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# REPORTS OF THE COURSE

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## GROUP 1

### INVESTIGATING AND PROSECUTING TRAFFICKING IN PERSONS OFFENDERS

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The Chairman introduced the topics of discussion, and suggested to narrow the scope of deliberations to four significant topics to maintain focus. With 11 members, 2 people would comfortably take up a topic and discuss it in detail. It was suggested that the aim of the deliberations is to make recommendations rather than reiterate what has been already said in the Individual Papers, and topics 2, 3, 7 and 8 were chosen from the list. Later with general consent the scope was expanded to cover the remaining topics as they were found to be integrally related to the theme.

#### I. INTRODUCTION

The group reviewed the definitions of Trafficking in Persons (TIP) in the U.N. protocol as well as legal provisions in various countries, and felt that TIP was a pressing and urgent problem for the world. The group has also taken note that the most vulnerable victims have been women and children. The task before the group was to analyze the current situation in trafficking based on individual country experiences, data available and to discuss remedies and countermeasures. The group also took note of best practices in various countries and the need for replication and adaptation of these according to each country. The main focus of the discussions was on “Investigating and prosecuting TIP offenders”; various measures for appropriate interviewing methodology, investigative practices, evidentiary issues and witness protection were discussed at length. The group also dwelled upon measures to encourage reporting of such offences, raising public awareness and victim assistance before and after the investigation stage.

#### II. SUMMARY OF DISCUSSIONS

##### A. Current Situation of T.I.P.

###### 1. Modus

- Recruitment and victim acquisition

The group took note of the methods and modi employed to acquire/lure potential victims into TIP and subsequent exploitation. At times, advertisements promising better job opportunities abroad are published to lure unsuspecting female victims into sexual trade.

- Routes used by traffickers

The group discussed in detail routes used by traffickers and choice of the same; air routes were found to be used more for Commercial Sexual Exploitation (CSE) as it was economically more viable. The group noted the need for cooperation of victims with the trafficker especially while using air routes; Choice of routes — domestic, international, air/land/sea — was seen as dependent on market economics, the rigors of border controls, terrains and prevalent political climates in the

countries of origin as well as destination.

- Countermeasures and circumvention  
Governments have been aware of the scale and proportion of this problem and have been implementing various measures for prevention of TIP; the need for financial statements, return tickets, property documents, inoculations, etc. has also helped to make illegal travel difficult, thus creating a disincentive for the traffickers. The traffickers on the other hand are using forgery, fraud and corruption of officials as means to circumvent these measures.
- Prioritization  
The group also talked about the responsibility of airlines and cost of travel of deported persons. As an effective means of control, the airlines are now very stringent in checking travel documents. Prioritization by governments of the issue of TIP was discussed, and some examples were cited where governments prevented departure of probable victims. It was felt that the governments are increasingly allocating more resources and trying to put in place effective interventions.
- Agents  
The role of agents who “facilitate travel” by assisting at airports, etc. was discussed. The group felt that other than organized crime groups which specialize in such operations, freelancing individuals also indulge in such activities. These people can be found assisting victims with travel formalities and procedures at airports and borders. It was felt that a complete debriefing of victims gives a more complete picture of trafficking and modus used.
- Technology  
Technologies used by traffickers are getting more complicated and superior, and governments need to match this. Law enforcement in most countries has always been seen to be short of resources, thus relegating the issue of TIP to the background.
- Organized crime groups  
The role of organized crime groups was analyzed; it was felt that the involvement of these groups was dependant on the economics of exploitation, the return on “investment” and profitability of such ventures. Several modi operandi were discussed, e.g. recruiting “babysitters” and then using them as prostitutes or for forced labour, “adoption” of Haitian children and then using them for forced labour and domestic servitude/slavery.

## 2. Forms of exploitation

- Commercial Sexual Exploitation,
  - Involuntary servitude, bonded labour, slavery, debt bondage,
  - False marriage, forced marriage, “mail order brides”,
  - Pornography,
  - False adoption, child soldiering (especially in Africa),
  - Organized begging,
  - Sale of organs;
- All were discussed with examples from various countries and jurisdictions. It became apparent that CSE was the most prevalent form of exploitation.

## **B. Criminalization**

- Anti-Trafficking legislation  
The chairman informed the group that only 80% of the countries which signed the UN protocol have enacted legislation and taken other significant measures<sup>1</sup>; it was proposed that the countries that have not yet passed such legislation be urged to enact it. Confiscation of proceeds of crime should be an integral part of such legislation. Old penal laws are being used instead of specific anti-trafficking legislation in some countries, hence the need for legislation in line with the UN protocol.

