of Filipinos Overseas (CFO)
- Chair Emeritus – Office of the Vice President

Section 21 of the same law defines the powers and functions of the IACAT as follows:

- Formulate a comprehensive and integrated program to prevent and suppress trafficking in persons;
- Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- Monitor and oversee the strict implementation of this Act;
- Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- Coordinate the conduct of massive information dissemination and campaign on the existence of law and various issues and problems attendant to trafficking, through the local government units (LGUs), concerned agencies, and NGOs;
- Direct other agencies to immediately respond to the problems brought to their attention and report to IACAT the action taken;

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<sup>11</sup> Revised Manual for Prosecutors, p. 44 (2008).

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- Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- Formulate a program of reintegration of trafficked persons in cooperation with the DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;
- Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
- Complement the shared government information system for migration established under R.A. No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995" with data on cases of trafficking in persons, and ensure that the proper agencies conduct continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;
- Develop the mechanism to ensure the timely, coordinated and effective response to cases of trafficking in persons;
- Recommend measures to enhance cooperation efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- Coordinate with the Department of Transportation and Communication (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;
- Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- Exercise all powers and perform such other functions necessary to attain the purposes and objectives of this Act.

#### **IV. DEPARTMENT OF JUSTICE (DOJ) ACTIVITIES**

The DOJ is responsible for prosecuting trafficking cases. It also acts as the lead agency of IACAT, and implements certain programs and initiatives against trafficking in persons, in addition to the efforts made by other IACAT members in accordance to their mandates. Each of these activities is discussed briefly.

##### **A. DOJ-led Investigations and Prosecutions**

To sustain our drive to prevent trafficking, the DOJ-IACAT is currently setting up a quick reaction team (QRT)/task force composed of prosecutors, law enforcement investigators, welfare officers, and non-government organizations (NGOs). The QRT is designed to centralize the rescue operation of the existing anti-trafficking law enforcement units. The IACAT will create these task forces in all the seventeen (17) regions in the Philippines. Presently, there are eight (8) anti-trafficking task forces being supervised and supported by the IACAT, all headed by a DOJ prosecutor, as follows:

1. National Inter-Agency Task Force Against Trafficking in Persons (NIATFAT)
2. Ninoy Aquino International Airport (NAIA) Task Force
3. Manila North Harbor Task Force
4. Diosdado Macapagal International Airport Task Force
5. Region V Task Force (Bicol Region)
6. Region VII Task Force (Cebu)
7. Region IX Task Force (Zamboanga)
8. Region XI Task Force (Davao)

These teams (1) conduct intelligence, surveillance and monitoring of trafficking operations in the target area in coordination with the local enforcement agency; (2) undertake a unified, coordinated, and synchronized interception, arrest and investigation of traffickers and intercept or rescue victims of trafficking; (3) document and gather evidence, including relevant information on the profile of traffickers, organization involved, trafficking modus operandi; and (4) file complaints against suspected traffickers.

These task forces have been successful in curbing trafficking incidents in their respective regions and have derailed would-be traffickers in their illegal pursuits, forcing them to seek alternative routes.

### **B. DOJ-assisted Rescue Operations and Prosecutions**

The DOJ-IACAT also supervises and supports the intelligence, surveillance, and rescue operations of the Anti-Human Trafficking Division of the National Bureau of Investigation (NBI) and prosecution of trafficking cases by the DOJ Task Force on Anti-Trafficking in Persons, a group of specialized prosecutors that handles trafficking cases.

In particular, on May 18, 2011, the IACAT, in coordination with the Asia Against Child Trafficking, the Philippine Embassy in Malaysia assisted twenty (20) Filipino fishermen, who were victims of trafficking for forced labor in Kuching, Malaysia. Prior to repatriation, the DOJ sent two (2) prosecutors to Malaysia to get the victims' affidavits in preparation for the filing of trafficking cases against their recruiters, a Filipino and a foreign national.

The Anti-Human Trafficking Division of the NBI assists the NAIA Task Force in the investigation of TIP incidents at the NAIA Terminals 1, 2, and 3 on 24/7 tour of duty. It also conducts independent surveillance and rescue operations.

### **C. Monitoring of TIP Cases**

To minimize delay in the prosecution of TIP cases, facilitate the resolution of cases and increase the rate of convictions, the DOJ issued Department Circular Nos. 49<sup>12</sup> and 57,<sup>13</sup> directing all prosecutors to prioritize and expedite the resolution and trial of such cases, oppose motions designed to delay the prosecution, and prohibit the dismissal of TIP cases on certain grounds. The DOJ likewise sought the assistance of the Office of the Court Administrator (OCA) of the Supreme Court of the Philippines, to direct all courts to prioritize and expedite the trial of TIP cases.

On October 26, 2010, the Supreme Court issued OCA Circular No. 151-2010 directing all Judges in the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities and Municipal Trial Circuit Trial Courts, to expedite and prioritize disposition of TIP cases, and submit the list and status of trafficking cases pending in their respective courts.

Based on an inventory of cases from 2003-2011, there are a total of 1,072 trafficking cases pending before the DOJ and the courts.

- From 2003-2011: there were 48 convictions involving 56 traffickers. In addition to the said numbers were three (3) convictions for TIP-related Illegal Recruitment cases.
- From 2010 to 2011, there were 25 convictions involving 31 persons, doubling convictions from 2003 to 2009.

### **D. Minimizing Trafficking-Related Corruption Cases**

Corruption unfortunately impedes our work, particularly with TIP cases. To this end, the DOJ filed and is closely monitoring the administrative and criminal cases involving government officials complicit with traffickers. These cases involve immigration officers, agents of the NBI, an employee of the Manila International Airport Authority, and even elected officials.

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<sup>12</sup> Issued on June 25, 2010.

<sup>13</sup> Issued on July 29, 2010.

### **E. Increase in the Number of Personnel Dedicated to Anti-Trafficking Efforts**

On October 5, 2011, the Secretary of Justice issued Department Order No. 826 reconstituting task forces in the DOJ main office, including the Task Force on Anti-Trafficking in Persons. There are now 18 prosecutors in our office specifically designated to handle and prosecute TIP cases. There are about 60 prosecutors in the National Capital Region and Local Offices of the DOJ who were likewise designated to handle and prosecute TIP cases. In addition, there are 43 prosecutors designated to assist law enforcement operatives in their case build up.

The DOJ likewise hired and designated the following to assist the NAIA Task Force in its daily monitoring of outbound passenger and investigation of trafficking incidents at the airport, and administrative operations of IACAT:

Technical Assistants /Confidential Agents	–	12
Technical Assistants/Consultants	–	18
NBI-Anti-Human Trafficking Division Agents	–	14

### **F. IACAT 1343 Hot Line**

On March 15, 2011, the DOJ launched the IACAT Action Line 1343, a 24/7 hot line that will respond to emergency or crisis calls from victims of human trafficking. The Commission on Filipino Overseas, through a Memorandum of Agreement with the DOJ-IACAT, oversees the operation of the action line.

From March 15 to May 22, 2011, there were a total of 2,161 received calls, twenty (20) of which were verified calls for TIP (three calls), sixteen (16) for illegal recruitment cases and one (1) for mail order bride.

### **G. Development of National Strategic Action Plan against TIP**

The IACAT, with the DOJ on the lead, is currently developing a new 6-year plan of action, which will draw a roadmap and chart the course of action of the government against TIP for 2011-2016. While the previous action plan (2004-2010) focused on the three major components – prevention, protection (including law enforcement and prosecution), and recovery and reintegration – the new plan of action will focus on the following six (6) key areas of intervention: (1) advocacy and prevention; (2) protection and assistance; (3) enforcement and prosecution; (4) victim support and reintegration; (5) partnership; and (6) structural and legal framework. The action plan is at its validation stage.

On December 12, 2011, the DOJ presented the Strategic Plan to IACAT partners for comments.

### **H. Manual on TIP for Forced Labor**

With the assistance of the International Labor Organization, the DOJ is finalizing the Manual on the Prosecution and Investigation of TIP for Forced Labor. The Manual will serve as a guideline in investigating and prosecuting TIP for forced labor as it seeks to address certain issues relative to forced labor, *i.e.*, its definition, elements, indicators, and its distinction from other related laws, such as from Illegal Recruitment under the Migrant Workers' Act and Labor Code of the Philippines, Worst Form of Child Labor under R.A. No. 9231, and other Prohibited Acts relating to labor under the Revised Penal Code and the Civil Code of the Philippines. The Manual is also at its validation stage.

