

International Trafficking in Women

Anti-Trafficking Law in Asia

**Expert Meeting
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Asian Women's Fund

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Asian Women's Fund (AWF)

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Forward

With regard to Violence against Women in Asian region, it is noted that trafficking in persons is one of the most widespread, serious and common issues. And yet, it is often the case that the general public of the receiving societies is not aware of the issue because trafficking traders seldom surface and trafficked victims are under severe control. The international community urges measures and actions addressed to Governments, intergovernmental and non-governmental organizations, and seriously concerned with the increasing number of women and children are being trafficked. Since 1980s, Japan has been known in the region as a recipient country of women trafficked for the purpose of sexual exploitation from Asia, South America as well as East European countries. Recognizing these facts, Asian Women's Fund convened international meetings on "International Trafficking in Women" in 1998 and 1999 in cooperation with the Government of the Philippines and UNESCAP in Bangkok respectively.

In the current situation, it is almost impossible for the victims of trafficking to claim their exploitation in justice systems and to punish their employers/traffickers/intermediates. How dose each country deal with these victims? What kind of support is required to restore their rights? Is there any measure to punish employers and traffickers who forced them to prostitution? Is there any way to prevent the traders of trafficking from holding profits gained by the illegal conducts? How to protect the victims' rights to bring suit, if they overstayed their visas? How to protect and care for the victims? To what extent the international framework can be effective? Is the framework of law enough?

Keeping these new developments in mind, AWF organized an expert meeting on trafficking in women 2003 in Tokyo. The experts came up various recommendations with regard to preventive measures (such as increase economic opportunities among sending countries), protection and assistance to victims (including temporary visa), and prosecution of the traffickers (mandatory restitution). Many of the Asian countries regardless of sending, receiving or transit country of victims, the anti-trafficking laws were introduced in recent years. In Japan, however, there are still various opinions for the anti-trafficking law. The expert meeting strongly urges the Japanese government to consider the establishment and implementation of anti-trafficking laws in order to protect victims. It is also requested to set up the inter-governmental task force to coordinate the anti-trafficking programmes and to form a focal point which brings international organizations and NGOs periodically.

We hope this report could assist in understanding the recent development of anti-trafficking activities in Asian region.

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Date: November 27, 2003
Place: Tokyo Women's Plaza Hall

“Is the Law Prohibiting the International Trafficking Necessary?”

Yoko Hayashi
Attorney-at-Law

Asian Women's Fund (AWF) was established in 1995 under the initiative of Japanese government for the atonement projects of the “comfort women” who are the victims of Japanese military forces during World War II, assuming the moral responsibility of the Japanese government. Mr. Tomiichi Murayama, the former Prime Minister, is the head of this AWF at present. The atonement projects was composed by three components; 1) extending “atonement money” which contributed by the Japanese general public, 2) a letter of apology from the Japanese Prime Minister, and 3) medical and welfare services provided by the Japanese Government. The atonement project was finished in September 2002, after the five years duration, and for not repeating the same error, we are trying right now to promote the women's dignity project for dealing the contemporary women's issues.

This international expert meeting on trafficking is the third one since 1997 when we conducted the first meeting in Manila, the second in Bangkok in 1998 that we have convened. For the past five years, however, we have not convened the expert meeting, we did not forget about this issue, but because we are trying to engage more into the other issues such as women's human rights under the armed conflicts, women and justice system, and domestic violence, etc.

We realize that in terms of the human trafficking, the major and serious developments are identified in the Asian regions, and I am very much pleased to have extensive reports about the human trafficking in the regions, from all the panelists and participants at this meeting.

In 1986, a shelter called HELP Asian Women's Shelter opened in Tokyo with the support of the Christian organization, and without any request, I volunteered my legal expertise to serve as their legal advisor and expert. For 10 years I had been involved in the HELP Asian Women's Shelter. In 1989 I was in Bangkok and Yayoi Matsui wrote a letter of introduction for me and I met a wonderful legal expert, and that was Ms. Naiyana who joins us here from Thailand. She was in her 20s at that time, a very young lawyer, and ever since then at the age of 39 she became the youngest human rights commissioner, and she

is at the top of the Asian expert on this issue right now. She is also very active in the human rights issues in Thailand.

In 1996, there was the occasion at HELP Asian Women's Shelter, looking back the legal activities of the Shelter in 10 years among the volunteer legal experts, and looking at the documents which were published, I find we tried to pursue many cases to accuse of the perpetrators; however, the police, most of the cases, refused to be involved and the prosecution did not take place.

At that time, for example, I went to Saitama with the information that a Filipino woman was confined, and I rushed to this "snack bar" with my own camera. I submitted the complaint together with an evidence of photographs. The police officers were very impressed with my skill of taking good pictures of the bar, but that is the end of the story. The police officers did not advance the investigation. They said just OK, this is the end of the case because the victim was deported back to the Philippines, so we could not go any further. I thought the prosecutors had some kind of answer, but that was not the case. They just responded to me in writing that they decided to "suspend" the investigation of the case, because the victim returned to the Philippines, so they had nothing else to do.

The title of this forum is "Whether the anti-trafficking law necessary or not"; of course it is necessary. You consider that it is necessary, that is why you came here. But many of the Japanese government officials consider that such kind of anti-trafficking law is not necessary. CEDAW (Committee on Elimination of Discrimination Against Women), United Nations' treaty body, reviewed Japanese government report last year in order to evaluate women's status in Japan. The Committee recommended that Japan should improve the prohibition of human trafficking, together with other recommendations.

Those people who are opposing anti-trafficking law have two reasons. Number one: they think there are plenty of laws and these kinds of existing laws cover the necessary prosecution, but many papers submitted during our expert meeting such as Ms. Yoko Yoshida of Japan and also Ms. Ann Kambara of the USA also gave us a very good organized presentation about this issue, why Japan has to consider the anti-trafficking law.

There are Immigration Laws, Anti-prostitution laws, yes, there are a series of laws, but these are only applied within the applicable jurisdiction of the crime, and it may not cover entirely the trafficking issue because it does not discuss the protection of the victims or preventing the re-victimization of victimizations, so we cannot supplement this directly.

What we are discussing here is that if the perpetrator is caught and brought to the law, that is, of course, very important. However, the reintegration of the victims also should be

included in the anti-trafficking law, and also accepting the victims during the trial, how to support the victims for their future life by sending and receiving governments. Therefore, from the UN treaties of 1949, there is a gap between the development, and the Japanese laws are not catching up with this development yet.

During the Expert Meeting, we have heard that the Philippines has a new law from this year, and Thailand and many other countries have new laws. What is the new development, a part of salient point is that recognizing the right of the victims, protecting the victims, and the buyers should be punished. In this process, we have to eliminate human trafficking from the surface of the earth.

The second reason of those who oppose anti-trafficking law is related to the first reason that is prejudice against the victims. The victims are on their own initiative, they have come by themselves. They do not have any skills, but come to Japan just to make money. And they are so willingly even going to the prostitution because they just simply want to make money, and why do we have to be sympathetic to such kind of prostitutes. This is a kind of prejudice still exists in our society.

During World War II, some people said that the “comfort women” were the licensed prostitutes, they said that they are, on their own will, participating in the prostitution, offering the sex service to the Japanese troops. Some people even believe this today. Women’s movements are fighting against these kinds of prejudices.

We should be careful not to blame the victims, and not to justify or let the perpetrators escape. So, we have to focus strictly on the perpetrators. The feminism movement starts from this perspective who is the real victim. Therefore, the issue of former “comfort women” and the victims of human trafficking are common elements.

Assuming such kind of law is necessary, what should be the next step? Considering this, we cannot bring all the hidden problems/pictures to the fore, especially most of who overstay their visas cannot witness the problems etc. However, we have to compile the typical case studies, what are the reasons which blocks investigation, and why do the success rate of that prosecution or indictment is so low, and what is the penalty so low.

Mr. Kumoda of the National Police Agency participated at the Experts Meeting. In the past, we invited the Immigration Office, and the Ministry of Justice Office. According to Mr. Kumoto, the police information, the victims are brought from Thailand, the Philippines, Indonesia, China, Russia and Columbian and Korea in descending order. Several years ago in Yokohama, there was a women's forum I spoke about the trafficking, and I learned that there are territories, Columbian women are in Kabukicho, Tokyo area, Russian women

are in Yokohama, it seems that there is a territorial breakup among the yakuza groups. And when I was dining this afternoon in Yokohama, indeed, many Slavic words are spoken. They may be the victims, the brokers, or the recruiters. I started to worry because there are many Russian women and East European women working as sex workers in Yokohama. We need to seek for the bilateral laws if the multilateral treaty cannot be ratified immediately, we can consider the bilateral treaties for supporting the victims and also for protecting the witnesses and the victims during the trials. Probably the government already started the discussion, but the NGOs do not have much information of this process. The bilateral treaty would be one way at least to start with.

Whenever we consider the protection of the victims system, setting aside the psychological side, there are two very important views from the legal perspective; one is the right to stay in Japan. The perpetrators need to be sued and the victims have rights to get compensation from the perpetrators. During the trial, they should be allowed to stay in Japan, otherwise, we cannot reach and solve to the root causes. Even though the perpetrator is arrested, usually the victims are deported by the immigration offense. In the case of the United States, T-visa is given by the immigration office under anti-trafficking law. So a similar visa should be given to the victims of the trafficking in Japan.

Second perspective is a criminal law that it is already exercised the part of the protection of the victim, but video link and other means of victim protection are necessary. That is, they do not have to come to attend in the same court room as the perpetrator; from the separate room, the victim can listen to the proceedings of the trial or the observers or they can be covered with a screen without showing their faces and the body while they give for the testimony.

This kind of Japanese high technology such as video link is available. But such procedure is only granted for the criminal case as I have mentioned earlier. In case of the civil court for the demanding of the damages, victim protection is on request bases from the lawyers and victims. In the sexual harassment case, for example, you have to request to put the screen, too. I was involved in a rape case, the boy's rape by the employer, yes, the request was granted. However, in another case, the sexual harassment rape of the female students by one of the lecturers, the court did not admit this. The girl had to show her face, expose herself to many of the observers in the public gallery of court. I think courts should be more sympathetic.

In 1993, I interviewed the former "comfort women" in the Philippines, and the task force members of the Philippine government said very strongly, that the Filipino stakeholders are doing well among themselves. There are many surviving former "comfort women" in the Philippines. It means that many of the rapists (Japanese soldiers) should be surviving in

Japan, so if Japanese people wish to do something for those victims, they should go back to Japan and try to survey the Japanese men who raped Korean and Filipino women. That was the strong message from the victims in the Philippines.

It is the same thing in human trafficking. The Philippines is a sending country for human trafficking. But this is also an issue of the receiving side; Japan is one of the major receiving countries from many other countries of Asia. So the sending countries are trying very hard and try to give full support to the ingenuity to control this situation, we cannot step back and we do nothing at this point.

In 2001, the Anti-Domestic Violence Law came into effect. Previously many say that Anti-DV Law was not necessary because there already exist other laws preventing domestic violence. However, in Korea and Malaysia and many other countries in Asia institute Anti-DV Law, one after another, and in the year 2000 Japan was the only country who did not have one.

This anti-trafficking law will probably follow the same route, but somebody has to start with this. So during the expert meeting, I hope this will be the first trigger for activating the NGO activities and whatever expertise that we have accumulated should be culminated into the establishment of the anti-trafficking law in Japan. That is my strong personal opinion.



**Nop Sarinsreyroth
Cambodian Women's Crisis Center (CWCC)**

I Introduction

Population: There are approximately 13 millions people; this number includes more than 45% of the total population are under 15 years old (Ministry of Planning). Cambodia is an agricultural country in the Southeast Asian Region next to Vietnam, Lao and Thailand. 80% of Cambodian people are farmers.

II Situation of Trafficking in Women and Children

Women and children are being trafficked from the rural areas to cities for prostitution especially for Phnom Penh and other provincial town such as Siem Reap province, Poipet town, and Koh Kong. Also, women and children are trafficked to Malaysia, Thailand, and Taiwan. Most Vietnamese girls have been trafficked into Cambodia and re-trafficked from Cambodia to Thailand, Malaysia, and Taiwan.

In 2002, 210 clients of CWCC were victims of sex trafficking and in the first ten months of 2003, 220 clients were victims of sex trafficking. This statistic has shown that 30% were children who are under 18 years old, 47% of prostitutes were forced into prostitution, 35% of prostitutes were cheated by offering jobs such as garment factory workers, domestic helpers, and restaurant servant etc, 1% was kidnapping, and 11% were sold by their parents.

The Cambodian Commission on Human Rights and Reception of Complaint of the National Assembly estimated that there are over 14000 women and children working as prostitutes in brothels, bars, message parlors, guest houses, and hotels in Phnom Penh only. The Ministry of Planning's findings show that there are around 60000 to 70000 prostitutes in Cambodia in 2001. The prostitutes were sold or deceived by some people who offered them with a job.

A- Forms of Trafficking

1. Forced into prostitution

Victims, who were trafficked to work as prostitutes in the brothels, are a forced prostitution form i.e. those prostitutes are not volunteer to work. Some prostitutes were locked and confined to a room when they do not serve clients. Further, some of them were forced to serve clients from 5 to 10 clients per day; they sometimes have to serve up to 20 clients per day when there is a special national festival (water festival, Khmer New Year). Their incomes will be confiscated by the brothel owner; they can get only two times of meals per day and cosmetic. Some of the prostitutes will be tortured or tormented by electricity shock or threatening to kill if they do not wish to serve clients. Most of prostitutes are allowed to go out side of the brothels.

2. Begging

Women and children are not only trafficked to work as prostitutes, but they are also trafficked to work as beggars in Vietnam and Thailand. Women and children were usually lured by a pimp who promises with them to offer a well paid job either in Cambodia or in the neighboring countries. As a matter of fact, in order to get a well paid job, women and children were forced to offer the pimp with some commission; therefore, they need to sell their land and house in order that they can offer the pimp.

3. Pornography

Pornography and video sex are shown everywhere especially in coffee shops, in karaoke parlors etc. Pornography CD is also available at every Cambodian market. The distribution of pornography and video sex in Cambodia is anarchy. Therefore, most ill-educated people, who can not control their feeling after having watched the video sex, will rape women and children who are living next doors. Some go to the brothels to have with the prostitutes after having watched the video sex. Pornography and video sex have made sex trafficking in high demands.

4. Forced Labor

Children are usually forced to leave school due to the fact that their families are poor. Children need to earn money to support their families especially work in the house or out side the house to get income for their parents.

B. Routes of Trafficking

The victim were Trafficked from the rural area to the cities especially to Phnom Penh and a lot of the people were trafficked from Cambodian to Vietnamese to Thailand, Malaysia, and Taiwan etc..

C. Working Condition

- Some of the prostitutes were locked and confined to the room, staved, beaten, and tortured with electricity shocks;
- Some of them were forced to serve clients up to 20 clients per day even when they are sick or menstruating;
- They were sometimes disfigured by acid attack; and
- They were forced to engaged in pornographic acts;
- They were even forced to work from 9 AM to 3 AM;
- Some of them were forced to have unsafe abortion by unqualified midwives.

D. Root causes of trafficking

- Poverty
- Domestic Violence
- Low Education and Vocational Training
- Landmines
- Tourism (Traditional Marriages) Some tourist who came to visit Siem Reap province committed sexual exploitation, and pedophile sex with minor children who vendor their souvenirs around Angkor Wat temple.
- Paying medical bill
- Human Rights Violation from trafficking

E. Health and HIV/AIDs infections

In 2002:

- 180000 people are infected by HIV/AIDs
- 36% to 40% are prostitutes
- 4% are police
- 3% are pregnant women

III. Encounter Measures Against Trafficking by the State

A. By government -Applicable Cambodian Laws and Policies combating against trafficking

According to article 46 of Cambodian Constitution 1993 states that “the commerce of human beings, the exploitation by prostitution, and obscenity, which affects the reputation of women shall be prohibited.” In 1996, Cambodia has a specific law on the Suppression of the Kidnapping, Trafficking, and Exploitation of Human Persons, these law aims against trafficking in person for the purposes of sale or prostitution. The article 3 of the law stated that “trafficking of human beings either adults or minors by mean for the purposes of

sale/prostitution with/without consent is a crime. Punishment is from 10 to 15 years in the prison for trafficking and exploitation of an adult, 10 to 20 years for committing debauchery involving a minor under 15 years old and fine of 5 to 30 millions Riels for opening a place for committing obscene or debauchery acts. The accomplices, traffickers, sellers, buyers, facilitators are all subject to the same punishment as that of perpetrators.

B. By NGO -To Preventing & Eliminating Trafficking of Women & Children, and Assist Victims

In response to the issue of trafficking, few NGOs have created programs for assisting the victims while doing prevention work as following:

The Cambodian Women's Crisis Center (CWCC) has established five programs to reduce and curb all forms of violence against women and children in Cambodia. Its offices located in Phnom Penh, Banteay Meanchey province, and Siem Reap provinces. We collaborated with Court Officials, Ministry of Women's and Veteran's Affairs to handle the cases lawfully.

1. Assisting Victims

a. Monitoring and Rescuing- read newspapers, receive complaints and investigate cases of trafficking to collect information and evidence for submission to the police for rescuing the victims from brothels, night clubs, bars, etc; and taking perpetrators for prosecution. In addition, NGOs are helping the victims to access available services such medical care, safe shelter, counseling, and legal assistance.

b. Legal Assistance- providing legal counseling, helping in writing and submitting complaint and giving legal representation for the victims.

c. Safe Shelter- including necessity, counseling, medical treatment, health care education, literacy, and life skill training.

d. Vocational Skills, and Employment Assistance- providing them economic development opportunity as an alternative to prostitution.

e. Reintegration, Repatriation, and Follow up- if the trafficked women and children wanted to go back to their hometown after escaped or being rescued from the brothels, CWCC's staff contacts parents or relatives to take them back. In case the relatives want to have them back but lack of means to come to city to take them back, CWCC's staff accompany them home. Usually, we do three month follow-up to see their living condition and try to find ways to further helping them in community by matching to existing program in the village.

Confidentiality is our principle for this program. Further, the Cambodian Women's Crisis Center has cooperated with International Organization for Migration to repatriate Vietnamese survivors of sex trafficking to Vietnam.

2. Prevention Work

a. Community Education- trying to sensitize women and children the issue so that the groups that are at risk will be able to protect themselves form trafficking.

b. Research- CWCC is conducting a research on legal responses, attitudes and behavior of law enforcement officer and judiciary staff toward trafficking issue and victim. We hope that it would be a very good tool for us to identify the next program of action, including legal campaign.

c. Advocacy through media and posters- NGOs have produced video for national broadcasting through TV and radio on the issue of trafficking rural women to prostitution in the city to Thailand to work as prostitutes, beggars, construction workers, porter etc. We aim to inform them about tricks and risks in the city and Thailand before they made decision to migrate. We also organized workshops and seminars to sensitize the issue. We lobbied political parties to put the issue into their platform of action during the national electoral campaign.

d. Community Organizing on Trafficking- to sensitize community about and to organize community to respond to the issue which including trafficking. We believe that only communities are able to prevent, protect, and respond to the issue effectively, sufficiently, and promptly.

IV. RECOMMENDATION

After six years of sex trafficking project implementation, CWCC has found that there need to be some improvement as the following:

- Disseminate information on the tricks of traffickers to women and children who live in the remote areas;
- Provide more accesses to education for women and children;
- Advocate for amendment anti sex trafficking law;
- Victims of sex trafficking should be courageous to unfold about the traffickers
- There should be a security and safety protection for victims and relevant project implementing agencies;

- Strengthen the border control;
- Bring perpetrator to justice, and be accountable;
- Network with local authorities and organize community networks in preventing sex trafficking.
- Improve services of reintegration, repatriation, and documentation,
- Exchange information via email and website on best practices, laws, and trafficking development,
- Improve cooperation in prosecution
- Field Trip/Study Tour to share information on interventions aimed at bilateral cooperation,
- Cooperate on formulation of bilateral/multi-lateral agreement to prevent trafficking and improve monitoring,
- Continue supporting from international counties because Cambodia is still poor.



Prevention Against Trafficking In Women and Children in Lao P.D.R

Amphayvanh Vilaychaleun
Director of Inspection Department
President, Lao Women Union of Ministry of Labour & Social Welfare (MLSW)

On behalf of MLSW and myself, I would like to thank Asian Women's Fund for inviting me to this important meeting and to give me a good opportunity to participate and share some experiences with all of you in this meeting on 'International Trafficking in Women'.

As you know Laos has border with 5 countries such as: Bordering Burma and China in the North, Thailand in the West, Cambodia in the South and Vietnam in the East, Laos shares its longest border with Thailand along the length of the Mekong River.

The geographical location of Laos has a considerable impact on the situation of Trafficking Women and children. Especially in the provinces where has border with Thailand.

1. The policy of Lao Government

The Government signed the Convention on the right of the Child (CRC) in 1991. The Government also signed the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1990 which has articles that relate specifically to suppression of Trafficking and prostitution, the best interests of the children and legal rights of children in 1992, the government established the National Commission for Mothers and Children (NCMC). The NCMC co-ordinated preparation of the first Country Report on the implementation of the Convention on the Rights of the Child(CRC) for submission to the United Nations Committee for Child Rights in 1995. While the 1992-1996 Country programs had been planned and implemented in a needs-based approach, a child protection activities, particularly the area of child trafficking, were introduced with the MLSW.

The Government has been strong commitment to improve the lives of women and girls. The Lao Women's Union (LWU) in particular, has played a major part in advancing the education and professional opportunities for women.

The Lao P.D.R Government had pursued a centrally-planned economy since it came to power, but by the mid-1980s, the economy had nearly collapsed. In 1986, the government adopted an economic reform process called the 'New Economic Mechanisms' (NEM).

2. Laotian Workers in Thailand

Though existing demographic information on Laotian migrant workers in Thailand is not comprehensive existing surveys and research on Trafficking, mainly conducted by Inter-Governmental Organizations (IGOs) do provide information on provinces in Laos where there is a high rate of trafficking. In particular, the ILO survey and research conducted by the Ministry of Labour and Social Welfare (MLSW) on trafficking in women and children in Thailand, provide critical baseline information on workers migrating from five specific provinces in Laos.

The latest official figures on documented workers in Thailand show that 42,085 workers from Laos applied for the extension of their work permits during the period of February to March 2002.

Those who do not live near the border, use facilitated networks of villagers, agents or traffickers. One village reported that one could access such networks by mobile phones in town: for a fee, anyone wanting to migrate to Thailand could call to be picked up by motorbikes, vans or even special air-conditioned buses. In some villages, the facilitators were not professionals who benefited economically, but friends, family and fellow villagers.

However, studies have also found a high incidence of trafficking, whereby a migrant is transported to some form of employment without either consent or knowledge of the nature and conditions of the work. The ILO Survey conducted in two border towns along the Thai-Laotian border found a high incidence of minors being recruited in the village by traffickers and then transported into Thailand for work.

Many Laotian migrant workers manage to work in Thailand for months to years without being caught, and once ready to return home, they simply return in more or less the same way as they came. For the less fortunate who are caught by Thai authorities, detention and deportation are not uncommon. The migrant can then be kept in a detention center for months and then deported, via either voluntary or forced repatriation.

3. Co-operation between Lao Government and International Organisations for preventing of the trafficking in women and children.

Government

The Government's responses to migration largely focus on preventing the trafficking of women and children, assisting trafficking victims, and decreasing irregular migration through

awareness-raising programs on the dangers of trafficking and rural development and job creation schemes. The main government agencies directly addressing labour migration issues in Laos, include the Ministry of Labour and Social Welfare, the Department of Immigration/Ministry of the interior, and state-sanctioned mass organisations that work mainly at the grassroots level.

Ministry of Labour and Social Welfare (MLSW) (and its partner agencies)

The ministry of Labour and Social Welfare (MLSW), established in 1993, comprises two departments that deal with labour and social welfare respectively. The Ministry began giving more attention to cross-border migration when it attended an International Symposium on Migration in 1999, where the main issues of the meeting included peace and the security of goods and labour. Its work on trafficking developed particularly after the Government invited the Special Rapporteur on Women and Children to visit Laos in 1998. In 2000, Laos joined the ILO's world wide International Programme on the Elimination of Child Labour (IPEC). The main response of the MLSW concerning migration has been its leading role within the UN Interagency Project on Trafficking of Women and Children (UNIAP) in the GMS. The component of this initiative in Laos, called the National Project on Trafficking, involves a National Steering Committee (NSC) chaired by the Needy Children Assistance Section of the Department of Social Welfare (DSW). The latter has three to four staff, and it is in charge of co-ordinating the implementation of the project, which involves a repatriation program, public education and research on trafficking and migration. The Project has also involved pilot intervention projects promoting income generation and vocational training in two districts. A major component of the Project is the repatriation program, which is partly supported by the IOM, mainly through institution-building. The DSW liaises with migrants' families and facilitates migrants' return to Laos through its connections with the Thai Ministry of Social Welfare and the IOM. In the past year, 25 of the 121 migrant returnees were financially supported by the DSW. The Department also runs a transit center and shelter in Vientiane, where returning migrants can stay temporarily and receive counselling and other forms of assistance, such as 'family testing/tracing'.

The DSW also co-ordinates with the Lao PDR Youth Union (LYU) and the Lao PDR Women's Union (LWU) to monitor data on trafficking cases and promote educational program designed to increase awareness of the dangers of recruiters who traffic young women. Information campaigns conducted with the LWU in a few border towns include the distribution of booklets. The DSW recently oversaw a television and radio program and created a calendar and storybook to publicise the danger of trafficking.

As part of the UNIAP, the DSW has also been conducting research on underlying reasons for migration to Thailand in conjunction with UNICEF and ILO-IPEC in Laos. The MLSW

Research has recently recognised how Laos' national development strategy has increased labour migration, hence, beginning to enable the Government to recognize how some of its development policies may actually lead to conditions that promote higher rates of migration. According to the Research, the MLSW mentions that certain development policies provide:

1. Health care and population growth, which leads to excess labour.
2. Education and access to knowledge, but as there are limited means of applying this knowledge, the unemployment rate remains high even among the educated.
3. Agricultural technology that increases agricultural output, this in turn leads to a food surplus for the market.
4. Access to markets and increased cash to buy TVs that are used to watch Thai programs, these help increased migrants' desire to migrate to Thailand.

The Department labour (DL) also works to prevent undocumented migration by recommending to the Government to review check-point procedures and to seriously address rural development. In addition, the DL also recognizes that the international labour market has a high demand for skilled labour, and thus promotes skills development schemes for workers. Aside from its responses to prevent undocumented migration and promote increased skilled migration, The Ministry, led by the DL, is beginning dialogue with Thailand, Korea and Malaysia on the possibility of creating regular channels for out-migration of Laotian workers. The DL's current focus is on the status of Laotian migrant workers in Thailand, and it has been attempting to create a bilateral agreement or Memorandum of Understanding (MOU) with the Thai Government since 2001. The Laotian Government has recently issued a decree stating their commitment to negotiate an agreement with the Thai Government to regularize the migration flow from Laos. Among other means, it is using its participation in ASEAN to advocate for migrant labour protection. The DL is also working closely with ILO-IPEC in Laos and Thailand on the issue.

Department of Immigration, Ministry of Interior

In addition to the Department of Immigration's regular functions to manage migration flow into and out of Laos, the Department engages in ASEAN conferences on immigration and consular affairs, many of which focus on people smuggling, trafficking and migration. These conferences are important venues for ASEAN member governments to set subregional standards and policies on migration.

National Economic Research Institute (NERI), State Planning Committee

The National Economic Research Institute (NERI) plays a key role in advising the state on national planning and policy development and it is reputed to be among the few organisations that conduct comprehensive and scientific research on policy formulation and

agenda-setting related to social development issues in Laos. Though it has yet to conduct comprehensive research on international migration, NERI has written an article that includes some general information on international labour migration to and from Laos. The Institute has conducted research on women internal migrant's working and living conditional migration.

Lao PDR Youth Union (LYU)

The LYU has identified migrant workers as one of the organisation's eight focal areas of work. The Young Pioneer Department of the Union has recently launched a program on the trafficking and abuse of children, and it is also working together with the MLSW as part of the UNIAP. In January 2002, the LYU began conducting participatory action research (PAR) with save the Children Fund –UK to examine push factors for migration and map community needs. The LYU's training division addresses issues of Laotian youth through vocational training and development programs that are being conducted at 11 centers in various provinces. However, the LYU admit these centers do not meet the needs of the youth and they are searching for ways to increase the numbers and activities of the centers.

Lao PDR Women's Union (LWU)

The government-sanctioned Lao Women's Union (LWU) provides counselling services for women, including trafficking victims, but these services are only available primarily in Vientiane. The Union has trained around 1.000 LWU members in counselling and estimates dealing with approximately 300 women per year with trafficking-related problems. The LWU also collects information on the problems of returning migrant women in seven districts and together with the MLSW, has conducted some awareness-raising drives on the dangers of migration and push factors. The Union requires more baseline information on trafficking but does not have the resources to collect such information. They are currently working with the MLSW on data collection.

LWU states that domestic violence is a big problem, and is seeking ways to combat the problem. LWU is also carrying out limited skills training, including paralegal training for women.

Inter-Governmental Organisations (IGOS)

Due to the limitation faced by civil society groups in Laos and the fact that there are only international NGOs working on social development issues, IGOs play a crucial role in Laos in supporting cross-sectoral co-ordination and the institutional development of government organisations that are still relatively new.

UN Interagency Project on Trafficking of Women and Children in the GMS (UNIAP)

UNIAP aims to reduce the trafficking of women and children in the GMS through improving national and regional co-ordination. The project in Laos is headed by a national Steering Committee, made up of the Ministry of LSW, Justice and Interior, and chaired by the DSW/MLSW. In addition, it also includes government agencies such as the Ministries of Health and Education; the state affiliated mass organisations, LYU and LWU; IGOs such as ILO-IPEC; UNDP and UNICEF and international NGOs such as the Save the Children Fund-Norway and Church World Service. The UNIAP's functions include co-ordination among the different agencies, research, data collection, creation of public education materials and pilot community intervention projects, as well as periodic meetings of the Committee headed by UNIAP. The NSC has met twice so far and an important output of its work was the survey on trafficking completed by the MLSW in October 2001.

ILO-IPEC (Lao PDR)

ILO-IPEC's work on migration in Laos has focused mainly on the prevention of trafficking and undocumented migration by partnering with government agencies to conduct village development programs and awareness-raising initiatives in high-risk areas. It helped to establish the National Commission on Trafficking and continues to be a key actor on the UNIAP. The ILO-IPEC's preliminary assessment of trafficking in women and children is an important research that is referred to by policy makers in Laos. The ILO-IPEC now continues to collect data on internal and internal and external migration as a follow-up to its preliminary assessment. ILO-IPEC is trying to work with the Laotian and Thai Governments to regularize Laotian migrants in Thailand and establish a bilateral agreement.

UNICEF (Lao PDR)

UNICEF plays an important role as part of the UNIAP in advocating and advising the government on the reform and improvement of laws and procedures for child victims of trafficking, safer immigration border controls and training for officials engaged in rescuing trafficking victims. UNICEF has also conducted a study on the commercial sexual exploitation of women and children during which they came across Vietnamese and Chinese women working in the sex industry in Laos.

International Organisation for Migration(IOM)

The IOM is assisting the MLSW to facilitate the tracing and reintegration of migrants and their families in Laos. The IOM had previously provided some institutional capacity-building to workers in the DSW but this may have stopped due to funding limitation.

International NGOs (INGOs) Save the Children Fund-UK.

Expanding on their existing research on young people's migration in other GMS countries, SCF is conducting a Participatory Action Research (PAR) in three provinces in Laos to examine the need and interests of young people, the reasons why Laotian youth choose to migrate, and what kinds of pilot activities may work well to stop trafficking and migration of children. SCF is in the process of training 17 trainers from the LYU from villages in three different provinces to conduct the research, as well as training staff from the DSW/MLSW's Needy Children Section. SCF-UK is also part of the UNIAP.

Community Aid Abroad-Oxfam Australia.

Community Aid Abroad-Oxfam Australia does not work on labour migration directly but works on community and youth development, to try to stem the tide of migration. CAA conducts a project on Youth Employment Training with the LYU at the provincial level. CAA also carries out its Sustainable Livelihood Development Project, which includes water and irrigation projects, agricultural development, community development and education programs for teachers.

Preventing Trafficking of Women and Children.

Though the MLSW, mass organisations and some IGOs are conducting pilot projects and information drives on trafficking, access to information on the processes and dangers of irregular migration are not readily available in all villages. The available information disseminated by the Thai media and the experiences of some returning migrants mainly serve to glamorize life in Thailand.

4. Recommendation

- The government, mass organisations and media must conduct broad-based awareness-raising Campaigns to disseminate accurate information on the dangers and realities of irregular migration, precautions that must be taken and the benefits and procedures involved in Thailand's registration process. IGOs and INGOs must lend support to such initiatives.
- The government, mass organisations and INGOs need to develop and implement programs that help facilitate returning migrants' communication of their migration experiences as a form of public education.

- The government, mass organisations and IGOs must conduct research to gain information on how Vietnamese and Chinese migrant women and girls are trafficked in Laos and on their needs and issues.
- Existing responses are inadequate in meeting women's practical needs (such as reproductive and general health care, access to basic information on migration) their triple burden in agrarian life and strategic problems such as unequal access to education and working opportunities. Given the high concentration of women working in vulnerable sectors such as domestic and sex work and the magnitude of the health problems they face, there is a shortage of information on the health and human rights hazards involved in working in such industries at all stages of migration. Upon migrant women's return to Laos, few groups provide counselling, especially at the village level and shelters and half-way houses for women barely exist. Initiatives are needed to promote their self-organisation on the migration issue.
- The government, assisted by mass organisations, IGOs and INGOs, must conduct gender-sensitivity training for government officials to promote understanding on gender-based problems experienced by migrant women.
- The government, mass organisations and INGOs should implement livelihood programs, that include small business loans, for (potential and returning) migrant women, to address their socio-economic needs.
- Mass organisations and INGOs should conduct public education campaigns that sensitise Laotian society to issues of returning migrant women, including the problems that propel women to enter the sex industry.

Social Welfare

- The government and mass organisations, supported by IGOs and INGOs, must provide psycho-social counselling services, safe houses and /or shelters for returning migrants, especially women and youths. Services must aim to help their social reintegration into village and agrarian life.
- Mass organisations and IGOs, with government support, need to implement counseling, day-care and educational-support services for children with parents abroad and for returning-migrant children.

Thank you for your attention.



Proposed Measures for Action

**MA Merceditas N. Gutierrez
Acting Secretary
Department of Justice**

Even with the passage of the new anti-trafficking law, the Philippine situation is still flux and it remains to be seen whether the implementing rules and regulations as well as the comprehensive strategic plan to address trafficking in persons which are meant to cover the loopholes in current practice can crystallize into good practices. Nonetheless, from the point of view of countries of origin, the following are the proposed measures for further action.