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<sup>1</sup> Global Report on TIP, 02/2009, UNODC.

- U.N. conventions  
U.N. conventions do not automatically become law without enactment/legislation, but countries which are a signatory to a convention and a protocol have an obligation to legislate on the subject.
- Legal measures  
Use of new legal measures, like asset forfeiture, anti-money-laundering provisions, organized-crime legislation, etc., need to be included in any such specific legislation. Enhanced penalties, tailor-made procedures and new definitions are some benefits of specific legislation.
- National instrument  
The group agreed unanimously on the need for a national instrument (commission/task force/committee, etc.) at the national level to deal with TIP.
- Acts related to TIP  
Regarding criminalization of different acts related to TIP, the group recommends that acts related to TIP should also be penalized; however, it was felt that although it is difficult to comprehensively cover each and every such act by legislation, the hotbeds of such crime are fairly known and can be tackled by effective use of allied laws like anti-child labour laws, etc. The need for effective enforcement of existing legislation was also felt.

### **C. Obstacles to the Detection, Identification, and Investigation of TIP Cases and Key Elements for Solutions**

#### **1. Detection**

- Sophistication, e.g. superior quality of forged documents  
The group called for training and better technology for detection; also for the addition of better security features for documents to prevent forgery; countries still using non-electronic/chip-based passports should shift to electronic ones.
- Lack of will on part of people to cooperate with law enforcement  
The group felt that sensitization and awareness of the public and probable victims is the need of the hour; it was also felt that a victim-centered approach to deal with TIP is needed. Professionalism and integrity with a strong ethical code is needed on the part of law enforcement in dealing with victims. Some participants felt that incentive schemes for informants would encourage reporting of TIP crimes.
- Complexity of TIP crime  
Better legal provisions covering all aspects of TIP crime and countermeasures are needed in line with the UN protocol; also, awareness and training of the enforcement machinery, especially at critical points and jurisdictions, e.g. border check points, is needed. One of the participants recounted a case in which 28 persons were prosecuted/deported for illegal immigration, etc., but in retrospect he felt that it was a case of TIP; had he possessed the proper perspective at that time, he would have booked the perpetrators for TIP rather than the victims; he even recalled arresting the “agent” responsible for arranging travel documents, but that person was deported. Provisions for the protection of “undercover” operatives were felt necessary. Similarly, enabling provisions for surveillance, monitoring and interception are needed. Along with use of all available resources and tools like surveillance technologies, the need for developing human intelligence was emphasized.
- Vulnerability of victims due to language barriers  
The group felt that use of interpreters and skilled interviewers especially at immigration points will aid detection. Coordination with concerned embassies/consulates will also help in detecting TIP crimes.
- Legal status as an immigrant (legal/illegal)  
Provisions for temporary stay, protection and guarantees against immediate deportation and prosecution after being identified as a victim of TIP were felt to be effective remedies.
- Psychological barriers and cultural issues prevent detection  
Use of NGOs (non-governmental organizations) and trained counsellors to interface with probable victims and vulnerable groups can help in removal of such barriers. Also TIP is seen as a “victimless”

crime by society in general, especially when victims are foreign nationals, so there is no social support or public concern for them.

## 2. Identification of victims of TIP

- Lack of knowledge about TIP on part of law enforcement/prosecution and judiciary  
Victims are usually seen as violators of statutes; they also are themselves unaware of the factum of trafficking. Intensive training, e.g. as the Philippines' "proactive victim identification program" for various agencies, centering on indicators of TIP and sharing of best practices to deal with it, may be replicated elsewhere.
- The group felt that the element of exploitation is very difficult to prove  
It blurs the margins between trafficking and migration; much of TIP may be disguised as migration/smuggling. Joint/special multidisciplinary teams including members from law enforcement and immigration, as well as legal professionals, need to debrief victims, from various perspectives and use the knowledge gained for prevention and identification. Profiling and use of indicators for preliminary screening of migrants likely to be victims, coupled with detailed interviews when needed, will help greatly in identification and detection of victims, at the initial stages of entry or transit.