### **I. Capacity Building and Awareness Campaign**

Finally, the DOJ continues to conduct trainings and workshops to enhance the capacity of front line workers. These include:

- *Expansion of anti-trafficking training programs for Foreign Service Officers (FSO).* The training of our FSOs, consisting of labor and welfare attaches, Assistance to Foreign Nationals (ATN) officers and other personnel of Philippine posts abroad, particularly in countries where there are significant numbers of trafficking incidents, is ongoing. The FSOs are the first line of service providers catering to all distressed Filipinos, including TIP victims.

On November 17-19, 2010, the first training session was held in Kuala Lumpur, Malaysia, with FSOs from the ASEAN Region, Taipei and Hong Kong. The second training session was in Amman, Jordan on December 9-12, 2011, with participation from FSOs of the Middle East and African countries. The

training also seeks to strengthen coordination and referral systems among our FSOs, particularly in countries with connecting borders, like countries in the ASEAN Region. The training is a joint effort of the Department of Foreign Affairs and DOJ.

- *Training of DOJ Prosecutors through the RP-US Letter of Agreement.* US Embassy personnel conducted training for prosecutors pursuant to the Letter of Agreement between the Philippines and United States. Training sessions were held in Boracay, Cebu and Manila.
- *Training of Prosecutors, in partnership with the Australian government, through the Asia Regional Trafficking in Persons Project (ARTIP).* The “Pilot ASEAN Skills Course Training on Trafficking in Persons for Specialist Prosecutors” was held from July 19-23, 2010 in Subic and trained 30 prosecutors from the DOJ main office, National Capital Region, Regions III and II. The second training session was held on March 14-18, 2011 in Manila and attended by 30 prosecutors, mostly members of the task forces.
- *The Philippine Anti-Trafficking in Persons Database (PATD).* Launched on December 16, 2009, the PATD is an effective tool in generating accurate information to fully understand the causes, processes, trends and consequences of TIP. Statistics and reports drawn from the database will be useful in outlining and improving the country’s anti-TIP policies and programs. Standard Reporting Formats, one for law enforcers and another for prosecutors were likewise developed to ensure that only essential information are elicited.

With the support of the UNICEF, the DOJ conducted five (5) trainings for the users of the database for TIP. A total of 125 Administrative Officers and Personnel in the following offices of the National Prosecution Service were trained: (1) NCR Field Offices and Regional Office, (2) Region III Offices, (3) Regions X and XI, (4) Regions I and II, and (5) Regions VII and IX.

- *Trainings for the Members of the Task Forces and NBI Agents.*
- *Trainings for members of the task forces (NIATFAT, NAIA, and Regional Task Forces).*
- *Training of Trainers for a pool of speakers to intensify Anti-TIP campaign, and the 1343 Action against TIP.*

## V. LOOKING AHEAD

The Philippines has made significant strides in combating trafficking; nevertheless, there is so much that remains to be done. Presently, the IACAT is able to take action on domestic trafficking, but is not yet able to fully respond to cases of trafficking with international dimensions, particularly those affecting our Overseas Filipino Workers and those victimized abroad. Accordingly, the IACAT is looking to create the following comprehensive anti-trafficking framework to address TIP in all its cycles:

- Intensify witness protection program and assistance to victims of TIP, by setting up temporary shelters catering exclusively for trafficking victims and medical and health care programs, and providing assistance to rescued victims in terms of physical, mental and psychological rehabilitation as well as successful reintegration to the society.
- Set up Anti-Trafficking Operations Center that will monitor and supervise task forces, take actions on the reports and referral from the IACAT hot line, and other IACAT-assisted rescue operations.
- Intensify efforts in rescuing victims of trafficking abroad, and investigating TIP with international dimensions.
- Increase of human resources of the IACAT and its task forces.
- Create task forces in all regions in the country, particularly in areas in Laoag International Airport, which remains as the only international exit port without a task force that monitors outbound passengers.
- Increase the rate of convictions through monitoring of cases, support victim-witnesses, and provide administrative assistance to law enforcers and prosecutors.
- Intensify efforts to prevent or minimize trafficking-related corruption cases.
- Increase efforts to prevent incidents of TIP.

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- Conduct investigations and rescue operations in various areas of the country, especially in conflict areas where the vulnerability of persons is at the highest through IACAT's task forces.
- Provide administrative assistance to the existing task forces, including capacity building for their members.
- Roll out the TIP database in the regional offices of DOJ, NBI and PNP, and provide training and equipment.
- Coordinate meetings with the Regional, Provincial, City and Municipal Inter - Agency Committees against Trafficking.
- Coordinate meeting with the Hotel Owners/Association and airline companies as part of the awareness campaign against TIP and child-sex tourism.
- Develop National Strategic Plan of Action against Trafficking in Persons (2011-2016).
- Develop Guidelines for Trafficking for Forced Labor, including training thereof of law enforcers and prosecutors.
- Oversee the implementation of the Implementing Rules and Regulations on Organ Trafficking (including coordination meeting with hospitals, medical establishment and medical professionals, and awareness campaign).
- Expand training programs to educate Foreign Service officers and other personnel of Philippine Embassies abroad in countries where there are significant numbers of trafficking incidents.
- Continue training of prosecutors, law enforcers, labor inspectors, foreign service personnel and other frontline service providers.
- Provide case-by-case assistance in complex cases with multi-jurisdictional cases crossing cities and countries, which are crucial in pursuing the leaders of trafficking syndicates.
- Develop an infomercial, public relations and media campaign against TIP, including maintenance of IACAT website.
- Conduct the 2<sup>nd</sup> National Conference on Trafficking in Persons.
- Strengthen international cooperation with other countries in the investigation and prosecution of traffickers.
- Increase efforts to engage governments of destination countries through law enforcement and diplomatic channels in the investigation and prosecution of trafficking offenders.
- Provide capital for the IACAT and its task forces and operations center.

## VI. CONCLUSION

Human trafficking is a multi-million criminal industry, in which traffickers adapt quickly to perpetuate their trade. As traffickers innovate their trafficking processes, and as new purposes for trafficking emerge and new vulnerable young groups come into fold, it is imperative that countries all over the world find new ways to combat this scourge. Governments accordingly must work cooperatively – both domestically and internationally – to prevent human trafficking. The Philippines is doing its part to stem the rising tide of TIP cases, though a lot of work remains to be done, particularly with regard to international cooperation on TIP cases.

# **BEST PRACTICES IN THE PROTECTION, PREVENTION, AND PROSECUTION OF HUMAN TRAFFICKING CASES IN ZAMBOANGA CITY**

*Darlene Reyes Pajarito\**

## **I. INTRODUCTION**

Being a transnational crime, Trafficking in Persons is one of the top three syndicated crimes in the world that generates billions of dollars. In terms of gravity, this modern-day-slavery attacks the very core of humanity. Philippines recognizes the gravity of this transnational crime; thus after becoming a signatory to the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” Philippines had its very own anti-trafficking law, Republic Act No. 9208, otherwise known as the “Anti-Trafficking Act of 2003,” which passed in May 26, 2003 and became effective on June 19 of the same year.

This law has been effective for merely eight years. Despite several convictions since 2005 up to 2011, there has only been one Supreme Court Jurisprudence, handed down on 12 October 2011. The Supreme Court affirmed the first human trafficking decision rendered by the Regional Trial Court of Zamboanga City, dated 29 November 2005, finding two Filipinos guilty beyond reasonable doubt of the crimes of Trafficking In Persons and Illegal Recruitment committed by a syndicate with the penalty of two Life Imprisonment and a total fine of 3.1 Million Pesos broken down as follows, to wit: Php 2M Fine in Trafficking in Persons; Php 500,000 Fine in Illegal Recruitment; Php 500,000 Fine as moral damages; P100,000 Fine as exemplary damages. (Supreme Court G.R. No. 195419). The amount of moral and exemplary damages were substantially modified by the Supreme Court as it was increased from Php 50,000.00 respectively.

Having comprehensive anti-trafficking legislation that is strictly implemented is one of the most effective measures to combat trafficking in persons.

Among the Asian neighboring countries, the geographic proximity of Malaysia, economic opportunities, and for some, an extension of their home, lured many Filipinos to cross the Malaysian border, mostly through illegal means or using the ‘backdoor.’ Criminal activities and human rights violations are common in such situations/conditions and trafficking in persons is not an exception.

Philippines is identified generally as a source country from where victims of trafficking in persons are recruited and transported to other countries not only within the Asia and Pacific region but to other parts of the world. However, domestically, trafficking in persons is likewise thriving and is just as lucrative.