A. Recovery

- Ensure, in cooperation with NGOs, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Foreign service posts should provide any form of assistance and emergency shelter should be provided to victims, regardless of their immigration status in the host country.
- Ensure, in partnership with NGOs that trafficked persons are given access to primary health care and counseling.
- Provide Foreign Service personnel with adequate and appropriate training in responding to requests for information and assistance from trafficked persons. Such training should include a module on understanding the issues concerning trafficking in persons and identification of victims.
- In appropriate cases and to the extent allowable under the domestic law of the host country, victims should be provided with legal and other assistance, in connection with any criminal, civil and other actions against traffickers and exploiters.

B. Repatriation

- Making representations with the government of the host country to ensure the safe,

orderly, and where possible, voluntary return of trafficked persons and to explore the option of residency in the country of destination or third country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-victimization is likely).

- Facilitate and accept without unreasonable delay the return of its national who is a victim of trafficking, with due regard to the safety of that person. In connection with this, the country of origin should issue such travel documents or other authorization as may be necessary to enable the person to travel and re-enter its territory.

C. Reintegration

- In partnership with NGOs and community-based groups, provide victims of trafficking who do return to their countries of origin with assistance and support necessary to ensure their well being, facilitate their social integration and prevent re-victimization. Measures should be taken to ensure the provision of appropriate physical and psychological healthcare, housing and educational and employment services for victims of trafficking.
- Reintegration programs should take into account the special needs of children. Children victims should be provided with free education.
- Encourage and support community-based reintegration programs. Support the initiatives of local government units to build and operate their respective shelters. establish local cooperatives and conduct livelihood and skills training for victims of trafficking.
- Where possible, the victims and their families should be involved in the reintegration process. This is especially true in cases of dysfunctional families and where pressure or influence from family members was a primary element in the recruitment stage of the trafficking process.

D. In General

It is recognized that prevention is the best antidote for human trafficking. Preventive measures should be at the heart of any action plan to combat trafficking in persons. But we propose the following general recommendations that have bearing on recovery, repatriation and reintegration:

- **Ratify UN instruments.** Countries are encouraged to ratify the United Nations Convention on Transnational Organized Crime and its two Protocols as a basis for developing national legislation and international cooperation. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is a repository of important guidelines in protecting victims of trafficking.
- **Improving coordination.** Strengthen national coordination of different government agencies for a more focused and streamlined approach. To prevent overlapping and duplication of functions, which could lead to "double victimization", a multi-disciplinary approach should be taken. This would entail a) establishing a central database, b) adopting a uniform reporting format, c) institutionalization of a response network that defines agency jurisdiction at different levels of the response process. d) sensitizing agencies involved and mainstreaming the issues on trafficking in persons, especially women and children in their functions and e) setting up of monitoring and feedback mechanism.
- **Strengthening the criminal justice system.** There is an urgent need to improve the overall criminal justice system insofar as making it gender-sensitive and child-friendly to ensure that victims are protected at every stage and their rights are not impaired. Further to existing witness protection schemes, policies would have to reflect specific measures to increase the victim's readiness and willingness to seek assistance and cooperate with authorities. There is likewise a need to mainstream gender perspective and child-focused policies in all areas of the criminal justice system. Towards this end, special units and children's desks, family and juvenile courts should be supported with appropriate capacity building measures, and appropriate training must be provided for law enforcers, judges and other service providers.
- **Cooperation with other countries.** Trafficking can occur internally and across borders. Based on Philippine experience, domestic trafficking can serve as jump-off point for transnational trafficking. Countries of origin need to enter into more bilateral, sub-regional, regional arrangements, agreements and initiatives that aim to combat trafficking in persons. These cooperation agreements can cover a whole range of areas: cross-border cooperation in the return of cross-border victims, law enforcement, information sharing and exchange, mutual legal assistance and extradition.
- **Build partnerships with all stakeholders.** Trafficking in persons is a complex problem and addressing it at every stage entails the cooperation of all stakeholders. Government neither has the capacity and the resources to do it alone. Thus, it is imperative to build partnerships with NGOs, communities, the private sector and civil society groups in general.

The Philippines and the Issue of Trafficking of Persons - Particularly Women and Minors – (1)

Introduction

Trafficking in persons, especially of women and minors, which is committed for purposes of, i.e., prostitution, sexual exploitation, forced labor, slavery, debt bondage and removal or sale of organs, is a modern form of human rights violation which affects the very life and dignity, as well as the right to self-development of human beings.

Today, Filipinos constitute one of the largest migrants sector in the world. Poverty, coupled with the plunge in the country's economy starting in the 1970s, led to scarcity in employment opportunities in the Philippine job market. Such situation forced many Filipinos to seek employment in foreign countries like Europe, the United States, the Middle East, and East Asian countries -- responding to the increasing demands for skilled construction workers, engineers, architects, nurses, care-givers, domestic helpers and entertainers. To these Filipinos, working abroad is a key to a brighter future for them and their families. A number of Filipinos from the countryside / poor provinces also find their way in the metropolitan cities, i.e., Manila, also in search for greener pasture.

Overseas employment, even if coursed through illegal procedures, is seen as a better alternative to local employment. Such situation makes Filipinos vulnerable to manipulation and exploitation by scrupulous individuals, recruitment agencies, foreign employers and even by Crime syndicates. This further aggravates the problem of trafficking. Usually, it is the same Filipino workers who have not passed through the appropriate / legal procedures: or those who lack awareness of their basic human rights, who turn out victims of injustices such as non-payment of wages, illegal termination, maltreatment, physical and sexual abuse, or even mysterious death. A significant number of this group are women and, at times, minors, who are recruited as domestic helpers or factory workers but who, upon entry to the country of destination, are forced into prostitution, or mail-order brides, and land in other lowly employment very much different from what is stipulated in their contracts of employment.¹ Other countries, especially the third world nations, probably, are experiencing the same situation like the Philippines.

¹ Report on Trafficking in Human Being from the Philippines: A Survey of Government Experts and Law Enforcement Case Files, National Police Commission, Philippines.

Data on Philippine Migration(2)

Records of the Commission on Filipino Overseas show that as of December 2002, the estimated number of Filipinos abroad was about 7.57 million. Three million plus (3.15M) of which were temporary migrants who may have work or student visas; 2.80 million were permanent residents; and about 1.62 million were considered as irregular migrants who were considered the most vulnerable among the groups. They may include illegally recruited workers, undocumented migrants and persons smuggled by international syndicates. These irregular Filipino migrants are scattered in at least 90 countries worldwide.

In 2002, more women were deployed as overseas Filipino workers (OFWs) at sixty nine percent (69%) compared to males at thirty one percent (31%). Forty-four percent (44%) of the total deployed female OFWS belong to the service sector, while forty-three percent were in the professional, technical and related fields. Most of the female OFWS seek overseas employment as domestic helpers, which in 2000, accounted for a total of 49,310 female OFWs, followed by choreographers and dancers with 24,788 female OFWs and composers, musicians and singers with 15,607 female OFWs. Majority of the female OFWs worked in East Asian Countries (46.3%), mostly in Hone Kong (24.8%), Taiwan (11,8%), and Japan (8%), while male OFWs still prefer the Middle East (43%), particularly Saudi Arabia (37.2%).(3)

From 1993 to December 2002, there were 1,013 documented cases of traffickin⁹ in the Philippines.(4) However, important considerations have to be made in trying to determine the extent and magnitude of sex trafficking of women and gins in the Asian Region. Note also that, due to the clandestine character of trafficking there is difficulty in coming up with definite figures as many trafficked women and children are kept in captivity and sexual slavery. It is also important to note the need to recognize and acknowledge that many adult women in prostitution start out as child prostitutes and that we are dealing with one and the same sex industry that has given rise to the demand for the sexual services of both women and children.

2 Cited in Philippine Country Report, ASEM, 2003.

3 Data from the Philippine Overseas Employment Administration.

4 Combined report of the Department of Foreign Affairs and Commission on Filipino Overseas.

Response to Trafficking in Women

Rhoda F. Yap
Assistant Secretary
Department of Social Welfare and Development (DSWD)

Introduction:

The Philippine Government has acknowledged the problem of trafficking in women and children and continues to undertake activities in an effort to eliminate the problem through the collective efforts of various national agencies in collaboration with Non Government Organization (NGO) partners and the private sector.

In this light, Republic Act No. 9208 entitled "An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes" otherwise known as the "Anti-Trafficking in Persons Act of 2003" was signed into law on May 26, 2003 and its Implementing Rules and Regulations was approved.

The Department of Social Welfare and Development (DSWD), the primary social welfare agency of the government, is mandated to provide social protection and promote the rights and welfare of the poor, vulnerable and the disadvantaged individual, family and community to contribute to poverty alleviation and empowerment through Social Welfare and Development policies, programs, projects and services implemented with or through Local Government Units (LGUs), Non-Government Organizations (NGOs), People's Organizations (POs) and other members of civil society.

Number of Women Victims of Trafficking Served by DSWD (1998-2001)

	Women's Desk	Community Based	Substitute Home for Women	Total
(2001)	458	357	0	815
(2000)	111	539	0	650
(1999)	773	571	0	1,344
(1998)	157	355	0	512

Hence, as a response to the problem of women and child trafficking and in its continuing commitment to eradicate all forms of violence against women, the Department of Social Welfare and Development, is implementing the following programs:

A. PROGRAMS AND SERVICES

The programs and services for Filipino women who are victims of trafficking are either community; or center-based.

I. Community-based

Community-based services are those that are provided to women and their families involving the active participation of the community where they live.

- 1) *Information and Education Activities* - are aimed at raising the awareness of the public in protecting the rights and promoting the welfare of Filipino women.
- 2) *The Quick Response Team* through the Crisis Intervention Unit (CIU) is the DSWD's response to intensify its current efforts to serve the needs of women victims of trafficking. It enhances our existing mode of response through strengthening/ establishing working arrangements with appropriate government, non-government, professional and civic organizations.
- 3) *Reintegration and Mobilization of Community Support* - this is a counterpart project of the Department under the Strengthening of Support of Victims/Witnesses in Trafficking of Human Beings in the Philippines, in partnership with the Center for International Crime Prevention (CICP) & UN International Drug Control Programme, National Police Commission (NAPOLCOM) & Department of Interior and Local Government (DILG).

II. Center-based Residential care

For women victims of human trafficking, residential care services in substitute homes for women or "the Haven," are provided to facilitate healing, recovery and reintegration. There are fifteen (15) substitute homes for women in the Philippines.

B. INTERVENTIONS / SERVICES

The following services / interventions are provided to women victims of trafficking whether they are in the community or at the center:

- 1) *Organization of Support Groups* - such as survivor groups or parent group etc. to assist in the rehabilitation efforts of children victims.
- 2) *Support Services for Women Victims of Trafficking* - provision of care, rehabilitation, medical aid and counseling to women victims of trafficking and other forms of abuses.

Women victims of human trafficking are provided specific services such as:

- Psycho-social service - provision of psycho-social interventions, counseling, stress debriefing, peer support group, therapy sessions to regain self-worth and dignity;
- Medical services - is in the form of referral for medico-legal examinations, hospitalization and medical treatment if indicated.
- Legal Services - referral for legal services in connection with the victims' pursuance of the case, litigation of perpetrator, termination of parental authority.
- Psychiatric services
- Psychological services
- Other - Provision of self-enhancement/development sessions on personal and child care, skills training for employment or in preparation for livelihood entrepreneurship, spiritual enrichment, legal assistance and referrals for other support services.

C. PILOT PROGRAMS

- 1) International Social Welfare Services - This is a Pilot project developed to provide social services to documented and undocumented overseas Filipino workers including victims of trafficking in:

Dubai;
Abu Dhabi;
Singapore;
Kuwait;
Hong Kong;
Saudi Arabia; and
Taiwan.

It entails the assignment of professional Social Workers to provide psychosocial

interventions to migrant workers, assist the Labor Attache in Philippine Overseas Labor Offices and handle OFW cases.

2) Support Services to Victims and Witnesses of Human Trafficking in the Philippines

This is an 18-month pilot project of the Department, which is in partnership with the UN Office on Drugs and Crime. The project aims to provide capacity building to direct service providers in centers/homes for women and girls and provide direct services to victims/witnesses of trafficking in persons, particularly women and children.

A unique component of the project is the selection and training of Victims/Witness Assistance Workers (VAW) in three of the pilot regions in the country.

The Victim/Assistance Workers will provide info/counseling, assistance/support to victims/witnesses of human trafficking who wish to file court cases against the perpetrators. Further, another component of the project is the identification and training of community volunteers who will organize peer support groups to facilitate the survivors' reintegration in the community and also provide community education and advocacy to eliminate human trafficking.

Challenges

1. Strengthen advocacy efforts to prevent trafficking;
2. Provision of support services to victims and witnesses of trafficking in human beings particularly focusing on reintegration;
3. Enhance capacity for collecting and generating data trafficking of women and children;
4. Capability building of direct service providers on the prevention, treatment, recovery and reintegration of victims/witness of trafficking;
5. Capability building and organization of community support groups who will act as advocates, educators and watchdogs for perpetrators of human trafficking;
6. Strict implementation of anti-trafficking related laws on women and children;
7. Continuous development of programs and services focused on the prevention of trafficking in women and children; and
8. Strengthen networks and linkages with Government Agencies and Non- Government Organizations local and abroad to prevent trafficking in persons.

PHILIPPINE RESPONSES TO THE ISSUE OF TRAFFICKING

Wilhelm Dabu Soriano
Commissioner, Commission on Human Rights

The issue of trafficking in persons is of critical importance to the Philippine government. Hence, the Philippines looks into the issue of trafficking both within the domestic context and across national borders – it being a major country of origin. It cannot also be disregarded that the country is also a point of transit, as well as of destination. Trafficking is a serious human rights issue which the Commission on Human Rights, as an independent national human rights institution, also takes much concern. The alarming increase in human trafficking cases affecting Filipinos in the past decade and the complexity of the problem dictate the urgent need to combat trafficking at all fronts -- taking multi-pronged approach and strengthening cooperation, networking and collaboration of all stakeholders, to include raising global awareness on the issue. Thus, the Philippines has been actively involved in a number of regional and multilateral initiatives to protect the rights and promote the welfare of Filipinos, particularly, women and children.

1. Legal and Policy Framework

1.a. International level

As of today, the Philippines is a party-signatory to twenty-three (23) international human rights instruments, to include women and children specific documents such as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the UN Convention on the Rights of the Child and its Optional Protocols; the Convention on the Protection of Migrant Workers and Members of their Families; the UN Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others; the UN Convention Against Transnational Crimes, to include its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; and the ILO Convention No. 182 – Elimination of the Worst Forms of Child Labor. The Universal Declaration of Human Rights is always a primary guide in the Philippine enabling legislation and policy formulation pertaining to human rights, to include that on women and children issues.

1.b. National / Local level

1.b.1. *Republic Act No. 9208, otherwise known as “The Anti-Trafficking in Persons Act of 2003”, approved into law on May 26, 2003.*

On May 26, 2003, the President Gloria Macapagal Arroyo signed into law the legislation enacted by the Philippine Congress known as the “Anti-Trafficking in Persons Act of 2003”. This new law defines trafficking in persons, criminalizes acts of trafficking and acts that promote and facilitate trafficking, institutes policies to eliminate trafficking in persons especially women and children, and establishes the necessary institutional mechanisms for the protection and support of trafficked persons. The new laws addresses trafficking in both domestic and across the borders spheres and is intended to fill the gaps in the current policies, programs and practices in the Philippines to eradicate trafficking in persons especially women and children.

Trafficking in persons defined -- R.A. 9208 defines trafficking 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.”

“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.”¹

Prior to the enactment of R.A. 9208, trafficking in persons had been used interchangeably and confused with human smuggling and illegal recruitment. This resulted to various methods of classifying trafficking in persons, thereby making statistics on the matter inaccurate.²

- Legal protection; support mechanisms.--It may be noted that, the new law (R.A. 9208) provides legal protection and establishes mechanisms for the support of trafficked persons, thus:
 - ✓ Trafficked persons are treated as victims rather than as offenders. As such they shall not be penalized for crimes directly related to the acts of trafficking as

¹ Section 3(a), R.A. 9208.

² Philippine Country Paper on Recovery, Repatriation, Rehabilitation of Trafficked Persons, ASEM, 2003.

enumerated under R.A. 9208 regardless where the acts of trafficking or acts to promote trafficking took place -- within or across national borders.³

- ✓ The right to privacy of the trafficked persons shall be recognized / protected at any stage of the investigation, prosecution and trial offense. In particular, this is a directive to law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case.⁴
- ✓ Trafficked persons shall be given preferential entitlement under the Government's Witness Protection Program.⁵
- ✓ Trafficked persons who are foreign nationals are provided with the necessary protection, assistance and services available to trafficked Filipinos.⁶
- ✓ Government agencies are mandated to establish and implement preventive, protective and rehabilitative programs for trafficked persons. Among the agencies tasked under the law to undertake such programs are the Department of Foreign Affairs, the Department of Social Welfare and Development, the Department of Labor and Employment, the Department of Justice, the National Commission on the Role of Filipino Women, the Bureau of Immigration, the Philippine Overseas Employment Administration, the Department of the Interior and Local Government, the Local Government Units.⁷
- ✓ *Trust fund*—the law establishes a trust fund to be used exclusively for prevention, protection, rehabilitation, and reintegration programs.⁸ Note that, in addition to the penalty imposed for the violation of this new law, the court shall order the confiscation and forfeiture, in favor of the government, of all proceeds and properties derived from the commission of trafficking, unless such property belong to third person/s who are not liable under this law. These proceeds /property shall accrue to the trust fund.
- ✓ Persons found guilty for the offense of trafficking or attempt to commit such act/s shall be meted the penalty of imprisonment ranging from six (6) years to life imprisonment, and a fine ranging from P500,000.00 to P5,000,000.00 (Philippine Currency).⁹

³ Section 17, R.A. 9208

⁴ Section 7, *ibid.*

⁵ Section 18, *id.*

⁶ Section 19, *id.*

⁷ Section 16, *id.*

⁸ Section 15, *id.*

⁹ Section 10 (a), (b), (c), (d), (e), *id.*

- ✓ Awards for damages.—Awards for damages to the victim shall be taken from the personal and separate properties of the offender.¹⁰
- ✓ The law also mandates the creation of the Inter-Agency Council Against Trafficking¹¹ which is reposed with the responsibilities to, among others: (a) formulate a comprehensive and integrated program to prevent and suppress trafficking in persons including reintegration program; and (b) develop a mechanism for the timely, coordinated and effective response to cases of trafficking.
- ✓ The new law on trafficking likewise addresses the issues and concerns on repatriation and reintegration. Thus, existing programs and services on rehabilitation and reintegration have been further strengthened, requiring mandatory services for trafficked persons, i.e., emergency shelter or appropriate housing, free legal services, medical or psychological services, livelihood and skills training, and educational assistance to trafficked child.¹²
- ✓ Provides for the procedures for the rescue, recovery, repatriation and reintegration.¹³

* *Role of the Commission on Human Rights (Philippines)*

Aside from the agencies constituting the Inter-Agency Council Against Trafficking, there are other agencies / institutions in the country which are also mandated to pursue programs and services to combat trafficking in persons. Among these is the Commission on Human Rights (Philippines)¹⁴ whose role and responsibilities in line with trafficking issues include:

- Conduct advocacy and training programs relating to anti-trafficking;
- Investigate and recommend for prosecution violations of the Act;
- Provide free legal aid to victims of trafficking, and other assistance under its human rights protection services;
- Integrate anti-trafficking efforts in the Barangay Human Rights Action Center (BHRAC) Program; and
- Monitor government compliance to international human rights treaty obligations related to the suppression / elimination of trafficking.

¹⁰ Section 14, id.

¹¹ Section 20, id.

¹² Section 23, id.

¹³ Implementing Rules and Regulations, R.A. 9208.

¹⁴ Article V, Section 18(f), Final Draft, Implementing Rules and Regulations, R.A. 9208.

Such role and responsibilities are consistent with the constitutional mandate of the Commission.¹⁵

1.b.2. *Other national laws relevant to trafficking of persons*

Even prior to the enactment of R.A. 9208, there were already laws which are relevant to the trafficking process. Among these are:

- ✓ Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act, which defines the crime of illegal recruitment and prescribes penalties therefore. This law also provides for the mandatory repatriation of underage migrant workers and strengthens government assistance through the country-team approach.
- ✓ Republic Act No. 7610, otherwise known as The Special Protection of Children Against Child Abuse, Exploitation and Discrimination. This law provides for stronger deterrence and special protection against child abuse, exploitation and discrimination. It specifically punishes, among others, child trafficking and attempt to commit child trafficking.
- ✓ Republic Act No. 8239, otherwise known as The Philippine Passport Act, which mandates the State to maintain the integrity of passports and travel documents and provides stiff penalties for offenders.
- ✓ Republic Act No. 6985, otherwise known as The Mail Order Bride Law, which penalizes the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis.
- ✓ Republic Act No. 8043, otherwise known as The Inter-Country Adoption Law, which sets the policies and procedures in inter-country adoption including penalties for violations. It also created a Board as the central authority on matters relating to inter-country adoption.
- ✓ Republic Act No. 8552, otherwise known as The Domestic Adoption Act of 1998, establishing the rules and policies on the domestic adoption of Filipino children.
- ✓ Republic Act No. 3815, otherwise known as The Revised Penal Code of the Philippines. The defines and penalizes, among others, the crimes of corruption of minors and white slave trade.

¹⁵ Section 18, Article XIII, 1987 Constitution of the Philippines.

2. Institutional Mechanisms

The Philippines has also established several institutions or bodies, primarily, to provide policy directions against trafficking in persons and institutional support for trafficked persons, such as:

- ✓ The Inter-Agency Council Against Trafficking (IACAT), created pursuant to Section 20, R.A. 9208 (the Anti-Trafficking Act of 2003). It is mandated to, among others, formulate a comprehensive and integrated program for the prevention of trafficking and the protection and support for trafficked persons including appropriate reintegration program.
- ✓ The Office of the Undersecretary for Migrant Workers Affairs (OUMWA), operating under the Department of Foreign Affairs (DFA). It has a Trafficking Desk that handles all concerns regarding human trafficking and people smuggling and serves as the focal and coordinating office within the DFA on issues relating to trafficking in persons and human smuggling.
- ✓ The Senior Government Working Group (SGWG) on Human Trafficking and People Smuggling, which is mandated to develop and carry out a national strategy to address trafficking in persons and people smuggling and ensure the fulfillment of Philippine commitments under the United Nations Convention Against Transnational Organized Crime and Its Supplemental Protocols.
- ✓ The Anti-Illegal Recruitment Coordinating Councils (AIRCCs) are inter-agency groups composed of different sectors concerned with illegal recruitment and serves as a venue at the grassroots level for consultation and sharing of experiences and map out strategies to improve the anti-illegal recruitment program of the government.
- ✓ The Sub-Committee on Human Trafficking of the National Law Enforcement Coordinating Committee (NALECC) meets regularly for purposes of sharing data on human trafficking, briefing on actions being done in the prosecution of human trafficking cases and adopting measures to strengthen a coordinated approach against the problem.
- ✓ The Philippine Center on Transnational Crime (PCTC) is principally tasked to formulate and implement a concerted program of action of all law enforcement, intelligence and other government agencies for the prevention and control of transnational crime such as trafficking in women and children, particularly through improved coordination, research and data banking.

- ✓ The Local Councils for the Protection of Children have been established at the provincial, city, municipality and barangay (smallest political unit) levels purposely to assist in identifying conditions that may lead to child abuse, neglect and exploitation, and facilitate immediate response to reported cases of child abuse and exploitation.

3. Support Programs and Services; Linkages / Coalition

As mentioned earlier, the national strategy to combat trafficking in persons shall be undertaken, primarily, by the Inter-Agency Council Against Trafficking (IACAT).

Because trafficking is the concern of everyone, there is collaborative efforts between and among all stakeholders which include government, communities, non-government organizations and civil society. Noteworthy to mention is that, church groups through its international networks and the various migrant-focused organizations provide services, i.e., counseling, referrals, and crises care for Filipino migrant workers. Among the significant steps which government has undertaken even before the enactment of the new law, wherein it involved all stakeholders, is the adoption by the Senior Government Working Group on Human Trafficking and People Smuggling (SGWG) of a National Strategy to address trafficking in women and children using a comprehensive and holistic approach covering, among others, the areas of prevention, protection, prosecution, repatriation and reintegration.¹⁶

4. Current Initiatives on Recovery, Repatriation and Reintegration of Trafficked Persons

The policy, programs and services established pursuant to the Migrant Workers and Overseas Filipinos Act of 1995 (R.A. No. 8042) which generally apply to distressed migrant workers and Filipinos overseas, similarly apply to trafficked persons who are also considered as Filipinos “in distress”. These include:

(a) Legal Assistance Fund intended exclusively for the provision of legal services to migrant workers and overseas Filipinos in distress which includes fees for the foreign lawyers retained by the government to represent migrant workers facing charges abroad, bail bonds for their temporary liberty, court fees and other litigation expenses. Generally, the Department of Foreign Affairs provides services to Filipinos overseas, including legal assistance, through the Philippine embassies and consulates, which are open to both documented and undocumented Filipino migrants, without need of any special requirement or qualification.

¹⁶ Executive Summary, Report on Trafficking in Human Beings from the Philippines: A Survey of Government Experts and Law Enforcement Case Files, National Police Commission, Republic of the Philippines, p. 6.

(b) Assistance-to-Nationals Fund, which is under the auspices of the Department of Foreign Affairs. This is intended to answer the expenses for the repatriation of Filipinos in distress.

(c) Filipino Workers Resource Centers established in countries where there is a large concentration of Filipinos. The centers operate on a 24-hour basis and make available necessary services to Filipino overseas workers/migrants, i.e., counseling, legal services and welfare assistance.

(d) Repatriation Programs for Trafficked Persons which are undertaken by the Philippine foreign service posts. This is to ensure the repatriation of victims with dispatch. The Filipino Workers Resource Centers provide temporary refuge to trafficked persons in the meantime that appropriate interventions are taken with the employer and the labor department.

(e) Emergency Repatriation Fund. This is intended for the repatriation of workers during emergencies and where the principle, i.e., foreign employer or recruitment agency cannot be identified.

(f) Rehabilitation and reintegration programs for women and children aimed at facilitating recovery from traumatic experience and return to normal life. These include individual or group counseling / therapy focusing on, among others: affirming self-worth; getting victims and survivors out of a trap of negative emotions, i.e., fear, shame, self-denial, guilt and self-blame; providing information on the victims/survivors' situation to enable them to clearly see their options and plan for the future.

The program also provides opportunities for continuing education, as well as vocational and skills training; grant of financial / technical assistance in project planning / training for victims / survivors who would like to venture into income-generating projects; and community organizing.

Institutions providing some of the abovementioned rehabilitation / reintegration programs:

(a) The Department of Social Welfare and Development (DSWD) Crisis Intervention Unit which operates a 24-hour hotline in the fifteen (15) regions nationwide. It provides counseling service through telephone, rescue operation to children and women victims of abuse and exploitation. It also conduct referral service necessary for

the victims and other support services which may be appropriate to respond to the needs of the victims and potential victims.¹⁷

(b) The Department of Social Welfare and Development (DSWD) Centers, which include 12 Girls Home, 12 Reception and Study Centers for Children, 4 Lingap Centers and 12 Substitute Homes for Women. These centers provide temporary shelter and rehabilitation to women and children in especially difficult situations. The services include psycho-social and psychological / psychiatric services, formal and non-formal education, vocational and skills training, medical and dental services, food and non-food items, recreational sports and other socio-cultural activities as well as access to legal services.

(c) Project Haven (Hospital-Assisted Crises Intervention for Women Victims / Survivors of Violent Environments).-- An inter-agency government project of the National Commission on the Role of Filipino Women (NCRFW), the Department of Health, Women's Crisis Center (a non-government organization, and the East Avenue Medical Center, which piloted a government hospital-based healing center for victims of violence against women – the first hospital-based crisis center and the first GO-NGO model. The pilot project also incorporated documentation of information gathered from cases through pilot-testing of intake forms in the hospital, conducted trainings to health professionals on assessment and intervention work for victims / survivors of violence against women, the production of a video manual on setting up hospital-based crisis centers and the development of a sexual offense evidence collection kit. It also pioneered the setting up of an inter-agency body to coordinate the different efforts of government agencies involved in providing services to victims / survivors of VAW by setting up a Project Steering Committee led by the Department of Health. Part of the output of this project is the development of protocols in properly handling victims / survivors of VAW.¹⁹

There are also other initiatives in the areas of rehabilitation and reintegration of trafficked persons, as follows:

Reintegration Project for Trafficked victims particularly Women and Children which shall further respond to the needs of women in especially difficult circumstances. The project which is expected to commence within the year 2003, shall provide counseling therapy, as well as other support to enable the victims to live normal lives. It is funded by the UN Center for International Crime Prevention.²⁰

¹⁷ Philippine Policies and Initiatives to Address Trafficking of and Violence Against Women (1996-2001), cited in Philippine Country Report, ASEM, 2003.

¹⁹ Id., p. 7

²⁰ Id., p. 3

Philippine-Belgium Project on Trafficking aimed at educating and training the public on preventive actions against trafficking in women and children, and provide social and legal assistance to victims of this crime. The project included a cross-cultural legal research component, a preventive education component and a social assistance and health component.²¹

As earlier mentioned, the rules and regulations implementing the new law on trafficking provides for the procedures for the rescue, recovery, repatriation and reintegration of trafficked persons. However, issues and concerns from the point of view of the Philippines as a country of origin should be considered, i.e., the limited number of Philippine Foreign Service posts; trafficking destinations beyond embassy range; clandestine and syndicated nature of trafficking; identification of trafficked persons; need for foreign service personnel to undergo comprehensive capability training on handling trafficking cases and identifying victims; the problem in identifying victims and treating them as such because such persons often do not see themselves as victims; lack of resources to implement reintegration program; lack of capability of service providers; security and safety; stigmatization.

Conclusion

The Philippine government's effort to combat trafficking is a work in progress. And the enactment of the new law – R.A. 9208, is expected to fill the gaps in and strengthen existing policies, program measures and practices to address trafficking in persons within the domestic / local level and across national borders. But the implementation of the comprehensive strategy / plan coupled with the availability of the necessary resources need the involvement and participation of all stakeholders, the government agencies concerned, non-government organizations, civil society, the community, and the religious sector, the academe, and even the international community, because the issue of trafficking is everyone's concern.

Recommendation

There is a need to strengthen national and international linkages / networking and ensure the cooperation and support of all stakeholders, the government, non-government organizations, civil society, the church, the academe, and the international community towards a resolute and collaborative efforts to eradicate trafficking. But this has to begin within the local / national level, which requires therefore a government with strong political

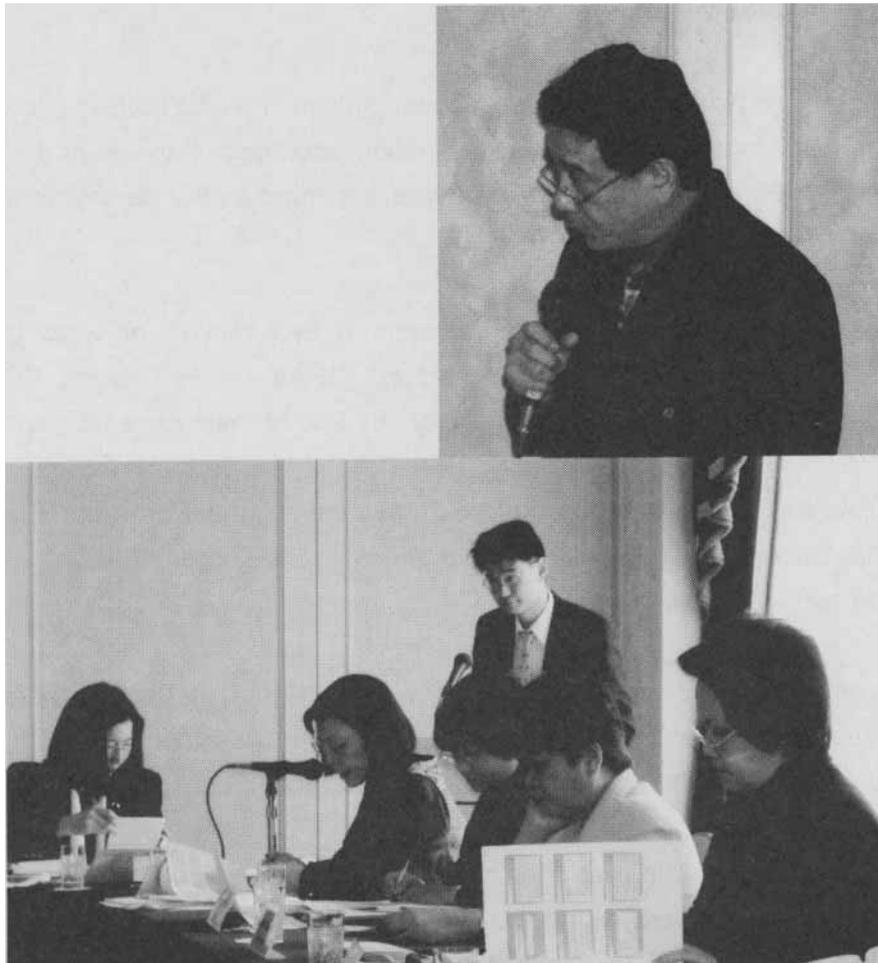
²¹ id.

will to strictly enforce the law and make available all the needed resources, to include competent, responsible, accountable and nationalistic individuals / group of individuals to run system established for the purpose.

Another, for all countries, whether of origin, in transit, or destination, to treat trafficked persons as victims and not as offenders and to ensure them the necessary protection and assistance, regardless of race, nationality, creed, or whether they are documented or not.

It is also necessary for all members of the United Nations to sign and ratify all international instruments relevant to human trafficking and smuggling, and slavery, etc. For countries who are already party-signatory and ratified such treaties, to comply with their international obligations, to include the enactment of relevant laws, development and implementation of programs and service.

Finally, human rights should be at the heart of every law, plans and programs pertaining to trafficking.



“Trafficking Experience in Japan: The Case of Filipino Women Overseas Performing Artists (OPAs)”

Carmelita G. Nuqui
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President, Philippine Migrants Rights Watch (PMRW)

As executive director of the Development Action for Women Network (DAWN) and president of the Philippine Migrants Rights Watch (PMRW) that are both active civil society groups that protect the rights of migrant workers and their families, I have seen the trafficking problem as an inevitable risk of labor migration. That even the legal deployment of Filipino workers overseas is not an assurance of safe and secured employment. More so, for women who have become the country's top labor and export commodity since it joined the international labor force in the 1970s.

I. Migration of Filipino Women to Japan

Records of the Philippine Overseas Employment Administration (POEA) show that of late, Japan has become one of the top five destination countries of overseas Filipino workers (OFWs). Since 1996, there has been an increasing trend in the deployment of OFWs to Japan reaching 77,870 in 2002.

A large percentage of these workers are women entertainers or what the Philippine government calls the, “overseas performing artists” (OPAs). In 2002 alone, POEA recorded that out of the 73,246 OPA deployment to Japan, 69,986 of them were women.