## 3. Obstacles to investigation and solutions for the same

- Legislation  
Absence of legal provisions and low probability of successful prosecution may severely limit chances of proper investigation. Enactment of specific TIP laws in the countries that are signatories to the UN protocol but have yet not legislated on it was urged upon.
- Pattern identification  
Better investigation and feedback from individual cases to identify patterns, networks, individuals and economics of the TIP trade (e.g. drug cases are taken up as the highest priority), would help in unraveling the chain of offenders and their nexus across boundaries.
- A manual of procedure  
S.O.P.s, i.e. Standard Operating Procedures (like the Philippines' "Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases"), may be adapted to specific country needs and used as a template or model.
- Coordination and cooperation  
In a chain of offences, parts of the offences or specific acts may be committed in different countries and jurisdictions, and obtaining evidence and witnesses across such barriers become very difficult. Lack of coordination and cooperation between different countries and stakeholders is also a serious impediment. The participants felt that sharing of best practices, learning across agencies and borders, inter-agency cooperation, and better training, were suggested as means to remove obstacles to investigation. Exchange of intelligence and information between countries of origin, transit and destination will help in proper investigation.
- MLAT (Mutual Legal Assistance Treaty)  
Different legal systems and provisions across borders also severely limit the scope of investigation. Also the outcome of the case heavily depends on the victim's testimony, which is difficult to obtain. MLAT treaties need to be signed between countries facing TIP crime and related issues.

## **D. Measures to encourage victim cooperation**

- Protective measures  
During investigations, safe houses or other such protective measures, including accommodation, may be provided for the protection of the identity of the victim to prevent intimidation and further harm by defendants/traffickers. Provisions for in camera proceedings, confidentiality of proceedings, and testifying via video link during trials (including legal provisions for the same) have been used successfully in some countries and may be replicated elsewhere. Offering immunity from prosecution, as embodied in certain countries' laws, when crime is a result of trafficking; providing temporary residence in the country of exploitation; special status/non-deportation; repatriation instead of

deportation to prevent stigma, etc. — all are valuable protective measures to assist victims of TIP. During field visits to Japanese district courts, the participants were exposed to the use of video links and other advanced technologies used in the courtroom. The group was very appreciative of such measures and resolved to recommend use of these in the members' respective home countries, too.

- Interview procedures  
Simplifying interview procedures with a victim-centric approach will go a long way in ensuring victim cooperation during investigation. Free legal aid and counselling, services of interpreters, assistance to claim compensation; medical and psychological assistance, vocational training and guidance for rehabilitation will go a long way in ensuring victim cooperation.
- Special precautions for women and children  
When the victim is a minor, special precautions may be needed; most countries have specific legislation dealing with the protection of children's rights. In the case of female victims, presence of a trained female interviewer during the interview can be of great help. Family members of victims may be at risk; protection measures are needed in the victim's home country/town.

### **E. Appropriate interview methods**

- Special interview methods  
Sensitivity and empathy towards the victim and her/his suffering; based on the type of exploitation suffered, social and cultural background, special vulnerabilities, etc.; skilled/trained and mature interviewers to handle victims with care, special methods needed for child-victims. Choice of investigator, his/her skills, preparation and the environment, etc. is very important. Sometimes an interviewer of a similar ethnic or cultural/linguistic background may be used to establish rapport.
- Assurance of protection  
An assurance of safety (of self as well as family members, etc.), protection from reputation loss or media/public exposure need to be ensured before the start of the interview.
- S.O.P.  
A manual of procedure/protocol needs to be utilized; it may include provisions of confidentiality, assurances, knowledge about laws/procedures of the country, his/her role in the process, awareness of rights, etc.
- Child-friendly interview  
In case of child-victims, background information may be obtained by talking to parents/caretakers; investigators should use this information to gain trust. The presence of parents during the interview may at times be counterproductive. Assistance of psychologists and social workers adept at dealing with children can be helpful. Formulation of child-friendly interview guidelines is needed.

### **F. Measures to encourage reporting**

- Awareness campaigns  
Establishing hotlines and "action lines" dedicated to TIP, also ensuring anonymous reporting. Awareness campaigns in media, posters, workshops with vulnerable sections, direct public contact, etc. have been suggested as means to encourage reporting. The participant from Colombia informed the group about such a campaign successfully run in 2008, which resulted in a large increase in the apprehension and prosecution of TIP offenders.
- Witness protection programmes/provisions/mechanisms/court orders, immunity from criminal prosecution, and other measures, including protection of identities, can be undertaken; different kinds of persons may be in need of disparate arrangements.
- Use of technology, e.g. SMS for anonymous reporting and building information databases for structured response.

### **G. Measures for investigation**

- Evidentiary issues  
Special kits (based on type of evidence/crime) for collection, preservation, packaging and transport

of biological and other evidence have been in use in some countries, and this may be replicated elsewhere. Training and orientation with proper procedures to collect physical evidence is needed. Evidence may also be documentary, digital or concerning financial transactions, forgery and other records and transactions.