There are several places within the Philippines identified as ‘hotspots’. Hotspots may be a province, city or municipality marked as a place where it is identified as a human trafficking source, destination, transit, and an exit point. Zamboanga City is one of those identified ‘hotspots’ in the Philippines.

Law enforcers can easily spot a possible human trafficking victim just by observing at one of the seaports in Zamboanga City. Probable victims’ profiles include among others, young passengers from ages between 12 to 25 years old; mostly girls; first timer in the big city; willing to take risks; without any clear information about their work, salary, employment, employer and place of work. Most of the victims are deceived into believing that they will have decent, good or high paying jobs in Malaysia; thus they would readily cross the border despite the fact that passing through the back door entails dangerous and unsafe conditions of travel.

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In the City's first conviction on human trafficking in 2005, the victim, a 22-year-old woman, was lured into Malaysia with the promised work of waitress at Php 25,000.00 per month. She was sold as a prostitute in one of the bars in Sandakan, Malaysia where she had to serve and have sex against her will with at least three to five male customers in a night, for more than a month until she was rescued. Aside from being raped, she was boxed, pushed and her head banged against the wall by her customers whenever she refused to have sex with them. Five other convictions followed, all involving young women who were exploited for sex or labour in Malaysia.

However, despite the statistics, getting more convictions remains a challenge. Human traffickers simply use different *modi operandi* to avoid getting detected and making it more difficult for police officers to intercept and arrest perpetrators as well as gather evidence. However, among the usual or common *modi* include (1) making advanced payment to parents, while recruitment process is still on-going, (2) making unrealistic promises relative to work, salary, food and lodging, (3) spurious documents and papers, (4) quota and networking system by relying on a wide net of "facilitators", (5) paying government personnel to overlook suspicious documents, (6) transport recruits in groups, in twos, or individually but will regroup at port areas, (7) recruiters avoid personal contact with recruits by buying tickets through the internet and sending it through emails, or they sometimes communicate through the social networking system, (8) movements of the potential victims are restricted and they are told to avoid talking to government personnel, other passengers or crew, (9) travel and personal documents are in the possession of the recruiter or the his/her facilitator and are sometimes given to recruits only at the port area already with government stamps on it, and (10) when one port area becomes strict, they simply go through another backdoor or another legal port. These *modi operandi* make it difficult to secure evidence especially when victims are non-cooperative.

## II. DEFINITION OF TRAFFICKING IN PERSONS

As provided under Section 3(a) of Republic Act No. 9208, "Trafficking in Persons – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

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

Based on the foregoing definition, there are three elements to prove to secure a conviction. These are the ACTS, MEANS and EXPLOITATIVE PURPOSE.

## III. ZAMBOANGA CITY CONVICTIONS

From 2005 up to 2011, Zamboanga City has a total of six convictions for violations of Republic Act No. 9208. Section 4 thereof enumerates eight Acts of Trafficking categorized into three kinds, namely sexual trafficking, labor trafficking and organ trafficking. Zamboanga City's six convictions all involve violations of said section, particularly on sexual and labor trafficking. An outlined summary is shown below, as follows:

### A. First Conviction in the Philippines

People of the Philippines –vs– HADJA JARMA LALLI y Purih, RONNIE ARINGOY y Masion (convicted) and NESTOR RELAMPAGOS (at large)

- Criminal Case No 21908 – Trafficking In Persons (Section 4(a) in relation to Sections 6(c) and 10(c) of RA No. 9208) filed on 18 August 2005
- Criminal Case No 21930 – Illegal Recruitment (Section 6 in relation to Section 7(b) of RA No. 8042)

- DATE OF DECISION: 29 November 2005; Promulgated on 5 December 2005
- PENALTY: 2 Life Imprisonment and a fine of 2.6 M
  - *In the human trafficking case:* Life imprisonment and a fine of Two million pesos (P2,000,000.00);
  - *In the illegal recruitment case:* Life imprisonment and a fine of Five hundred thousand pesos (P500,000.00);
  - *And to pay offended party the sum of P50,000.00 for moral damages and P50,000.00 for exemplary damages.*

*(NOTE: Moral damages of P50,000 was modified and increased to P500,000 while the Exemplary damages of P50,000 was modified and increased to P100,000 by the Supreme Court).*
- Heard and tried before Regional Trial Court, Branch 16, with Hon. Judge Jesus C. Carbon, Jr. as the presiding judge
- Prosecuted by City Prosecutor Ricardo G. Cabaron and 3rd Asst. City Pros. Darlene R. Pajarito
- This is a Qualified Trafficking case, committed by a syndicate, involving one (1) young female victim who was recruited in Zamboanga City, brought to Malaysia and prostituted thereat. This case was tried jointly with Criminal Case No. 21930 filed against the accused for Illegal Recruitment and was submitted for decision on 10 November 2005.

**B. Second Conviction in Zamboanga City**

PP vs. Rosie T. Ociel (convicted) alias “CONCEPCION CATARMAN y OBLIOPAS alias “MOMMY ROCHELLE” alias “MICHELLE”, a certain “GINA CATAMAN”, LenLen Batungbakal, KHOO MING HOI alias “ELWIN”, a certain alias “MICHAEL” and a certain alias “LUCY” (all at large)

- Criminal Case No 21899 – Trafficking In Persons (Section 4(a) in relation to Sections 6(c) and 10(c) of RA No. 9208) filed on 17 August 2005
- Criminal Case No 21898 – Illegal Recruitment (Section 6 in relation to Section 7(b) of RA No. 8042 filed on 17 August 2005
- DATE OF DECISION: 27 March 2007; Promulgated on 27 March 2007
- PENALTY: 2 Life Imprisonment and a fine of 7.2 M
  - *In the human trafficking case:* Life imprisonment and a fine of Five million pesos (P5,000,000.00);
  - *In the illegal recruitment case:* Life imprisonment and a fine of One Million pesos (P1,000,000.00);
  - *And to pay each of the six (6) private complainants the sum of P50,000.00 moral damages and P50,000.00 exemplary damages;*
  - *And to pay the costs.*
- Heard and tried before Regional Trial Court, Branch 16, with Hon. Judge Jesus C. Carbon, Jr. as the presiding judge.
- Prosecuted by City Prosecutor Ricardo G. Cabaron and 3rd Asst. City Pros. Darlene R. Pajarito
- This is a Qualified Trafficking case, committed by a syndicate and in a large scale involving six (6) young female victims who were recruited in Las Pinas, brought to Zamboanga City, thereafter to Malaysia where they were sold as sex slaves. This case was tried jointly with Criminal Case No. 21898 filed against the accused for Illegal Recruitment. After the submission of Memorandum on 30 June 2006, the case was deemed submitted for decision.
- On 28 March 2007, the Honorable Court promulgated its decision dated 27 March 2007 convicting the accused

**C. Third Conviction in Zamboanga City**

People of the Philippines –vs– EDWINA GUARIN (convicted) and CHARITO REBOLLOS (at large)

- Criminal Case No 21800 – Trafficking In Persons (Section 4(a) in relation to Sections 3(a) of RA No. 9208)

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- Criminal Case No 22151 – Illegal Recruitment (Section 6 of RA No. 8042)
- DECISION: 10 October 2008; Promulgated on 14 October 2008
- PENALTY: 20 years' imprisonment and a fine of P1.7 M
  - *In the human trafficking case:* 20 years' imprisonment and a fine of one million pesos (P1,000,000.00) but not more than two million pesos (P2,000,000.00);
  - *In the illegal recruitment case:* Imprisonment of not less than 6 years and 1 day but not more than 12 years and a fine of not less than two hundred thousand pesos (P200,000.00) nor more than five hundred thousand pesos (P500,000.00);
  - And to pay moral damages.
- Heard and tried before Regional Trial Court, Branch 16, with Hon. Judge Jesus C. Carbon, Jr. as the presiding judge.
- Prosecuted by 3<sup>rd</sup> Asst. City Pros. Darlene R. Pajarito
- This is a Simple Human Trafficking case involving two (2) young female victims who were recruited in Sangali, Zamboanga City, brought to Malaysia, and exposed them to prostitution thereat. This case was tried jointly with Criminal Case No. 22151 filed against the accused for Illegal Recruitment. On 16 July 2007, this case was submitted for decision. On 14 October 2008, the Honorable Court promulgated its decision dated 10 October 2008 convicting the accused.