Although OPAs have been sent to other countries, the numbers are not as large as those sent to Japan. Out of 73,685 Filipino OPAs deployed in 2002, only 439 went to work in other countries; the rest went to work in Japan.

With this overwhelming demand of Filipino women OPAs in Japan, there have been reported cases of abuse and exploitation like that of Maricris Sioson in 1991. Maricris was 19 years old when she worked as an entertainer in a club in Fukushima,

Japan. Like many OPAs, she lived in a cramped room together with the other women and was made to go out on dates with her Japanese customers. She was physically confined and monitored by her strict Japanese employer who has connections with the Yakuza.

Despite signs of physical abuse on Maricris' body, the authorities discounted the possibility of foul play. No one came out to share what he or she knew about Maricris' death.

After Maricris' death, the Philippine government began a review of its policies and implemented reforms in its deployment program to provide a mantle of protection for Filipino migrant workers. However, recent study conducted by DAWN on the migration plight of Filipino OPAs in Japan showed that these women migrants remain unprotected.

The study was conducted in Metro Manila and in Tokyo, Japan from April 2002 to August 2003. With this study, DAWN has identified the legal, social and economic issues and problems that confront Filipino women OPAs in Japan during the three phases of the entire migration process, that is from pre-departure, on-site, to their reintegration.

DAWN's research team conducted a survey and focus group discussions with OPAs, interviews with key government officials and industry leaders, and an on-site research in Tokyo. Let me share with you two different yet both tragic experiences of our women OPAs who participated in this study.

II. Two sad tales

Mary Joy was only 21 years old when she worked in Japan as entertainer in 1995. This was prohibited under the rule during that time that set 23 as the minimum age requirement for entertainers.

Let me take note that the legal age now for OPAs was further reduced to 18 which makes girls aged younger than Mary Joy and who are supposed to be in school, to be easily lured to such kind of work without knowing the possible consequences.

In the case of Mary Joy, though she was unqualified then because of her age, she was able to pass the tedious process using a birth certificate fixed by her agency. Determined to help her family, she underwent a series of tests and academic training only to be traumatized by the job waiting for her in Japan.

Upon arrival at the Narita International Airport, she was fetched by representatives of her promotions agency in Japan and of the club she would work in. She was brought to a club instead of the hotel named in the contract she had signed in Manila. She learned from the other Filipino women entertainers that such practice, called flying booking, was normally done.

The club owner got Mary Joy's passport and warned her not to roam around or face arrest by immigration authorities. She was also made to start working on the day of her arrival. Mary Joy was completely shocked with what she saw in the club. Some Filipino women were having intimate moments with their Japanese customers while members of the Yakuza went to dance onstage, freely displaying their butts before the newly arrived entertainers.

Wearing sexy attire, Mary Joy was assisted by a timer or an OPA who has worked in Japan for several times, in serving drinks, sitting beside the customers and going on *dohan* or what they call the afternoon date. She had a quota of one customer per week for *dohan*. Three months later, her quota was increased to two. She could not refuse. She was afraid to suffer the same penalty meted on other entertainers who were locked up when they refused to go out on *dohan*. Mary Joy left for Japan as a dancer, but she was never made to dance at the club. Given the nature of her work, she experienced being touched on her private parts. When she tried to resist or complain to the management, she was reprimanded and told plainly that these were all part of her work as an entertainer.

At times, the women were asked to play Jack en Poy. If the entertainer won, the customer paid the OPA. If the customer won, he had the right to touch the entertainer or make physical advances. Mary Joy had no choice but to play the game. She and her fellow entertainers were at the mercy of their customers.

In one of her *dohan*, Mary Joy had a customer who brought her to his home where he showed her a video of other Filipino women whom he had gone out with. When she was feeling relaxed and at ease, the man began showing pornographic videos which startled her. Luckily, he did not pursue his intentions, upon Mary Joy's plea.

There was a time when Mary Joy was not able to get a customer for *dohan*. For fear of a 12,000 yen fine (equivalent to more than \$100 that time), she tried calling some customers, but could fine no one. As a penalty, Mary Joy was made to stay outside the club even if it was freezing cold. With no proper winter clothing, she felt humiliated and almost froze in the cold. She was allowed to enter the club only if and when a customer came and she sat with him. When the customer left, she was again made to stay outside until a new customer arrived.

Since the club opens at 6:00 p.m. and they had to travel some distance from the talents' apartment to the club, Mary Joy and her fellow entertainers would have an early dinner at 3:00 p.m. to be able to come early enough for cleaning or janitorial chores in the club. Though this was not part of their contracts, they were told by the management that they had no choice nor did they have the right to complain.

The women worked from 6 p.m. to 3 a.m. and were paid Y1,500 food allowance per week. They almost did not have days off because of the need to complete their quota for *dohan*. At the club, they could not bring in food, neither could they eat unless they had a customer. It became a practice among the women to eat secretly inside the toilet to be able to work until the wee hours of the morning. Her contract ended on December 20, 1995. It was only then that she got her salary of \$350 per month. The Y200,000 stipulated in her contract was not followed and her earnings were reduced to almost nothing because of salary deductions made by her agency. Mary Joy went home shattered, distressed and hopeless.

She has survived that difficult stage of her life, though, and is now the coordinator of DAWN's livelihood program, *Sikhay*, and an active advocate of women's rights.¹ But not all former entertainers are survivors like Mary Joy. Many of them have yet to recover from the trauma of their Japan experience.

One of them is Rolinda (not her real name). Rolinda became psychologically disturbed after going through painful experiences which all started when she was recruited and promised a high-paying job to work as an entertainer in Japan in 1986. Coming from a poor family and the eldest in a brood of four, Rolinda immediately grabbed the bait when her father died and left the country using a fake passport fixed by her agency. She was only 17 years old then.

Rolinda was supposed to work as a dancer in Osaka but was instead placed in a brothel in Nagoya where she was forced to give sexual services to different men every night. When she was transferred to a club, Rolinda thought that her agony would end. But she was wrong. With an expired visa, Rolinda was again violated in her new work place. Apart from doing janitorial chores, she was forced to do "hostessing" work. One of her customers became her partner whom she chose to go out on *dohan*. He got her pregnant twice but she both got them aborted. She also discovered him having an affair with another woman. Brought by such unfortunate circumstances, Rolinda became psychologically ill. On her third pregnancy, Rolinda went back to the Philippines in 1994, already shattered and devastated. She was placed in a mental hospital for some time but that did not help her fully recover from the trauma. Until now, Rolinda with her nine-year-old Japanese-Filipino child, remain mentally disturbed.

III. Vulnerability of women OPAs

The stories of Mary Joy and Rolinda are only two of the sad tales experienced by our women OPAs in Japan. DAWN's study showed that despite their intensive training prior to

¹ Mary Joy has attended and delivered her personal testimony as former entertainer in Japan in several local and international conferences.

their deployment, women OPAs do not actually perform on stage. Their performance is based not on their singing or dancing prowess, but on how many customers they manage to lure into the club every night. More so, most of their customers mistake their consent to *dohan* as a tacit agreement to have sex. Thus, many of them become more exposed to possible sex trade, prostitution, and even rape. It is because aside from shopping and dining in with their customers, some women are also brought to private places where customers expect sexual services.

Those who fail to meet the quota for *dohan* are fined or punished while some are even deported to the Philippines. With such kind of work, acquiring HIV / AIDS and other sexually-transmitted diseases is also another danger they face. For many Filipino women, *dohan* is the only way for them to keep their jobs though in the POEA's memorandum #02, Series of 1997 (paragraph 1, item 1.3) it is explicitly stated that, "*The parties shall not allow their Overseas Performing Artists (OPAs) to engage in dohan or other similar practices, do lewd shows, or perform other indecent acts and do menial jobs, such as waitressing, janitorial and other non-contract related work.*"

The Japanese government's drive against discrimination of foreign workers has not worked in favor of Filipino women OPAs, as evidenced by the rampant practice of *dohan*, flying booking, and the many forms of hostessing work they have had to perform. One OPA respondent of our study said that she was almost raped by her male customer while another was forced to do topless dancing. They are even deprived of just benefits and compensation. Sadly, they were legally deployed as OPAs only to be violated, harassed and abused in their work place. They are put into a situation where they have no choice.

We can see from the stories of Mary Joy and Rolinda and from the experiences of other women that both documented and undocumented OPAs are vulnerable to sexual exploitation, slavery and forced labor in their work places, all clear indications of trafficking as defined in Section 3 a of the Philippines' Anti-Trafficking in Persons Act.

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 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. [Sec.3(a), RA 9208].

In fact, at the round table discussions with industry leaders and NGOs organized by the

POEA in May and July 2002, it was pointed out that the tradition of the geisha culture in Japan has evolved into a more commercial form, where young, sexy women performers have become the most desirable feature of entertainment venues, giving rise to a great demand for guest relations officers, hostesses, escorts and prostituted women. This commercialization of Japanese culture is said to be another contributing factor to the vulnerability of women OPAs to various forms of trafficking in Japan.

DAWN and PMRW recognize the passage of the Anti-Trafficking in Persons Act in the Philippines as specially significant and beneficial to young Filipino women, especially those recruited from the provinces, who are oftentimes lured to the job of an OPA only to be forcibly engaged in prostitution, hostessing work and other forms of exploitation and harassment. Many of them are even below the age of eighteen, like Rolinda, who are still considered as children or minors. Their youth and innocence make them even more vulnerable to deception, abuse and harassment.

IV. Recommendations

It is sad to note that the Philippine government has played an integral part in the process, particularly in terms of projecting a work abroad that will showcase world-class Filipino talents which is not what it is in reality. The academic and skills trainings and tests required for the issuance of the Artist Record Book or ARB which is a prerequisite for securing a visa, and calling these women as “overseas performing artists,” are no longer appropriate and necessary to the kind of work which Filipino women entertainers actually do in Japan.

Both the government and private groups are earning from this deployment program, through dollar remittances and agency fees, respectively, at the expense of the women’s dignity and welfare. Some women are even made to pay high fees to their agencies for their documents and training expenses prior to departure. For those who had to falsify their documents, including fake ARBs and passports, this would even cost more.

Women advocates call it the “vaginal economy.” Clearly, they are also serious cases of human rights violations. Japan, as the receiving country, should also give equal protection to our Filipino women. Though it is clearly stated in their laws that foreign workers are equally protected in their country, this is not what happens in the case of our women. One reason could be the distinction given to entertainers as “guests” and not as workers. Are they really “performing artists --singers or dancers?” Or while it recognizes entertainers as part of the labor force, full and strict monitoring and implementation of the present rules and policies are yet to benefit our Filipino women there.

Notably, Japan has ratified the UN Convention on the Rights of the Child , but it has yet to ratify the UN Convention on the Rights of All Migrant Workers and Members of their Families and has no local law on anti-trafficking. With the continuous deployment of Filipino women/children to Japan, DAWN recommends a joint review by both the Philippine and Japanese governments of the executive and legislative policies and their implementation, and monitoring measures and conditions in Japan that endanger Filipino women OPAs and other foreign workers.

While we at DAWN continuously intervenes into the lives of our returning Filipino women OPAs and their Japanese-Filipino children through the projects and services under our three major programs: the *Social Services*, *Alternative Livelihood*, and the *Research and Advocacy*. Within our limited resources, we are helping the likes of Mary Joy and Rolinda to recover from the experience and reintegrate into the society. But we know that this would not be enough. The full attention and support of both the Philippine and Japanese governments is very much needed in addressing the wide range of concerns and issues, including the trafficking in women OPAs in Japan, regardless of their status of migration. Both the documented and undocumented women OPAs deserve to be informed, protected, empowered and respected just like other migrant workers who only hope to earn and support their families back home. And any system or policy made to address this issue, to be effective, requires the concerted efforts of all sectors involved in the migration process.

On behalf of DAWN and PMRW, we do hope that in the prevalence of trafficking in women and children, we can find and rapidly spread new forms of solutions to stop this global menace through this experts meeting.



Weerasak Kowsurat
Vice-Minister
Ministry of Social Development and Human Security

1. Current Situation

Thailand is one of the countries facing severe problem of women and children trafficking and sexual exploitation, especially from countries in the Mekong Sub-region, Myanmar, Lao PDR, Cambodia, Vietnam and China (Yunnan province). The problem has become increasingly widespread and intensified which is similar to trafficking phenomenon in every region of the world.

Thailand, at present, is recognized as the country of origin, transit and destination point. Many foreign women and children were recruited to Thailand and exploited in various forms, such as sex service, forced labour, begging, and other inhumane treatment. While Thai women went abroad and find themselves in exploitative situation, convenience transportation and communication facilitate Thailand to be the hub for sending those trafficked persons to foreign countries.

2. Causes of Human Trafficking

Developments within the context of globalization and economic disparities between countries contribute to expansion of trafficking. The capitalism, which allow freedom in movement of resources and labour, also generate cross-border migration of unemployed people who seek for better life and opportunity for jobs. During economic downturn, women and children migrate to big cities to fulfill increasing responsibilities for the economic survival of their families. They, who are basically in the informal sector and have less access to equal opportunity in development and employment, become most vulnerable for being lured and exploited by transnational criminal networks.

3. Thailand's responses to the problem

The Thai Government, NGOs and international organizations paid much attention to the problem as the issue is considered as a severe violation of human rights and a form of organized crime.

A number of international instruments and domestic laws have been used as tools to function mechanism in combating human trafficking. The government has ratified and followed those instruments by setting up focal points, formulating national policy, and launching many intervention programmes in areas of prevention, protection, prosecution, return and reintegration.

Safe return and reintegration are recognized as the key concept that Thailand has put an effort to address to neighboring countries. The principals of sustainable reintegration shared and agreed among partners are the safe return, non-re-victimized or prevention for re-entering to trafficking cycle and that means there shall be an agency taking care of trafficked persons in a long run in the source countries.

The efforts have been paid on initiatives in joining regional, sub-regional program and international communities to set up structural and systematical protection, recovery, repatriation and reintegration. In early 1999, Thailand agreed with the United Nations to participate in the UN-IAP on Combating Trafficking in Women and Children in the Mekong Sub-region that launched in area of Thailand, Cambodia, Laos, Myanmar, Vietnam and China. Each country initiatives were supported to reinforce network building domestically and internationally. As well, Thailand have been working closely with IOM, UNICEF, ILO-PLC and other international NGOs like Asia Foundation, SC(UK), World Vision, MRLC, etc. in order to maximized full protection of those trafficked persons and improve greater cooperation in all aspects to combat human trafficking.

Recently, we just have co-hosted with Philippines and Sweden in organizing the ASEM Seminar on Enhancing Support and Cooperation for Strengthening Social Policies to Assist Trafficked Women and Children in Bangkok on 1-3 September 2003. Lots of ideas and experiences have been exchanged among countries in Asia and Europe.

Thailand has a multi faceted response to the problem of people trafficking. The Thai Government has initiated a genuine and committed response to the problem by providing trafficked persons with following initiatives;

3.1 National Policy on Anti-Trafficking: The formulation of a joint government/NGO National Policy and Plan of Prevention, Suppression and Combating Domestic and Transnational Trafficking in Women and Children (six years plan)

3.2 Memorandum of Understanding: Thailand has sought to develop effective procedures both formal and informal for the safe and effective repatriation of trafficked victims.

- The Thai Cambodia MOU is one such example of Thailand's search for strategies to improve the support available for trafficked persons.

Thailand has also initiated and formalized other separate domestic MOU's relating to trafficking in persons, both bilaterally and nationally.

- Those are MOU between government to government
- Government to non-government
- Non-government to non-government and
- Newly signed local MOU among 9 provinces in northern part of Thailand.

The first MOU of government has been renewed to expand the coverage to vulnerable groups and agencies concerned. The range and diversity of these MOU's represent the importance that Thailand places on finding broad and effective measures to both support the victims of trafficking and to target the traffickers. Further development of a handbook for practitioners of MOUs to clarify roles and responsibilities of each partner and a number of training have been organized in order to improve knowledge and understanding by simplify legal text into more friendly users for the practitioners.

4. Law amendment and enforcement

4.1 Law amendment

- Thailand has its specific anti-trafficking law, namely the Measures of Prevention and Suppression of the Trafficking in Women and Children Act 1997. The responsible officials for the law have been also assigned to the Ministry force to supplement to the police or law enforcers in order to ensure of effective implementation and coverage. The law prohibits the selling' buying, luring, sending, receiving, detaining and procuring of women and children to perform sexual acts with or without the consent of the women and children. The maximum penalty is 5 years imprisonment and a fine. Currently, Thailand has conduct a public hearing and national research in amending the anti-trafficking law to be comply with to the Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children of the UN Convention Against Transnational Organized Crime.
- Thailand is recognized as one of leading countries that improve and revised the anti-prostitution law, the Prevention and Suppression of Prostitution Act 1996 that emphasized more on tackling of the demand side for trafficked persons by increasing penalties for persons who engage in the commercial sexual exploitation of any child under 18.

4.2 New Law

- The Child Protection Act of 2003 that has been improved and integrated from previous laws and regulation related to providing assistance, protection and promoting child behavior has just signed in the middle of this year. The law stipulated has mandated the national fund, responsible officials, and provincial structure to implement according to the act. Multi-sectoral and multi-disciplinary team is key concepts of the laws and draw greater participation from all actors to provide protection to the child and youth.

4.3 Newly established mechanisms

Royal Thai Police has made a lot of move in improving law enforcement.

- The first initiative was to establish new structure to take direct responsibility on women and children protection and eliminate human trafficking. The unit is the child and Women Protection Center, under Royal Thai Police.
- Law enforcement in Thailand has identified the need to prioritize the investigation of trafficking offences and has begun to structure a specialist response that includes both the Royal Thai Police and the new Special Investigation Division (SID).

4.4 Labour protective mechanism

Human trafficking in Thailand is not limited to sexual exploitation. It also includes children and women who are trafficked into forced labour. There was progress in response to protection of foreign migrants such as; the identification within labour migration of trafficking of persons into forced labour, and the development and implementation of responses that included;

- The conclusion of MOU's between the government of Thailand and the Governments of Laos PDR, Myanmar, and Cambodia on labour migration in order to bring those persons illegally employed in the country into the legal fold so that they can have access to the rights, protections and proper treatment within the provision of Thailand's laws.
- Work to formulate a special task force within the Ministry of Labour to respond to reports of violation of the rights of migrant labourers. The task force focuses on strategic interventions to protect migrant's rights and will incorporate committees that are made up representatives from concerned departments and organizations.

5 Assistance to trafficked persons

- All trafficked women and children will be treated as victims, not criminals as stated clearly

in the government MOU. The ministry has assigned Department of Social Development and Welfare, Bureau of Anti-Trafficking in Women and Children (BATWC) to provide support to trafficked victims in the following areas; legal assistance in the recovery of wages, recovery and repatriation, protection, medical support and working with NGO's in providing access to victims or trafficking and support in their return.

In an attempt to assist children who are sexually exploited or trafficked, the Ministry designated the Kredtrakarn Protection and Occupational Development Center to be the key government agency responsible for providing assistance to women and children who are victims of commercial sexual exploitation before repatriating them to their home countries. They are provided with non-formal education, vocational training, medical treatment, social work services, psychological rehabilitation, and reintegration services. The Center also provides services for young girls who face various social problems. There are 5 designated main protection homes located at various regions in the country;

1. Kredtrakan Centre at Nonthaburi Province
2. Narisawas Centre in Nakhon Ratchasima Province (Northeast)
3. Song Kwai Centre in Pitsanulokhe Province (North)
4. Srisurat Centre in Suratthanee Province (South)
5. The Reception Home for boys at Nonthaburi province for boy victims of trafficking

- In addition to be ensured of the coverage Of the service provided, the Ministry has also designate 97 shelters, under supervision and located in different areas as a temporary shelter to provide initial intervention through out to mitigate critical problems and then refer to main agencies.
- The provision of knowledge and psycho-social and vocational training the services provided include not only basic necessities but also activities and programs that respond to both physical and particularly emotional needs of victims. Psychologists and social workers arrange many activities, such as casework, group work and counseling services. Later, the victims can choose to attend vocational training courses such as dress-making, hair-cutting, weaving, making garlands, and foot massage so that they will have basic skills to be Ruther developed as their career in their hometown. Moreover, the victims will be provided with social work services informal education, training and equipped with various knowledge in the shelters.
- Capacity-building for care takers and service providers. The Ministry has worked with NGOs and International Organization in formulation of Psycho-Social Rehabilitation of Trafficked Victims handbooks and Training of Trainers Manual on Multi-Disciplinary Law Enforcement Process. The media such as VDO, VCD used for life skills training was also

developed to be responsive to child and women needs, culture and diversity of the language used.

6. Special Preventative Measures

Thailand has implemented a range of preventative and support measures that include;

- The establishment of a project to establish Welfare and Vocational Training Centres for Women (there are presently 7 such centres operated by the Department of Public Welfare throughout the country. Vocational training for children in institutional care-children at risk of trafficking who do not want to attend further formal education are encouraged to undertake vocational training courses at institutions run by the MOWSW or general institutions appropriate to their interests.
- The implementation of a project on Building a New Life for Rural Women-the project focus on short term vocational training courses in communities for young women at risk of procurement for work within the sex industry. Target groups include young women with little or no educational opportunities, and unemployed or retrenched female workers. Each year approximately 3000 women have completed these courses and have been encouraged to form occupational groups back in their communities.
- Awareness raising of the Asks of trafficking within the commercial sex industry - the project targets young women at risk of being trafficked into prostitution and includes awareness raising for families and communities about the risks posed from the commercial exploitation of children.

7. Networking and Coordination

Thailand has developed and fostered networks and coordination arrangements that include;

- The bringing together of relevant arms of government and NGO's within a multi-agency approach to trafficking, formalized by inter agency MOU. Thailand has been working closely with NGOs; many case conferences and well developed of process on protection and assistance are usually exchanged among actors. FACE, CPCR, Foundation for Women, Foundation for Child Development and TraffCord are involved in the rescue team, and consultation for prosecution traffickers.

- Collaboration with UN, governmental, non governmental and international organizations to provide protection for cross border trafficked persons.
- Supporting inter country cooperation for combating human trafficking through work with the IOM that commenced in 2000 and initially focused on assisting trafficked women and children from Cambodia. Later the target population expanded to included persons trafficked from Myanmar, Laos PDR, and Vietnam.
- Our recent initiative was that we brought all actors to join together discussing how to solve the problem and to maximize, mobilize resources more effectively. From the lessons learnt after conducting 2 workshops with the Ministry of Foreign Affairs, especially to the consuls and staffs in Bangkok and London, we were aware of problems arisen and become complicated. We need to have more strategies and new partners who can help the government address the problem. The Ministry has identified Thai NGOs and networks abroad, particularly, in Japan and Europe networks, and invited them to Bangkok to discuss with local partners from the North and Northeast network as well as relevant government officials. At the end of the workshop, we agreed and signed MOU to pursue further development on preventive and raising awareness activities altogether.

In principle, the Ministry plays a role as the host and tries not to be the owner in combating commercial sexual exploitation or trafficking in women and children. We will encourage all partners, actors from policy to community level to join hand in hand together in eradicating the problems. Sometimes, we were not only the host but also the supporter to ensure of full participation from all multi-sectorial and multi-disciplinary team.

Currently, human trafficking crime has something in common/similar to drug trafficking which is related to transnational organized crime. The Government of Thailand has paid much attention and put all efforts to operate various initiatives and activities to combat this influential crime. The Ministry of Social Development and Human Security: MSDHS has set up the Sub-committee on Suppression of Influential Persons on Trafficking in Women and Children, Forced Prostitution and Child Prostitution. This Sub-committee is established under the structure of the Office of the Narcotics Control Board led by Gen. Chavalit Yongchaiyua. Its function is to encourage serious enforcement of all the related laws to suppress influential persons in human trafficking crime such as Criminal Law, the 1997 Measures in Prevention and Suppression of Trafficking in Women and Children Act, the 1999 Prevention and Suppression of Money Laundry Act, Law Concerning Revenue etc.

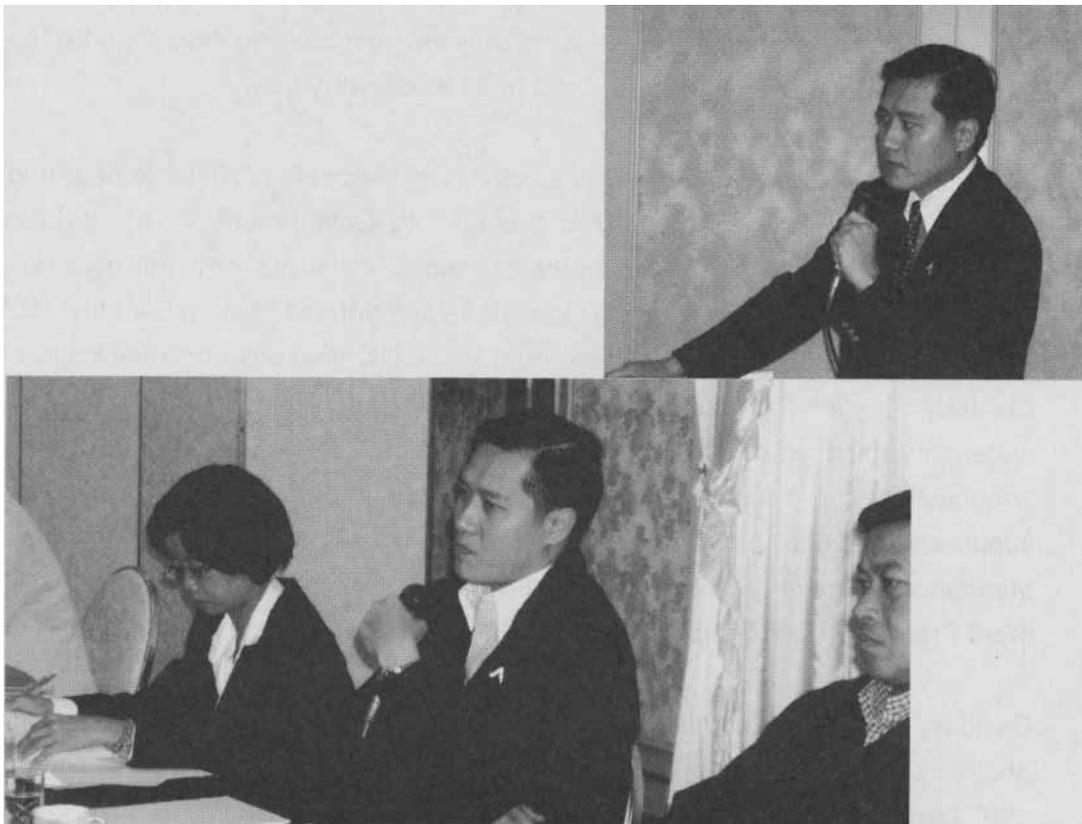
Besides, MSDHS in cooperation with the Anti Money Laundering Office has also set up another Committee on Coordinating and Monitoring of Legal Cases in Accordance with the 1997 Measure in Prevention and Suppression of Trafficking in Women and Children Act. Its

function is to take legislative action against the perpetrators of human trafficking according to the Prevention and Suppression of Money Laundering Act.

It's true that those who are economically deprived - poor are more vulnerable to trafficking. However, not all equally poor people are equally vulnerable to trafficking. The 'pull' factors for young women are greater in one village than in its neighbor and it is not always the poorest that are most likely to be traf6cked. We shall not to underestimate global, national and regional economic inequalities - these contribute to trafficking.

People are vulnerable to being trafficked because often they lack education; they more often have limited job opportunities; they are, and consider their lives to be, subject to the direction of their families; they often lack self-esteem; and because subject to the direction of their families; they often lack self-esteem; and because they are able to be viewed as commodities - by themselves, their communities and those along the trafficking chain, and throughout the world, who would exploit them.

As trafficking in people is a major human rights and gender issue facing the international community and each nation, all world community should be aware of the problems and help each other to prevent and protect vulnerable women and children from any forms of exploitation. We shall also make sure of development economically but socially as well.



Thai Legislation against Human Trafficking

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Trafficking is one of the most serious crimes in human history and is condemned as modern slavery of 20th century. It is compared with slavery because the victims of trafficking are exploited and many are forced and tortured to work for financial gains of the exploiters in the similar manners as traditional slavery. Moreover, the victims of trafficking suffer as much as those of traditional slavery. Trafficking includes trafficking for labor and sexual exploitation. Victims of trafficking may be willing to be trafficked or they may be forced, solicited, or lured with false promises, false offers, etc. The worst type of trafficking is that the victims are forced to engage in commercial sex by the exploiters. Due to globalization, poorly planned development, consumerism, economic disparity, trafficking is widespread in both domestic and international levels. Young people from poor rural areas are recruited into wealthy urban areas. People from less economical developed “countries are lured into more developed ones with the hope of getting higher pay for their services. However, the phenomena of trafficking cannot be so rampant without the very active catalyst which is the well organized criminal groups who manage the trafficking at all levels and gain most of the huge financial benefit from these illegal activities leaving only a small part of the benefit to the victims who invest their lives, souls and health in this business. Countries with the trafficking problem have tried to eliminate this crime but face with a lot of difficulties including corruption.

Law relating to Traffic in Persons

1. The National Constitution

The new Constitution guarantees that all persons will be treated equally under the laws no matter whether they are a Thai citizen or illegal immigrant and the equal treatment will cover protection and all rights stipulated in the Constitution. Article 43 provides that State has the duty to raise the compulsory education from the present nine years to twelve years. The long compulsory education will help keep the risk groups children from being exploited or trafficked when they are very young with the hope that with higher education and more opportunity to get better jobs or receive further education they will not enter into the commercial sex when they grow up. Children of the illegal immigrants will have the same right to education as well. Article 53 has clearly stated that it is the duty of State to protect all children and juveniles (under 18 years) both Thai and foreigners from being abused. The

abuse is not specified; therefore it means the abuse in all forms which includes labor, sexual, commercial gain, physical or mental abuses. The new Constitution will have a very important role in shaping the domestic law to that effects stipulated in the Constitution. Any law is contrary to the principles laid down in the Constitution can be challenged and nullified.

2. The Penal Code

The modern Penal Code of Thailand has been effective since 1957 with many amendments. It was considered to be a good one with heavy penalty, particularly in Title IX-Offences Relating to Sexuality. With the changing circumstances and social values together with new problems, it needs some more adjustment to be more effective in fighting with child exploitation for commercial sex industry.

2.1 The Existing Relevant Sections

Trafficking or procuring children for an indecent sexual purpose is the crime punishable in Thailand no matter where the offence is committed. Traffic in men and boys shall be punishable with the same penalty as the traffic in women and girls. Rape is offensive with four years to life imprisonment and the age of consent is over fifteen years. In case the victim is dead the penalty is capital punishment. However, the element of the law stipulated that only women can be raped. Thus, boys could not be raped. In addition, rape was interpreted by the Supreme Court in a narrow sense as the insertion of male genital into female genital only. The interpretation has dominated all rape cases till nowadays. An offender who rapes a boy through the anus can only be charged with committing an indecent act which carries penalty of imprisonment up to 15 years. If the victim is dead the punishment is death penalty or life imprisonment. Anyone who procures, seduces or leads away a woman (with or without her consent) for indecent act in order to gratify sexual desire of another person is punishable with 1-20 years imprisonment. If the victim is a child under 18, 15, or 13 the penalty is heavier depending on the age of the victim. The penalty in this case ranges from three to life imprisonment or death penalty. According to Section 286 a pimp is liable to punished with 7-20 years imprisonment but because of the very restricted interpretation of the Supreme Court it is very difficult to enforce this Section. Having pornography in possession for personal use is not illegal in Thailand. The Criminal Code prohibits the trade, distribution, import, export, production, or possession for sale or distribution or exhibition. The maximum penalty is 3 years imprisonment.

2.2 The Proposed Penal Code Amendment

With the widespread sexual abuse against boys and to make possession of child pornography a punishable offence in Thai court, two amendments were proposed by the

National Commission on Women's Affairs (and Office of the Attorney General to amend the Penal Code). A man or boy raped with the new definition of the word "*sexual intercourse*" set forth in the amendments. Having in possession of child pornography shall be an offence with three years imprisonment and the distribution, sale, production or exhibition of the child pornography shall be imprisoned up to seven years.

3. The Prostitution Prevention and Suppression Act.

In October 22, 1996 the Parliament passed the new Prostitution Prevention and Suppression Act which radically changes the concept of the former Prostitution Suppression Act of 1960 which had been in use for 36 years.

3.1 The Former Prostitution Suppression Act (1960)

This former Act was enacted with the intention to outlaw all forms of prostitution which used to be legal under license from authority before 1960. The concept behind the drafting of the Act was to punish prostitutes more severe than procurers. A prostitute arrested might face with imprisonment not more than three to six months or fine of 1,000 - 2,000 baht according to her act of prostitution. In addition, she might be detained in a closed rehabilitation centre for another two years while the maximum punishment for a procurer was three months imprisonment and a fine not more than 1,000 baht with no rehabilitation requirement. An owner of a place for prostitution might face up to one year jail term. The punishment for procurer and owner of a brothel, therefore, was not deterrent compared with a huge profit from the trade and the risk of being punished. Moreover, when prostitutes themselves were targets of suppression and were treated as criminals, they were pushed into protection of procurers who had influence with law enforcement officials. Not only did the Act fail to suppress prostitution as planned, but the Act also encouraged prostitution to be widespread and increased in numbers and forms. Within the period of 36 years the Act had been in use, prostitution had grown and prospered unchecked. Organized criminal rings benefited from prostitution business grew stronger with increasing influence and power. Kick back was widespread and widely known by the public. It was a boon the Act was replaced by the 1996 Act.

3.2. The Present Prostitution Prevention and Suppression Act (1996)

This present Act replaced the former Act of 1960 and was effective on December 21, 1996 (sixty days after published in the Royal Gazette). The main concept of this Act is that prostitutes are victims of poverty, social problems and organized crime. Therefore, the Act concentrates on punishing procurers, brothel (both traditional and disguised brothels)

owners, mama sans, pimps, customers, and parents who sold their offspring for prostitution. With this concept the punishment for prostitutes is greatly reduced. It means that being a prostitute is not illegal, but some acts are still prohibited. Prostitutes are prohibited from causing nuisance to the public by overtly and shamelessly soliciting or importuning people. They are not allowed to gather in a prostitution place because the gathering will bring pimps, owners and other exploiters to organize the gathering. They are also barred from advertising themselves for prostitution. The punishment of exploiters, on the contrary, are greatly increased. A procurer or trafficker (with or without consent of the victim) is punishable with imprisonment from one to twenty years. An owner, manager, pimp, and mama san is liable to be imprisoned from three to twenty years. Anyone who detains another person for prostitution will be punished with one to twenty years or life imprisonment or death penalty.

Two other new offences in the Act are that customers who buy sex from children under eighteen years old will be imprisoned from one to six years. The second offence is that parents who sell their child to a procurer or customer for Prostitution are liable to imprisonment of four to twenty years and their guardianship may be revoked by a court's order.

Although this Act is not a perfect legislation but it give an effective tool to law enforcement officials to fight with prostitution business and is much better than the former Act. With strong suppression the exploiters should be punished for what they deserve with the adjusted penalty in the new Act.