- Technology  
Surveillance, wiretapping and interception of telecommunications and internet communications can be used in accordance with safeguards and procedural precautions; however, many countries allow use of such techniques only in cases of threat to national security, thereby severely limiting its utility to criminal cases. The group felt that law enforcement agencies should be well equipped with the latest technology and equipment to be a step ahead of the perpetrators of crime.
- Turf wars  
Inter-agency cooperation within the country is an urgent need; turf wars between agencies also prevent cooperation and coordination regarding human trafficking.
- Confiscation of proceeds  
Legal provisions regarding confiscation of proceeds of crime are usually available post-conviction; in some countries the standard of proof used for asset confiscation regarding proceeds of crime is “preponderance of probabilities [evidence]”, which makes it a very useful provision. One limitation cited by some participants was that asset confiscation provisions were available only for drug-related cases, as until recently in Panama (new legislation includes such provisions); many other countries such as India have provisions for asset confiscation in the Criminal Procedure Code, which have been successfully used in TIP cases, too. The group felt that TIP cases should be covered under it, e.g. innocent couriers are used as “mules” to carry huge sums of money across borders especially through air routes.
- License suspension  
Participants also mentioned closure of licensed premises or withdrawal/suspension of shop/establishment provisions if found to be indulging in TIP.

## **H. International cooperation**

- Mechanisms and practices  
The Convention on Transnational Organized Crime and protocol on TIP are not fully implemented in reality, and countries urgently need to put mechanisms and practices in place. All agencies involved in different countries need to be made aware of existing provisions and the importance of cooperation. Participants also expressed the feeling of satisfaction and significant change in perception along with an increase in awareness about the need for international cooperation; they also vowed to put learning points into practice.
- Informal channels  
Group members recounted successful cases of informal coordination between agencies across borders where victims of human trafficking were rescued, without resorting to formal diplomatic channels of communication. Members also mentioned informal joint meetings (about various issues including border control, crime and intelligence matters) as being a very successful practices which ensure quick responses through personal contacts, cutting red tape and procedural delays. Quick responses are needed in criminal investigations, especially human trafficking cases; formal channels of communication and the absence of informal mechanisms ultimately delay and create impediments in prevention and tackling of TIP. Ad hoc lecturer, Mr. Senta, recommended the use of informal channels to cut red tape and speed up proceedings during the investigation stage, and a visiting expert, Mr. Wanchai, also echoed the same feelings. One of the Japanese participants mentioned that in a particular case relating to Thai traffickers, information by fax (before using MLAT procedures) was sent to Thailand resulting in the subsequent arrest of a broker there.
- Intelligence sharing  
Regular communication and interchanges of information and intelligence will ultimately lead to prevention of such offences even before they are committed. Participants from Latin America mentioned formal and established mechanisms of information sharing (quarterly meetings) between neighboring countries regarding crime including TIP; similar practices exist on the African continent

(SAPCCO; Southern Africa Police Chiefs' Cooperation). AMERIPOL (American Police Community) and CLACIP (Latin American and Caribbean Community of Police Intelligence) in Latin American countries have been performing these functions.

### III. CONCLUSIONS

The group recognized the impact of the course on the participants; it analyzed the existence and dimensions of the problem, discussed remedial measures as practiced by different countries, various methodologies of implementation of recommended strategies and ultimately benefiting the victims of TIP. The group felt that the course has given them insight and a new perspective on TIP. The participants affirmed that they are going back home with a lot of shared knowledge about diverse practices and measures to tackle this heinous crime against humanity.

- The group recognized the importance of a victim-centered approach.
- The importance of the use of informal channels rather than formal ones was reiterated, especially during the investigation stage. The members also resolved to use these in practice in their home countries upon their return; the need for international cooperation was emphasized.
- The requirement of a policy initiative and a “National Instrument” comprising different stakeholders, including law enforcement, public prosecution, immigration, welfare (child and women) departments, NGOs, social workers and specialists from the field of psychology and sociology, as well as victim support groups, was seen as an essential measure to address the issue of trafficking in persons holistically.
- Special Anti-TIP Units within law enforcement were recommended to be established.
- Capacity-building of different stakeholders in the form of training and sensitization was emphasized.
- It was unanimously felt that public awareness regarding TIP is the need of the hour, and governments were urged to provide enough resources for the same.
- TIP, being complex and widespread and no country being free of it, needs specific legislation in line with the UN protocol on Trafficking in Persons, which defines the Actions, Means and Purposes of trafficking and criminalizes them.
- Participants felt that enhancements in technologies of investigation and detection should be shared between different countries in the world to effectively tackle TIP and other crimes, and a framework for the same was recommended to be created.