**D. Fourth Conviction in Zamboanga City**

People of the Philippines –vs– FLORA CABRAL y ALDENESE, a.k.a. “Flora Jasmin Aldenese” a.k.a. “Flora Aldenese”, Christopher Yu, Analyn Yu and a certain Francis

- Criminal Case No 22878 – Trafficking In Persons (Section 4(a) in relation to Sections 6(c) and 10(c) of RA No. 9208)
- DATE OF DECISION: 29 July 2010; Promulgated on 6 August 2010
- PENALTY: Life imprisonment and a fine of P2.1 M
  - Fine of Two million pesos (P2,000,000.00);
  - And to pay private complainant the sum of P100,000.00 for moral damages and P50,000.00 for exemplary damages;
  - And to pay the costs.
- Heard and tried before Regional Trial Court, Branch 12, with Hon. Judge Gregorio V. Dela Pena III as the presiding judge.
- Prosecuted by 3<sup>rd</sup> Asst. City Pros. Darlene R. Pajarito
- This is a Qualified Trafficking case, committed by a syndicate, filed in court on November 28, 2006 involving two (2) young female victims from Camino Nuevo Barangay, Zamboanga City who were recruited in this City to work in Malaysia as cashier or entertainer. Upon reaching Malaysia, they were instead exposed to prostitution. Accused was a resident of Tumaga Barangay, Zamboanga City. This case was submitted for decision on December 2009.
- On 6 August 2010, the Honorable Court promulgated its decision convicting the accused

**E. Fifth Conviction in Zamboanga City**

People of the Philippines –vs– Arlene Ramos, a.k.a. “Michelle Ramos”, “Arlene Anova”, “Arlene Lee”

- Criminal Case No 22792 – Trafficking In Persons (Section 4(a) of RA No. 9208)
- DATE OF DECISION: 8 February 2011; Promulgated on 8 February 2011
- PENALTY: 20 years' imprisonment and a fine of 1 M
- Heard and tried before Regional Trial Court, Branch 14, with HON. JUDGE REYNERIO G. ESTACIO as the presiding judge.
- Prosecuted by 3<sup>rd</sup> Asst. City Pros. Darlene R. Pajarito

- This human trafficking case was filed in court on 25 September 2006. Accused, who is from Cabaluay-Catumbal Barangay, this City, recruited two (2) young female residents of Valera St., Barangay Zone 1, Zamboanga City, to work in Malaysia as waitresses. When they reached Malaysia, they were sold to different employers as household helpers without pay. This is Zamboanga City's first LABOR TRAFFICKING conviction and the second in the country.

**F. Sixth Conviction in Zamboanga City**

People of the Philippines vs. Mary Glen Anos y Dela Torre, Bebe Lim, et. al.

- Criminal Case No. 22969 - Trafficking In Persons (Section 4(a) in relation to Sections 6(c) and 10(c) of RA No. 9208)
- DATE OF DECISION: 1 July 2011; Promulgated on 1 July 2011
- PENALTY: Life imprisonment and a fine of 2.1 M
  - Fine of Two million pesos (P2,000,000.00);
  - And to pay private complainant the sum of P100,000.00 for moral damages and P50,000.00 for exemplary damages;
  - And to pay the costs.
- Heard and tried before Regional Trial Court, Branch 12, with Hon. Judge Gregorio V. Dela Pena III as the presiding judge.
- Prosecuted by 3<sup>rd</sup> Asst. City Pros. Darlene R. Pajarito
- This is a Qualified Trafficking case, committed by a syndicate, filed in court on January 31, 2007 involving two (2) young female victims who were exposed to prostitution in Malaysia. Victims were from Pagadian City while the accused was a resident of Poblacion Guipos, Zamboanga del Sur. This case was submitted for decision on 31 January 2011.
- On 1 July 2011, the Honorable Court promulgated its decision convicting the accused.

In all the foregoing cases, common evidence presented included the following, to wit:

- Affidavit/ Supplemental Affidavits (of Victims/Relative/Arresting Officer/Witness)
- Certification from the Philippine Overseas Employment Agency (POEA)
- Tickets (Airline/Boat/Bus)
- Complaint sheet/Booking Sheet
- Case Report/ Forwarding Report
- Certification from POEA
- Passports/Travel Documents
- Pictures
- Receipts paid by customers
- Receipts of money sent across border to a co-accused
- Pink paper for short time booking and yellow paper for overnight booking
- Letter of one of the victims to the mother
- Passenger Manifest
- Counter-Affidavit of Accused & that of Witness of Accused

This evidence was identified when the following witnesses testified in court:

- Private complainant/ Victim
- Corroborative Witnesses – Relative/s
- Police Investigator
- Arresting Officer
- Representative from POEA
- Representative from Airlines/Shipping Lines

#### IV. FACTORS THAT CONTRIBUTED TO THE SUCCESSFUL CONVICTIONS

Prosecuting such a complicated law is not easy especially when cases are victim-centered. A common challenge in prosecuting human trafficking cases is when victims or survivors no longer wish to participate or pursue the case against the human traffickers. Nevertheless, based on the experiences of stakeholders, enumerated below are some of the factors that contributed to the successful convictions in Zamboanga City.

- A. **Speedy Trial.** Prosecution ensures that witnesses are ready and present during the presentation of prosecution's evidence.
- B. **Specially Designated Prosecutor.** Department of Justice issued an order assigning a prosecutor to specially handle all trafficking in persons cases from the preliminary investigation up to the prosecution of the case in court.
- C. **Victims Almost Always are Presented First During Trial.** This is to avoid losing the victim and eventually the case.
- D. **Prosecutor To Conduct More Than One Briefing.** Prosecutors are obliged to prepare the witness for trial; thus the need to meet with the victim more than once, not only to guide the witness but also to be able to establish rapport and make the victim feel comfortable with the concerned duty holders as well as with the environment and the entire court process.
- E. **Focus on the Elements of the Crime in Attacking the Theory of the Defense.** This is to prevent deviation of issues or from the fact that trafficking in persons did occur.
- F. **Submission of a Strong and Well-Written Memorandum at the End of the Trial.** Judges appreciate the submission of Memorandum, as it helps them see the viewpoint of the parties. On the part of the Prosecution, it is an opportunity to give emphasis where it is needed to strengthen its point.
- G. **Relevant Corroborative Evidence is Likewise Presented.** These evidences can strengthen the case and are very useful should victims choose not testify. These include forensic interview records, video recording, child's journal, and testimony of investigators, arresting officers, social workers, medical doctors, and other eyewitnesses who have personal knowledge of circumstances leading to the trafficking in persons incident.
- H. **Gender or Victim Sensitivity.** It is very common that exploited victims are traumatized thus stakeholders are trained to use the Right-Based Approach to avoid re-victimization.
- I. **Enroll Victims in the Witness Protection, Security and Benefit Program.** Victims are empowered to pursue the case and seek justice for themselves and for the other victims when they are enrolled in the Witness Protection, Security and Benefit Program of the Department of Justice. Under such program, financial assistance is provided and as well as personnel security, for victims who receive threats during and even upon termination of trial. A temporary shelter in a safe house is likewise provided to protect them from harassment and possible threats from the human traffickers who are respondents or accused in trafficking in persons cases.
- J. **Presence of Social Workers and Counseling Given to the Victims.** Victims are always accompanied by a social worker from rescue, investigation up to prosecution and trial level. Counseling and post debriefing are likewise provided to help the victims cope with the trauma as well as the stress of pursuing a case.
- K. **Access to the Mandatory Services as Provided for in Republic Act No. 9208.** These mandatory services include providing the victim emergency shelter or appropriate housing, counselling, medical/psychological services, free legal services, livelihood/skills training, educational assistance to a trafficked child, capability building programs, and rehabilitation and reintegration of victim. (Section 23, RA No. 9208). These services or assistance are provided by concerned government and non-government agencies.

- L. **Duty Holders are Knowledgeable about Republic Act No. 9208.** The entire criminal justice system stakeholders are knowledgeable about the law and how to implement it. These stakeholders include police officers, social workers, prosecutor, judges, public defenders, jail officers, local community leaders and officials, and other non-government entities. Enhancement trainings and capacity building seminars on human trafficking are periodically conducted throughout the year.
- M. **Synergize Port-Based Task Forces.** Zamboanga City has local anti-trafficking task forces for sea-base, air-base and land-base which were organized in the last quarter of 2007. These are composed of government agencies in charge with the enforcement of the Republic Act No. 9208. In mid-2008, said task forces were mobilized to intercept, arrest and investigate human traffickers at all ports. These task forces are likewise mandated to rescue/recover and repatriate and rehabilitate victims. In handling human trafficking cases, the task forces are well coordinated. Case conferences are held prior to operation, and debriefing sessions are held thereafter. The task forces also do monitoring work and updates and new leads and information are shared.