4. The Women and Children Trafficking Act

This is the specific law expected to directly deal with trafficking. The Act on the Traffic of Women and Girls was enacted in 1928. This former Act covers only trafficking in women and girls but not boys. The purpose of trafficking which will be an offence according to this Act must be for the commercial sexual abuse. An official is authorized to enter into any vehicle to inspect women and girls entering into or exiting out of Thailand. A trafficker is liable to be punished with imprisonment up to seven years. Thai law has an extraterritorial effect that the offender can be prosecuted in Thailand even if parts of the commission of the offence occurred outside of the Kingdom. In order to make it more effective in fighting trafficking the existing law was enacted in 1997.

The new law changes the name of the Act to the "Traffic in Women and Children Act" which protects children of both sexes. It stipulates that the conspiracy to commit an offence concerning traffic in women and children is a crime which is to enable the undertaking of

legal proceedings from the start. An aider or abettor of the commission of any offence in the Act will be punished as much as the principal offender. This Act lessens its requirement of the purpose of trafficking from commercial sexual abuse to be for commission of indecent act against a women or children. The penalty of traffickers is imprisonment from one to twenty years, life imprisonment or death penalty. The law gives officials more authority to stop and confine suspected victims for questioning that can interrupt trafficking process. Officials are authorized to search various places, not only vehicle, to facilitate the prevention, suppression and assistance to those victimized. The court is empowered to take deposition of a victim's testimony soon after she was rescued from the offender

5. The Criminal Procedure Code

The Criminal Procedure Code was written in 1934 without much thought about child victims or witnesses. The procedure was designed to be used with adults but not children, in particular, child victims in sexual abuse cases. The child victim has to repeat the traumatic story several times to several people in the process of investigation, inquiry, and trial. In addition, the victim has to face with abuser in the trial room and the victim has to go through a depressing cross examination. This procedure is appropriate for a mature adult victim in general offences. The only protection provided in the existing code is the trial in secrecy. Each party can make a request for a secret trial. A judge, if he thinks fit, may order that the trial proceeds in secrecy without a request from any party in the case. The Code was enacted at the time that children and women were well protected by big family value and strong culture. Thus, there was no need to give much attention to the child friendly procedure at the time it was drafted.

The Existing Criminal Procedure Code

This law proposes three measures to protect children and fight with criminals in child sexual abuse cases. Firstly, video tape recording shall be used to take the statement of a child victim or witness in order to prevent the child from second victimization. Secondly, video-link trial shall be used while a child victim or witness gives a testimony in a trial with the help of a psychologist or a social worker. Thirdly, the court is obliged to take early deposition of the child victim or witness in a case upon a request of a prosecutor before the offender is indicted if it would be difficult to bring the victim or witness to testify later on. These three measures will help reduce the hardship of the child victim or witness in the procedure and the victim or witness can give testimony before the offender or his peers have a chance to bribe or intimidate the victim or witness.

6. The Money Laundering Law

Money laundering law has been proved by many countries to be one of the most effective legislation to fight crime, specifically well organized crime. In Thailand there have been continuous attempts to pass a money laundering law to suppress crime. In order to avoid opposition and to ensure the success in enacting this law, the original draft of the bill was drafted to be used only against drug related offenders. Many people have called for the extension of the bill to cover other offences as well and one of them is commercial sex related offences which includes trafficking in women and girls. In approving the Money Laundering bill, the statute was extended to cover offence of trafficking women and children and becomes another effective tool to fight against women and children trafficking and exploitation. Most of the offences under prostitution law and trafficking law are predicated offence under money laundering. To report financial transactions is mandatory for bank and financial institution. Proceed of crime is liable to be frozen and confiscated and the burden of proof is on the offender.

7. The Immigration Act

This law has been used since 1979. According to this Act, any foreigner who does not enter into Thailand through an immigration control point, with a valid passport and visa (in case a visa is required) or other legal document is considered an illegal immigrant. It is an offence punishable with two years imprisonment and a fine not exceeding twenty thousand baht. Immigration authority can prohibit any person who has no money to pay for his/her living in Thailand from entering the Kingdom. They can prohibit any person, who is suspected that he/she comes to sell labor, be prostitute, traffic women, children or narcotic, from entering into Thailand. If these illegal immigrants are found out later on, the authority can order such person to leave the Kingdom. The illegal immigrant has a right to appeal such order to the Minister of Interior.

8. Other laws and policies affecting trafficked persons

8.1. Witness Protection in Criminal Cases Act 2003

Witness in trafficking cases can seek for protections according to this law such as law enforcement officer can provide the safe place for witness, remove them to the new residence or conceal the identity or status of the witness. Meanwhile the allowance must be paid to the witnesses and their families during the program of protection.

8.2. Memorandum of understanding (MOU)

The Memorandum of Understanding on Common Guidelines of Practices among Concerned Agencies for Operation in Case Women and Children are Victims of Human Trafficking, B.E. 2542 is a non-binding legal agreement signed in 1999 between the Prime Ministers Office, police, Ministry of Public Welfare and NGOs. It recommends measures for co-operation between police and public welfare officials regarding the treatment of trafficking persons (Thai and non-Thai), and to improve chances of successfully prosecuting traffickers. The MOU uses a similar definition to the Trafficking Act but also adds elements of slavery-like labor practices, forced begging and other inhumane acts. The MOU stipulates that foreign women and children who have been trafficked into Thailand should not be treated as illegal migrants. The MOU specifies that after a statement from a victim is taken, the official is to submit information to the Immigration Service to grant leniency under Section 54 of the Immigration Act B.E. 2522 (1979) and give assistance as provided for in Section 11 of the Trafficking Act (housing in an approved shelter). Women and children trafficked to Thailand who agree to testify against traffickers can stay in Thailand for the duration of the trial and are supposed to be housed in a shelter. Under the MOU, trafficked persons are entitled to food, clothing, medical care and counseling. Public welfare officials are supposed to collect information from the trafficked person and pass it to the police in case it can be used as evidence in the criminal case against the trafficker. The MOU contains various other provisions relating to the type of care and assistance to be given to trafficked women and children.

9. Cooperation Among countries in Criminal Cases

In the past, most legislation was to prosecute and punish an offender in the country where the offence was committed. Most countries did not extradite their own nationals to face trial in another country and could not prosecute an offender for a crime committed outside their jurisdiction. As a result, many child sex crimes went unpunished.

This is now changing and countries are amending their criminal law to include extraterritorial legislation for child sex offences-including Norway, Sweden, Denmark, France, Germany, USA, Australia and New Zealand. This type of legislation makes the offenders realize that they risk being prosecuted within the limitation of the offences no matter where they are.

Extraterritorial legislation is not new but most has been tailored to prosecute those involved in narcotic trafficking and serious crimes other than child sexual abuse. The legislation is being extended to cover child sexual abuse as we become more aware of the size of the problem and of our global responsibility to put an end to it.

At present Thailand has an extraterritorial law which covers rape in another country. We are now considering amending this law to cover all serious sexual offences. To use extraterritorial laws successfully to prosecute an offender in his home country, evidence will be in the country where the crime was committed. The most important testimony is that of the victimized child but the child's age must also be verified.

A treaty on mutual legal assistance with another country will make it much easier to obtain evidence from that country. If there is no treaty between two countries, they have to rely on their domestic law and good diplomatic relations. Thailand and Britain have signed a treaty on "Mutual Assistance in Criminal Matters". Thailand also has mutual assistance agreements with Canada and the USA.

Thailand also helps countries that have not signed an agreement, although cooperation is easier and faster when an agreement is in place. A Swedish national who had been arrested for child molestation was released on bail and left Thailand. Using extraterritorial law, he was investigated, prosecuted and convicted in Sweden. The Swedish prosecutor took statements from a witness in Thailand with the cooperation of the Office of the Attorney General of Thailand. Three years ago, Fight Against Child Exploitation (FACE), Thai NGO based in BKK, brought the victim to testify in the court in Paris with the support of UNICEF France and Thailand. Both cases resulted in successful convictions of the sex tourists. Japanese lawyer group and FACE cooperated with local NGO network on gathering evidence to prosecute a Japanese abuser in Japanese court. The use of extraterritorial legislation is one way to deter child sex tourists.

Two main types of cooperation in handing trans-border trafficking are Extradition and Mutual Assistance. Extradition is needed to ensure that a fugitive fled to another country will be arrested and sent back to stand trial in the country the sexual offence against a child was committed. If the requested country shall prosecute the offender using extraterritorial legislation, more than ten countries have extraterritorial legislation to punish their own citizen if they commit sexual offences against children abroad. Several countries are in the process of drafting or considering this type of legislation. Mutual assistance is very important for it provides the needed evidence for the police, prosecutor and judge in the case to prove that the offender is guilty as charged. The extradition and mutual assistance can be done through bilateral treaties, multilateral treaties or domestic laws. Among countries within the Mekong region such treaties do not exist. This type of cooperation should be promoted to fight trans-national trafficking and organized crime syndicates who operate exploitation in women and children.

Interpol is another useful tool in quick exchanging of information concerning crime which includes trafficking. However, there is not much cooperation in this channel, particularly in

the trafficking issue, among countries in the Mekong region.

10. Enforcement

Enforcement is one main problem in suppression of trafficking. No matter how good the laws are, if enforcement is weak those good laws are ineffective. Therefore, problems in enforcing the laws against human trafficking needed to be explored.

Most of the victims are so vulnerable they do not want to participate in the legal process and are not willing to give statement or testimony. Things become more difficult when the victim is an alien woman and child who cannot speak Thai. The long process of a criminal case adds difficulty to the police because they no resources to keep the victim for a long period of time needed in the process and at the same time the victim is not willing to stay for they want to return home.

Another discouraging factor is the organized crime racket that operates trafficking or child exploitation. When one of its members is arrested, his peers would do everything to make sure that its member would be free. These criminals use money, influence, violence and/or other means to achieve that goal. They might offer bribes to the officers, victims, and witnesses. Many victims who declined to be bribed were run over by a truck which sped away after the incident and in most cases it ended up as a normal road accident cases. These criminals could buy the best legal advice from one among the best and most expensive lawyers to fiercely fight his case. It is quite normal that each case was dragged to the consideration of the Supreme Court which took several years before the Supreme Court rendered its verdict. During the trial the defendant could bail himself out to stay outside the prison on the notion that everyone was presumed to be innocent until the final court pronounce in the verdict he is guilty. During his stay outside on bail the defendant could influence the victim or other witnesses who were afraid to tell the police or prosecutor.

As mentioned earlier concerning the lack of international cooperation, in particular, in crime suppression has made the situation of child exploitation in human trafficking in this region worse. While the authority of each country cannot extend its authority across her own border and cannot get quick and efficient help from the authority of a neighboring country, the activities of the well organized crime syndicates are not limited by the same border as the authorities. These criminals can cross the border at will. Even when they are arrested for child abuse, the authority often has uncompleted jigsaw of evidence. The important missing parts of evidence and victims or witnesses are in foreign country and no way to get them due to the lack of routine mutual legal assistance. Officers of each country do not know what procedure they should carry out and to whom they should contact. In many

cases they let the criminals go because lack of evidence of it should be called the lack of ability and measure to get evidence from another country. The lack of extradition treaties among the countries is another set back in suppression of trafficking. Although the culprit was known and an arrest warrant was issued, the authority cannot arrest the culprit because he is in another country. The long arm of the law is limited by borders while criminals are not and this is the most difficult problem in handling this cross-border crime.

11. Solutions

The solutions to the problems mentioned above need time, effort and cooperation from all parties and countries. Some measures can be implemented immediately while others have to be a long and continuous project. Without concrete efforts it is impossible to tackle traffic in women. This paper will explore some solution that may solve the problems to a certain extent.

11.1 Cooperation between Authorities of the Countries in the Mekong Region

It is unthinkable to minimize the problem of cross-border trafficking without international cooperation. This may be easy to say but in practice it is very difficult due to many hindrances and two most difficult hindrances are the differences in domestic law and legal system. Thus, to conclude a multilateral agreement is next to impossible. The realistic approach, however, is that Thailand negotiate with each neighboring country. On May 31, 2003, we conclude the memorandum of understanding between the Government of Cambodia and the Government of Thailand on Eliminating the trafficking of Children and Women and assisting victim of trafficking.

11.2 The need to Increase Awareness in All Levels

Gender discrimination is another hidden cause that makes women and girls more vulnerable for being easily abused. Girls are raised differently from boys. The traditional value is that boys have to receive as much education as they can, or as their parents can afford while education for girls is not very necessary. Moreover, when the parents have limited resources, girls have to sacrifice so that boys can receive education. A son can pay back the gratitude to their parents by being ordained to be a monk for a period of three months while a daughter has to pay back in other ways including working in commercial sex business and contributes the hard earned money for the survival or comfort of her parents and her siblings.

In order to increase the efforts of government, officials and people, the first and most

important thing is to raise their awareness in order to understand the serious consequences of the child exploitation. Without increased awareness, these problems will not be given priority and support from government, law enforcement officials and people. Many governments still refuse to recognize the problems or denied that the problems are not as serious as being reported. People often turn a blind eye on the problems because they do not want to know about this issue and because they think it is not very damaging. Many do not realize how much trauma the victims have to endure. Many shocking stories are not publicized to the public. A lot of campaigns have to be launched to the public and to the family of the potential victims of trafficking. The potential victims and their families should be informed of the suffer of those who were lured, deceived or forced to be prostitutes. This information should be publicized for the public to know how much damages the sexual exploitation can cause.

Whenever the awareness is high the public will support the fight against trafficking. Politicians will be forced to make this problem their priority and law enforcement officials then cannot sit back but they have to concentrate in prevention and suppression of the trafficking.

11.3 Clear Policy and Strong Political Will of Policy Makers

To enforce measures and laws against trafficking in women, a strong policy of the government in that country is necessary because the government can direct and allocate resources to fight against trafficking. It also can emphasize and prioritize the problems of traffic in women so that law enforcement officers know exactly what the government wanted them to do.

Strong political will to solve sex tourism will result in the government's social projects to improve the quality of lives of children and women. I.e. education, occupational training programs, job placement, physical and mental rehabilitation programs, etc.

11.4 New Laws Needed

The existing law is not up date enough to fight this crime. Law of each country may have severe penalties but the context may not cover all the changing situations. Take the present Act on Women and girls Trafficking of Thailand as an example, the law does not cover trafficking in boys which is an increasing phenomenon. That is the reason why the existing trafficking law was enacted in 1997. Many countries do not have a Money Laundering law which is another effective tool to fight organized crime mobsters who manage trafficking. Many countries do not have treaties and domestic laws which authorize the governments to cooperate with other countries in extradition and mutual legal assistance. The lack of all

necessary laws and cooperation make Mekong region the heaven of pedophiles. More new and effective laws needed to be enacted to close the loopholes of the laws and to get rid of the sex tourists.

11.5 Judicial System Adjustment

Even if a perpetrator is arrested within Thailand and there is no need for cooperation from another state, it does not guarantee that the prosecution will be successful. The reason is because of the long and complicate process of the judicial system which is easily abused by the defendant.

Therefore, it is necessary to create a friendly procedure designed especially for giving due protection to a victim of trafficking or sexual abuse and at the same time give due protection to the defendant's rights. The difficulties are how to balance between these two protections. The most important part in the judicial process problem is the attitude of people in the criminal justice administration. If they do not realize the plights of the victim and have no sympathetic attitude towards her, the victim will be very much suffered by the judicial process which has the duty to protect her. Thus, all parties in the judicial process, i.e. judges, prosecutors and police, assigned to handle these types of cases, should receive special training in this issue.

12. Conclusion

Trafficking is a serious and dangerous crime to women and children, in particular, from the Mekong region. It is quite certain from many studies that many organized criminal rings are behind domestic and cross border traffic in women. Corruption, kick back and "tea money", which are widespread in the region, make suppression weak with lax law enforcement. The sovereignty concept and lack of cooperation among countries make suppression of cross border trafficking more difficult. Therefore, it is necessary to seriously study this problem and try to get all the governments in the Mekong region. NGOs and international agencies to work systematically together against the traffic in women. In addition, many laws have to be enacted or amended in the right direction to give effective tools for officials. Social plans of actions are also needed to reduce the root causes of the problem. With all the measures taken together in a concert effort, then there is hope to eradicate the traffic in women from the Mekong region.

Connection between Human Trafficking and Prostitution

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The UN Convention on the Rights of the Child (CRC) provides protection for children (person aged under 18 years old) who provide sex service and requires punishment of those who buy sex from children. It also states that it is an international crime to acquire, lure or bring for pornographic purpose women or girls to satisfy sexual desire of other people whether the victims give consent or not. This means that culprits must be punished whether the crime is committed inside or outside of the territory of each country. In addition, there has been an attempt to build a network for cooperation in suppression of international human trafficking that is considered to be an international crime.

Thailand became a state party of the CRC on 12th February 1992 and it came into effect on 26th April 1992. Being a state party to the CRC resulted in Thailand changing its laws to be consistent with principles of CRC and protection has been expanded to cover men as well without age limit.

Ideas on trafficking of women and children for sexual purpose

Trafficking of women and children for sexual purpose is a complex problem and is related to many parties. At present, trafficking of women and children has been expanding very fast and becomes a cause of oppression and exploitation. It is also stated to be a major source in the spread of HIV/AIDS. This results in national governments trying to find methods to prevent and solve the problems. There are 4 main ideas or ways of thinking as follows:

1. Criminalisation - seeing sex service providers / sex workers as criminal.
2. Legalisation - accepting sex workers by controlling them to work legally under the law.
3. Abolition - totally eradicating prostitution.
4. Decriminalisation - stopping to see sex workers as criminal.

These four main ideas are different in their essence and would affect the way the problems are being solved.

The first idea is to divide and set a standard of behaviours separating 'bad girls' and 'good girls' as seen by men who would fully benefit from it. Moreover, it creates a myth and ideology that would be a barrier blocking women themselves. The 'good girls' are misguided to think that they have higher status than 'bad girls', leading to expression of contempt and lack of analytical question on the root cause of the problems. This way of thinking also makes role and relations between two groups of men and women being overlooked, although their roles and relations may not be different in essence, that is to say, both are being oppressed and exploited by men or patriarchy.

The second idea may have benefits in terms of the control of sexually transmitted diseases, taxation, reduction of police officers' corrupt behaviours and reduction of exploitation by traffickers. However, it would make prostitution a legal institute which is against the UN convention of which Thailand is a state party.

The third idea is an idealist one which is extremely difficult to be true. However, it is a way of thinking that would make women, children and society safe in this area.

The fourth idea, of which sex workers are not considered to be criminal, is based on acceptance of reality and is a humanitarian approach as women and children who are already victims would not be re-victimised. Both the third and fourth way of thinking therefore have details and are useful in developing policy for preventing and solving the problems that are more possible to implement.

The authors agree with the fourth idea with a few conditions that sex service providers must be of legal age by either marriage or being 20 years old, they must provide sex service themselves independently in private place, and the sex service providers must not behave as trafficker. At the same time, the government and society have to totally suppress prostitution networks and mechanism.

Problems caused by Law Enforcement

1. The law is enforced in die ways that are unfair for those concerned

Certain parts of this law have both gender-related and class-related prejudice. The law requires punishment of sex service providers while letting sex service buyers go free unless the sex service is provided by children aged under 18. If the law intends to discourage people from promiscuity, both the providers and buyers should be punished as the act is mutually committed. In stead, the law selectively punishes only the sex service providers. Economically the buyers have more power while women tend to be sex service providers.

It then can be concluded that enforcement of this law causes not only class prejudice but also gender prejudice. Police officers therefore either ignore their legal duty or fulfill their duty that would punish female sex service providers rather than other principal culprits in the act. This conclusion is confirmed by findings in the research "The State and Control of Sex Trade" conducted by Police Major General Kitti Seributr (National Defence Council, no date). This research, despite being dateless, well reflects realities at present as follows:

1.1 Many police officers, both junior and senior ones, have stakes in sex trade. They have relations with sex business owners or in some cases are the sex business owners themselves. This involvement results in the culprits not being arrested and honest junior police officers dare not fulfill their duty because they are afraid that such action would offend their superiors and they would be maltreated by them. When a complaint is made, asking for investigation of police officers involving in sex trade, the complaint does not receive due attention and the accused is often informed and can avoid being investigated or punishment. In addition, some police officers also force the arrested sex service providers to have sex with them.

1.2 In case that an arrest is made, more often than not those being arrested are the female sex service providers rather than other people who play main role in sex trade. The latter are those who organise and manage the sex trade, pimps or thugs hired to give protection to the sex service premises.

1.3 In the process of investigation, the police investigators do not lead the investigation in such a way that would try to bring those who play a major role in sex trade to justice. In case that any of these people is arrested, large sums of bribe are often offered to the police investigators to buy their assistance. Some selfish police officers would take up the bribe and help the culprits in return, using loopholes in the cases to make them weak and have the state prosecutors allowed the cases to be dropped and the accused released.

1.4 In case that the owner, manager or controller of the sex service premises where women are detained and forced to provide sex service or place that buys women who are forced or lured into sex trade are arrested, these culprits would try to reach a compromise by agreeing to pay compensation to the women. Police investigators often allow this compromise despite these acts are an offence that is uncompromising under the law.

2. Law enforcers are nearly all men

Law enforcers are nearly all men and are likely to lack understanding of the complexity and seriousness of the problem. Moreover, they may lack analytical skill to

understand the root cause of the problem and may be influenced by the thought that sex service providers are 'bad women'.

Officers, who are mostly men, then think that it is fully legitimate for them to use their authority. It must be emphasized, however, that this mainstream line of thinking appears in conservative women as well. This conception definitely influences their practices. It is observed that in fact there are many women involving in this legal process, including those in the field of public health and female police investigators, who should be gender sensitized to make their work effective.

3. The government has not enforced the law to control the mass media, stopping them from disseminating news or pictures that deem being pornographic.

The government also itself owns or controls a large number of electronic media but never use the media to actively campaign against sex exploitation of women and children. Progress of government actions in this aspect is in fact slower than private sector's use of the media to benefit from such exploitation that creates an image of Thai women and Thai society to be sexually liberal and cause social deviation. It has created a brand that Thai women and children are cheap and of good sexual quality. Some foreign businessmen use this brand to advertise their products, such as the case Thai actresses' face being used to advertise sex-related business. When this abuse happened, the victims complained to the government and the government just dealt with the problem case by case, and never at the root cause.

4. As there are several laws involved and they were enacted in different era, leading to problems in understanding and systematic enforcement of the laws according to their types.

The problems are made worse when government officials involved have no education background on the subject of law because applications of these laws need technical knowledge of law. On the other hand, if the knowledge is restricted to the mainstream one without clear understanding of the intention of the laws of which economic, social, cultural, political and gender factors need to be taken into consideration, the laws cannot be effectively enforced. However, it is possible to make people who are outside the field of law to have knowledge and understanding of the intention of the laws and their systematic enforcement with consideration of economic, social, cultural and political factors and this should be actively carried out in response to the need for problem solving and prevention.

In summary, police officers who are a main factor in preventing and suppressing trafficking of women and children, and prostitution, do not practise according to their duty, resulting in

no enforcement of the laws or discrimination in law enforcement. Consequently' female sex service providers are suppressed and punished while others who are major culprits in human trafficking and prostitution are ignored and can get away. Moreover, the way police officers arrest sex service providers shows no respect to their human dignity. In practice, the police officers often pretend to offer to buy sex. The premise then is raided and the women are arrested while providing service to their customers, often when they have no clothes on. As mentioned above, some police officers also force the arrested sex service providers to have sex with them.

Recommendations

1. Prevention and suppression of women trafficking and exploitation of women in prostitution, which at present constitute a large-scale industry, can only be achieved when actions are carried out actively and continuously. These actions need good coordination from local to international level among people and organisations involved in both public and private sector, clear goals of the operation, and regular monitoring and evaluation.

2. It is necessary to have a national and regional committee to oversee operation in this area. Attention must be given to experts from both the public and private sector who have knowledge and experiences working and coordinating in this area. At present in Thailand, it is likely that Ministry of Social Development and Human Security will be the host body while the National Police Office would be the central agency in term of suppression. Operation will require coordination with and cooperation Com au sectors in society. The prevention and suppression plans used by different related government agencies must be coordinated, while non-governmental organizations should be coordinated in providing welfare, rehabilitation and development to trafficked women. These services must be given with respect to basic rights, liberty and human dignity of the sex service providers. Any behaviours and actions that deem to look down upon them must be avoided. After many years of advocacy, some newly enacted laws have already come into effect, such as the National Education Act, and some are about to be in effect, such as the National Social Welfare Promotion Act 2546 (2003) and Children Protection Act 2546 (2003). They should become important mechanisms to prevent and solve the problem.

3. Operating mechanisms of the government, particularly the police, state prosecutors, court of justice and the Correction Department should be improved to make them strong and being able to enforce the laws more strictly against the traffickers, owners of the sex service providing place and those who gain from prostitution, and to relax in enforcing the laws against sex service providers, in order to give them opportunities to learn and develop themselves and have better places in society.

4. Hotels and other service places should be brought under control to prevent them from becoming places for sex trade and prostitution.

5. Legal literacy campaign on laws related to human trafficking and prostitution should be carried out to educate a wider public, so that they can participate in preventing and solving the problems.

Conclusion

Owners of sex service providing business are allowed to legally register their premises. Most sex service buyers are men and customers of the sex service providing business. They are not punished by law. The law, on the other hand, has provisions to punish sex service providers, most of whom are women.

When demand from 'customers' are high, it is necessary for the owners of sex service providing business (in their mind) to become 'human trafficking operators', acquiring women to provide sex service in response to the needs of 'buyers'. This then becomes a cycle that goes on forever as sex service providing women or sex workers need to be brought under control of the sex business in order to avoid being arrested by the police.

While demand for service from (male) customers is still high and the sex business continues to operate, decriminalizing the sex service providers would give them more power to bargain with the buyers and sex business owners. Using force for exploitation and violence against sex service providers would gradually decline. At the same time, when the police actively enforces the law against those who force women to sell sex, women and children trafficking syndicates will be suppressed without much difficulty. This could happen because sex service providing women (aged 18 and over) would have their status clearly accepted; there is no need for them to try to escape from law enforcing mechanism any more. The police can also use strict measures to examine sex service providing places that force women and children to sell sex easier than before.

Preventing and suppressing human trafficking therefore links with laws and policy to prevent and suppress prostitution and thus cannot be considered separately,

Prevention against Trafficking in Women and Children in vietnam

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First of all I would like to thank Asian Women's Fund for inviting me to this important meeting on "International trafficking in women" I also would like to thank IOM Ha Noi for introducing and helping me to be present here today. My presentation would be stick to the objective of our meeting, is to share with you the experiences of Vietnam in dealing with trafficking in women and children.

Viet Nam considers trafficking in women and children and violence against women and children as illegal acts which have serious and long-term effects violating women's human rights and dignity, damaging psychologically and physically the women victims and affecting adversely family life.

As a common concern in the world for the last decades, in Vietnam trafficking in women is clearly seen in the process of "opening the door" and developing a multi-sectored economy. The national economy is growing but accompanied by social evils. According to Vietnamese laws any act damaging women's dignity or discriminating against women is prohibited but, in reality trafficking in women and prostitution across national borders and in the country remain a great concern. According to information by the Police Ministry in a meeting held by the Government in Sept. 2003 in Ho Chi Minh City, from 1991 to 2002 the police hold 2269 cases with 3787 traffickers. Most of these cases are trans-national. The meeting came to a conclusion that a National Task Force on combating crime of trafficking in Women and Children will be set up, legalities will be nationalized and a long term program on combating and preventing this kind of crime will be formulated. This will go together with other measures to stop the situation by 2010.

The trafficking in women in Vietnam is deep-rooted in illiteracy, unemployment, poverty, lack of information on the problem, tricks by traffickers, poor understanding of the law by women and girls, poor management by authorities and relevant justice bodies at all levels against the practice. In addition, in Viet Nam, trafficking in women is effected by the international trafficking networks in women and children which is known as a very profitable business.

The Government of Viet Nam joined early the Convention on Elimination of All forms of Discrimination Against Women (CEDAW) in 1981 and the Convention on the Rights of the Child (CRC) in 1990 and many other international legal papers. This shows the strong international commitment by the Vietnamese Government which has been translated into

practical efforts including legislative, judiciary and other measures on the basis of coordination among related branches, administration levels and organizations, with the leading role played by the government.

Although Vietnam has no separate codes on trafficking in women, this problem has been dealt with in a various legal documents, especially the Penal Code. Articles 115 of the Code stipulates that those involved in trafficking of women and children can be sentenced to between two and seven years of imprisonment. The Code also stipulates punishments of between 5-20 years of imprisonment for organizing human trafficking, trafficking women to another country and/or seriously repeated offences. The Code specifies a number of offences directly relating to trafficking in women, e.g. Article 88 on organizing, forcing other people to illegally depart to or stay in another country; Article 89 on illegal exit or entry or illegal stay in another country; and especially harbouring or procuring prostitution in Article 202.

The Vietnamese Government has taken initiatives to build an appropriate mechanism to control and curb the trafficking in women and children. Under the Prime Minister's Decision 08/TTg in 1994, a steering committee for prevention and fight against social evils, including trafficking in women and children, was set up at the central level with the participation of representatives from various ministries, branches and organizations, including the Vietnam Women's Union (VWU). The committee was set up at all administrative levels and in all localities assisted by the Department for Social Evils Control under the Ministry of Labour, War Invalids and Social Welfare (MOLISA).

On September 17, 1997, the Prime Minister issued Instruction 766/TTg, assigning responsibilities to 7 ministries and branches under the control of the central governmental and Chairmen of People's Committees in all provinces and cities to take measures to stop the illegal transfer of women and children to other countries. On July 31, 1998, the Prime Minister signed Decision 138/1998/QD/TTg, approving a national programme on crime prevention and eradication, which includes targets for and details of the official fight against trafficking in women and children. In addition, mass organizations, especially the VWU and the Youth Union, have built their own programmes of action to prevent and fight trafficking in women.

Hunger eradication and poverty alleviation is one of the positive measures to curb and eradicate trafficking in women. the Vietnamese Government has launched a movement to eliminate hunger and reduce poverty, approving a national programme on hunger eradication and poverty alleviation and a national employment programme, and assigned MOLISA to manage the implementation of these programmes. The Bank for the Poor or Social Policy Bank was established in 1996 to provide loans to poor farmers to develop production. Many women have benefited from these programmes. In addition, job training systems run by many

branches, organizations and localities have also helped poor women find employment in both rural and urban areas.

In addition, mass organizations like the network of VWU chapters, especially in border areas, have great experience in supporting groups of women who are at high risk of becoming victims of social vices. Under the national mobilization "Mutual assistance for house hold economic development" drives millions of poor women benefited from the VWU's credit activities. The activities played an important part in curbing trafficking in women as well as helping victims re-integrate into the community and their families.

All cases that meet prosecution requirements are tried in accordance with the law. The courts delivered strong punishments to organizations and individuals involved in trafficking in women and harbouring prostitution, sentencing more than 80 percent of the accused to imprisonment, of which 8 percent were sentenced to between 10-20 years in prison.

Strengthening control of a household registration at grassroots level and entry-exit activities at border gates are important measures to curb and discover the trafficking of women and prostitution. The border guard force and the police that supervise household registration play a major role in border, population and migration control to actively prevent the trafficking of women. The General Department of Tourism coordinates with the Ministry of Public Security and local authorities to closely manage tourist and entry-exit procedures to prevent traffickers of women from abusing these services.

Mass media make effective contributions to promoting public awareness of trafficking in women and prostitution and the fighting spirit, especially of women, against these vices. The mass media have been quick to disseminate information on laws and policies.

Vietnam has not had compiled an official review of the trafficking in women. Nevertheless, a number of ministries, branches and localities, including the Department for Social Evils Control (MOLISA), the Ministry of Public Security, the VWU, and the Ho Chi Minh Communist Youth Union have conducted surveys, collect statistics and made public a number of their findings. Various seminars have been organised to discuss the situation and solutions to prevent and fight trafficking in women, most noteworthy being the coordinated activities of the VWU and the International Organization of Migration (IMO) towards a project to expand the propaganda drive in 14 provinces on preventing and fighting trafficking in women.

Mass organizations especially VWU, from central to local levels, particularly those in border provinces and cities, have helped victims re-integrate into the community, such as providing consultation and services in health care, education, job-training, as well as capital and

technical support, so that they can dispose any sense of inferiority and rapidly integrate into the community to lead an honest life.

Preventive measures including research, information, education and communication; prohibition of pornography publication and dissemination were strongly promoted in Vietnam. Besides, organizing rescue and helping rehabilitate trafficked women and children to reintegrate to the community through partnership between GOs and NGOs in providing safe housing or shelters, affection evening classes, health check-up, psychological counseling and medical treatment are also done by some NGOs in Vietnam.

International cooperation in fighting against trafficking in women is continued to be promoted. Viet Nam took part in regional initiatives such as the Sub Mekong project on prevention against trafficking in women and children, the project on formulating policies and strategy and plan of action to fight child sexual harassment period 2001-2010, pilot projects in An Giang and Dong Thap provinces in South of Viet Nam where there are many children sold to Cambodia for prostitution, pilot project on receiving shelters for those victimized women and children who return to Vietnam in the North border provinces of Lang Son and Quang Ninh.

However, the situation of trafficking in women and children still remain a problem that requires more joined efforts among the GOs, NGOs to overcome. One of the biggest concerns by NGOs in Vietnam now is which government ministries that really play the condition role in prevention or combating trafficking: Ministry of Police or Ministry of Labor and social Welfare or Ministry of Foreign Affaire...

Vietnam Women's Union (VWU) is an unique mass based organization of women in Vietnam. It has a close network of four levels reaching out to the communes with 11 millions members. As an organization representing women's rights and benefits, VWU fully supports the government's point of view on fighting against trafficking in women and exploitation of women's prostitution.

VWU at all levels especially in the border provinces has initiated many activities mainly in raising awareness of the public, high risk groups, men and women, adolescent and helping the returned victims. (In fact we have not done much in rescue but only assisting the local authorities, police to rescue the victim girl adolescence and women).

The Research Department and the Family and Social Affairs Department of VWU have conducted several surveys and studies on the issues for policy advocacy and policy recommendation. VWU executive committee meets twice a year. In these review meeting, the issue of trafficking including protection and rehabilitation of the victimized women and girl adolescents are discussed for joined efforts in the localities national and cross border scale.

Many provincial women's Unions, especially in the border provinces Women's Union have initiatives to implement relevant projects to prevent trafficking or help to returnees by conducting IEC (Information, Education and Communication activities, providing micro credit, job training, legal counseling, health care, providing temporary accommodations...).

The Women's Union in Lang Son and Quang Ninh provinces (in the North - bordering with China) do a lot IEC activities and reintegration. Ho Chi Minh does research, IEC against fault marriage matching and provide protection and care for the returnees.

VWU has organized several conferences on these topics and worked out a 3-year plan of action in combating against trafficking in women and children. 1999 - 2001 the program has been strongly supported by the government and line ministries. VWU has instructed its network to implement the program with the following activities: communication activities, survey and research for policy recommendation, community development and re-integration of the returned victims, discover and stop trafficking in women and children, Supervise law enforcement relating to the issues, Promote international cooperation to prevent and stop the trafficking. Under the framework of this program that VWU at all levels explore partnership either with local government or international organization. So far we have develop to some extent cooperation with IOM, UNICEF, Action Aid, Asia Foundation, GATTW, etc. in different programs/projects and activities.



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How does the International Labour Organization see trafficking ?

Seeing Trafficking in Persons through a Labour Market perspective, the International Labour Organization sees that, apart from involving gross violations of fundamental labour rights, trafficking finds its root causes in labour market failures occurring both at supply-and demand sides. Whereas “push factors” such as poverty and the lack of decent work opportunities have long been highlighted as major triggers of migration of men and women, “pull factors” in destination countries, such as the demands for cheap exploitative labour and the promotion of sex tourism and entertainment, had until recently been rather neglected as parameters in the increasing volume of trafficking in persons worldwide. Today, working groups, expert meetings and ministerial meetings are held everywhere in efforts to coordinate action in sending, transit and destination countries. Labour institutions and authorities will need to be involved more closely into these efforts, particularly in destination countries. In a recent ILO symposium held in Tokyo¹, we heard the experience of the creation of the Stability Pact Task Force on Trafficking in Human Beings for South Eastern Europe (SPTF), created under the umbrella of the Organization for the Security and Cooperation in Europe (OSCE), to develop a comprehensive response to trafficking in South Eastern Europe. The ILO is a member of the SPTF's expert coordination team through its Special Action Programme to Combat Forced Labour.

1) A Standards-based Approach:

Ever since its inception, the ILO has been adopting Conventions aiming at prohibiting Forced Labour, eliminating discrimination at work, and protecting children, as essential principles required in the pursuit of social justice and universal peace. As an international organization setting and supervising the application of international labour standards, some of which constitute fundamental human rights at work, the ILO adopts, in its work, a rights-based approach. Through this approach, the ILO sees trafficking in persons as:

¹ The symposium was held on 23 September 2003 in Tokyo, and welcomed Helga Konrad, Head of the Stability Pact Task Force, and Roger Plant, Head of the ILO Special Action Programme to Combat Forced Labour.

- ✓ A form of Forced Labour and an issue related to abusive working conditions (including slavery-like practices)
- ✓ One of the Worst forms of Child Labour
- ✓ One of the Worst forms of Exploitation of migrants
- ✓ A consequence of discrimination against a significant number of women workers.

2) Relevant ILO Conventions are:

- **ILO's Forced Labour Convention (No. 29)(1930)**, adopted as early as 1930 and widely ratified (161 States out of 176 Member States) urges countries to suppress all forms of forced labour, defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". According to this Convention, and **ILO Convention on the abolition of Forced Labour (No. 105)(1957)**, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on Member States to ensure that the penalties imposed by law are adequate and strictly enforced.
- **The Worst Forms of Child Labour Convention (No. 182)(1999)** explicitly declares the trafficking of girls and boys under 18 year of age a practice similar to slavery, and as such, a worst form of child labour. The Convention places an obligation on Member States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency, as well as to take effective and time-bound measures for their prevention, as well as removal, rehabilitation and social integration of the victims, among other things. Ratifying this Convention is therefore an important step towards the elimination of child trafficking. To date, Convention No. 182 has been ratified by 147 countries, and Japan ratified it in 2001.
- **ILO Conventions on Migrant Workers (No. 97)(1949) , and (No. 143) (1975)**
The situation of workers employed abroad was also an issue addressed as soon as the ILO was founded in 1919, aiming at the *equality* of treatment of nationals and migrant workers, and *coordination* on migration policies between States on the one hand, and between Governments and social partners on the other hand. These principles set forth at a very early stage still are of great relevance. Convention No. 143 and Recommendation No. 151 contain as their objective of protecting irregular migrant workers against abuses of all types.
- **ILO Convention on Discrimination at Work (No. 111) (1958)**
Discrimination against women, migrant workers, indigenous people, in fact any type of discrimination is an indirect cause of poverty. Obviously linked as a root cause of trafficking is discrimination against women, lowering their social status, and with

patriarchal structures, it increases their vulnerability in their own country, putting them at a greater risk of becoming victims of trafficking. Convention No. 111 is the ILO Convention that deals with discrimination comprehensively, in all aspects of work, including vocational training. Equal access to education is also considered an important element in eliminating discrimination in the labour market. The elimination of discrimination is therefore essential in addressing the root causes of trafficking, as discrimination in origin countries increases people's vulnerability, while further discrimination in destination countries accentuate the violation of fundamental labour rights, already undergone by the victims.

- **International Supervision of ILO Standards**

The International Labour Organization has mechanisms of supervision of the application of labour standards ratified by the States, that is more or less comparable to the supervision of the supervision exercised by UN Human Rights Committees, although with some differences. Its *regular supervision* is based on Governments' reports on legislation and practical application of the ratified Convention. The peculiarity of mechanism is that this report will be submitted to the International Labour Conference, where the most serious cases of violation will be debated by tripartite delegations of all member States.

- **The Declaration on Fundamental Principles and Rights at Work and its Follow-up** adopted in 1998 also provide a new and unique tool to intensify ILO activities in this area, by reinforcing the rights and principles embodied in the ILO's eight fundamental conventions, which contain four sets of basic principles that are all relevant to the combat against trafficking: abolition of forced and compulsory labour; elimination of child labour; elimination of discrimination at work; freedom of association and right to collective bargaining. Under the Declaration, every Member States accepts, as a condition of its ILO membership, to safeguard and promote the rights contained in the eight conventions, even if they have not ratified them. Under the follow-up to the Declaration, a global report on each of the four principles is made every four years. The first global report on forced labour² was issued in 2001, and "alerted ILO constituents to the gravity of contemporary forms of forced labour including trafficking". It also led to the creation, in November 2001, of a Special Action Programme to Combat Forced Labour (SAP-FL)³ (see below).
- **ILO's Assistance in Legal Aspects:** Assistance at better implementation; Assistance with in the framework of operational programmes (legislative analysis may be included).

² *Stopping Forced Labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILO, 2001

³ For more on the SAP-FL, see R. Plant (Head of the ILO Special Programme of Action to Combat Forced Labour, SAP-FL): "Trafficking for Labour Exploitation - the Role and Activities of the ILO - ", December 2002

3. Technical Cooperation⁴:

The ILO's technical assistance programmes are essential in translating ILO standards into reality. These may include legal assistance, directly aiming at better implementation of ILO standards, but they may also attack the issue directly. On the issue of trafficking in persons, technical assistance will aim at prevention, through people's empowerment, awareness raising activities, by conducting surveys on occurrences of trafficking, etc., at the rescue of people subject to forced labour, where possible, and their protection and rehabilitation, by providing training and education, and helping their reintegration into the society. These activities are conducted in close cooperation between the technical departments themselves, and with local Governments and NGOs. The ILO's technical departments targeting trafficking are essentially:

- **The Special Action Programme to Combat Forced Labour (SAF-FL)** created in November 2001, under the DECLARATION (I referred to above), with a mandate to give more comprehensiveness, visibility and coherence to the ILO's activities to combat forced labour including trafficking, in close collaboration with other regional or global bodies active in this field. The SAP-FL has commenced, in the beginning of this year, pilot research in different countries, examining where and why forced labour can be in different industrial sectors. Parallel research is being carried out by the ILO-IPEC in the Balkan countries, looking specifically at the causes and incidences of child trafficking. The SAP-FL has at its beginning, a particular focus on Europe, looking at how, beyond its obvious forced labour and child labour dimensions, trafficking can also be addressed from the perspective of labour market failure. Therefore future programmes can focus on the strengthening of different labour market institutions, as well as on preventive measures at the country of origin.
- **ILO-MIGRANT**, as the section dealing with labour migration and the rights of migrant workers, is obviously involved. The main focus of the ILO migration programme is policy formulation assistance for the regulation and management of labour migration, as a form of prevention against trafficking. Programmes may include capacity building seminars, coordination among governments and social partners, complemented by research and data collection on migration flows and their impact, and publications including an on-line migration database. ILO-MIGRANT has set up the Informal Network on Foreign Labour in Central and Eastern Europe, 1994, which provides opportunities for discussion of joint measures at regional and bilateral levels, to deal with trafficking. It has carried out studies on illegal labour migration and trafficking of migrants in the Russian Federation, Ukraine, Moldova, Lithuania, Hungary and the Czech Republic. It is currently preparing Reports on Exploitative and Abusive Conditions of Migrant Workers (Gender-sensitive data) in Central America and the Andean Region.

⁴ For comprehensive information on ILO's Action against Trafficking, see *Trafficking in Human Beings: New Approaches to Combating the Problem*, Special Action Programme to Combat Forced Labour, ILO, May 2003

- **GENPROM**, the ILO's gender promotion programme which focuses on new and emerging areas of gender concern and especially vulnerable groups of women workers, also has programmes in the area of trafficking. GENPROM works through developing the information base and practical tools for action, through awareness raising and advocacy, and through direct action programmes to empower women and reduce their vulnerability. Recently it has developed a comprehensive Guide to prevent discrimination, Exploitation and Abuse of Women Migrant Workers, which comprises a large section on the issue of Trafficking⁵.
- **IPEC**, the ILO's International Programme on the Elimination of Child Labour, focuses particularly on the trafficking of children (as stated above, the trafficking of children is defined by Article 3(a) of the ILO Worst Forms of Child Labour Convention (No. 182) as a worst form of child labour that has to be abolished immediately). It has been carrying out action programmes on child trafficking since 1993 and six major projects to combat trafficking and sexual exploitation of children at regional level are ongoing (see below). Like other sections of the ILO, IPEC works with governments, workers' and employers' organizations, NGOs, international and regional bodies and other partners. It is conducting subregional programmes to combat child trafficking in:
 - ✓ **Africa:** In October 1999, ILO-IPEC launched a major subregional programme in West/Central Africa conducted in two phases, developing national plans of action and a regional strategy, then implementing this strategy through awareness-raising campaigns among at-risk groups, community-level protection projects, law-enforcement capacity building, networking among social actors, rehabilitation and reintegration programmes, and the provision of alternatives for children at risk and their parents. Multi-and bilateral cross-border agreements between countries in the region are also supported.
 - ✓ **Central America:** In February 2002, ILO-IPEC launched a three year programme to combat commercial sexual exploitation of children in seven countries of Central America, creating synergies among the national initiatives, establishing cross-sectoral cooperation, and strengthening the capacities of major actors through training, technical support, good practices and pilot action models.
 - ✓ **Europe:** In early 2002, IPEC in collaboration with the Infocus Programme on Promoting the Declaration and the ILO International Migration Programme developed a programme to combat trafficking of children and young people for labour and sexual exploitation in the Balkans and Ukraine. The first phase of this programme seeks to identify a strategy for concerted action against trafficking through situation analysis and appraisal of existing responses in the region, This will include adaptation of the rapid assessment methodology, training for national

⁵ *AN INFORMATION GUIDE: Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers*, GENPROM, ILO, 2003

partners, workshops and analysis. A comprehensive action programme focusing on prevention and reintegration is to be developed on this basis.

- ✓ **South America:** Since January 2001, ILO-IPEC has been active in Brazil and Paraguay in mapping the incidence of exploitation in the border areas of the two countries, and in programmes to build institutional capacity, raise awareness and mobilize community-based protection mechanisms, rescue and care for exploited children.
- ✓ **South Asia:** The subregional programme to Combat trafficking in Children in South Asia began in 1998 with research, consultation and analysis, leading to a two-year project covering Bangladesh, Nepal and Sri Lanka. The project supported local implementing partners in research, capacity building, policy development and legislation, prevention, recovery and reintegration of trafficked children. Anti-trafficking units have been supported within government structures and surveillance units have been set up with computerized monitoring of rescued victims. Youth groups have been mobilized and supported and a strategy for effective rehabilitation developed.
- ✓ **South-East Asia:** ILO-IPEC's Mekong subregional programme to Combat Trafficking in Children and Women (in which GENPROM is collaborating with IPEC) began in 1998 with research, consultation and analysis, leading to a three-year pilot intervention phase, covering Thailand, Vietnam, Laos, Cambodia, and China (Yunnan Province). In collaboration with the ILO Gender Promotion Bureau, the project worked with local partners in implementing projects in education and skills training, alternative livelihood promotion, legal literacy and awareness raising. A regional strategic framework added capacity building, advocacy and cross-border consultation to these national actions.
- ✓ **World Day Against Child Labour: 12 June 2003:** On 12 June 2003, the second World Day Against Child Labour, the ILO has focused attention on the issue of Trafficking in Children. 1.2 million of children (both boys and girls) are estimated to be trafficked each year into exploitative work in agriculture, mining, factories, armed conflict or commercial sex work.

Some final remarks:

- a) It is important to bear in mind that trafficking is not only for sexual exploitation, but also for other forms of slavery and debt bondage in construction, garment, agriculture and other sectors, that need to be put an equal weight in the fight against trafficking.
- b) Focus on the demand side of trafficking, namely labour market and economic dimensions is currently given in the ILO, SAP-FL. Although they have only started

research and still focus on a limited number of countries, they will provide a useful analysis tool for the long-term fight against trafficking.

- c) There is still prevailing gender discrimination, which increases the vulnerability of women to become victims of trafficking. Gender is a determining factor in trafficking, both on the supply and demand sides.



IOM's Role in Regional Efforts to Criminalize Trafficking in Persons and Strengthen National Trafficking Legislation

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As many of you are aware, there have been two Regional Ministerial Conferences to Combat People Smuggling, Trafficking in Persons and Related Transnational crime. The first Conference was held from 26-28 February 2002, and the second was held from 28-30 April 2003. Both conferences were held in Bali, Indonesia. The follow-up to these conferences is commonly referred to as the "Bali Process". There are some 40 member countries to the Bali Process, which covers the Asia-Pacific region – a vast region ranging from Turkey to the West and Samoa to the East; as well as 14 observer countries and 14 observer organizations/international agencies. IOM and UNHCR are participating agencies.

The conference was convened by the governments of Australia and Indonesia, to discuss the need for a strengthened multi-lateral approach to address the transnational crimes of people smuggling and trafficking in persons, following several highly publicized instances of efforts to smuggle and traffick persons onto boats and other cargo vessels from countries in the Asian region to Australia, New Zealand and North America. This coupled with an increased concern over terrorism, following the tragic terrorist events in America, heightened concerns over existing efforts to address these issues across a broad region.

At the first Ministerial Conference, Ministers agreed to support the formation of two "Ad-Hoc Experts' Groups, comprised of sufficiently senior officials at the *operational* level, to develop a mechanism for more effective regional cooperation in combating and reducing the crimes of people smuggling and trafficking in persons: Experts' Group I, which is chaired by New Zealand and is tasked with *Regional and International Cooperation and Information Sharing*; and, Experts' Group II, which is chaired by Thailand and is tasked with *Policy, Legislation and Law Enforcement*. IOM serves as the lead coordinating agency for the follow-up and has developed a project appeal to secure funding to support the work of the two experts' groups.

The two Ad Hoc Experts' Groups have developed plans of action based on the accepted principles of the Bali Process - that cooperation should begin from an acknowledgment that each State has a sovereign right and legitimate interest to develop and implement its own laws to address people smuggling and trafficking in persons, reflecting the non-binding nature of the Co-Chairs' Statement. The action plans endeavour to engage in practical

measures that will achieve concrete results. The overall mandates of these two groups, as defined by the Ministers, are as follows:

- Developing more effective information and intelligence sharing arrangements within the region to obtain a more complete picture of smuggling and trafficking activities and other forms of illegal migration
- Improving the cooperation of law-enforcement agencies to enhance deterrence and to fight against illegal immigration networks
- Enhancing cooperation on border and visa systems to improve the detection and prevention of illegal movement
- Increasing public awareness of the facts of smuggling and trafficking operations to discourage those considering illegal movement and to warn those susceptible to trafficking, including women and children
- Enhancing the effectiveness of return as a strategy to deter illegal migration through the conclusion of appropriate arrangements
- Cooperating in verifying the identity and nationality of illegal migrants, in a timely manner

The ministers further agreed that *“an important strategy to deter and prevent these activities would be to adopt and strengthen legislation, as appropriate, that specifically criminalizes people smuggling and trafficking in persons.”*¹

Strengthening Legislation

The strengthening of trafficking and smuggling legislation across the region is therefore one of the primary aims of the Bali Process. As you are all well aware, criminal elements thrive by not only exploiting vulnerable persons, but also by exploiting lax law enforcement and weak legislation. It is much less risky, after all, to traffick people from, to or through countries that have weak or non-existent laws on trafficking and/or weak penalties. As it has often been noted the penalty for trafficking drugs is severe, but for the trafficking and exploitation of a human beings it is often usually far less punitive – to the point that criminal elements pursue trafficking in humans as a low risk option. It is therefore evident, in fact imperative, that trafficking offences carry a penalty commensurate to the crime and are severe enough to discourage traffickers in engaging in this enterprise. At the same time, of course, it is also imperative that legislation is comprehensive and enforceable. And, it is important that there is some consistency across the region, while taking into consideration national priorities, so that traffickers don't have the option to exploit regional weak points.

¹ Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, Co-Chairs' Statement, 28 February 2002

The work of the Ad Hoc Experts' Group II, in particular, has therefore devoted considerable effort to address the strengthening of legislation across the region and to "raising the common denominator" of legislation so that gaps or weaknesses that exist are eliminated, and thus not exploited by traffickers. In order to achieve this objective, the Experts' group II has held two Legislation Workshops at which "key elements", or baseline standards, were defined that are required in legislation to effectively prosecute people smuggling; effectively prosecute trafficking in persons; and effectively investigate and cooperate in combating people smuggling, trafficking in persons and related transnational crime. Subsequent to the identification of these standards – "key elements" and also taking into consideration the Transnational Organized Convention and its Protocols, model laws were developed in each of these areas. (For the purposes of the discussion this week, I will focus on the key elements identified for an effective trafficking law.)

In defining the model law on trafficking, the following key elements were identified as being critical for the development of effective legislation:

- 1) Make human trafficking a crime.
 - Define human trafficking, to include using deceptive or coercive practices to move a person across borders or within a country for the purpose of exploitation.

- 2) Make Laws comprehensive, and include:
 - trafficking in men, women and children.
 - "recruiting" persons to be trafficked (including "using fraud, threats, force or abuse of power).
 - exploiting persons who have been trafficked.
 - harbouring persons who have been trafficked.
 - arranging, organizing, facilitating, financing or profiting from any of the trafficking activities above.

- 3) Insure that laws target the main organizers of trafficking, including organized crime where relevant.
 - Including by using conspiracy provisions and measures to combat organized crime.

- 4) Make legislation or other measures that cover actions outside the state (extraterritorial application), to the extent possible in the national legal system.

- 5) Make sure that laws and penalties reflect the serious nature of human trafficking.
 - At a minimum, they should allow extradition and mutual assistance.
 - States might consider whether higher penalties are necessary in some situations ("aggravated circumstances").

- States should be aware of the penalties applying in other states.
- 6) Make laws that can be implemented with an aim to make prosecutions for human trafficking easier.
- These could include allowing the use of evidence gathered in other countries, allowing witnesses to stay in the country to give evidence, and protection of witnesses.
 - Recognise the specific problems that trafficked persons have in identifying many of the organisers of trafficking.

And, most importantly provide within national legislation provisions for the protection of and assistance to persons who have been trafficked. This is particularly important if we are to succeed in turning victims into witnesses, through providing the necessary protection frameworks that develop a sense of trust and security for the victims. These would include the formation of multi-disciplinary teams, with appropriate expertise and background, raising gender sensitivity, to include female law enforcement officers, social workers, among others. In so doing, the chances for securing testimony and related evidence for use in prosecution will be increased.

While these “key elements” are indeed important they are not fully comprehensive and are primarily aimed at assisting states take the first step towards criminalizing trafficking. In order to achieve effective prosecution of trafficking, regional cooperation and collaboration on a comprehensive law enforcement framework is also required.

Progress to Date

Legislation

Among the Bali Process countries, many of which are here today, there has been considerable progress on strengthening legislation against trafficking. A review of current information included in a matrix of legislation that is being compiled in the Bali Process follow-up, shows that:

- 19 countries now have criminalization legislation in place for people smuggling and/or trafficking in persons legislation;
- 12 countries are currently considering implementation of criminalization legislation or are in the draft stage of implementing such legislation;
- 18 countries have made use of the model legislation;
- 8 of those countries with legislation have also adopted key protection measures for victims of trafficking;

- 15 countries have mutual legal assistance arrangements and/or extradition legislation covering people smuggling and trafficking in persons and related transnational crimes; and
- 9 countries have established national action plans, prevention strategies or inter-agency cooperation mechanisms.

Law Enforcement

Effectively combating trafficking does not depend solely on the putting in place of sound domestic legislation. It requires the development of national and regional cooperation networks between and among judicial branches and law enforcement agencies. It also requires greater awareness and prioritization of the issue both within the government and among the general public. The Bali Process seeks to address this aspect of the issue – the so called holistic approach, through undertaking efforts to train and inform law enforcement officials on the issues of trafficking, especially victim protection and support, as well as through promoting the development of regional information sharing networks among police, immigration and other enforcement agencies. Training has been provided on identity verification and document fraud and a set of “key elements” has also been drafted for improved law enforcement in the areas of:

- Operational Cooperation and Investigation
- Identity Verification and Document Examination
- Technical and Capacity Requirements for Effective Enforcement

Efforts are also underway to develop and strengthen cooperation and promote the development of specialized law enforcement teams, both nationally as well as regionally to combat trafficking and smuggling.

Information Exchange

Considerable effort has also been given to improving information sharing and exchange to enhance and support improved cooperation in the region, especially through the work of the Ad-Hoc Experts’ Group I which has led the development, among many other efforts, of the following;

- A website, developed by IOM, to facilitate information exchange and serve as a resource reference point (www.awiz.net/bmcw). The website contains all information generated by through the work of the two experts’ groups and has links to national websites containing information on legislation and policies, information on national administrative structures addressing trafficking and smuggling, as well as other relevant

information. The site also contains a legislative matrix, which will serve to provide an easy reference/resource guide to trafficking, smuggling and mutual legal assistance legislative development across the region. There are also plans to include a resource menu for public awareness raising, repository of return agreements, and more.

- A reference booklet on national organisation to deal with people smuggling issues. The booklet describes how States are organised to address issues posed by people smuggling, trafficking in persons and related transnational crime, with information on which agencies are involved, the roles and responsibilities each of them has and information on their head office address, phone, fax and email
- A reference Booklet on international co-operation describing initiatives in which participating States are involved at the bilateral, regional, and international level to exchange information about, or to support operational action against, people smuggling, trafficking in persons and related transnational crime.
- A list of “best practices” for status determination procedures was developed for consideration and implementation, where appropriate, by twenty-three Bali participant countries attending a workshop led by UNHCR addressing the need for appropriate measures to be in place to insure protection for vulnerable groups, or refugees, that might be among smuggled or trafficked migrants – so called ‘mixed flows’.
- A plan of action is under development for a regional approach to Public Awareness Raising wherein participating governments would undertake develop campaigns that: raise awareness among and within government agencies; that target the general public; and, that include grass-root preventative campaigns targeting vulnerable communities.

Conclusion

The Bali Process, like any forum, can only be successful if countries commit to the principles to which it adheres. Effectively combating smuggling and trafficking will not be achieved unless the elimination of these crimes remains a national, regional and global priority. The Bali Process, though non-binding and voluntary in nature, seeks to invoke Ministerial commitment to work to achieve this goal and we, in our respective roles, should seek to leverage this commitment to advance this objective.

IOM Counter-Trafficking Experience in the Greater Mekong Sub-region (GMS)

IOM's first counter-trafficking initiative within the GMS began in 1997 with a program supporting the return and reintegration of Vietnamese women and children trafficked to China from Lang Son province in northern Vietnam. Shortly thereafter, IOM missions in the region began implementation of programs to address the protection, return and reintegration of Cambodian women and children trafficked to Thailand, as well as for Vietnamese women and children trafficked from Vietnam's Mekong Delta provinces to Cambodia. In 2000, those two programs were incorporated into a 3-year project entitled *Return and Reintegration of Trafficked and Other Vulnerable Women and Children Between Selected Countries in the Mekong Region*. As the first regional initiative of its kind, that project has focused on working with government and NGO counterparts to establish systematic return and reintegration systems in GMS countries for trafficking victims who originate from Cambodia, Vietnam, Laos, Myanmar and China.

Other current activities designed to advance practical return and reintegration assistance to trafficking victims include a *Pre-Return Psycho-Social Assistance* project implemented in Thailand; a *Long Term Recovery and Reintegration Assistance to Trafficked Women and Children* project in Cambodia; and a project in Vietnam that supports shelter and recovery assistance for trafficking victims from the Mekong Delta.

IOM's programmatic approaches within these projects have focused on building government and NGO capacities to develop systematic responses to the challenges of return and reintegration. Additional activities have included provision of reintegration assistance through support of government agencies and NGOs involved in rescue, return and reintegration processes; advancing research focused on the practical realities of return and reintegration; and coordinating forums in sending and receiving countries with a view towards fostering practical cross-border cooperation on return and reintegration issues

IOM has also been engaged in facilitating national and inter-regional consultative processes to establish measures and mechanisms to further advance the protection, return and reintegration of trafficking victims. In Thailand, IOM has provided ongoing assistance to Thai NGOs and the Royal Thai government in their efforts to develop a series of MOUs detailing cooperative mechanisms amongst NGOs and government agencies on treatment of trafficking victims. IOM facilitated and supported consultations, preparations and drafting of a bilateral MOU between Thailand and Cambodia on standards, procedures and responsibilities in the treatment of trafficking victims. In a related initiative, IOM is also assisting and facilitating the development of a bilateral MOU between Thailand and Laos addressing the same issues. IOM also supports the development of resource manuals, containing relevant Thai legislation, MOUs, etc., related to trafficking for use in providing

training to Thai immigration and police officials throughout the country. Over 20,000 resource manuals have been printed and training has been provided to over 1500 police and immigration officers.

In the area of trafficking prevention IOM has recently produced an animated short film titled *Shattered Dreams*, to raise awareness among young people of the risks and consequences of becoming involved with people trafficking and exploitation. The film, which is part of a Life Skills training package designed for regional distribution, addresses a wide range of issues and challenges facing adolescents vulnerable to trafficking. These issues include gender, deceit, forced labour, exploitation - including sexual exploitation, exposure to HIV/AIDS, and stigmatization. The video has been dubbed in a range of languages including in Thai, Khmer, Burmese, Shan, Lao, and Vietnamese.

IOM also has an ongoing project initiated in 2000 working closely with Cambodia's Ministry of Women's and Veteran's Affairs (MWVA) in the implementation of a *Prevention of Trafficking in Women and Children in Cambodia (PTWCC) project*. This project works towards strengthening the MWVA's human resources and capacities to support the Ministry's national focal role of preventing trafficking. By the end of 2003, over 2000 civil authorities from national to village levels, across six provinces and municipalities, will have been trained in legal and socio-economic issues related to trafficking and migration. Through the project, vulnerable women and children in 900 villages have been given access to reliable information on orderly migration and the dangers of trafficking.

Complementing the PTWCC project, IOM is also implementing an *Information Campaign to Combat Trafficking Women and Children in Cambodia* from 2002-2005. Designed to promote prevention of all forms of trafficking in women and children, the project disseminates trafficking awareness information to vulnerable women and children through multi-media presentations to audiences across eighteen provinces. Implemented in partnership with the MWVA, the project will further build capacity within the Ministry to conduct future information campaigns on a national level. Working in the provinces not covered by the PTWCC project, these activities, in effect, ensure national coverage for awareness raising and MWVA capacity building measures.

Building off its experience, IOM Cambodia is collaborating on a specialized *Child Mental Health and Anti-Trafficking* project in Rattank Mondul district, Battambang Province. Implemented in partnership with Terres des Hommes, this project complements psycho-social and counseling training activities with awareness raising on trafficking in an area of particular vulnerability for trafficking given its high poverty level, proximity the Thai border and long-term exposure to conflict.

In addition to these projects, IOM has also been involved in trafficking prevention information campaigns in Vietnam. The first campaign took place during 1998 on a pilot basis in Lang Son province. Designed to compliment the return and reintegration initiative taking place in the same province, the information campaign focused on building the capacity of the Lang Son Women's Union to create and implement grass roots public awareness campaigns. By the end of the project, the Women's Union was designing anti-trafficking materials and undertaking direct and indirect information campaigns throughout the province. The materials and training modules developed served as models for a *National Anti-Trafficking Information Campaign* carried out by IOM and the Vietnam Women's Union during the year 2000. That project resulted in 6,600 trained activists engaged in a range of anti-trafficking information dissemination activities in rural and high-risk urban areas. The project also provided training on trafficking realities to journalists, border guards, immigration and police officials to encourage media coverage of trafficking and foster inter-departmental cooperation in combating the phenomenon.

Recognizing the need for qualitative and quantitative information on trafficking realities, IOM has also undertaken a range of counter-trafficking research initiatives since 1997. Those initiatives have included research of root causes of trafficking amongst specific populations, analyses of realities affecting reintegration, development of trafficking population profiles, gap analyses of regional return/ reintegration processes, and surveys to determine awareness raising, training and capacity-building needs within specific GMS countries. The research outcomes have been used not only to produce a series of reports, but also shape and target priorities for developing IOM projects.

On a wider level, IOM has taken an active role in facilitating and supporting regional processes and consultative forums designed to advance consistent migration policies, legislation, law enforcement and greater cooperation on counter-trafficking and other migration issues, both bilaterally and inter-regionally. In 1999, the Royal Thai Government, with collaboration from IOM, convened governments of the Asia region in a symposium that resulted in the *Bangkok Declaration on Irregular Migration*. Subsequently, IOM played a facilitator role in organizing the first *Bali Conference on People Smuggling, Trafficking in Persons, and Related Transnational Crime*. Since that conference, IOM has provided administrative and logistical support to the two ad-hoc expert groups tasked at the conference to identify and develop strategies to further the conference objectives. IOM remains committed to working with governments to address the principles and objectives resulting from these forums, as well as those addressed in the Asia-Pacific Consultations on Refugees, IDPs and Migrants.

Within the GMS, IOM currently has counter-trafficking activities being undertaken by IOM missions in Thailand, Vietnam and Cambodia. A counter-trafficking focal point has been

appointed in each of these IOM missions to facilitate implementation and coordination of these activities. IOM staff is also present in Laos undertaking counter-trafficking activities, with the establishment of an IOM mission there pending agreement with the Lao PDR government. IOM supports NGOs undertaking reintegration activities for trafficking victims returning to Myanmar, and is exploring potential counter-trafficking activities to initiate in the southern China provinces of Yunnan and Guangxi.



Human Trafficking in the U.S. and Japan

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A few weeks ago I arranged a showing of the Japanese National Police Agency film on Trafficking in Japan to U.S. embassy employees. I felt it was important that the members of my community understand this issue because they needed to be familiar with U.S. government policy on human trafficking and, as parents, to be aware of the possible dangers to our children in areas such as Roppongi, Akasaka, Shibuya and Shinjuku's Kabukicho. The American and Japanese staff members were very interested in the issue and asked many difficult questions. They wanted to know why Japan does not do more to apprehend brokers in human lives and to investigate the organized crime groups that profit from this human suffering. They wanted to know how to let Japanese bureaucrats and politicians know that they want Japan to do more. And many wanted to know what they could do to support private shelters like HELP and Saalaa that assist trafficking victims. I was encouraged by this response, which I believe reflects a growing awareness and concern for human trafficking, not only in sending countries, but also in the countries that receive trafficking victims, like the U.S. and Japan.

My remarks are divided into three sections. The first looks at why countries should tackle the complex issue of human trafficking. Next I will discuss the various forces in the U.S. that underpinned Congressional passage of the Trafficking Victims Protection Act of 2000 (TVPA.) and discuss changes currently under discussion as U.S. lawmakers look at fine-tuning this law. Finally, I want to make some recommendations for Japan in what I call the "tough love" section. As a diplomat with almost 10 years of work experience in Japan over a span of 20 years I don't claim to be a "Japan expert" but believe that I have some pragmatic suggestions based on the experiences of the U.S. and those of trafficking experts from many countries that can provoke a discussion of what Japan can do to combat trafficking at all levels.

Many people ask me why the U.S. is so concerned with human trafficking and who in the government regards this as a key issue? My government's concern about human trafficking starts at the top. In September 2003, President Bush underscored the hidden crisis of human trafficking in his annual address to the United Nations General Assembly. The President pointed out that human trafficking generates billions of dollars each year – much of it finances organized crime. He noted the particularly heinous nature of human trafficking, which results in the abuse and exploitation of the most innocent and vulnerable. President

Bush called for severe punishment for those who prey on trafficking victims and who profit from their suffering, noting that those who patronize the commercial sex industry debase themselves and deepen the misery of victims. In short, the U.S. regards trafficking in persons as a heinous international crime and we are committed as a nation to end this violation of human rights at home and abroad.

Another reason to address human trafficking is because these actions are now a transnational criminal enterprise that recognizes neither boundaries nor borders. Profits from trafficking feed the coffers of organized crime; trafficking has become the second largest source of income for these groups after drug running, according to the United Nations. A research study by the Coalition Against Trafficking in Women under a grant from the National Institute of Justice, a Department of Justice research and training facility, showed that traffickers and brokers are involved in a wide range of criminal activities including robbery, car theft and export, extortion, money laundering, alien smuggling, document fraud, weapons violations and drug trafficking to name just a few. The borderless nature of human trafficking demands that law enforcement and judicial officials develop new strategies for the investigation and prosecution of this crime. We can no longer afford to ignore trafficking as a "victimless" or "foreigner" crime that is put on the shelf in favor of investigations of "hard" crime. We can't afford to not pursue trafficking cases because they are difficult and time-consuming without an obvious impact on the daily lives of our people.

Further, we need to change our way of thinking about trafficking and understand that that human trafficking is based on economic demand and supply principles. Traditional law enforcement approaches that center on punishing those who provide services, namely the trafficking victims, are ineffective. More attention needs to be placed on making sure to deal with the "demandeurs" of human trafficking, ranging from those who profit from trafficking to the clients who may not even regard their patronage as part of a chain of criminal exploitation with a severe human toll.

We need to recognize that there are foreign policy implications of a failure to deal effectively with human trafficking. I believe it is very appropriate that this conference is sponsored by the Asian Women's Fund, which has evolved from its original focus on issues related to the World War II comfort women to contemporary issues that affront the dignity and rights of women. Speaking frankly, some people in Asian countries regard Japan's tolerance of the sexual exploitation of foreign women and children as a contemporary version of Japan's wartime use of comfort women and forced laborers. A case that illustrates this was the strong negative reaction that many Chinese expressed on the internet about the recent sex tour scandal in Shenzhen, China. While the employees of the Osaka company thought they were simply procuring a large number of Chinese prostitutes for a party, many Chinese

expressed outrage over what they felt was a deliberate affront to Chinese women on a national holiday commemorating the Japanese invasion of Manchuria.