**V. STRENGTHENING PARTNERSHIP, PROTECTIONS, AND PREVENTIVE MEASURES THROUGH MULTI-AGENCY COLLABORATION**

- A. **Continuous Trainings.** This is to update stakeholders with the existing laws and jurisprudence. This involves coordination/collaboration with Department of Justice, non-government agencies and with the Local Government Unit concerned.
- B. **Increase Awareness Among Agency Personnel.** This involves re-echoing what was learned and increasing the agency personnel’s effectiveness or competence in combating trafficking in persons.
- C. **Good Publicity After Conviction.** This is to encourage other women to come forward and pursue their respective cases against traffickers in persons. Media partners can help through print, radio and television coverage in sending a clear message, if not instill fear, among traffickers.
- D. **Continuous Collaboration Among Anti-Trafficking Task Force members.** Task Force members (government and non-government agency-members) continuously meet, monthly or quarterly to exchange information and strengthen ties and referral systems.
- E. **Continuous Anti-Trafficking Campaign/Advocacy Efforts.** This advocacy is very crucial among the youth, women, academe, local government unit community, transport groups, and business community to heighten campaign against trafficking and sustain the message sent as well as to increase the network of partners/stakeholders. Efforts include, among others:
  1. Conducting Basic Awareness and Orientation Seminars on the Salient Features of Republic Act No. 9208;
  2. Fun Run and Walk Inviting all Government Agencies and Non-Government Agencies to Participate;
  3. Posting of Posters and Giving of Handouts, Pamphlets or Information Material;
  4. Setting Up of Trafficking In Persons Videos to be shown at all Port Areas (sea, air and land);
  5. Setting up of an Overseas Passenger Assistance Center at all Port Areas. This is to purposely advocate, rescue, or intercept as well as to give assistance to probable victims of human trafficking and arrest human traffickers who are facilitating the exit of the victims through the legal ports.

However, given all the measures in place, human traffickers revise or change their *modi operandi*, especially at port areas. Their network of “facilitators” may be bus driver or conductor, a porter, or vessel crew or captain. They use local airline budget fares to evade tightening grip in ports, or private tinted vans beyond inspection, or they shipped victims under tarpaulin covers in trucks. Sometimes decoys are sent-off, as illustrated in the testimony of one victim: “Our recruiter divided us into those who have documents, and those who have none. The first group with documents is taken to the authorities for inspection. Our group

without documents was told to discreetly go in pairs, slip out of the terminal, and re-join the other group in a designated point where the bus would wait for us." (15 year old interviewee in Lilo-an, Philippines). Others are simply slipped through at night inside the engine room of the ship, when enforcers and non-government agencies are not closely watching.

## VI. CONCLUSION

Having a law with good penal provisions is definitely an important tool to help eradicate human trafficking. However, implementing it and prosecuting human traffickers is another matter. Having a good case, a good lawyer and a good judge can definitely boost the chance of getting a conviction.

Noteworthy to mention are some salient features of Republic Act No. 9208 that greatly contribute to its effectiveness. These include, among others, the legal protection afforded to the victims of human trafficking, who are given immunity from prosecution for crimes directly related to acts of trafficking; that they are entitled to be enrolled in the witness protection program; and that consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant (Section 17). Another salient feature of the law is the high penalty imposed on violators.

These foregoing convictions give very strong guidance to future prosecutions and possible convictions of human traffickers on issues like:

- That indeed consent is irrelevant;
- That actual sexual or labor exploitation is not necessary to prove the element of 'Purpose' when victims testified that they were given pills, condoms, and sexy clothing and ordered to entertain male customers by having sex with them;
- That victims' desistance does not necessarily result to acquittal of the accused;
- That there is conspiracy among contacts in different countries;
- That victims feel more empowered and protected once enrolled in the witness protection programme;
- That family support is crucial; and lastly
- That even college students and graduates can be just as vulnerable as those unschooled.

The modus operandi may change but what remains constant is the victims' desire to migrate or relocate to a different place, within or across national border; or victims wanting to work overseas, pushed mainly by economic factors and reinforced by their being 'risk takers but naive' or the attitude of 'Bahala na ang Dios' ('It is up to God'). These circumstances will always be the challenge duty holders face in combating human trafficking. A more frustrating challenge beseeching further attention among partners is corruption in the government. Although, anti-corruption laws are likewise in place, however, like the anti-trafficking law, it requires as much commitment from the duty holders to implement it and pursue the offenders.

Since human trafficking is a transnational crime, commitment not only from domestic stakeholders but from international stakeholders are very much needed. The importance of having a coordinated network within the Asia and Pacific region, and for these countries to share experiences and best practices can greatly enhance capacity and knowledge on how to improve instituted programs and measures in place as well as to strengthen the fight and take the necessary steps in eradicating this syndicated global crime of human trafficking.

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## REPORTS OF THE SEMINAR

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### GROUP 1

#### EFFECTIVE DETECTION, INVESTIGATION AND PROSECUTION OF TRAFFICKING IN PERSONS WITH SPECIAL FOCUS ON INTERNATIONAL COOPERATION

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<b>Chairperson</b>	Ms. Darlene Pajarito	(Philippines)
<b>Co-Chairpersons</b>	Mr. Seguchi Yoshio	(Japan)
	Mr. Mizanur Rahman Khan	(Bangladesh)
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	Mr. Anthon Billie	(Papua New Guinea)
	Mr. Komvich Padhanarath	(Thailand)
	Mr. Tanaka Hiroaki	(Japan)
<b>Advisers</b>	Mr. Wanchai Rujanavong	(Thailand)
	Prof. Naoyuki Harada	(UNAFEI)

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### I. INTRODUCTION

All the participants are in agreement that trafficking in persons is a serious problem affecting both the domestic and global community and that each country can be a source, transit, or a destination country, or all of the foregoing. Except for the participant from Papua New Guinea, all the participants considered their countries to be source, transit, and destination countries. The participant from Papua New Guinea mentioned that his country is a transit and destination country, while the Bangladeshi participant stated that his country is a source and transit country.

Under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, trafficking in persons has three forms of exploitation: sexual exploitation, forced labour or slavery, and organ removal. Although not all countries have criminalised all three forms of exploitation (sexual, labour, and organ trafficking), each country has its own domestic laws to counter some forms of human trafficking. In Papua New Guinea, basic criminal and labour laws are applied to human-trafficking cases. Despite the endeavours and continuous efforts of different countries in combating human-trafficking, there are still many obstacles preventing each country from effectively addressing this global menace.

The Group identified, among others, the push and pull factors common to all countries: economic reasons; lack of employment opportunities; family disintegration; weak or no law criminalising human trafficking; corruption and lack of exemplary punishment; vulnerability of victims due to calamities; limited or no access to social services or information; regulation imbalance; and presence of organized crime groups.

This report embodies the views and experiences of the participants in combating human trafficking, the obstacles encountered in detection, investigation, and prosecution of trafficking in persons (TIP) cases, as well as the available measures in their respective countries. Considering that TIP is a transnational crime, the Group agreed that to be able to effectively address TIP, effective measures in detection, investigation and prosecution must be recommended, focusing specially on international cooperation among participants' respective countries.

### II. MODUS OPERANDI

Being an organized transnational crime, the TIP common process involves recruiting victims, transferring or transporting such victims to the destination, and exercising control over victims to make them subservient to the human traffickers' demands.

At the recruitment stage, the Group identified several modi operandi. Human traffickers employ

fraudulent schemes or deceptive means such as giving false promises, advance payment or salary, job offering, internet communication, and advertisement in newspapers. A participant from Japan gave an example of human traffickers luring Filipina women with Japanese fathers to Japan by assuring them of the grant of citizenship, only for them to suffer sexual or labour exploitation upon arrival in Japan.

Victims of human traffickers are usually transported illegally to the transit/destination countries – legal ports are not often used; if exit or entry is through legal ports, fake travel documents are used. Fake marriages are likewise employed to gain entry to another country. Human trafficking occurs by air, land and sea, depending on the strategic location of each country. A participant from Honduras gave an example of victims who were transported on top of a cargo train from Mexico to the United States of America. If by sea, in the case of the Philippines, some victims are hidden in the engine room of the vessel for more than twelve hours. To other countries, like Japan, transportation of victims is mostly by air. As to the exercise of control by the human trafficker, it may occur during the transfer or at the start of the exploitation in the destination country.