Similarly, it reflects badly on Japan when there are international media reports on criminal investigation and prosecutions in foreign countries of recruiters and "jockeys" that traffic persons to Japan, while there appear to be no comprehensive investigation in Japan of the broker organizations and establishments that "order" and employ these trafficking victims. The U.S. regards Japan as a valued partner and a strong example of a successful Asian democracy. However, it is difficult for Japan to play a leadership role in the region if its neighbors harbor doubts about its performance on trafficking.

I'd like to turn now to the development and passage of the U.S. Trafficking Victims Protection Act (TVPA). The drafting and passage of the TVPA represented an unprecedented coalition of political forces. Human rights advocates, religious conservatives, defenders of women's rights, child-protection activists, worker rights groups and law enforcement all cooperated. Legislators from across the political spectrum were galvanized by reports such as the 1999 Global Survival Network case study of sweatshop workers in the Northern Marianas Islands, which revealed that some 40,000 illegally trafficked women from East Asia and Russia were working under sweatshop conditions by day and forced into prostitution by night. The CIA produced an important monograph that discussed the role of international organized crime groups and the challenges to law enforcement under current trafficking-related laws, providing concrete suggestions that eventually were incorporated into the TVPA. The bipartisan global leadership group called "Vital Voices" also played an important role bringing together people like Senator Hillary Rodham Clinton, Secretary Madeleine Albright, Senator Kay Bailey Hutchison and our own "taishi furen" former Senator Nancy Kassenbaum Baker to raise awareness of trafficking and to lobby for the TVPA. In the House, the final version of the TVPA passed in October 2000 by 371 yeas to 1 nay, while the Senate passed the bill in a unanimous 95 to 0 vote.

I've included a briefer from "Vital Voices" that gives the highlights of the TVPA. I think many of you are already familiar with its major outline so I will just review a few points that I believe distinguish this law:

- First, the TVPA takes the definition of "coercion" beyond actual physical violence to the victim to include threats of physical abuse, psychological and mental coercion and threats to the victim's family members.
- The Act focused in detail on how to provide protection and assistance to trafficking victims – in effect treating them as victims of crime rather than criminals. The TVPA provides temporary residency, and in some cases

permanent residency, to trafficking victims and their families, thus protecting them from possible reprisal and provides access to shelter, medical care, legal assistance and other services.

- For the first time, the TVPA recognized trafficking as a specific offense and mandated prison sentences that ranged from a minimum 20 years to life depending on the circumstances of the crime. Traffickers were also subject to mandatory restitution for the losses of their victims and to forfeiture of assets. The Act also authorized law enforcement to use federal racketeering law to investigate trafficking cases.
- In recognition of the transnational nature of trafficking and in an effort to globalize anti-trafficking efforts, the Congress requires the Secretary of State to present an annual report on the status of trafficking in countries and authorizes sanctions on countries that have significant trafficking problems and fail to address them.
- The TVPA also called for the establishment of a Cabinet-level task force and authorized the Department of State to create an office to support the task force and coordinate anti-trafficking activities across government agencies.
- The TVPA authorized \$95.5 million over the first two years for domestic and international initiatives.

I'd like to briefly discuss where we think the TVPA may be going as we look at the TVPA re-authorization bill currently being negotiated in the Congress. Congress is thinking of revising the law to revise our annual report on other countries like Japan to take a closer look at whether they are making "significant efforts" to address trafficking but which are not fulfilling a specific list of minimum standards for an effective anti-trafficking program. One idea would be to divide this group of countries undertaking significant efforts into two to further recognize the efforts and resources being brought to bear on combating trafficking. The current interpretation of "significant efforts," or the progress a country has made, is that the efforts of a government cannot remain stagnant; efforts must be dynamic to respond to the changing situation. For instance, even if anti-trafficking legislation is in place, the U.S. will look for evidence that a country is pursuing actively investigations and prosecutions. Also, many feel that rich countries should be held to a higher standard than countries that have difficulties achieving a basic living standard. The trend is toward primarily looking at the anti-trafficking efforts a country is making, while taking into account the size of the problem and the measures available to the country in terms of resources and capacities.

As this year's Trafficking in Persons report shows, many countries have been able to illustrate their determination to stopping trafficking even with limited financial resources.

The last part of my speech is dedicated to steps that I believe Japan can take in its anti-trafficking efforts. I've done this by looking at the process the United States went through in creating the TVPA. I've also used ideas taken from a State Department and "War Against Trafficking Alliance" international conference that was held in February 2003. This conference drew more than 400 participants from more than 100 countries and the United States to discuss the most successful strategies against sex trafficking and to suggest innovative methods to combat traffickers and rescue victims. Attendees included government ministers, legislators, scholars, medical personnel, religious workers, jurists, victims, journalists and representatives from NGOs, international organizations and government agencies. As you will see, my recommendations seek participation across government and the public to address human trafficking in Japan.

First, since it's getting close to Christmas when the child in us is allowed to ask for anything at all, allow me to voice one wish. I wish that Japan would develop a specific trafficking law along the lines of the model law the United States developed in March 2003. I understand that Japan's implementation of its United Nations commitments on trafficking has been under debate and that there are many who argue that there is no need for a comprehensive law. However, the reason I advocate for a specific trafficking law is based on our experience during the debate over the TVPA. Although the United States has outlawed slavery and involuntary servitude since 1865 and aspects of anti-trafficking were covered in a range of laws, the "2000 Trafficking Monograph" developed by the CIA called for changes to existing law. The Monograph noted that prosecutors found that a lack of a single trafficking statute made prosecution under numerous statutes cumbersome. Also, a trafficking law would permit better tracking of cases and record keeping, improve law enforcement and prosecutorial coordination, and serve as a better deterrent. A specific trafficking law would provide conceptual clarity, define the issue, and prescribe adequate protection and assistance for trafficking victims. Most importantly, in the case of Japan, it would put trafficking violations under criminal procedure instead of the currently applied labor and immigration law violations. Whereas currently law enforcement officials do not investigate child trafficking under the existing child pornography laws, even though a number of foreign trafficking victims are underage minors, a specific trafficking law would better focus attention on the need to more effectively screen victims, rather than assuming that they are all here voluntarily without coercion. These are all benefits that I feel would accrue to Japan if it were to create it own anti-trafficking law.

In my list of recommendations, I also call for the Government of Japan to create an Inter-Ministerial Task Force and an Anti-Trafficking Office. This was done in the U.S. pursuant to

the passage of the TVPA out of the recognition that combating trafficking would require cooperation among various agencies to assist victims, investigate and prosecute traffickers and provide international assistance. Traffickers thrive on legal and jurisdictional ambiguities that exist. Mandating cooperation among various ministries must come from high levels to realize effective implementation at the bottom. As long as some Ministries accept the United Nations and/or United States concept of trafficking and trafficking victims while others deny its existence in any form in Japan, there will not be an effective anti-trafficking program. Beyond improving coordination within the government, we have also found that our contacts with the NGOs that assist victims and with the United Nations agencies that deal with these issues have been invaluable. I would urge Japan to regularize consultations with concerned NGOs, UN Agencies, foreign embassies and others to develop effective anti-trafficking steps and to improve the treatment of victims of trafficking.

Another general recommendation that holds true for all countries that deal with trafficking is that we need to better estimate the scope and magnitude of the trafficking problem. Before the publication of the "2000 Trafficking Monograph" by the CIA, there was no comprehensive look at the United States that outlined the scope and magnitude of the trafficking problem, in particular the links to organized crime and the international scope of the problem. Subsequently, the March 2001 report on "Sex Trafficking of Women in the United States" funded by the National Institute of Justice provided valuable information that I'm sure will be part of the TVPA re-authorization discussion. Although I often feel that sometimes we spend too much time studying problems rather than acting on them, in the case of Japan I think a well-done study of the trafficking problem could raise public awareness of the problem, make government officials more knowledgeable about the nature and extent of the crime, and possibly generate support for a specific anti-trafficking law. To better develop an anti-trafficking strategy we need empirical data to support or dispel fears such as:

- There are an alarming number of victims from a wide range of countries that we are unable to reach;
- Our lack of understanding of the full extent of profiteering by the Yakuza and foreign organized crime groups from trafficking;
- The connections between human trafficking operations for sex and for other purposes, for example crime or forced labor;

- The connections between the trafficking of foreigners and the growing problem of the exploitation of Japanese children in the sex industry and by individual Japanese.

One last general comment before I submit for consideration a list of possible measures for Japan is an observation about the law enforcement process. When we implemented the TVPA we faced difficulties in training some law enforcement officials, including police, labor inspectors, immigration officials and others, to make the pursuit of trafficking cases a priority. Given the limitations of time and resources, there is a tendency for law enforcement to focus investigations on violent crime to the community they serve. Also, successful investigations of "victimless" crimes were not career-enhancing or good public affairs material. While we all know that trafficking is certainly not a "victimless" crime, it remains difficult to get law enforcement to focus on cases that are difficult and time-consuming to investigate and which are not viewed as "protecting the immediate community." However, just as globalization has brought many economic benefits, it has also changed our perception of our own "backyard." We now know that our economic livelihood can be affected by the decisions of a policy-maker across the globe. Likewise, the problems of poverty, civil war, corruption and organized crime are no longer restrained within a physical border. Therefore, new criminal challenges call for changes in the way that our laws are made and the enforcement of those laws.

In Japan this may require greater public demand for law enforcement action on transnational crimes as being equally important as handling the robbery of the local ATM. Or this call may come as the result of the study I proposed before when there is a public realization of the "cost" of trafficking to Japanese. The NGO shelters and the Colombian Embassy recently took the initiative and did much of the investigatory footwork before turning over a case to the police that resulted in the conviction of Koichi "Sony" Hagiwara earlier this year – "public-initiated" investigations might be what is needed to get trafficking the attention it deserves here. The United States, through its Annual Trafficking Report can also play a role but I think it is important to keep motivations in mind as we discuss practical steps that Japan can take to address trafficking.

Public Understanding and Legislation Regarding Human Trafficking in Japan The Present Situation and Proposed Amendment

**Yoshida Yoko
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“Trafficking in Persons” is defined in “the UN Convention Against Transnational Crimes, to include its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children” (translated by DFA). But this definition can read that it deals with “from employment to reception of persons” and does not include exploitation that follows. Since the suppression of exploitation is integral parts of elimination of trafficking in persons in terms of controlling demands, exploitation after reception should be examined.

I. The situation of victims of trafficking in Japan

1. Although any statistics of human trafficking is not available, it is true that the cases are happening in Japan.
 - (1) Official Statistics: The figures are available only in terms of punishment. The penal code, Prostitution Prevention Law, Employment Security Law, Manpower Dispatching Business Law, Immigration Law, etc.
 - (2) Victims found out by NGOs in Japan
 - (3) Facts collected by Embassies in Japan, such as Thai and Columbia.
 - (4) Facts collected by the governments and NGOs in sending countries
 - (5) Women victimized as the objects of sexual exploitation. Also a source of money for organized crime.
2. Public Awareness in Japan
 - (1) No understanding of the reality, no information, -public indifference to the issue
 - (2) They have come to earn money. They know what is going to happen, -No need to help or support
 - (3) They corrupt public morals of sexual behavior. They are overstay their visas, and moreover illegally employed, -They should be deported immediately.

II. The situation of Relief Activities for the Victims

1. Victims should be punished and deported.
 - (1) According to the existing laws;
 - a. Victims should be punished under the immigration law (illegal entry, overstay), Foreigners Registration Law (no application), Prostitution Prevention Law (solicitation publicly), Penal Code (forgery and use of official document, false statement on notarial

deed)

- b. Victims should be deported under the Immigration Law (illegal entry, overstay). If the immigration office judged the person “once engaged in prostitution,” she will be either deported or refused to enter the country.

(2) In reality;

- a. Victims will be arrested by police, sent to the Public Prosecutor’s Office, indicted, and the court will give a suspended sentence of imprisonment.
- b. Victims will be detained by immigration office, examined illegal acts and deported immediately, and the case is settled.

2. Assistance to victims. There is no specific provision.

(1) Defense Against the Offender

It is necessary to defend victims against threat or vengeance of organized crime in of both sending country and Japan. However, there is no mechanism for protection.

(2) Recovery from the physical, psychological, and social damages.

a. Housing (temporary place of refuge)

- Public shelters are operated only by Women’s Bureau, where the most residents are victims of Domestic Violence (DV). As for the foreigners without legal status of living in Japan, these shelters “will receive them but inform to immigration office.” In fact, they rarely receive foreigners because of the difficulty of language as well as living cost.
- There are very few privately operated shelters (two or three in nationwide), which are faced with financial difficulty. Public subsidy is insufficient.

b. Medical treatment and counseling

- Workers’ Compensation System (Labor Standard Law, Workers’ Accident Compensation Insurance Law) can be applied to anyone who is employed by business and receive wage, with or without legal status of living in Japan. The “business” he/she is engaged with does not have to be perfectly legitimate. Labor Standard Control Office will not inform to Immigration Office. (An officially notice has been given.) However, it is impossible to prove that a victim of trafficking is employed by business and receive wage. Thus, practically the system cannot be applied for the trafficked persons.
- The Livelihood Protection Law stipulates in its Section 1 that the law can be applied for Japanese citizens. Complementary application for foreigners is limited to certain people such as permanent residents, settlers, a spouse of Japanese or permanent resident), which is the benefits rather than one’s own rights (October 1990, Ministry of Social Welfare Verbal Statement). There is no

- way for trafficked persons to enjoy the benefits.
- c. There is no welfare system including providing living cost.

(3) Recovery of legal rights of the victims

a. Redress through civil action

- Claim unpaid wages, Claim compensation are possible for anyone with or without legal status of living in Japan. Even if the person is deported, legal action is possible. Nevertheless, it is almost impossible for the trafficked persons to pursue the claim. For it is quite difficult to identify the offender and find his financial situation. It cannot be expected to recover the victims' rights effectively.
- Welfare programs based on redemption system cannot be provided for the victims of trafficking. The Benefit for Crime Victims Law does not include the victims of trafficking.

b. Providing legal status

- There is no system to give temporary or long-term status of living in Japan for the victims of trafficking.
- Special Permission to live in Japan is granted by Minister for Justice at his generous discretion. The permission is a benefit rather than rights. Mostly this permission is given to "a parent who brings up a Japanese child."

III. The Current Situation of Offenders

1. Lack of Anti-Trafficking in Persons Act and Penal Code for its Violations

(1) Anti-Trafficking in Persons Act

- a. There is no law to provide definition of "trafficking in persons" and mechanism to provide penalties for its violations.
- b. Some acts of "Trafficking in Persons" can be punished under several laws with limited conditions. (see the attached paper)
- Penal Code #224-225: Abduction and Kidnapping of Minor, Abduction and Kidnapping for the purpose of profits;
 - It refers to transfer of persons from their own living place by means of threat or use of force (abduction), fraud or solicitation to put the victims under effective control of oneself or others. (kidnapping) . It is also unlawful for any person to attempt such acts. Any person who commits the offense abroad will be also punished.
 - However, the provision mentioned above has not been applied before.
 - The punishable acts under this Penal Code is more limited than those stipulated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons. (The cases of abuse of power, taking advantage of the vulnerability of the person, to achieve the consent of a family member having control over another person are not covered.

Are the recruited persons covered?) When the unlawful control by force is established, the offense is accomplished. It means that any person who is involved with the offense after that will be given only light punishment as post-abiding and abetting. (For example, the person is punished for receiving the victim for the purpose of abiding and abetting. Preliminaries will not be punished.)

- Penal Code #226: It refers abduction and trafficking for the purpose to sending persons out of Japan. As the situation has changed since this Act was enacted, this provision is not effective. The provision should be revised to read “for the purpose of transfer persons out of their living country.”
- Anti-Children’s Prostitution Act #8: It prohibits trafficking of children for the purpose of prostitution as well as pornography.
 - This provision can be used under the limited conditions. However, this has not been applied so far,
 - The definition of “trafficking in persons” is not given, which can be interpreted in any way.
- The Child Welfare Law #60, #30(7): It is punishable to transfer the child for the purpose of lascivious conduct. This law also has not been applied before.

c. Reasons why the existing rules and regulations cannot be applied.

- As the real situation of human trafficking is not reported, public understanding of the crime is not deep enough to punish the offense severely. Particularly, those who are over 18 years old are considered that “she came to Japan knowingly to be engaged with illegal work.”
- Both to investigate and prove the crime are quite difficult. Investigation of the top of the organized crime is almost impossible.
- Very few victims seek assistance to the appropriate agencies.

(2) Punishment for the acts in the process of human trafficking

a. The acts punishable under the Penal Code include:

- Assault, injury, bodily injury resulting in death, murder, threat, coercion, arrest and confinement, arrest and confinement with fatal wound, forgery of an official document, and its use, false statement on original notarial deed.
- In practice, this rule has been applied only for forgery of official document and false statement of original notarial deed. In addition, the victims are arrested in these cases.

b. Why these rules and regulations are not effective?

- As the real situation of human trafficking is not reported, public understanding of

the crime is not deep enough to punish the offence severely. Particularly, those who are over 18 years old are considered that “she came to Japan knowingly to be engaged with the illegal work.”

- Very few victims seek assistance to the appropriate agencies.

(3) Exploitation in the sex industries and the existing rules and regulations.

Existing rules and regulations.

a. Penal Code: rape, forced obscenity,

b. Labor Laws

- Manpower Dispatching Business Law: It is punishable to dispatch any worker to engage the person in a harmful job in terms of public health and public morality.
- Employment Security Law: It is punishable to recruit workers by means of restriction of the person physically or mentally, or for the purpose of harmful job in terms of public health and public morality.
- Labor Standard Law: Forced labor, Intermediary exploitation, Advance

c. Laws related to sex industry

- Prostitution Prevention Law: Punishable acts under this law include any act to promote prostitution such as offering, solicitation, offering places and fund, contract to engage in prostitution, controlled prostitution, and so on.
- Food and Entertainment Business Law: Punishable acts under the law include, violation of restriction of business districts, false statement for unlicensed business, pimp, use of minors.
- Child Welfare Law: #34(6): The use a child for lascivious conduct is to be punished.

d. Immigration Law: To promote illegal employment is punishable.

These rules and regulations have been applied to certain extent, but it is not enough.

a. Penal Code is too strict to apply for trafficking case, which depends on its interpretation.

b. Even though all the other laws (labor-related laws and so on) have been applied for the few cases of trafficking, the sentence given to the offender is light in both legal sentence and the one given by judge. In addition, the victim is arrested under the Prostitution Prevention Law and Immigration Law. (She will be deported immediately after the judgment.)

2. Protection of witness in the process of criminal court against offender

(1) Although the Witness Protection Program is stipulated in the Penal Code, Anti-Organized Crime Law and the Criminal Procedure Code, the program is implemented only in the court.

(2) Furthermore, there is no system to avoid identification of the witness or to protect

the family members of the witness living in the home country.

IV. What Japan should do?

1. Three measures should be set up, that is, relief for the victims of human trafficking, punishment of the offenders, and prevention of the crime. Basically, it is necessary to raise the public awareness of the trafficking issues, which would control demands and suppress of buying prostitution. However, it would take long time to accomplish this. Thus, it is necessary to revise the rules and regulations first. This will lead to change the public understanding and better application of law. Public campaign on this issue is also important.

2. Victims Protection

- (1) The victims of trafficking should not be punished under the Penal Code, and be given a temporary or long-term status of living in Japan.
- (2) The victims of trafficking should be protected from the offenders.
- (3) The victims of trafficking should be provided services including housing, medical care, living cost, and cost of repatriation.
- (4) The victims of trafficking should have the arrangement to recover their legal rights..

3. Punishment of the Offenders

- (1) Definition of human trafficking and punishment for its violation should be stipulated. In terms of effective legislation, dealing with organized crime and measures to protect the witness and related persons are required.
- (2) It should be examined closely why the existing rules and regulations cannot be fully executed.

4. Prevention of the trafficking

- (1) To control demand
- (2) To eliminate the push factors in sending countries.

5. Necessity of the comprehensive policy

- (1) New legislation based on the comprehensive approach to the human trafficking is necessary.
- (2) Special organizational structure to deal with the trafficking in persons. Cooperation between the Government and NGOs. Providing training for those who deal with the issue.

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“ルールを守って、国際化”

-2003 Slogan of the Japanese Immigration Bureau

In December 1998, the then Prime Minister Keizo Obuchi of Japan pointed to “human security as the key concept to comprehensively seizing all the menaces that threaten the survival, daily life and dignity of human beings” (UN Press Release, January 14, 2001). He subsequently announced the creation of a Trust Fund for Human Security in March 1999 with an initial contribution from Japan of 500 million yen. By 2001, the Trust Fund amounted to approximately \$170 million, the largest of its kind established within the United Nations. Subsequently, a Commission on Human Security (CHS) was created by the UN Secretary General on January 24, 2001.

Assigned to head the CHS were the Nobel Laureate Amartya Sen and Sadako Ogata, the former UN High Commissioner on Refugees who is also the most visible female international leader in Japan, a country where the status of women remains low even according to the latest study released by its own Prime Minister’s Office (July 2003).¹ The CHS was created to “protect and empower people who face critical and pervasive threats and explore a concept of human security as an operational tool for policy formulation and implementation” (Asahi Shimbun, Feb. 24, 2003). The categories of activities supported by the CHS Trust Fund cover such issues as poverty, refugees and internally displaced persons, medical and health care, including HIV-AIDs, drug control and trafficking of women and children.

Japan’s involvement in the CHS is another addition to an already long list of high profile yen diplomacy with regards the issue of trafficking. Japan has given generous monetary and/or personnel contributions to United Nations organizations that pursue trafficking issues and has also hosted several international conferences on trafficking with appearances of its leading bureaucrats and government officials.²

¹ The Prime Minister’s Office on Gender Equality ironically replaced the original Committee on Prostitution that foresaw laws and policies concerning prostitution. It publishes annually the White Paper on Gender Equality, comparing the situation of women in Japan to other countries in terms of wages, political involvement, educational attainment and so on.

² These include the Centre for International Crime Prevention (CICP), the UN Office on Drugs and Crimes (UNODC), Interregional Crime and Justice Research Institute (UNICRI), Development Fund for Women (UNIFEM), UNCHR, UNICEF, ILO, and others. Japan officially hosted the Asia-Pacific Symposium on Trafficking in Persons (July 2000), and the Second World Congress against Commercial Sexual Exploitation of Children (December 2001), among other major conferences.

Despite all these efforts, however, when the U.S. State Department released its Trafficking in Persons Report for the year 2002, Japan was the only G8 member country included in the Tier 2 list that included countries like Bangladesh, Bulgaria, El Salvador, Guatemala, Mali, Nigeria, Ukraine and other developing countries. The TIP Report is divided into three tiers: the first tier includes countries that comply with the Trafficking Victims Protection Act; the second are those “that are not in compliance with the Act but are making significant efforts”; and the third, “countries that are not attempting to comply.”

The Report states that:

Japan is a destination country for women trafficked for commercial sexual exploitation and for men trafficked for labor purposes. Some international trafficking exists, as illegal migrants engaged in commercial sexual exploitation are sold and become bound by debt to the new “owner.” Female trafficking victims come from Southeast Asia, especially Thailand and the Philippines, and increasingly from Colombia, Russia and other states of the former Soviet Union. Male victims come primarily from China and other Asian countries.

The Government of Japan does not yet fully comply with minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Although Japan does not have a law against trafficking, some traffickers have been prosecuted under related laws. Investigations and punishments appear to be uneven, with some traffickers being tried for minor crimes and receiving light or suspended sentences. In general, trafficking victims are viewed as illegal immigrants under Japanese, and are deported, which is inappropriate treatment for victims. Protection is not available to all victims; temporary shelter is only provided to foreign victims who approach the government for help. Police and immigration officials have received special training to assist victims of trafficking. Various measures to protect witnesses who testify against traffickers are in place, although victims are generally not encouraged to press charges. The government engages in awareness raising on Japanese laws, particularly those that prevent commercial sexual exploitation of children, and has sponsored international anti-trafficking conferences. Japan has also sponsored anti-trafficking information campaigns in source countries. Other prevention efforts include assistance to international organizations that conduct economic and social development programs in source countries for at-risk individuals.”

The Philippines was also included in the same Tier 2 as Japan. Commenting on the reasons for its inclusion, the TPI explains that:

The Philippines is a source, transit, and destination country for internationally trafficked persons. Women are trafficked primarily to destinations in Asia, Europe and the Middle East. Adults and children are trafficked internationally from poor, rural areas to urban centers for the purpose of sexual destination as well as a transit country for mainland Chinese nationals trafficked to the Pacific Islands nations or to North America.

The Government of the Philippines does not yet fully comply with minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. While there is no specific anti-trafficking law, penalties are appropriately severe under other relevant law. The law prohibits forced and bonded labor by children. Convictions under the laws related to trafficking are not frequent, due primarily to the over all ineffectiveness of the judicial system. In 2001, the government increased the number of firms it closed for illegal recruitment over the previous years. In terms of protection, the government cooperates with religious organizations and other NGOs that provide social services. In some cases, the government directly provides in-kind aid. Repatriated victims receive medical aid, shelter, and financial assistance. Trafficked persons are rarely detained, jailed or deported and may request temporary residence status. Consular and diplomatic officials receive anti-trafficking training focusing on protection of exploited overseas workers. Victims can file civil suits or seek legal action against traffickers. A Witness Protection Program under the Department of Justice offers relocation and job placement assistance, but the program is under-funded and not widely known. On prevention, the government participates in a number of regional and international anti-trafficking initiatives. No new coordinated government anti-trafficking public education effort has been launched, although migrant workers receive pre-departure briefings on labor rights and abusive employment practices, and the government disseminates the names of illegal recruiters via Internet sites and posters....

It could not be helped but compare the assessment of these two countries that were lumped together in the Tier 2 list: first, while Japan is a destination country, the Philippines is a sending country for trafficked persons. Second, while Japan is a highly industrialized country, the Philippines remains highly dependent on the remittances of its overseas workers. Third, while both countries were at equal footing at the time of the State Department assessment of “not yet fully complying with minimum standards for the

elimination of trafficking, however, ... making significant efforts to do so,” the Philippines had, among other things, established an Inter-Agency Council Against Trafficking and Center for Trafficking that maintains a database on all suspected trafficking-related cases. Recently, the Philippine Senate passed an Anti-Trafficking in Persons Law³ that provides a maximum penalty of life imprisonment and fine of up to 5 million pesos to traffickers, and likewise criminalizes any person who engages the services of trafficked persons.

True to form, Japan immediately approved the release of \$243,000 assistance to the Philippines to support some of its anti-trafficking programs (MOFA, 2003). Shozo Azuma, Japan’s Senior State Secretary for Foreign Affairs also commented that “Japan provided \$84,000 in aid to Thailand’s Empower Foundation, which is active in the protection of women who work in the sex industry and has provided support through grass-roots grants for NGOs actively involved in the care of victim children in Southeast Asia” (MOFA, 2000). Yet, no such program of its kind currently exists within Japan, nor is there any effort to conduct a state-funded undertaking to fully understand the enormity of the problem of trafficking that is happening within its boundaries.

Why then has Japan been generous in giving funds to other countries so that they could get eradicate trafficking, yet been slow in combating the same problem within its territory? The answer probably lies within the conflicts that the issue of migration has brewed between the national and local authorities, between bureaucracies, and most importantly, within the postwar Japanese society itself.

This paper will look into how trafficking, within the context of migration issues, is viewed in a) academic studies; b) domestic and international laws and covenants to which Japan is a signatory; c) interviews of Japanese officials; and, d) selected court cases involving Filipinos in the Kansai area, for the period 2001-2003.

Migration Studies in Japan

The interest in migration studies in Japan was a direct consequence to four developments in its history: first, the colonization of Korea and China in the prewar period that resulted in the massive entry of migrants from these two areas; second, Japan’s defeat in World War II that displaced members of these two migrant communities who have been considered up to that point as *de facto* Japanese citizens; third, the massive and on-going globalization of migration to Japan not only from East and Southeast Asia but also from former Eastern European states, and fourth, the officially sanctioned “u-turn” migration of ethnic Japanese

³ Officially known as the Republic Act 9208, promulgated on May 27, 2003. A subsequent “Rules and Regulations Implementing the Anti-Trafficking in Persons Act” was also promulgated.

from Brazil and Peru (even the Philippines), that is currently putting pressures on the Japanese government and society.

Iwasawa (1986) traced the historical roots of the *zainichi gaikokujin* (resident foreigners) to the displacement of nearly a million and a half ex-Japanese Koreans and thousands of Chinese after Japan's defeat in World War II compelled it to give up its colonies and territories. He linked this colonial past to legal issues that later confronted the Koreans and Chinese specifically with the passing of the 1951 Immigration Control and Refugee Recognition Act (heretofore referred to as ICRRRA) which was formulated primarily to clarify their status as they were reduced from being *de facto* Japanese citizens to mere residents. Many were permitted to acquire Japanese citizenship, but the bulk were instead given the status of *teiju* (special long-term resident permit) to permit them to stay legally, while officially holding passports which attested to their South or North Korean citizenship. On the other hand, Japan's recognition of the People's Republic of China in 1972 left resident Chinese with little space to veer, especially for those who wanted to maintain ties with Taiwan.

De Vos (1966) published the results of his research on Korean communities which documented the difficulties of what he called as Japan's "invisible race," linking their sufferings to the deep-seated conviction that the Japanese are and have remained ethnically homogeneous. Weiner (1994) further investigated how the illusion of homogeneity was created in Japan through the exclusion of minorities in mainstream historical studies. He looked at the limits imposed upon the second and third generation minorities and the widespread discrimination in work, marriage, education and social relationships. Pak (1995) traced the current contradictions and tensions between local and national level migration policies in Japan as rooted in unresolved tensions between economic interests and national identity issues that generate insularity and homogeneity.

In the late 1980s, the filtering to the country of foreign male workers engendered research that introduced the phenomenon of the *Japayuki-kun*, a term used to refer to undocumented, male laborers. Issues related to migration -- from policy, economic, legal, public safety to human rights -- were conducted by governmental and non-governmental institutions, political parties and academicians. These studies came to form the backbone of current migration studies in Japan, prompting the formation of study groups within political parties such as the Liberal Democratic Party, Democratic Socialist Party and Komei Party to discuss internally the question of the foreign migrant labor. Even the powerful association of businesses started discussions about what to do with the huge presence of a pool of cheap labor.

Komai (1995) investigated the conditions of the Iranian workers in Tokyo and later on expanded to include all foreign workers in the country. He argued that migrant laborers

have contributed greatly to the Japanese economy as they perform crucial “3-D” work shunned by the people, and pushed for promulgation of laws that would protect and integrate foreign workers into the Japanese society. Governmental agencies both in Japan and in the Philippines also began to undertake their own studies to clarify the tremendous gap between Japan’s official legal position on the acceptance of workers, and the absence, or ambiguity of regulations that bridge this gap. In these studies, again, the focus is on men laborers with hardly a reference to women migrant workers.

However, in mainstream Western and Japanese migration studies, the emergence of women entering Japan and into a very specific work sector in the entertainment industry did not produce massive inquiry or interest. It was the feminist writers who started to focus on the phenomenon of the *Japayuki* –*san* and there was a more concerted effort among them to connect this phenomenon to gender issues and/or global factors prior to and at the onset of migration. Matsui (1987), one of the early prolific writers on the topic, situated it within Japan’s historical acceptance of prostitution and to the expansion of the country’s sex and entertainment industry fueled by the economic growth. De Dios (1988) pointed to the contraction of the economies of oil-producing states in the Middle East and the prolonged recession of the Philippine economy in the 1970s as the trigger for Filipino women to look for work outside of the country. She was the first to raise the issue of trafficking of women to Japan, under the guise of entertainment.

Allison (1994), an anthropologist who worked in a bar in Japan to observe the behavior of men who frequent these watering holes, concluded that the entertainment industry is not only an extension of the corporate world, but also reflects the thin line between the “work and play” attitude of the Japanese *sarariman*. Ballescas (1994) conducted empirical studies on the complexities of the life of an entertainer, from the time that the decision to migrate was made to the process of negotiating with labor brokers. She also looked into the work conditions within the *o-mise* (place of work, usually a karaoke bar, pub or nightclub).

A groundbreaking research by Wayama (1995), a medical doctor who specializes on psychological problems arising from multiculturalism, found a high level of stress among foreign women married to Japanese men. He based his findings on clinical diagnosis of Filipino and Korean mail-order brides in the Tohoku area, attributing stress to a combination of the *maza-con* (mother complex) of the spouses and criticized the Japanese society and the state that sanctioned these marriages as not firmly grasping the serious responsibilities and complications of international marriages. This lack of preparations for “long-term care” to protect these women, their children and their marriages are creating social problems for these women and families. As will be discussed, the mail-order system has encouraged trafficking through the use of “dependent of a Japanese national” visa (there being no existing “spouse visa” category under Japan’s immigration laws).

The most comprehensive study on the sex industry so far is the ILO Study edited by Lin Lean (ILO, 1998), where several researchers investigated the problem of prostitution in several countries, connecting it to the propensity of underdeveloped countries to depend on the earnings of its migratory labor force, and to the implicit acceptance of developed countries of the system of exploitation. However, the authors viewed prostitution mostly from an economic perspective, concluding that most of the women who end up in this industry are willing workers. The study most seriously failed to situate the women's situation within the oppressive economic structures that created the market for prostitution, and the social and cultural norms that aggravate and perpetuate their situation. There was hardly any effort to also incorporate the issue of race, class and nationality, pursuing only the economic bases that push women to work in an industry that degrades them as human beings.

It is notable that in mainstream Western academic publications, for example, on postwar Japanese labor history (see for example, Gordon, 1998), the impact of the entry of Filipino women to Japan hardly elicits intellectual curiosity. The phenomenon is simply noted as with passing reference, relegated to footnotes or in brackets as exemplified by Yamanaka's comments (1994):

(Interestingly, while women formed the first wave of Japan's guest workers in the late 1970s, it was only after men began to arrive in large numbers in the mid-1980s that the foreign worker problem arose to prominence.)

The uneasiness in dealing with the "women migrant" issue could be attributed to the fact that their entry to Japan was into the very specific work of entertainers, a word that has become a euphemism for the prostitution. Like male migrants, the primary aim of women entering Japan as entertainers is to work, but the door that they subsequently opened widely for others has not been given due analysis despite the fact that more than half of all foreign workers coming into Japan are classified as entertainers, and entertainment is also the (visa) category that has continued to increase most markedly in recent years. In fact, the Ministry of Justice (2002) lists several categories of work undertaken by migrant women from the as "hostesses, prostitutes, waitresses, service and entertainment industry workers." How each is different is not clarified, and even the current migration laws have remained ambiguous regarding these terms.

Wayne (1995), in a desperate attempt to explain the phenomenon of Filipino women entering specifically the entertainment industry, even attributed it to the closed market for domestic helpers.

In Japan, the labor market for maids, in-home providers of childcare, and housekeepers is limited mainly to foreign professionals and diplomats who are temporarily posted there. This is a major reason why so many female immigrants from Asian countries have been forced into Japan's "entertainment" sector, in other countries *many of them would be working as live-in maids.* (Italics supplied)

The question of how to quantify "entertaining" as "labor" has proven to be difficult as estimates of how large the entertainment industry has grown remains very sketchy. The Asian Wall Street Journal (2000) estimated it at around US\$33-84 billion while Osteria (1995) calculated the entertainers' contribution to the Philippine economy to be in the vicinity of several hundreds of millions of dollars.