### III. OBSTACLES

#### A. Detection

Persons vulnerable to trafficking are those who, in addition to those referred to by the UNODC documents, are in the following situations: homeless; young women or children; from poor families; of unusual appearance or circumstance, such as unusual scars or visible injuries; new to urban areas; illegal migrants housed in common locations or regions.

As far as the victim is concerned, obstacles identified by the Group are the following:

- (1) victims sometimes do not realise that they are victims, or the possibility that they can become victims of trafficking, thus they are unable to identify themselves as such;
- (2) many victims are uneducated and/or have difficulty in communicating because of language barriers;
- (3) TIP victims who are found to have entered the country of destination illegally, or who are overstaying, or who have been involved in criminal activities such as prostitution, working without permits, or using fake travel documents, often refuse to cooperate with law enforcements agents for fear of punishment as well as fear of retaliation by human traffickers;
- (4) in most cases, victims are found to have no or limited freedom or movement due to either physical (locked inside the room or house) or mental (unpaid debts) control;
- (5) the geographical distance between the victims' place of origin and the place of exploitation increases the vulnerability of victim as well as their difficulty in escaping and seeking assistance from authorities.

The Group also identified two common obstacles in the community or the public. First is their lack of awareness of trafficking in persons, making them unable to identify if such crimes are being committed in their community. Second, they may be aware, but fear of harm or retaliation prevents them from assisting the victim or reporting the incident to the authorities. As to law enforcers, most of the participants identified the following obstacles as very common: lack of personnel, tools, devices, equipment, office supplies, and gasoline; and voluminous workloads and budget constraints. Moreover, law enforcers' lack of knowledge and skill in detecting witnesses and investigating human-trafficking cases, as well as corruption, are also obstacles in most countries.

#### B. Investigation

Law enforcers face several obstacles in investigating human trafficking cases, and foremost is the language barrier between the victims and the authorities, more specially, if it involves a foreign victim or minor. Victims' refusal to cooperate or to tell the truth are due to some factors such as trauma, fear of authority or being charged for illegal activities, fear of retaliation by human traffickers, a feeling of loyalty to the human traffickers, and fear of being labeled a prostitute. Some victims do cooperate but exaggerate what they experienced to make themselves appear more believable. In the case of Thailand, the long waiting period for trial to begin also discourages victim cooperation, and they would rather lie about the exploitation, accept punishment for criminal activities and be deported than wait for the prosecution of the case. As far

as investigating the suspect is concerned, language difference is likewise an obstacle, as well as bribery and corruption. Other obstacles are that suspects use various techniques to delay the criminal procedure; do not admit their guilt; and operate with an organized crime group. The presence of layers of actors complicates and sometimes prevents the police and prosecutors from identifying and tracing the suspects. Police investigators themselves face several obstacles such as their lack of knowledge of TIP and weak investigative skills, lack of internal and external police cooperation, frequent rotation of police officers, and lack of forensic or scientific equipment.

### C. Prosecution

As in investigation, the prosecution faces similar obstacles. However, in addition thereto, the prosecution faces the following obstacles:

- (1) Absence of witnesses at the trial or in court testimony;
- (2) Hostile witnesses;
- (3) Lack of cooperation by the witness;
- (4) Long duration of trial;
- (5) Lack of knowledge in handling human trafficking cases; and
- (6) The frequent rotation of prosecutors.

However, a participant from Japan disagreed that frequent fast-turnover of police and prosecutors was an obstacle, and viewed it instead as an effective measure to fight corruption as well as an opportunity to enhance the capability of other police or prosecutors by sharing knowledge, experiences, and expertise regarding human trafficking.

## IV. EFFECTIVE MEASURES IN DETECTION, INVESTIGATION, AND PROSECUTION

After a lengthy discussion, the Group recommended the following effective measures to secure the co-operation of victims and other witnesses:

- Presence of social workers at relevant stages of the process.<sup>1</sup>
- Grant victims/witnesses immunity from suit, a work permit, extension of stay, or residency status.
- Financial assistance or an allowance for the cost of transportation, board, and lodging.
- Availability of interpreters at all stages of the investigation and prosecution.
- Provision of assistance such as appropriate shelter, medical/psychological care, and livelihood skills training/rehabilitation.
- Upholding the privacy/confidentiality of victims' identity and personal circumstances at all stages and closed-door investigation, and prosecution/trial (where possible).<sup>2</sup>
- Pre-requisite testimony of victim before prosecutor, defender, and the judge.
- Offer of plea bargain to an accomplice-turned-witness.

Recommended effective measures to get useful information from suspects are the following:

- Availability of interpreters.
- Surveillance of the activities of the suspect and the organized crime group.
- Wiretapping.<sup>3</sup>
- Tracing of financial or paper flows.
- Undercover operation/sting operations.<sup>4</sup>
- Financial sanctions such as confiscation of criminal proceeds and devices.

<sup>1</sup> To gain the trust, knowledge, and understanding of the victim.

<sup>2</sup> In Japan, victim's name may not be divulged during trial.

<sup>3</sup> Generally, in Japan, wiretapping for TIP cases is not allowed.

<sup>4</sup> Entrapment operations are not allowed in Japan for TIP cases because in such operations, police officers in effect would be committing a crime, and no immunity can be granted to officer; further, it is considered that in Japan, this will erode public confidence in the police.

Below are common effective measures identified by the Group:

- Full-blown campaigns against human trafficking, and advocacy and awareness-raising in relevant countries for all sectors of the community.
- Continuous training for police officers, prosecutors, and judges relative to capacity building, anti-trafficking and anti-corruption practices, cyber-crime detection, fraudulent document detection, and value formation.
- Monitoring in both source and destination countries by means of strict checking at ports of entry and exit; monitoring of transport agencies and recruitment service providers; compulsory/regular inspection of business establishments by government officials and internet surveillance.
- Increased police visibility, such as more community or home visits by police officers.
- Establish a system for handling human trafficking cases at the police and prosecution level to ensure a smooth turnover and continuance of the investigation and prosecution of TIP cases.
- Create a task force specializing in investigating and prosecuting TIP cases.
- Investigate and prosecute suspects in TIP cases who bribe government officials.
- Enroll victims in witness-protection programmes or engage the assistance of non-government agencies to assist in protecting the victims and their families.

## V. INTERNATIONAL CO-OPERATION

Weak or absent international co-operation and links between and among relevant government and non-government offices at the regional and global levels are key factors in allowing a very low risk environment for human traffickers.

The Group identified two kinds of cooperation: formal and informal. Formal cooperation takes a longer time to process, especially in the absence of a bilateral treaty, extradition, or a central authority and where the diplomatic channel is the only means of cooperating. In informal cooperation, the process is easier and faster in facilitating communication and requests.

Thus the Group agreed upon the following effective measures in handling TIP cases involving foreigners:

- A. Create a joint task force on a case-by-case basis involving authorities from both countries.
- B. Secure technical assistance in international capacity-building training to equip or enhance existing capabilities of all countries in detecting, investigating, and prosecuting human-trafficking cases.
- C. Establish networks with international groups such as the UNODC, Interpol, foreign regional committees, and the like.
- D. Conduct regional meetings among countries to establish a good network and linkages.
- E. Attend international fora to widen the international network.

## VI. CONCLUSION

In view of the complex nature of the crime of human trafficking, it is important that different countries strengthen their regional and international cooperation and networking, with mutual understanding of each countries' current situation and how to best address human trafficking in terms of detection, investigation and prosecution. It is of equal importance that joint efforts are sustained to be able to eradicate this global menace.

## GROUP 2

### VICTIM ASSISTANCE AND PREVENTION

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	Mr. Martin Fowke	(UNODC)
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	Professor Yanaka Fumihiko	(UNAFEI)
	Professor Sakonji Ayako	(UNAFEI)
	Professor Wakimoto Yuichiro	(UNAFEI)

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#### I. INTRODUCTION

The Group elected, by consensus, Mr. Titawat Udornpim as the Chairperson and Mr. Daisaku Kaneko and Mr. Shahinur Md. Islam as the Co-Chairpersons; Ms. Aileen Marie S. Gutierrez, the Rapporteur, and Mr. Chiaki Ochiai and Ms. Tania Jeannette Fiallos Rivera, as the Co-Rapporteurs. The report will discuss Victim Assistance and Prevention and focus on the following agenda: (a) current situation of trafficking in persons; (b) criminal justice measures for protection of victims of trafficking in persons; (c) victim assistance measures in trafficking in persons; (d) preventive measures against trafficking in persons; and (e) promotion of inter-agency and international cooperation from the viewpoint of victim assistance and prevention.

#### II. SUMMARY OF THE DISCUSSIONS

##### A. Current Situation of Trafficking in Persons

###### 1. Modus Operandi

Human traffickers employ various modes in the furtherance of their illegal activities. The participants identified them as follows:

###### (i) *False recruitment*

This is the most common mode used by traffickers, who pretend to be recruiters or representatives of agencies/entities authorized to deploy foreign workers to other countries. Victims are promised an expense-free recruitment process, including airfare, travel documents and other fees. Then, victims are supplied with false documents to facilitate their exit from the country of origin and entry to the country of destination. Usually, traffickers assure the victims well-paying jobs, including provisions for food and accommodations. However, upon reaching the country of destination, the victims are forced into prostitution or slavery.

###### (ii) *Fake marriages*

This mode involves the marriage of the victim to a foreigner for the purpose of exploitation. It is a misuse of the immigration system of one country so that a victim can travel abroad.

###### 2. Forms of Exploitation

Trafficking in persons is a transnational crime that abuses the human rights of its victims. It can take the following forms: sexual exploitation, forced labour or services, slavery, and removal or sale of organs.

###### 3. Characteristics of Vulnerable Groups

Identifying trafficking victims is the most challenging task for any law enforcement agency. However,

there are certain indicators that a person is most likely a victim of trafficking. These are more apparent in vulnerable groups, who are marginalised in their respective societies. These groups often have some or all of the following characteristics: (a) poverty; (b) hopelessness; (c) legal minor; (d) uneducated or of low education; and (e) unemployed. In some countries, refugees and victims of natural disasters or climate change are also considered vulnerable.

#### 4. Key Elements for Assistance and Prevention

Victim assistance and prevention are part of the multi-dimensional approach in combating human trafficking. The participants identified the key elements, as follows: (a) an organized system for victim support; (b) a policy of addressing poverty, which is a primary factor that makes potential victims susceptible to trafficking, through sustainable development programmes; (c) an effective mass-awareness programme; and (d) capacity-building training for key players of the criminal justice system, such as law enforcers, immigration officers, prosecutors, judges, and other stakeholders.

### **B. Criminal Justice Measures for Protection of Victims of TIP (Trial Stage)**

Human trafficking undermines the safety and security of all its victims. Thus, certain measures are made available to the victims, particularly during trial. Victims of trafficking are usually unaware of their rights, and if they are, they are unwilling to testify against traffickers either for fear that their families would be harmed or because they are embarrassed to reveal the circumstances in which they lived. Thus, victim protection measures are imperative so that victims feel secure in filing cases against traffickers.

#### 1. Protective Measures during Trial

Some participants have institutionalised witness-protection programmes in their countries, which provide security and safe houses to victims/witnesses, including their families. For those who do not have similar programmes, their governments, through law enforcement agencies, provide security to victims/witnesses. Protection of witnesses are also done through the following: (a) presence of accompanying persons for psychological support; (b) testimony via video link; (c) exclusions; (d) closed trial; (e) pre-trial procedures; (f) limitation of questioning; and (g) limiting disclosure. During trial, coordination measures with NGOs, civil society groups, psychologists, and other medical practitioners are important actions to protect the victim.

#### 2. Organized and Speedy Trial Procedure

Human-trafficking cases should be heard quickly. To this end, the participants explained that they make use of a pre-trial procedure or a pre-trial test, wherein parties stipulate facts and the testimonies of witnesses are already taken for use during the trial. Some participants even have special courts or tribunals mandated to handle cases involving women, children, and human-trafficking cases within a prescribed period.

#### 3. Punishment Reflecting Gravity of Offence

All participants agreed that for criminal prosecution to be a deterrent in human-trafficking cases, a severe penalty should be imposed on human traffickers. While some participants claim that their respective laws have severe penalties for human trafficking, which are also not bailable, some participants said that their penalties are not severe. For some participants, a high penalty is imposed for cases involving multiple charges which can also be considered human-trafficking offences. In all of the participants' jurisdictions, the judge decides whether to grant bail.

Human-trafficking cases should be punished more harshly than other cases, considering the damage and trauma to its victims. Considering the severity of the crime, the suspension of sentence and granting of bail should be addressed more cautiously than ordinary crimes. Thus, prosecutors should present sufficient evidence to prove the human-trafficking offence beyond reasonable doubt and make the judge understand the gravity of the offence for him or her to sentence appropriately.

### **C. Victim-Assistance Measures in TIP**

While victims of human trafficking often enter the country of destination illegally, once discovered, they should be protected, not be treated as criminals to be punished and deported. Some participants stated that in their countries, victims are granted a special status allowing them to stay in that country, and are even provided with a work permit, as long as they participate in the prosecution of trafficking cases. The International Organization for Migration (IOM) also provides money for repatriation of victims who could not

otherwise afford to go home. In the event that victims cannot pay for passports, the immigration authorities co-ordinate with the concerned embassies to request a waiver of fees.

Upon repatriation and to prevent re-victimisation, the IOM also arranges for reintegration by coordinating with NGOs regarding livelihood programmes and the filing of criminal cases against traffickers. IOM can also find housing and other facilities for trafficking victims.

All participants said that in their countries, shelters and similar facilities are available, some provided by NGOs and some by the government as mandated in their respective laws. Victim-support programmes include shelters and legal and medical assistance, such as psychological support. Participants identified the problem of limited shelter facilities for rescued, recovered, or repatriated victims. These victims are referred to shelters and concerned government agencies for legal assistance.

Participants also discussed that the issue of interpreters of victims'/witnesses' statements being of the same nationality or ethnicity as the victims or witnesses. This situation can lead to discomfort and fear of speaking plainly on the part of the victims or witnesses and can therefore be a hindrance to the investigation. In this regard, steps can be taken by the individual country to engage interpreters from different countries with the assistance of international organizations working on TIP issues. The victims'/witnesses' opinions in the selection of interpreters should also be considered.

#### **D. Preventive Measures against TIP**

##### **1. Border-Control Measures**

Each participant explained their border-control measures to prevent trafficking. While not all countries have the same equipment and hardware, the procedures in monitoring are similar. A participant shared that convicted and suspected traffickers are monitored by the immigration authorities and can be immediately stopped from entering the country, including those involved in prostitution, as identified by the immigration authorities. A participant stated that while the immigration authorities are monitoring traffickers, there are too many blind spots in their country and that it is difficult to check traffickers. Thus, monitoring is limited to bus stations and airports. More challenging is the patrolling of both land or sea borders between countries. For a participant, monitoring is conducted by an inter-agency task force composed of different agencies, such as the immigration authorities, airport, port and maritime police, and other concerned law enforcement agencies.

All participants agreed that a database, use of finger print scanners, photographs, and machine-readable passports are effective tools in monitoring human traffickers. Not only names of international terrorists, convicted non-nationals and violators of immigration laws, but names of blacklisted non-nationals should also be in the database.

Most of the participants' countries are island nations or have very long land borders that are difficult to patrol. Thus, it is important to share information among countries. Concerned authorities of countries sharing borders should have sufficient information on border control.

##### **2. Measures against Misuse of Travel and Identity Documents**

All participants shared their respective immigration procedures regarding examination of passports and other travel documents. All countries issue machine-readable passports. Immigration authorities use electronic devices to determine the authenticity of the passport. If the authorities are not satisfied, a secondary inspection is conducted and the documents are checked again in another facility. A participant stated that his country has introduced the machine-readable passport system and immigration department is using software called "third eye" for detecting and identifying the genuineness of the travel document.

It was observed, however, that the use of machine-readable passports is not a big issue relative to trafficking. There are instances when minors use fraudulent birth certificates to secure a passport. Consequently, the issued passport is genuine, but the data contained in the passport is false, which is a challenge to immigration inspectors.

### 3. Awareness Raising

All the participants agreed that there should be efforts to raise public awareness as a preventive measure against trafficking in persons. Awareness raising should be done through public information campaigns, using broadcast, electronic and print media, to make the public, particularly vulnerable groups, aware that trafficking is a crime and that if they are victimised, they can seek legal protection.

The awareness campaigns should also be conducted in cooperation with civil society and NGOs to create public awareness about the forms of trafficking, including the methods adopted by traffickers and risks to victims.