Roots of Filipino Migration to Japan

Historically, the Japanese were the ones migrating to the Philippines until World War II. Japan had a state-sanctioned migration policy at the turn of the twentieth century that proved to be so successful that by 1939, the Philippines was home to around 30,000 Japanese settlers, the largest Japanese community in Southeast Asia (Shimizu, 1985). They were primarily construction workers in the north, hemp plantation workers in the south, fishermen or shop owners in the retail trade. The *karayuki-san* (the Japanese prostitutes "bound for China," from which the term "*Japayuki-san*" was derived) plied their trade in heart of the two cities of Manila and Davao where large Japanese communities existed.

In the immediate post-war period, hundreds of Filipino women were repatriated to different parts of Japan together with their Japanese spouses and children (NHK, 1990). Until the mid-1970s, a small number of Filipino women could be found only in Okinawa as spouses of workers and entertainers in the U.S. military installations or as domestic helpers working in diplomatic missions and foreign multinational corporations (Suzuki, 1996).

In 1973, however, an entirely new era of migration between the two countries was opened with the ratification of the Philippine-Japan Treaty of Amity, Commerce and Navigation (henceforth referred to as RP-Japan Treaty).

The RP-Japan Treaty was drafted in the wake of the San Francisco Peace Treaty in 1951 and subsequently ratified by the Japanese Diet in 1961. However, it remained shelved for two decades in the Philippine legislature due to lingering anti-Japanese sentiments. With

the abolishment of the Philippine Congress after the declaration of martial law in 1972, the then President Marcos ratified the treaty 10 days before the state visit of Prime Minister Tanaka Kakuei. This treaty abolished all restrictions on travel and trade and within a span of one year; Japanese investments expanded by 400% (Tsuda, 1986) and resulted in the influx of businessmen and workers, primarily men. This consequently led to the development of service-related businesses catering exclusively to the Japanese market, including nightclubs and bars, and by 1975, tourist arrivals to the Philippines were comprised mainly of groups of Japanese men, usually in company-funded vacations that came to be known as “sex tours.” (Matsui,1997)

Birth of *Japayuki-san*

Protest actions within Japan, Korea, the Philippines and other Asian countries were mounted by feminist, religious and other non-governmental organizations against sex tours, specifically during the Southeast Asian visit of Japanese Prime Minister Suzuki Zenko (Asahi Shimbun, 1981). The mass actions were successful in drawing international attention to this issue, but ironically, the result had a more far-reaching complication as it signaled the birth of the *Japayuki-san* (Valiente, 1987). From an insignificant number in the mid-70s, Filipino women entering under tourist visas to Japan ballooned to 9,100 in 1979, reaching its peak in 1992 (Ministry of Justice, 1993).

Before 1990, the only way for most women who want to work illegally in Japan was by securing a tourist visa, which expressly prohibited employment and limited the stay in the country from a few days to a week. After the revised ICRRRA was put into effect in 1990, an entertainer visa category came to be issued that permitted women to work in specifically in the entertainment industry. It is renewable twice for a maximum of six months.

The term “*Japayuki-san*” came to be used and up to the early 1990s, was used almost synonymously to refer to Filipino women entering Japan. By the mid-1990s, women from other developing countries filtered in, and the inflow now includes women from the former Eastern European states. The peak of entry of Filipino women using tourist visas was in 1991, which could be attributed to the fact that entertainer visas became available from 1990, and at the same time other “entertainers” were entering the country through other means, for example, through student and trainee visas. When the arranged marriage system became commercially successful for brokers, fake marriages have become one of the easiest methods to traffic women to Japan, as the paperwork is simple, and provides a stable status to force women to work in the sex industry.

Marriage to Japanese men thus created another a new phenomenon within the Japanese society: the permanent settlement of Filipino women in Japan. This caught the Japanese

law enforcement agencies in particular, and the Japanese society, in general unprepared because by the temporary nature of the work that they originally were given permission to stay, the Japanese immigration laws have supposedly clearly defined that they were not welcome to stay long. Legally and socially, Japan has always prided itself with the pronouncement as a “non-migration country” (Immigration Bureau, 1996).

We do not accept immigrants...The migration law does not provide conditions for the acceptance of immigrants...we have no provision for granting permanent residency at the time of initial entry. Furthermore, this means that on the policy side it is necessary to do so as much possible to prevent foreigners in general from staying long or settling down.

The longer presence of newcomers became evident by the mid-1980s when official statistics showed an overwhelming number of overstayers (Immigration Bureau, 1989). Then in 1989, the first batch of mail-order brides came to arrive in a remote farming community in Yamagata. From 1990, the settlement became increasingly permanent, with Filipino former entertainers contracting marriages with Japanese men in what is now popularly referred to as *kokusai kekkon* (international marriage).

No. of Overstayers (As of Jan 1, 2002)

(Source: Ministry of Justice, 2003)

COUNTRY	MALE	FEMALE	Total
Korea	20,747	34,417	55,164
Philippines	10,456	19,193	29,649
China(PRC)	15,749	11,833	27,582
Thailand	8,020	8,905	16,925
Malaysia	5,280	4,817	10,097
Taiwan	4,346	4,644	8,990
TOTAL	118,122	105,945	224,067

The Ministry of Health and Social Welfare (1995) started to collect data on international marriages since 1965 which showed that the early pattern was for Japanese women to

marry western men, as exemplified by the influx of approximately 50,000 “war brides” in the period immediately following the American occupation of Japan. Since the start of the 1980s, marriages between Japanese men and foreign women have been on the increase. While data on marriages between Koreans (both South and North), Chinese and American women were closely monitored from the mid-1960s, marriages to women of other nationalities were non-existent until 1992 (Ministry of Health and Social Welfare, 1998). It was after this period when brides from the Philippines joined Koreans and Chinese as the top marriage partners to Japanese men. Around 25,862 marriages were recorded in 1992 in which the partners were women from Korea, China and the Philippines, a three-fold increase compared to the 1982 figures. By 1993, Filipino women started to dominate the category of foreign spouse, when 32% of all recorded intermarriages were recorded between Japanese men and Filipino women (Ministry of Health and Social Welfare, 1993.) Currently, it is estimated that more than 60,000 Filipino women are married to Japanese men.

No. of Registered Foreigners

(As of December 2001)

	Korea	China	Brazil	Philippines	Peru	US	Total
Male	298,984	164,803	145,924	24,552	27,512	29,265	833,313
Female	333,421	216,422	120,038	132,115	22,540	16,979	945,149
Total	632,405	381,225	265,962	156,667	50,052	46,244	1,778,462
Permanent Residents	503,610	62,838	20,291	26,994	11,064	6,915	684,853

(Source: Japan Immigration Association, 2002)

Omote: Japan and the International Conventions on Trafficking and its Related Domestic Laws

Trafficking became a world-wide issue when NGOs began to push for international laws to protect the rights of migrants, women and children in the face of the globalization and feminization of migration. As a result, an almost universal definition of trafficking is now used, which is “the recruitment, transportation, transfer, harboring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud,

deception, abuse of power or a position of vulnerability, or by 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” (UN, 2003).

The U.S. Department of State Trafficking in Persons Report 2002 was not alone in pinpointing to Japan as a major market for trafficked women and children. International organizations such as IOM (1997), ILO (1998), CATW (1998), HRW (2000), UNICRI (2002), and others, have all presented facts and figures, including testimonies of victims and returnees to underscore Japan’s active role in keeping the sex industry, where the victims eventually fall into, lucrative and flourishing. UNICRI strongly stated that “there is a continuum between smuggling and trafficking as victims who depart the Philippines (undocumented or with forged documents) are trafficked upon reaching the country of destination,” while the IOM bluntly reported that “Japan has the largest sex market for Asian women, with over 150,000 non-Japanese women involved, mainly from the Philippines and Thailand.”

So what has been the official stance of the Japanese government in the face of all these reports? On the international level, Japan is signatory to the most important conventions on which trafficking laws and policies world-wide are based. These include the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees and the related Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention on the Rights of the Child and the Protocol on the Sale of Children, Child Prostitution and Child Pornography, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the UN Convention on the Protection of All Migrants, Workers and Members of their Families (recently enforced officially on July 1, 2003), the UN Convention Against Transnational Organized Crime (2002) and the subsequent Protocols against Trafficking in Persons and Smuggling of Migrants (2002).

The Ministry of Foreign Affairs (2001) proudly summed up its efforts to combat organized crime, including trafficking:

“Measures by Japan

(1) Japan actively participated in the deliberations on the Convention against transnational organized crime in the United Nations... and in the context of the G8, Japan demonstrated leadership in ... in its Capacity of the Chair of the Lyon Group (President of the National Police Academy and Former Director-

General of the International Affairs Department of the "Japanese" National Police Agency). Japan was particularly active in the coordination among G8 members and Asian countries concerning the Convention and the three related Protocols, and contributed to the agreement over the draft Convention and two of the related Protocols.

(2) Furthermore, in order to strengthen the criminal, judicial, and law enforcement systems of developing countries mainly in the Asia-Pacific region, Japan has provided a variety of support for the development of the legal framework, and has provided training to judicial and law enforcement experts in developing countries through such organizations such as the United Nations, Asia, and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEM). In January 2000, Japan hosted the Asia-Pacific Symposium on Trafficking in persons and also the Asia-Pacific Law Enforcement Conference against Transnational Crime in 2001.

Japan's active international role, however, merely reflects the state of the country's official stance towards trafficking: all rhetoric in the international arena, no action on the domestic front. For example, in the Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime held in Bali in February 2002, the report noted that

"Japan actively participated in the discussions from the standpoint of placing importance on transnational issues, based on Prime Minister Junichiro Koizumi's policy speech of January 2002. Vice-Minister Sugiura's opening statement on the root causes of these issues introduced Japan's measures and set the tone for the conference as a whole. Japan also contributed to the organization of the conference's results during the ensuing discussion, including the importance of follow-up process." (Report on the Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, March 1, 2002.)

On the Domestic Front: Theory vs. Reality

There are already several laws that are in place that could be utilized to combat

Law	Penalty
Indecency through compulsion (Art. 176, Penal Code) Constructive compulsory indecency (Art. 178, Penal Code)	Prison term of 6 months or more but not exceeding 7 years
Rape (Art. 177 of Penal Code) Constructive rape (Art. 178, Penal Code)	Prison term for a definite term of 2 years or more
Public Indecency (Art. 174, Penal Code)	Prison term not exceeding 6 months or a fine not exceeding ¥300,000, or custody or minor fine
Distribution of obscene literature, etc. (Art. 175 of the Penal Code)	Prison term not exceeding 2 years or a fine not exceeding ¥2,500,000 or minor
Act of inducing children to practice obscene acts (Art. 34, Child Welfare Law)	Prison term not exceeding 10 years or a fine not exceeding ¥500,000
Act of keeping a child under one's control or for purposes harmful to the child (Art. 34, Child Welfare Law)	Prison term not exceeding 1 year or a fine not exceeding ¥300,000
Persuasion of prostitution (Art. 5, Prostitution Prevention Law)	Prison term not exceeding 6 months or a fine not exceeding ¥10,000
Solicitation for prostitution (Art.6, Prostitution Prevention Law)	Prison term not exceeding years or a fine not exceeding ¥500,000
Prostitution through embarrassment (Art. 7, Prostitution Prevention Law) Contracts for Prostitution (Art. 10, Prostitution Prevention Law) Furnishing of a place for prostitution (Art 11, Prostitution Prevention Law)	Prison term not exceeding 3 years or a fine not exceeding ¥100,000
Business of making a person prostitute (Art.12, Prostitution Prevention Law)	Prison term not exceeding 1 year a fine not exceeding ¥300,000

the problems associated with trafficking, foremost of which are: Article 31 of the Constitution that stipulates that “no person shall be deprived of life or liberty,” the Law Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting

Children, the Child Welfare Law,” the Labor Standards Law, and the Employment Security Law.

Japan’s Penal Code also stipulates that the law may be applied to serious crimes committed by Japanese nationals outside of the Japanese territory, with regard to indecency through compulsion, rape, constructive compulsory indecency, constructive rape, forced indecent act resulting in death or injury and solicitation to commit fornication. Furthermore, there is also the Travel Agency Law, that theoretically prevents travel agents and their employees from providing services that constitute the so-called sex tours to the Japanese. Examples of penalties in the commission crimes that could be used in trafficking cases are the following (Ministry of Justice, 2001): In addition, the Penal Code provides for the punishment of anyone kidnapping by force or allurement a minor, and anyone involved in buying or selling another for the purpose of transporting him/her abroad. There is also a Prostitution Prevention Law that criminalizes “sex for a fee” that targets primarily brokers and employers

The Law on Control and Improvement of Amusement and Entertainment Businesses of 1999 was passed to supplement the Prostitution Prevention Act. It regulates sexual acts not covered in the Prostitution Prevention Law, and also prohibits entertainment and amusement businesses from "allowing persons less than 18 years of age to engage in jobs involving meeting with guest or dancing with guests," and "allowing persons less than 18 years of age to attend to guests from 10pm until sunrise."

Even the ICRRA (the Immigration Law) has provisions that prohibit “welfare crimes,” those that injure the welfare of children, for example, child abuse and exploitation that could be used to protect non-Japanese children (Article 73-2. Assisting illegal employment (Art. 73-2) was also later illegalized under the ICRRA.

All these laws are in existence and could be used anytime to discourage trafficking in Japan. However, due to the very nature of Japanese society, most of these have been applied only to Japanese citizens. In addition, the legal costs to pursue cases are so exorbitant given the small number of lawyers, judges and detention centers, so that if there are any convictions, if at all, the punishment tend to be suspended, short, non-accumulative, and with small fines” compared to the amount culled from the lucrative trafficking business.

The Japanese government has been generous in extending research and program development against trafficking to other countries, only one official research that has been done to assess the problem of trafficking within Japan. In 2000, the Life and Safety Bureau commissioned a private research center in Tokyo to conduct a survey-research on Thai women, in which members of the National Police joined as co-researchers. The report was

never made public. The head of the *Seikatsu-Anzen Kyoku* of the National Police, in an interview on May 29, 2003, said that “it relies on information from NGOs and the IOM.”

The National Police Agency in answer to a question during a meeting of the Prime Minister’s Office (2003) regarding what measures it has taken to combat trafficking merely stated that “in 2002, there were 901 investigations of anti-prostitution law related cases, of which 785 cases were recommended for prosecution.” The NPA did not state that in reality, the victims are deported and the victimizers are given light, if not, suspended sentences. Furthermore, the proceedings clearly equated trafficking with the criminal act of prostitution.

Other Factors that Exacerbate Trafficking as a Taboo Issue

In addition to domestic laws that seem to be more than enough to curb trafficking, there are other factors that should be taken into consideration in order to understand why trafficking has remained a “taboo” issue in Japan. These include conflicts between the different government agencies and institutions in Japan, the negative public opinion with regards to the presence of foreigners in the country, that could directly be linked to the successful efforts of the National Police Agency to blame the rising crime to foreigners.

A fact that is almost erased in the historical books of Japan is the important contribution of the members of its ethnic Korean and Chinese communities in postwar economic recovery and reconstruction. They provided the needed pool of cheap labor, much like the Asians who migrated to the United States and helped create the foundation of America’s dominance in agriculture, mining, fisheries, transportation and other industries. However, as Japan’s status as an economic power grew, pressures to accept more responsibility in the international arena became stronger, including the acceptance of refugees from 1975. The term “internationalization” became the slogan for the Ministry of Foreign Affairs, a situation that remains sensitive as it sometimes finds itself in a collision course particularly with the Ministry of Justice.

On the other side is the Ministry of Justice, which has the jurisdiction of the police and immigration. The most anti-immigrant among all government agencies is the National Police Agency (NPA), whose annual White Paper on Crime has consistently blamed the rise of criminal activities to the increasing number of foreigners. It is also interesting to note that a top-ranking official of the NPA is Japan’s foremost trafficking expert and was instrumental in the formulation of the basic conventions of trafficking. In his report (2000), he said that “the police handled 1,522 cases of foreign women charged with immoral conduct (crimes related to prostitution, obscenity and law regulating adult entertainment business). By nationality,

they included 497 Koreans, 342 Thais, 227 Filipinas and 142 Colombians.” The same report did not specify statistics with regards to brokers and handlers.

Prostitution-related Offences Cleared by Applied Provisions

In 2002, the National Police Agency released the data of prostitution cases that were recommended to the Prosecutor’s Office for prosecution. It is believed that most of these women were prosecuted and later deported, as most of the cases would not have flourished if the women had legal status of stay in Japan. The total number of cases is also small, considering that there are literally thousands of women who end up working in the sex industry. However, the NPA does not release figures to show the number of men prosecuted. Despite the high profile presence of Japanese officials in international anti-trafficking bodies, their personal opinions that “trafficking victims are merely illegal migrants with crime syndicates behind them” (HRW, 2000) is the same line toed by the individual Japanese officers who were interviewed for this study.

Acceptance and Disposition of Anti-Prostitution Law Cases

In an interview an Immigration Police Section Officer in Tokyo candidly stated that:

“Generally speaking, there is no trafficking of women in Japan. Those who come to this country know beforehand what awaits them here. The offenses against public morals (fuzoku) are charged by the police, not by the Immigration Bureau. The police arrest the women if they are in violation of the Anti-Prostitution Law, and then public prosecutors would indict them. After that, the Immigration Bureau is responsible for their deportation. We deport the hostesses, as most of them are found to be violating immigration laws.

In a case for example in Chiba, twenty-two Filipinos were arrested in a club but then released to us (Immigration) because the police detention rooms were full. The police did not bother to call interpreters to interrogate them, therefore, was not handled as cases to be filed at the public

prosecutor's office. It was processed by the Immigration for immediate deportation.

It is bothersome to question their involvement in the sex business. The Immigration Bureau is just concerned with the legality of their visa status. The hostesses may be victims in some ways, but we would have to arrest and deport them anyway.

A police officer in charge of international relations strongly disagreed and said that based on his 20-year or so experience, trafficking and smuggling exists in Japan not only involving women but also “children who really were 13, 14 or 15 years old when they entered Japan, but on paper, were passed off as adults. There are also trafficked boys and men, those who end up working in ‘host clubs’ that cater to women. These victims of trafficking could be found not only in urban or rural areas, but also in hot spring resorts, military bases, and industrial establishments, some in ‘gaijin clubs.’ Many of them are often traded and exchanged like a commodity.”

Another grey area which the Japanese government has not acknowledged is the extent of the involvement of corrupt officials in the entertainment industry. A police officer who was one of those originally trained in trafficking issues gave an honest assessment that:

All kinds of people are involved in corruption in this industry. From both countries (Japan and the Philippines). There are staff and officials of the Philippine consulate and embassy in Japan who are very much involved in this business. In fact, it is quite difficult to invite a labor attaché, for instance, to play golf before or after the inspection of the ‘*omise*’ that they would have to issue or renew the permit to ‘import’ Filipino women. Why? Because there are many, many invitations extended to those officials from different promoters at once. You must be special in succeeding to invite and ‘entertain’ them. Some past embassy peoples made a big fortune during their ‘mission in Japan. There was once a woman Consul General, quite known and often recognized inside many ‘*omise*’ where the Filipino women were working. She was a notoriously difficult

person to please and satisfy, according to the Japanese promoters.

In enforcing rules, an immigration officer sums up the difficulty it faces as it is faces in reviewing the current laws and policies regarding the entertainment industry:

The *Japayuki-san* issue has been talked about for the last twenty years or so. There were efforts to correct the terrible situation of those entertainers, but it has been difficult. Because, if you try to control them too severely, the related industry people as well as parliamentarians exert pressures. In fact, the Philippine government itself is still promoting (its women).

CASE STUDIES:

Court Cases Involving Filipinos in the Kansai Area

For this study, 67 cases in a District Court in the Kansai area involving Filipinos for the period 2001-2003 were studied (see Appendix for the complete list). This involved reading the original documents from the time of the police investigations, the reinvestigation at the Prosecutor's Office, and court procedures and decision.

The number of women, according to their nationality and the kind of occupations that they are engaged are summarized in the following table:

Because of the absence of an anti-trafficking law (and consequently, the unfamiliarity of police, prosecutors and judges with the issue of trafficking), criminal cases, although easily identifiable as trafficking (i.e., element of force and violence, trickery, fake documents, minor age), were prosecuted uniformly under two laws: "Violation of Immigration Law" which usually refers to illegal stay, and the "Violation of Foreign Registration Law" whereby the defendant fails to officially register as an alien. Under the former, twenty-four males and twenty-one females were found guilty, while under the latter, four males and three females were found guilty. The perimeters that define under which law a person arrested is charged is unclear, but the usual sentence is guilty with hard labor but with suspended

sentence. After the sentencing, the defendants are summarily deported as an immigration police officer is usually present at the time of the sentencing.

The surprising result of the research is the large number of women indicted in drug-related cases. Except for one male, 11 females were charged and found guilty of the use of stimulant drugs, or “shabu.” All users were working in the entertainment industry. Except for one murder case, there is no prostitution-related case prosecuted in the period covered by the study, despite the fact that Osaka has one of the biggest entertainment districts in Japan, and that the region where it is located has traditionally been home to syndicates that control the “*mizu shobai*” industry.

The Intersection between Trafficking, Internal Displacement and Anti-Terrorism Policies

Three of the women included in the above court cases reviewed were indicted with Violation of Immigration Law and subsequently deported to the Philippines. They were traced and interviewed in the Philippines. These women shared a common background: that they were originally internally displaced persons (IDPs) from areas in Mindanao, where an active Muslim insurgency is being waged, and consequently, anti-terrorism efforts had intensified following the 9/11 tragedy.

Case 1

CA was 21 years old at the time of interview. She was originally from North Cotabato, 4th child of a Christian father and Moslem mother (later converted to Christianity). After experiencing heavy fighting in the place of residence, the family moved to an evacuation center in Kolambugan, 50 kilometers from Iligan City in 1999. A travel agent, introduced by a fellow evacuee to her parents, promised jobs to her and several other women as factory workers in South Korea. She was charged 90,000 pesos as fees for expediting her application. To raise funds, she borrowed from a distant relative, a Filipina married to a Japanese man. The travel agent disappeared without trace and was left to pay the debt.

Forced to repay back her loan, she was introduced to a Japanese broker, who promised to settle her loan if she accepted the job as domestic worker in Japan. In Aug. 1999, at the age of 17, she came to Kobe using the passport of her relative and traveled together with her “husband.” She was “auctioned off” and then forced to work to pay her debt that amounted to more than 1 million yen (to cover for the original debt, transportation, broker’s fees, fees to the “husband”, food and lodging, and a ballooning debt for regular remittances to her family). Despite the wish to go home, she decided to stay and continue to work as a prostitute until a sting operation that led to her arrest in December 2002. She was deported in March 2003.

At the time of interview, she lived in Zamboanga City and “services” American soldiers stationed there, the main reason being, “I do not have any other skill to buy food for my family.”

Case 2

TD was 24 years old at the time of interview, eldest daughter of family of six, and originally from Basilan, of Chinese descent. In 2000 her family was forced to evacuate from Basilan and subsequently moved to Davao. She was introduced to a Japanese resident in Davao, notorious for running an “arranged marriage” and recycling business. She later contracted marriage with a 27-yr old Japanese Korean from Sakai City, Osaka. Met the Japanese only briefly during the marriage ceremony in Davao, then again, when she was met by him in Kansai airport after six months. She was given a 6-months “dependent of a permanent Resident” visa at the time of entry.

Upon arrival in Osaka, she was taken to an apartment to live with 6 other foreign women. Later,

she was transported to Hokkaido to work in a snack bar to pay for her mounting debts worth 600,000 yen. She ran away a few months later, back to her “husband,” who renewed her visa, for an extra fee of Y300,000. Started to work in another snack bar in Sakai until her arrest for use of drugs. Departed in May 2002 since her “husband” refused to guarantee the renewal of her visa. Currently working as a dancer in Davao.

Case 3

ZA was originally from Zamboanga del Norte and was 25 years old at time of deportation. She and her family suffered from multiple evacuations since the mid-1990s due to intensified fighting and later, the entry of Filipino and American soldiers in the area of evacuation. Worked as a factory worker in Malaysia until 2000 and then returned to family in 2001 that were living in Marawi City. In April 2003, her place of residence suffered from heavy fighting between MILF and Philippine military and was forced to evacuate to a center with entire barangay.

She moved to Cagayan de Oro to find work and was recruited as entertainer to Japan, via Manila, where she worked in a Japanese-owned bar while waiting for her papers. Entered Japan in June 2002 with a 3-months entertainer visa. Forced to accept “dohan” to pay for debts and earn extra money for her family. Arrested in December 2002 and subsequently deported in April 2003. Currently working as a GRO in Quezon City.

These three cases illustrate the link between internal displacement, anti-terrorism policies and trafficking. As the end to the conflict in many parts of the Philippines does not seem to be near, internal displacement in these areas will not abate. Furthermore, the combination of the Philippine government’s inability to improve the economy to its people and Japan’s

insatiable demand for entertainment services plus the lack of anti-trafficking laws in Japan, women and children will continue to be trafficked between these two countries.

CONCLUSION

In the issue of trafficking, Japan has once more shown its “ATM mentality” i.e., the pervasive thinking that providing cash to NGOs and countries that have been identified as point of origin of possible victims will quickly help solve the problem. While providing money for research and outreach programs to third parties, it has turned a blind eye as to the reasons why a market continues to exist domestically where these trafficking victims could be absorbed easily.

There are already existing constitutional and civil laws, as well as treaties to which Japan is a signatory that could help in the control and policing of the entertainment industry. Japan also has labor laws that theoretically cover all workers and are non-discriminatory in terms of visa status like the Labor Standards Law and Employment Security Law. But in this area lies the conflict with immigration laws. Since prostitution or the acts that constitute prostitution is illegal, the women cannot make claims under these laws. The farthest they could go is to claim unpaid wages during agreed upon working hours. In addition, due to their usually illegal status and thus, fear of deportation, as well as the lack of knowledge of the system, rather than pursue a court case, they either choose to run away, change workplaces or remain quiet. The powerlessness of a woman forced into “dohan” can be illustrated by the fact that she could not force her customer to use a condom. She cannot claim unfair labor practice if a client refuses to practice safe sex.

Japan will remain to be the center of the lucrative trafficking industry because of several reasons. First, its economic power will remain to attract individuals and organizations that will aim bring in more workers in the lucrative entertainment industry. Second, the cultural tolerance of prostitution assures that there is no strong censure waiting for customers of the victims, making the demand regular and insatiable. Third, the conflicting governmental approach to solving the problems inherent in the unstoppable inflow of migrants to the country will further result in diminishing political will. Fourth, the continuing low respect for women and the social and moral problems brought about by the disintegration of families all spell a rather gloomy future for eradicating the very serious problem of trafficking.

It should also be noted that there are also factors within the countries of origin that push women into the entertainment industry: First, the socio-economic inequalities that breed poverty. Second, the lack of educational and employment opportunities for women. Third, the continuing role of the government as official brokers of its men and women as it heavily

depends on hard currency remittances as the main pillar for economic sustenance. And fourth, the race, class and gender discrimination that migrant women face whether in their country of origin or in the country of settlement or work.

RECOMMENDATIONS

Japan now is at a point of no return. There is no doubt anymore that migration will be a continuing trend and the inflow is now unstoppable. In shaping its future relationship with other countries and people, it should accept the reality that its rapidly aging society and low birthrate will spell doom in its very survival as a nation and society.

The immigration policy should now reevaluate the visa categories that are now in place, particularly the “entertainment” visa. It is this one particular entry category that has provided a fertile environment for trafficking of women and children. It should also hold serious bilateral talks with the countries of origin for trafficking victims and exercise political will to stop once and for all, this crime that debases the core of humanity.

Japan should also put efforts into research to understand the enormity of the problem of trafficking that is happening within its territories. At the same time, the people should be educated firmly not only about trafficking but also with related issues such as HIV-Aids, racism, discrimination and exploitation.

Trafficking is not only a domestic issue. It concerns all countries and societies. Thus, it should be attacked bilaterally and multilaterally, publicly and privately and with equal inputs from the government and the civil society.



Thai Women Living in Japan and Their Children

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For the last 20 years, increasing number of Asian women have migrated to Japan, including many Thai women. Around 80% of women from Thailand are forced to work in sex industry in this country. In this situation, they have to always worry about possibility to get pregnant or have sexually transmitted disease (STD). It is also quite difficult for them to have either knowledge or a preventive of STD.

During living and working in Japan, these women are acquainted with various people including Japanese customers of sex industry or Thai men living in the same community. Many of them live together or get married and have children.

As a result, the number of Thai women who become pregnant, get abortion or give birth babies are increasing. To get the picture of these women, an obstetrics and gynecology hospital in Utsunomiya City conducted a survey on female foreigners who visited the hospital between April in 1991 and March in 1993. (I will share the report of this survey briefly.)

For the past 10 years, more NGOs have been set up to give advice or provide assistance to women from Thailand and their children. However, there is no statistics of their numbers and actual situation. In fact, we don't know the situation of those children whose mothers are illegal residents in Japan. On way to know their numbers and the situation is to see the registration of the birth at Thai Embassy in Japan. At present, we are collecting the data of the birth registration.

Generally, these children are faced with various problems, including:

1. Unwanted children by their parent or parents
In many cases, their father cannot be designated, is unknown or does not want to acknowledge his child.
2. To gain nationality
As long as the father is Japanese, the child can get Japanese nationality. If he does not acknowledge the child or is unknown, the child cannot apply for nationality. If the mother is Thai, the child can get Thai nationality. But it is difficult for overstay residents because they don't have authentic passport.

3. Health Insurance

These children cannot see the doctor easily, for they do not have a health insurance card.

4. Education

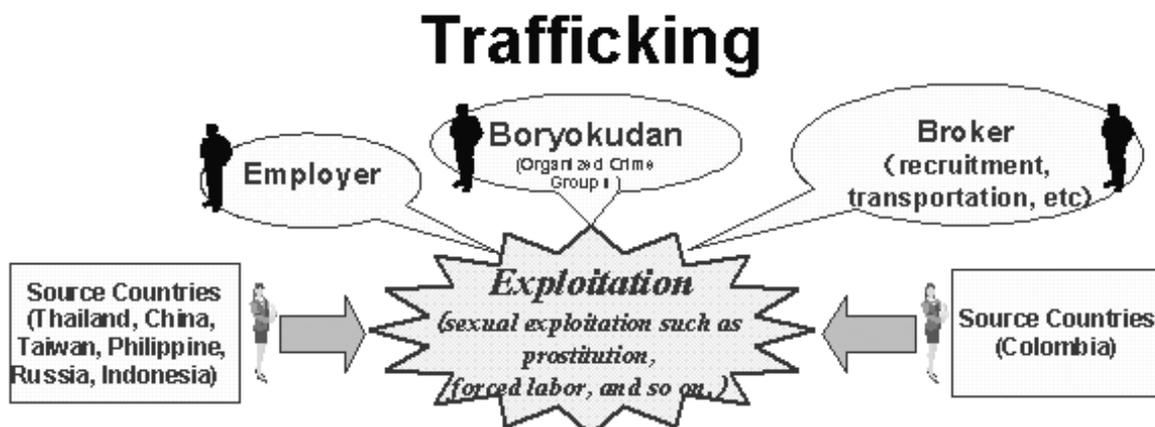
5. They are not provided by various social welfare services.

6. Identity



Summary of Trafficking in Persons in Japan

Consumer and Environmental Protection Division
Community Safety Bureau
National Police Agency of Japan



PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (Japan signed on Dec 9, 2002)

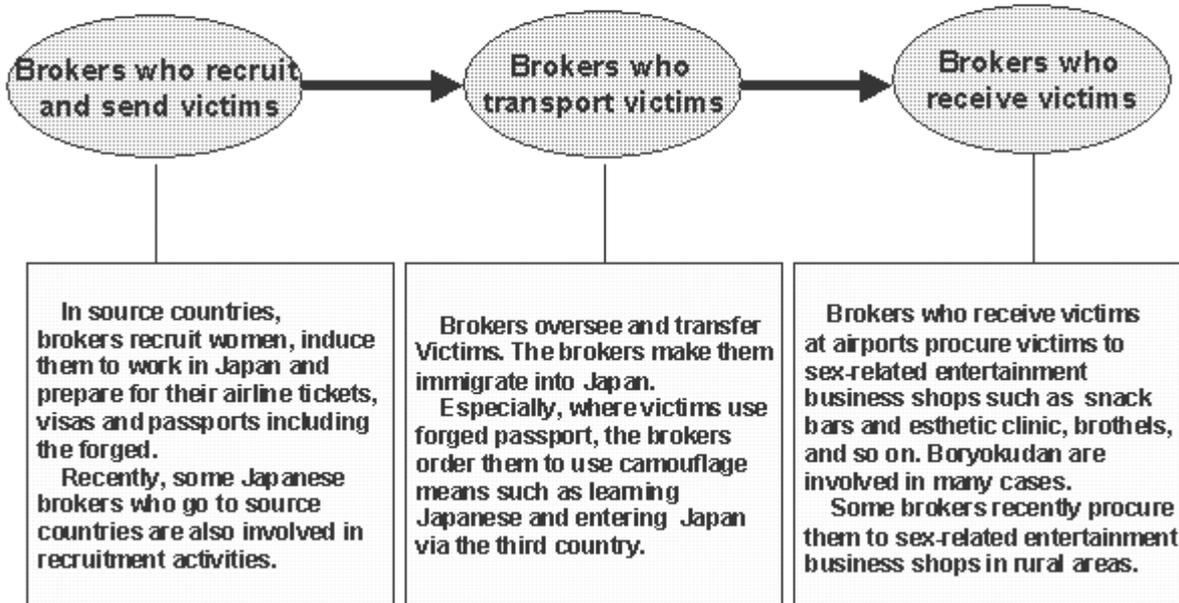
“Definition of Trafficking”

Act: recruitment, transportation, transfer, harbouring or receipt of persons

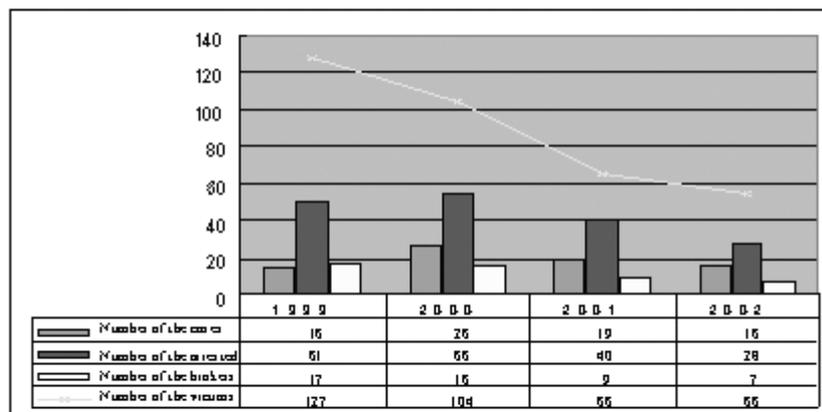
Means: the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person

Purpose: exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation,

Flows in trafficking cases



Statistics regarding trafficking in person



※ The statistics in 1999 represents the number only regarding large debt imposed cases.

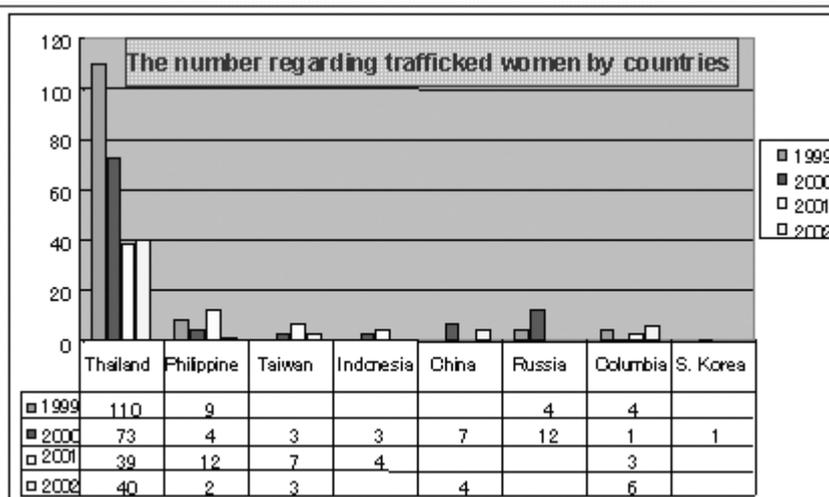
(Punishment)

- The Anti-Prostitution Law(Procurement, Business of making a person prostitute, etc)
- The Immigration Control and Refugee Recognition Act
(Facilitating illegal working, Illegally over state, Assistance of illegal entry, etc)
- The Law on Control and Improvement of Amusement Business(Running business without license)
- The Penal Code(Untrue Entry in an Authenticated Deed)

Actual Situation regarding trafficking victims

(Case 1) In December, 2002, the Japanese broker was arrested on charge of the violation of the Immigration Control and Refugee Recognition Act (ICRRA) and the other law. The broker procured Colombian women to at least 24 strip theaters all over Japan. In February, 2003, Tokyo Metropolitan Police Department and 17 Prefectural Police Headquarters simultaneously searched these theaters and arrested 15 persons on the charge of the ICRRA and found 68 victim women. Some victims were forced to prostitute by being imposed large debt under the guise of their travel fare. Most of their incomes earned in the strip theaters were exploited by the broker.

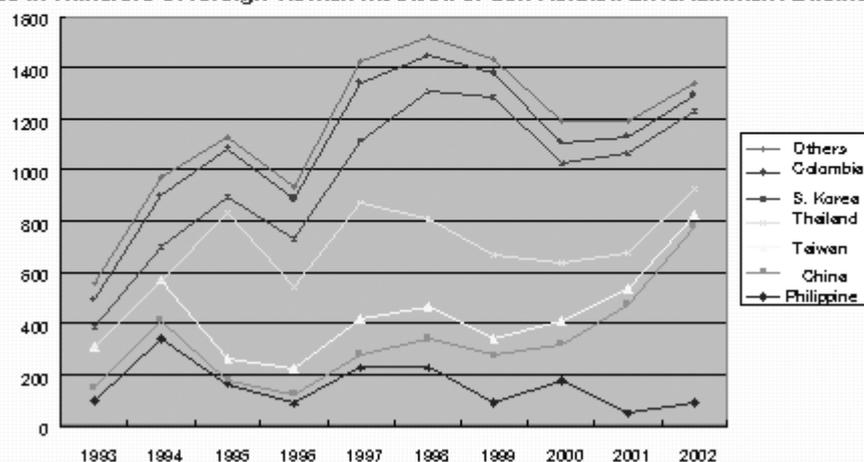
(Case 2) The leader of "Kaga-gumi", one of the subgroups in the designated Boryokudan group, and other made an introduction of the foreign women to the pub managers. The women who covertly entered Japan with the help of brokers used counterfeit passports or pretended to be couples. The managers arranged for prostitution by introducing the women into their customers. By September, 2002, Tokyo Metropolitan Police Department arrested them on the charge of the ICRRA and the other law as well as the managers on the charge of the Anti-Prostitution Law. The women were forced to prostitute by being imposed large debt under the guise of their travel fare and expropriating their passport.



Changes in the numbers of foreign women working in Sex-Related Entertainment Business

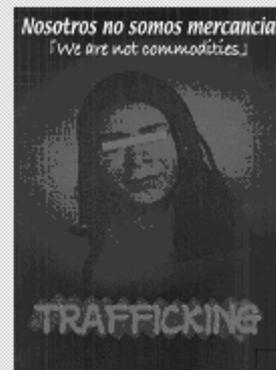
- The number of illegally overstaying foreigners ~220, 552(January 1, 2003, Survey: Ministry of Justice)
- Categories of entertainment establishments ~ esthetic clinics, bars, snack bars, etc.
- Types of labors ~ massagers, hostesses, prostitutes, etc.
- Resident's status ~ short-term legally staying, dancers for showbusiness, etc. (Although some foreigners enter Japan by using counterfeit passports, most foreigners use legitimate passports.

Changes in Numbers of foreign women involved in Sex-Related Entertainment Business cases



Enlightening the concern about trafficking

- Attending the symposium as a panelist
- Distributing educational documents regarding trafficking to all the police officers.
- Making and distributing the video regarding trafficked victim women.



Cooperation with Other Organizations

- **Law Enforcement in Foreign Countries (bilateral cooperation, ICPO)**
- **Foreign Embassies in Japan**
- **Other Domestic Agencies**
- **International Organizations**
- **NGOs**



REPUBLIC ACT 9208

AN ACT

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

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

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

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

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

- (a) *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of 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.
- (b) *Child* – refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

- (c) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.
- (d) *Forced Labor and Slavery* – refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.
- (e) *Sex Tourism* – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.
- (f) *Sexual Exploitation* – refers to participations by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim's vulnerability.
- (g) *Debt Bondage* – refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the values of the services as reasonably assessed is not applied toward the liquidation of the debt.
- (h) *Pornography* – refers to any representation, through publication, exhibition, cinematography, indecent show, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.
- (i) *Council* – shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

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

- (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
- (e) To maintain or hire a person to engage in prostitution or pornography;

- (f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced-labor, slavery, involuntary servitude or debt bondage;
- (g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;
- (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

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

- (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promotion trafficking in persons;
- (b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
- (c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, or any brochure, flyer, or any propaganda material that promotes trafficking in persons;
- (d) To assist in the conduct of misrepresentation or fraud for purposes of facilitation the acquisition of clearances and necessary exit document from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
- (e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampers or fraudulent travel documents for the purpose of promotion trafficking in persons;
- (f) To confiscate, conceal , or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies;
- (g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

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

- (a) When the trafficked person is a child;
- (b) When the adoption is effected through Republic Act No. 8043, otherwise known as the “Inter-Country Adoption Act of 1995” and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three(3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three(3) or more persons, individually or as a group;

- (d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
- (e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- (f) When the offender is a member of the military or law enforcement agencies; and
- (g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus(HIV) or the Acquired Immune Deficiency Syndrome(AIDS).

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

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

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

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

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

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty(20) years and a fine of not less than One million pesos(P1,000,000.00) but not more than Two million pesos (P2,000,000.00);
- (b) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos(P1,000,000.00);
- (c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);

- (d) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six(6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);
- (e) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;
- (f) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;
- (g) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;
- (h) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall likewise be forfeited; and
- (i) Conviction by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

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

- (a) First offense – six(6) months of community service as may be determined by the court and a fine of Fifty thousand pesos(P50,000.00); and
- (b) Second and subsequent offenses – imprisonment of one (1) year and a fine of One hundred thousand pesos (P100,000.00).

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

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

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

SEC. 14. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons. – In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act: Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender: Provided, further, That if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

SEC. 15. Trust Fund. – All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 hereof shall accrue to a Trust Fund to be administered and managed by the Council to be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the mainstream of society. Such programs shall include, but not limited to, the following:

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

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

- (a) Department of Foreign Affairs (DFA) – shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in elimination trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs.

The DFA shall take necessary measures for the efficient implementation of the Machine Readable Passports to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

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

- (b) Department of Social Welfare and Development (DSWD) – shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community.
- (c) Department of Labor and Employment (DOLE) – shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.
- (d) Department of Justice (DOJ) – shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.
- (e) National Commission on the Role of Filipino Women (NCRFW) – shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women’s issues.
- (f) Bureau of Immigration (BI) – shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.
- (g) Philippine National Police (PNP) – shall be the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. It shall closely coordinate with various law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. It shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.
- (h) Philippine Overseas Employment Administration (POEA) – shall implement an effective pre-employment orientation seminars and pre-departure counseling programs to applicants for overseas employment. It shall likewise formulate a system of providing free legal assistance to trafficked persons.
- (i) Department of the Interior of Local Government (DILG) – shall institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons.
- (j) Local government units (LGUs) – shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with DILG, Philippine Information Agency(PIA), Commission On Filipinos Overseas(CFO), NGOs and other concerned agencies. They shall encourage and support community based initiatives which address the trafficking in persons.

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

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

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

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

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

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

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

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

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;

- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the local government units(LGUs), concerned agencies, and NGOs;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- (h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority(TESDA), Commission on Higher Education(CHED), LGUs and NGOs;
- (i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
- (j) Complement the shared government information system form migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers And Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;
- (k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- (m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry(DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;
- (n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- (p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

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

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

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;

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

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

SEC. 24. *Other Services for Trafficked Persons.*

- (a) *Legal Assistance* – Trafficked persons shall be considered under the category “Overseas Filipino in Distress” and may avail of the legal assistance created by Republic Act No. 8042, subject to the guidelines as provided by law.
- (b) *Overseas Filipino Resource Centers.* – The services available to overseas Filipinos as provided for by Republic Act No. 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.
- (c) *The Country Team Approach.* – The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity and fundamental rights are concerned.

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

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

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

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

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

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

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

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

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

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

Approved.

**MEASURES IN PREVENTION AND SUPPRESSION OF TRAFFICKING IN
WOMEN AND CHILDREN ACT¹
B.E. 2540²**

.....

**BHUMIBOL ADULYADEJ, REX.
Given on the 14th Day of November B.E. 2540 (1997)
Being the 52nd Year of the Present Reign**

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on trafficking in women and girls;

Be it, therefore, enacted by the King, by and with the advice and consent of the Parliament, as follows:

Section 1 This Act shall be called “the Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997).”

Section 2 This Act shall come into force on and from the day following the date of its publication in the Royal Gazette.

Section 3 The Trafficking in Women and Girls Act B.E. 2471(1928) shall be repealed.

Section 4 In this Act:

“child” means a person whose age is not over eighteen years;

“official” means a government official not lower than the third level, or the superior administrative or police official appointed by the Minister for the execution of this Act;

“Minister” means the Minister in charge of controlling the execution of this Act.

Section 5 In committing an offence concerning the trafficking in women and children, buying, selling, vending, bringing from or sending to, receiving, detaining or confining any woman or child, or arranging for any women or child to act or receive any act, for sexual gratification of another person, for an indecent sexual purpose, or for gaining any illegal benefit for his/herself or another person, with or without the consent of the woman or child, which is an offence under the Penal Code, the law on prostitution prevention and suppression, the law on safety and welfare of children and youths, or this Act, the official is authorized to enforce power under this Act.

¹ The Act was published in the Royal Gazette on November 16, 1997 and it has been effective since November 17, 1997.

² This draft was translated by Wanchai Roujanavong, Deputy Executive Director, International Affairs Department, Office of the Attorney General; Chairperson of FACE (the Coalition to Fight Against Child Exploitation), and Pen Suwannarat, Program Coordinator, Mekong Region Law Center.

Section 6 Whoever makes preparations for committing any of the offences as specified in Section 5 shall receive the same punishment as attempting to commit such offence.

Section 7 Whoever, from two persons upwards, conspire to commit any of the offences as specified in Section 5 shall be punished with imprisonment not exceeding five years, or a fine not exceeding ten thousand baht, or both.

If any one of the offenders in the first paragraph has committed the conspired offence, all the offenders in the conspiracy shall be punished, as an additional count, with the punishment as stipulated for the committed offence.

In the case that the commission of the offence is in process, but because of the opposition by the conspirator, the offence cannot be carried through, or the offence is carried through but does not achieve its goal, the conspirator, opposing the wrong doing act, is liable only to the punishment as stipulated in the first paragraph.

If the offender, according to the first paragraph, changes his/her mind and provides information on the conspiracy to the official before the conspired offence is committed, the court may punish such offender less than the punishment specified, or may not punish such offender at all.

Section 8 The official shall inspect, examine, and monitor at airports, seaports, railway stations, bus stations, entertainment establishments, factories and public places to prevent the offence specified in Section 5 from being committed.

In the execution of his/her function according to paragraph one, the official may request any person for help in accordance with the regulation provided by the Minister and published in the Royal Gazette.

Section 9 In order to prevent and suppress the commission of the offence as specified in Section 5, the official shall have authority as follows:

(1) issue a summons to any person to give statement, deliver documents or evidence;

(2) examine the body of a woman or child, with a reason to believe that she/he is the victim of the offence as stipulated in Section 5, if the victim is a woman or girl the examiner shall be another woman.

(3) search any place or vehicle, but the search shall be done between sunrise and sunset; in case there is a reason to believe that if the action is not immediately taken the woman or child may be assaulted, or the offender may relocate or conceal that woman or child, the official may search the place at night with the permission of the Director General of the Police Department or person designated by the Director General in the jurisdiction of Bangkok, or the provincial governor or person designated by the provincial governor in the provincial jurisdiction for the search in such province.

Section 10 For the benefit of prevention and suppression of the offence as specified in Section 5, or for rescuing a woman or child who may be the victim of such offence, the official has authority to detain the woman or child for factual clarification, or checking documents or evidence, but the detention shall not be over half an hour. In case of necessity for longer detention, after the detention is recorded in an official report, the woman or child can be detain not over twenty-four hours, but the detention must be reported to the Director General of the Police Department in the Bangkok jurisdiction or the provincial governor of such provincial jurisdiction without delay.

If there is a necessary cause, the detention may be longer than twenty-four hours but not exceeding ten days, but the permission must be granted by the Director General of the Police Department or the provincial governor as the case may be.

In detaining the woman or child in accordance with this Section, the woman or child shall stay in an appropriate place, which shall not be a detention cell or prison.

The report, record, and grant of permission shall be in accordance with the regulation provided by the Minister and published in the Royal Gazette.

When the woman or child has testified in court in accordance with Section 12, it shall be deemed that the cause for detention of such women or child is ended.

Section 11 The official shall use his/her judgment in giving appropriate assistance to the woman and child, who is the victim of the offence as specified in Section 5, in providing food, shelter and repatriation to her/his original country or residence.

In providing assistance according to the first paragraph, the official may arrange for the woman or child to be in the care of a “primary shelter” provided by the law on prostitution prevention and suppression, a “primary shelter for children” provided by the law on child and juvenile safety and welfare, or other governmental or non-governmental welfare institutions.

In case it is expedient, the Minister may issue a regulation on the assistance according to this Section by publication in the Royal Gazette.

The repatriation of the victim, whose residence is in a foreign country, shall be done in accordance with the agreements set forth in a treaty with the state party, or a convention of which Thailand is an acceding state.

Section 12 When it is known that an offence as specified in Section 5 has been committed, even though the offender is not arrested, a public prosecutor, by oneself or by receiving an application from an inquiry official, may bring the victimized woman or child to file a petition, specifying all the acts allegedly committed and the necessary cause why the testimony must be immediately taken, to a court.

In case the initiation to testify in court is of the victimized woman or child, and she/he informs the public prosecutor, a petition to the court shall immediately be filed by the public prosecutor.

The court shall instantly provide the examination of the witness when the petition is filed. In such examination, if any 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 to do so when deemed appropriate.

The testimony of such witness shall be read to the witness.

If the offender is indicted later as a defendant with the charge of committing the offence as specified in Section 5, the deposited testimony of the witness shall be used as an evidence in the trial and in making decision of that case.

Section 13 In the case that the victimized woman or child, spouse, relative, or person with related interests to the woman or child, perceiving that the detention of such woman or child according to Section 10, or the assistance provided to such woman or child according to Section 11 is wrongful, the woman, child, spouse, relative or interested person may appeal to the Director General of the Police Department for Bangkok jurisdiction, or to the provincial governor for such provincial jurisdiction.

The competent authority, authorized to consider the appeal as specified in paragraph one, shall examine the facts and render judgment without delay. If the Director General of

the Police Department or the provincial governor considers that the detention of the woman or child is lawful, the case shall be reported to the Minister of Interior for final judgment.

The timeframe for consideration of the appeal, the form or timeframe of the report to be submitted to the Minister of Interior for the final judgment shall be in accordance with the regulation established by the Minister of Interior and published in the Royal Gazette.

Section 14 In executing duties in this Act, the official shall be the “superior administrative or police official” as stipulated in the Criminal Procedure Code.

Section 15 The Minister of Interior and Minister of Labour and Social Welfare shall have duty and control of the execution of this Act and shall have power to appoint the official for the execution of this Act.

Counter-signature
Chuan Leekpai
Prime Minister

Certified to be correct translation by
Wanchai Roujanavong
Senior Expert State Attorney
International Affairs Department
Office of the Attorney General

HIGHLIGHTS OF THE U.S. ANTI-TRAFFICKING LAW The Victims of Trafficking and Violence Protection Act of 2000

Every year, one to two million people mostly women and girls are trafficked and sold into modern slavery, including 50,000 who are brought to the U.S. alone. To combat this growing problem at home and abroad, the U.S. Congress passed the Victims of Trafficking and Violence Protection Act of 2000, which takes new steps to prevent trafficking protect its victims, and prosecute those responsible for these criminal human rights abuses.

Provisions of the Law:

PREVENTION: Working with NGOs to stop trafficking before it happens

- Increasing Economic Opportunity. New initiatives to increase economic opportunity for potential trafficking victims so that they are not lured away from home with false promises of jobs in other communities, regions, and countries.
- Raising Awareness. Public awareness programs warning potential victims about traffickers, and teaching them how to avoid becoming victims of this crime.

PROTECTION & ASSISTANCE: Providing new help for victims

- Temporary Residency. 5,000 victims of the worst forms of trafficking will now be eligible for temporary residency (T-visas) in the U.S.
- New Assistance. Victims are now eligible for a broad range of benefits and services regardless of immigration status.
- Targeted Department of Justice Grants. Creates the first ever grants to fund NGOs that help provide services to victims of trafficking.
- Reintegration. Assists victims in returning home and rebuilding their lives.
- Help and Safety While in Custody. Victims of trafficking who are in custody shall have access to shelter, medical care, information about their legal rights, translation services and other assistance. Information about these victims and their families will not be disclosed, and they will be otherwise protected from intimidation and retribution by traffickers.
- Allowing trafficking victims without T-Visas to remain in the U.S. Before any T-Visa assessment has been made, law enforcement officials may now keep trafficking victims in the U.S. if they need immediate assistance, they or their families are in danger, or they can assist a potential trafficking case.
- New Training for Justice and State Department personnel in how to identify and help

trafficking victims.

PROSECUTION: New punishments to fit the crime

- Establishes New Trafficking Crimes.
- Increases Sentences. Convicted traffickers must now serve 20 years or more
- Mandatory Restitution. Traffickers are now required to pay victims for their losses.
- Asset Forfeiture. Traffickers must forfeit their assets upon conviction.
- Protect Witnesses. Trafficking victims now eligible for the Witness Protection Program

SANCTIONS

- The law requires an annual report by the Secretary of State on the status of trafficking in countries, and allows economic sanctions for those that have significant problems and fail to address them. It also gives the U.S. the authority to sanction significant traffickers who are citizens of other countries.

THE PRESIDENT'S INTERAGENCY ANTI-TRAFFICKING TASK FORCE

- The President is required to establish a Cabinet-level task force. In addition, the Secretary of State is authorized to create an office to support the task force and help coordinate anti-trafficking activities across government agencies.

NEW REPORTING REQUIREMENTS FOR THE FEDERAL GOVERNMENT

- Ever year, the State Department is required to issue a report that includes a list of countries affected by trafficking, and an assessment of their efforts to combat trafficking. In addition, the Secretary of Health and Human Services is required to report on how many trafficking victims received services and benefits.

FUNDING

- The anti-trafficking law authorized \$95.5 million over two years for domestic and international initiatives, contingent upon Congressional funding.

(Sources: Vital Voices)

Act on the Punishment of Intermediating in Sex Trade and Associated Acts

Chapter I General Provisions

Article 1 (Purpose)

The purpose of this Act is to prevent human trafficking for the purpose of sex trade including selling or buying sex, intermediating in sex trade and etc., and to protect human rights of victims thereof.

Article 2 (Definitions)

- ① For the purpose of this Act, the definitions of terms shall be as follows:
1. The term “sex trade” herein shall mean doing any of the following with an unspecified person by giving or promising to give money, valuables, property benefits or being the subject of any of the following acts with an unspecified person by receiving or promising to receive money, valuables, property benefits:
 - (1) Sexual intercourse; and
 - (2) Quasi-sexual intercourse by means of a part of the body including the oral cavity or the anus, or with sexual apparatus.
 2. The term “intermediating in sex trade etc.” herein shall mean doing any of the following:
 - (1) An act of helping, inviting, seducing or forcing sex trade;
 - (2) An act of providing a place for sex trade; and
 - (3) An act of providing money, real estate or a building with the knowledge of the fact that they are used for sex trade.
 3. The term “human trafficking for the purpose of sex trade” herein shall mean doing any of the following:
 - (1) An act of transferring anyone who is under control or supervision to a third party by the means of deception or threat for the purpose of making anyone do obscene acts as defined under Article 245 of the Criminal Code or making film or video which expresses obscene content including sexual intercourse etc.;
 - (2) An act of transferring juveniles as defined under Article 2-□ of the Juvenile Protection Act (hereinafter referred to as “Juveniles”), those who are feeble-minded or incapable of distinguishing between right and wrong or making one’s own decision, or those with disabilities as defined under the Presidential Decrees to a third party with the promise to provide victims or those who protect or supervise them with advance payment, goods or interests of a proprietary nature for the same purpose as in the above subparagraph (1);
 - (3) An act of receiving a trafficked person for the same purpose as the above subparagraph (1) or for the purpose of selling him/her while being aware that acts as set out in the above subparagraph (1) and/or (2) are carried out; and
 - (4) An act of recruiting, transporting, harboring a trafficked person for the same purposes as the above subparagraph (1) (2) and (3).
 4. The term “victims of sex trade” herein shall mean those who fall under any of the following subparagraphs:
 - (1) A person who is threatened or forced to sell sex or is deceived into selling sex;
 - (2) A person who sell sex after being intoxicated with narcotic drugs, psychotropic medicine or marihuana as defined under Article 2 of the Act on the Control of Narcotics and other Analogous Substances (hereinafter collectively referred to as “drugs”) by his/her employer or supervisor;
 - (3) Juveniles, those incapable of distinguishing between right and wrong or making his own decision, those who are feeble-minded, or those with disabilities as defined under the Presidential Decrees who are offered or seduced to sell sex;

and

(4) A person who is trafficked for the purpose of sex trade.

- ② A person is considered to have put a trafficked person “under his/her control or supervision” as set out in □-3(1) of this Article in any of the following situations:
1. When he/she prevents a trafficked person from leaving against the trafficked person’s will even though he/she has obtained the consent from the trafficked person by the means of advance payment etc.; or
 2. When he/she who is an employer or a supervisor, or engage himself/herself in or intermediate in or assist in employment or immigration, receive passport or analogous documents as a security for payment for the purpose of sex trade.

Article 3 (Responsibility of the Government)

- ① The government and local governments shall put legal and institutional measures in place for providing education program and promoting public awareness on prevention of sex trade, intermediating in sex trade etc, or human trafficking for the purpose of sex trade
- ② The government shall make its effort to enhance international cooperation and strengthen mutual legal assistance in criminal matters in a fight against human trafficking for the purpose of sex trade.

Article 4 (Prohibition)

The following acts are prohibited:

1. Selling sex;
2. An act of intermediating in sex trade, etc.;
3. Human trafficking for the purpose of sex trade;
4. Recruiting or hiring people for the purpose of forcing them to sell sex, or intermediating in employment with the knowledge that it is involved in sex trade; and
5. Advertising for agency where acts referred to in the above subparagraph of 1, 2, or 4 are carried out.

Article 5 (Condition of Application of this Act)

In case where specific provisions are stated in the Act on Protection of Juveniles from Sexual Crimes with regard to provisions as set out in this Act, the Act on Protection of Juveniles against Sexual Crimes shall supersede this Act.

Chapter II Protection of Victims of Human Trafficking

Article 6 (Exceptions to the punishment for victims of sex trade and protection of victims thereof)

- ① The victims who are involved in sex trade or human trafficking shall not be subject to punishment for doing sex trade.
- ② In case where there is a good reason to believe that the accused or a witness is a victim of sex trade in the process of an investigation, a prosecutor or a judicial police officer shall immediately notify his/her legal representative, family members, relatives, or legal counsel of the related case and a prosecutor or a judicial police officer shall take appropriate actions to protect a victim that include provision of police escort, confidentiality of investigation, facilities for assistance, transfer of victims to counseling centers for victims of sex trade and etc. A prosecutor or a judicial police officer may not give notification when the accused or a witness requests due to privacy.
- ③ In case where the court or law enforcement agencies investigate victims of sex trade or those who report acts of crimes as defined under this Act to the authorities (hereinafter

collectively referred to as “reporter etc.”) or have them testify as a witness, Article 7 to Article 13 of Protection of Reporters, etc. of Specific Crimes Act may be applied mutatis mutandis. In this situation the condition of the possibility of retaliation is not required for application of this Act except for Article 9 and Article 13 of Protection of Reporters, etc. of Specific Crimes Act.

Article 7 (Duty of report)

- ① The head or staff members working in facilities for assistance or a counseling center as defined under Article 5(1) and Article 10 of the Act on the Punishment of Sex Trade and Protection of Victims Thereof respectively shall immediately report to law enforcement agencies when they become aware of sex trade and victims thereof.
- ② Anyone who reports on criminal acts to the authorities in accordance with this Act shall not be at a disadvantage due to his/her report.
- ③ With the exception of a case where specific provisions are stated in other laws, personal information of a reporter or any other material that contains the personal information shall not be published, broadcast or posted on the Internet.

Article 8 (Being accompanied by a trustworthy person)

- ① When questioning a reporter etc. as a witness, the court may allow him/her to be accompanied by his/her trustworthy person at the court’s own decision or at the request of a reporter, his/her legal representative, or a prosecutor.
- ② When investigating a reporter etc., the law enforcement agencies may allow him/her to be accompanied by his/her trustworthy person at the agencies’ own decision or at the request of a reporter, or his/her legal representative.
- ③ Juveniles, those who are feeble-minded, incapable of distinguishing between right and wrong or making his own decision, or those with disabilities as defined under the Presidential Decrees shall be accompanied by a trustworthy person on request in accordance with the above subparagraph □ or □ of this Article unless a trial or an investigation is hampered.
- ④ Anyone who accompanies a reporter in accordance with the above subparagraph □ or □ of this Article shall not influence a trial or an investigation by testifying in the place of the reporter or influencing him/her to testify.

Article 9 (Confidentiality of a hearing)

- ① The court may decide to make a hearing on a reporter etc. be closed for the public when necessary for the reason of privacy or witness protection.
- ② A reporter etc. or his/her family who is subpoenaed to testify as a witness may make a request that a hearing be closed for the public for the reason of privacy or witness protection.
- ③ When a request is made in accordance with the above subparagraph □ of this Article, the judge may make a decision on whether to allow or not, the way or the place the interrogation is made.
- ④ Article 57-□ or □ of the Court Organization Act may be applied mutatis mutandis to the confidentiality of a hearing in accordance with the above subparagraph □ or □ of this Article.

Article 10 (Nullification of claims in case of illegality)

- ① The claim of those who intermediate in sex trade, recruit or hire those who sell sex, or intermediate in employment associated with sex trade or human trafficking for the purpose of sex trade against those who sell sex shall be nullified regardless of terms and conditions of the contract. In case where the claim is handed over to a third party, the contract shall be rendered invalid.
- ② A prosecutor or a judicial police officer shall take into consideration whether money

or interests of a proprietary nature was provided for the purpose of seducing, forcing oneself into selling sex or preventing them from leaving brothels when investigating into a lawsuit that was filed against default related to illegality as set forth in the above □ of this Article.

- ③ A prosecutor of a judicial police officer shall notify victims of sex trade or their legal representatives that facilities for assistance are available and contracts mentioned above in subparagraph □ of this Article are nullified when investigating victims of sex trade or those who were involved in selling sex.

Article 11 (Special provisions for foreign women)

- ① A foreign woman who reports on crimes stated in this Act or faces an investigation as a victim of sex trade shall not be subject to a deportation order or social protection under Article 46 and Article 51 of the Immigration Control Act respectively until a prosecutor's final decision. In this situation, law enforcement agencies shall take appropriate actions by notifying the relevant immigration office of the necessary information of the foreign woman.
- ② After filing a public prosecution against the case stated in the above subparagraph □ of this Article, a prosecutor may request the head of an immigration office to suspend the execution of a deportation order or to temporarily withdraw social protection for a certain period of time considering the current status of sex trade, testimony or necessity of compensation or other factors.
- ③ During a period where the execution of a deportation order is suspended or social protection is temporarily withdrawn in accordance with the above subparagraph □ or □ of this Article, facilities for assistance is available for a foreign woman who reports on crimes stated in this Act or faces an investigation as a victim of sex trade.
- ④ When investigating the foreign woman as a witness, law enforcement agencies shall inform her of her right to claim compensation in accordance with the Act on Special Cases concerning Expedition etc. of Legal Proceedings.
- ⑤ When a foreign woman, as a victim of sex trade files a claim for compensation in accordance with the Act on Special Cases concerning Expedition etc. of Legal Proceedings, the above subparagraph □ of this Article may be applied mutatis mutandis until order of compensation is confirmed to be issued.

Chapter IV Penal Provisions

Article 18 (Penal Provisions) □ and □ are omitted

- Anyone who falls under one of the following subparagraphs shall be punished by imprisonment for no less than 3 years:
- (1 and 2 are omitted)
 3. A person who traffics persons for the purpose of sex trade;

Article 22 (Aggravated punishment for criminal organization)

Anyone who forms a group or an organization for the purpose of committing criminal acts as defined under Article 18 and Article 19 of this Act or participates in the group or the organization shall be punished under Article 4 of the Punishment of Violence, etc. Act.

Article 25 (Confiscation/Collection)

Money, valuables or property benefits obtained by those who committed criminal act as defined under Article 18, 19 and 20 shall be subject to confiscation. If it is impossible to confiscate them, the same amount of money equivalent to the money or property benefits acquired shall be collected.

AWF Expert Meeting on International Trafficking **List of Participants**

Thailand	Uthaiwan <u>Jamsutee</u>	Senior State Attorney, Thailand Criminal Law Institute, Office of Attorney General
	Weerasak <u>Kowsurat</u>	Vice Minister, Social Development & Human Security 25 & 26/11/03
	Sudarat <u>Sereewat</u>	Coalition to Fight against Child Exploitation (FACE) 25 & 27/11/03
	Chatchawal <u>Suksomjit</u>	Maj. Gen. Child, Juvenile and Women Protection Unit, Royal Thai Police
	Naiyana <u>Supapung</u>	Human Rights Commissioner
Philippines	Merceditas <u>Gutierrez</u>	Undersecretary, Department of Justice Acting Chairperson, Inter-Agency Council against Trafficking (IACAT)
	Carmelita <u>Nuqui</u>	Philippine Migrants' Rights Watch & Executive Director, DAWN
	Wilhelm D. <u>Soriano</u>	Human Rights Commissioner
	Rhoda F. <u>Yap</u>	Assistant Secretary, Department of Social Welfare and Development
Cambodia	Sreyroth <u>Nopsarin</u>	Coordinator, Monitoring & Legal Assistance, CWCC
Laos	Vilaychaleun <u>Amphayvanh</u>	Ministry of Labour & Social Welfare
Vietnam	Glang Hoai <u>Pham</u>	Vietnam Women's Union
International Organizations	Lance A. <u>Bonneau</u>	Senior Programme Development, IOM
	Masae <u>Shimomura</u>	International Organization for Migration
	Mitsuko <u>Horiuchi</u>	International Labor Organization (ILO)
	Yuki <u>Sekine</u>	ILO Tokyo Office
Embassies in Tokyo	Ann M. <u>Kambara</u>	Counselor for Labor Affairs, USA
Japan	Yoko <u>Hayashi</u>	Advisory Committee, Asian Women's Fund
	Yoichi <u>Kumota</u>	Technical Officer, National Police Agency
	Teruko <u>Maeda</u>	Sister Province, Sisters Adorers
	Jun <u>Shimato</u>	Ministry of Justice (法務省刑事局付) 26/11
	Akihiko <u>Suzuki</u>	OC Network
	Tomonori <u>Taki</u>	
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Atonement Projects for Former “Comfort Women” of The Asian Women’s Fund

*Implemented for 285 Women in the Philippines, the Republic of Korea and Taiwan
and 79 Women in the Netherlands.*

In 1995, the Japanese Government decided to implement projects aimed at providing atonement to former World War II “comfort women.” The projects involved sending each of them a signed letter of apology from the Prime Minister of Japan, making atonement payments financed by donations from the Japanese people, and providing medical and welfare services financed by the Japanese Government. The Asian Women’s Fund (AWF) was organized to manage the projects. A donation campaign collected over ¥565 million (US\$4,700,000) for dispersal among former comfort women in the Philippines, the Republic of Korea and Taiwan. In light of the need to implement the projects as quickly as possible due to the women’s advanced age, an application period of five years was established. The application dead-lines, which varied depending on the starting date, were set at August 2001 for the Philippines and May 2002 for the Republic of Korea and Taiwan. These atonement projects were concluded in September 2002, following conclusion of a medical and welfare services project in the Netherlands in July 2001. Some recipients expressed sentiments as, “I never expected to receive an apology from the Prime Minister or atonement money,” and, “I feel sure these represent the goodwill of the Japanese people.”

Why is the Cooperative Project Promoted Jointly by Japanese Government and People of Japan?

The term “comfort women” refers to women who were forced to provide sexual services at “comfort stations” visited by officers and men of the former Japanese military during World War II. The honor and dignity of these women were violated, and many suffered irreversible physical and psychological trauma. In August 1993, Japan’s Chief Cabinet Secretary expressed the sincere apologies and deep remorse of the Japanese Government for these wrongs. The AWF was founded in July 1995 to implement atonement projects on behalf of the Japanese through cooperative efforts by the government and people of Japan. The AWF seeks atonement on behalf of the Japanese Government and people for the distress suffered by the former comfort women and solutions to problems threatening the honor and dignity of women today. It is working to heighten awareness in Japan and other countries of the importance of protecting the honor and dignity of women and of preventing conduct that threatens their honor and dignity with the aim of constructing an international society in which such conduct can never be repeated.