Seminars or training should also be conducted for law enforcers, prosecutors and even judges. In the exercise of their duties, key players are aware of the existence of trafficking in persons. However, they still need to explore the other dimensions of trafficking as well. Increasing awareness about trafficking among immigration authorities, diplomatic personnel and other concerned persons is also important, as they are practically in contact with potential victims regularly.

Some participants' countries have institutionalised programmes against trafficking in persons, conducting training sessions and workshops to enhance the knowledge and capacity of front line workers and broadcasting information for the citizens. Some participants believe that in their countries, awareness raising is a challenge. While there are seminars conducted for academia and researchers, there are none for the general public. Likewise, not all concerned government officials, like labour inspectors, are even aware of what constitutes trafficking in persons. Thus, all related organizations/agencies in government should tackle the problem together. It was agreed that all allied law-enforcement agencies should be trained and provided a tool-kit to assist them in understanding and acting on TIP violations.

### 4. Forfeiture Proceedings

The participants agreed that high profit is one of the motivations for human trafficking and forfeiture of illegal proceeds earned from trafficking in persons can significantly contribute to preventing human trafficking. Thus, a law consistent with international conventions, norms and domestic laws relative to this matter is important.

### 5. Promotion of Inter-agency and International Cooperation from the Viewpoint of Victim Assistance and Prevention

All the participants agreed that trafficking in persons is a heinous crime with global dimensions. It is a high-income game, wherein traffickers change their *modi operandi* quickly to adapt to various situations. Thus, it is imperative for all countries to work together and cooperate to prevent trafficking in persons.

The participants explained that in their countries, they have on-going victim-assistance programmes in cooperation with NGOs, civil societies and social-welfare organizations, which provide shelter and other forms of assistance to victims of trafficking. Legal aid is also available to the victims. Task forces are also established to prevent and protect trafficking victims. Relative to some participants, while their country has no specific organization that exclusively takes care of the victims, its Ministry of Foreign Affairs takes measures to address this concern. There is cooperation among their domestic organisations, like the probation, coast guard, immigration, and even prosecution authorities.

Beyond the domestic sphere, some countries are already signatories to international conventions relative to trafficking in persons. Some have existing extradition and mutual legal assistance treaties. In one country, an Action Plan is in place, wherein international cooperation is effected through assistance programmes. In particular, assistance is extended to South-East Asian countries by providing education, support for victims, improvement of occupational capacity, and implementing stricter enforcement of regulations. There are also efforts through various international assistance programmes to reduce poverty and cooperate with each country to prevent trafficking in persons. But despite the existence of said Action Plan, there is no provision regarding international cooperation. Indeed, it is imperative for countries to participate in treaties and exchange information.

Different forms of international cooperation were also discussed, like extradition, mutual legal assistance,

exchange of investigation techniques and information, initiating co-investigation teams, law-enforcement co-operation and informal cooperation. In reality, extradition and mutual legal assistance requests take time. Thus, informal cooperation, also known as police-to-police or agency-to-agency assistance, is useful during the case buildup or the investigation stage. It is usually faster and easier to obtain information. Thereafter, the formal co-operation can follow. Informal and formal cooperation should be used to speed up proceedings.

Cooperation with international organizations, like the IOM, is also essential for victim prevention and protection. Aside from conducting research, data collection, information sharing and awareness-raising activities, it also helps in the review and crafting of legislation. IOM provides legal, medical and psychological aid to victims and helps them be reintegrated upon arrival in their countries of destination.

Some participants stated that while their governments do not provide shelter for the victims, NGOs do. They identified this issue as one in which international agencies can play a vital role.

### III. RECOMMENDATIONS

Porous boundaries and globalisation are making it easier for traffickers to escape detection. Hundreds of individuals are lured into prostitution and forced labour around the world. Countries should come together and protect victims of human trafficking.

It is worthwhile to note that communicating with a traumatised trafficking victim is imperative in combating trafficking. Gathering an accurate account of the incidents leading to trafficking is always a challenge to any law enforcement agency. Thus, to facilitate interviews, specialized/small groups may be created to assist in the interpretation, obtaining of information, and other related issues from victims/witnesses and other concerned persons.

The participants suggested the following:

1. Victim assistance and protection:
  - Physical support for better investigation, i.e. forensic and technological support.
  - Technical and logistical assistance for TIP units, especially for victim protection and shelters; and financial assistance to victims.
  - There may be some internationally acceptable form of witness-protection measures consistent with domestic laws and customs.
2. Prevention measures:
  - Income generating programmes and mobilisation of socio-economic resources to avoid human trafficking; and rehabilitation and reintegration of the victims to prevent re-victimisation.
  - Advocacy campaigns for the general public targeting the vulnerable group of possible trafficking victims, such as comprehensive awareness and PR activities; making and distributing awareness-raising brochures on TIP; education, promoting compliance with laws and regulations related to TIP; and raising awareness of the demand which fuels sexual exploitation.
  - Enhancing the capacity of concerned agencies/institutions, particularly law enforcement, or front liners.
  - Investigation of the money earned by human trafficking may be given more importance and a mechanism of confiscating the illegal proceeds/income from TIP may be developed.
3. International cooperation:
  - Extended international co-operation for establishment of victim shelter homes; promoting the capacity of the key players.
  - Cooperation among NGOs, IOM and other civil-society groups to ensure rehabilitation and reintegration of TIP victims in the society.
  - Close liaison among key players of different countries, i.e. establishment of small working groups.

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- Governments, through international cooperation, need to improve education and employment to prevent migration and TIP.
- Extended opportunity for sharing of information regarding TIP.
- Special attention to vulnerable groups from countries that have been large-scale victims of war, internal disorder, gross economic crisis, climate change, etc.
- Mutual legal assistance for investigation, trial, repatriation, and extradition should be enhanced.

#### **IV. CONCLUSION**

UNAFEI provided the agenda for the group workshop. The participants talked about various issues, within and beyond the prescribed topics. There was a sharing of customs, current situations, challenges, and best practices of each participating country. After the spirited and lively discussions regarding several matters like domestic law, international conventions, the role of international agencies working on TIP, and other relevant issues, the group concurred on the contents of the group paper. Everyone agreed to take initiative and work on the recommendations made. Indeed, extended international co-operation on strengthening capacities of key players, victim support, preventive, and protective measures and mutual legal assistance are indispensable to improve the entire TIP scenario.



## APPENDIX

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*COMMEMORATIVE PHOTOGRAPH*  
*• 150th International Senior Seminar*

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UNAFEI



# 150th International Senior Seminar



## **Left to Right:**

**Above**

Prof. Higuchi

## **4th Row**

Ms. Sasabe (Staff), Mr. Sugiyama (Staff), Mr. Honda (Staff), Ms. Yamamoto (JICA), Ms. Iwakata (Staff), Mr. Inoue (Staff), Mr. Okaniwa (Staff), Mr. Miyazaki (Staff), Ms. Tani (Staff), Ms. Tashima (Staff), Mr. Yamamoto (Staff)

## **3rd Row**

Mr. Jimbo (Staff), Ms. Sakai (Chef), Mr. Kawai (Chef), Ms. Yamada (Staff), Mr. Membreño Villela (Honduras), Mr. Corenejo Duran (El Salvador), Ms. Reyes Pajarito (Philippines), Mr. Seguchi (Japan), Mr. Padhanarath (Thailand), Mr. Tanaka (Japan), Mr. Kinoshita (Japan), Mr. Watanabe (Japan), Mr. Rivera (El Salvador)

## **2nd Row**

Ms. Maroski (Intern), Mr. Yamamoto (Japan), Ms. Sandoval Gutierrez (Philippines), Ms. Fiallos Rivera (Honduras), Mr. Udornpim (Thailand), Mr. Moniruzzaman (Bangladesh), Mr. Kaneko (Japan), Mr. Khan (Bangladesh), Ms. Pommanuchatip (Thailand), Mr. Islam (Bangladesh), Mr. Bokko (Indonesia), Mr. Billie (Papua New Guinea), Mr. Ochiai (Japan)

## **1st Row**

Ms. Lord (LA), Prof. Izumi, Prof. Sakonji, Prof. Tsunoda, Prof. Tada, Ms. Maloney (USA), Mr. Fowke (UNODC), Director Sakuma, Mr. Roujanavong (Thailand), Deputy Director Ukawa, Prof. Harada, Prof. Wakimoto, Prof. Yoshida, Prof. Yanaka, Mr. Hagiwara (Staff)