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JUDICIAL JOURNAL

Trafficking in Persons





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TRAFFICKING IN PERSONS

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Opening and Welcome Remarks*

*Justice Ameurfina A. Melencio Herrera (ret.)***

Bellaflor Angara-Castillo,
Representative of the Lone District of Aurora;
Hon. Aurora Javate-De Dios,
Chairperson of the National Commission
on the Role of Filipino Women (NCRFW);
Hon. Purificacion V. Quisumbing,
Chairperson of the Commission on Human Rights (CHR);
Prof. Myrna S. Feliciano,
Executive Director of the Mandatory Continuing Legal
Education (MCLE) Committee;
Atty. Carolina S. Ruiz-Austria, Executive-Director of
the Women's Legal Education, Advocacy and Defense
(WomenLEAD);
Dr. Ma. Rosanna E. De Guzman,
Women's Desk Program Coordinator of the U.P.-PGH;
Distinguished Speakers;
Participant-Judges, Lawyers, and
Representatives from law enforcement agencies;
Partner Representatives, PHILJA professors
and Guests;
Good morning and a very warm Welcome.

* Delivered at the *Inter-Disciplinary Seminar on Sex-Trafficking*, on March 13, 2003, at PHILJA, Tagaytay City.

The speech was delivered prior to the passage of Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003.

** Justice Ameurfina A. Melencio Herrera (*ret.*) has been the indomitable Chancellor of the Philippine Judicial Academy (PHILJA), the education arm of the Supreme Court of the

The 1998 U.S. Senate Resolution 82 on Trafficking states that:

Trafficking consists of all acts involved in the recruitment or transportation of persons within or across borders, involving deception, coercion or force, abuse of authority, debt bondage or fraud, for the purpose of placing persons in situations of abuse or exploitation.

Sexual trafficking is those particular forms of trafficking involving the violation of personal sexuality, manifested through childhood molestation, childhood pornography, forced prostitution, rape or coercive sexual practices. The United Nations estimates that four (4) million people are trafficked every year, resulting to \$7 billion in profits to criminal groups.

One of the perceived consequences of globalization is the rise in sex trafficking. With the breaking of barriers in the exchange of goods and information, it would be inevitable that there would be an increase in the number of women bought into the sex trade. This seminar aims to provide a forum of exchange among concerned parties in addressing the global phenomenon of human trafficking.

Philippines, since March 1996. She was Associate Justice of the Supreme Court from 1979 to 1992, where she chaired the Second Division from 1988, and Associate Justice of the Court of Appeals, chairing the Eighth Division from 1973 to 1979. At the Academy, she also holds the following positions: Chairperson of the Academic Council, Presiding Officer of the Judicial Reforms Office, and Member of the Board of Trustees. She graduated *Valedictorian* and *Cum Laude* at the University of the Philippines College of Law, where she obtained her Bachelor of Laws degree. She was Bar Topnotcher when she took her Bar Examinations, ranking first with a score of 93.85%. She is also currently Deputy President for Australasia at the International Organization for Judicial Training (IOJT), an international organization of academies specializing in judicial education and training, formed in March 2002, in Jerusalem, Israel.

Several factors have been cited as causing sexual trafficking. In several South and Southeast Asian countries, women, seeking opportunities abroad, are oftentimes deceived into becoming prostitutes. Often, poverty-struck women are forced to make money in any way they can, and thus agree to become sex workers. Negative social values that denigrate women, such as the undue emphasis on virginity, contribute to the problem of prostitution. Economic factors and lack of education are also major causes of prostitution.

One of the more novel global responses to sexual trafficking was made in Sweden. Sweden recently passed a law prohibiting the “purchase of sexual services.” The law effectively considered customers equally criminal as the prostitutes. Margareta Winberg, Deputy Prime Minister of Sweden, noted that far too many men see women as objects, as something that can be bought and sold.

Unless we dare to get to the root of the problem, we will never be able to solve it. We would be merely curing the symptoms, that is, ‘taking care’ of the victims, the women. Which would mean that men could continue to exploit women and men.

To date Sweden is the only country in the world so far to enact such a statute. “It is very obvious to us that there is a very clear link between prostitution and trafficking,” claimed Winberg. “Without prostitution there would be no trafficking of women.”

According to Winberg:

We have clearly recognized that women and girls are not commodities and that men who treat them as such should be criminalized. It is the purchasers, that is, most often the men, who are committing a criminal act. According to our point of view, the women – the prostituted women – should not be regarded as criminals. Their actions are viewed from a social perspective. They should be offered education

opportunities, health care if necessary, and support, allowing them to lead a life with a job that allows them adequate living without having to be sexually exploited. Prostitution is one of the more serious expressions of the oppression and discrimination of women; largely upheld by economic and social structures of society.

SOURCES:

Rina Jimenez-David, "Leading the Way," At Large, Philippine Daily Inquirer, 5 March 2003.

Sameena Azhar, "Sex Trafficking in South and Southeast Asia on the Rise," http://www.hardboiled.org/5_1/5I_0I-sextrafficking.html

Keynote Address*

*Justice Ameurfina A. Melencio Herrera (ret.)***

Two (2) of the most recent laws passed by Congress exhibit a high degree of gender and child sensitivity. These are the Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208) and The Anti-Violence Against Women and Children Act of 2004 (Republic Act No. 9262).

These are laws that enforce within the domestic legal system rights and guarantees of vulnerable sectors enshrined in and

* Delivered at the *Seminar on Anti-Trafficking in Persons (R.A. No. 9208 and its Implementing Rules and Regulations)*, on September 3, 2004, at the Orchid Garden Suites, Manila.

** Justice Ameurfina A. Melencio Herrera (*ret.*) has been the indomitable Chancellor of the Philippine Judicial Academy (PHILJA), the education arm of the Supreme Court of the Philippines, since March 1996. She was Associate Justice of the Supreme Court from 1979 to 1992, where she chaired the Second Division from 1988, and Associate Justice of the Court of Appeals, chairing the Eighth Division from 1973 to 1979. At the Academy, she also holds the following positions: Chairperson of the Academic Council, Presiding Officer of the Judicial Reforms Office, and Member of the Board of Trustees. She graduated *Valedictorian* and *Cum Laude* at the University of the Philippines College of Law, where she obtained her Bachelor of Laws degree. She was Bar Topnotcher when she took her Bar Examinations, ranking first with a score of 93.85%. She is also currently Deputy President for Australasia at the International Organization for Judicial Training (IOJT), an international organization of academies specializing in judicial education and training, formed in March 2002, in Jerusalem, Israel.

guaranteed by key international human rights covenants and treaties such as the Universal Declaration of Human Rights; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child; and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

They also constitute significant developments in domestic law insofar as they provide protection against certain detestable acts of exploitation and abuse heretofore unpunished and unpunishable.

In the recent June 2004 Combined Fifth and Sixth Philippine Progress Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) the situation of trafficking in women and children was described as follows:

179. A number of women who leave the country as entertainers, fiancées of foreign nationals, service workers, tourists or undocumented workers fall victim to organized criminal syndicates. Their undocumented or illegal status has kept them outside the protection of laws. From 1992 to December 2002, the Philippine Foreign Service recorded 1,084 cases of human trafficking. Data reported is very low compared to the number of actual victims reported. This may be attributed to the lack of systematic monitoring mechanism on the movement of Filipino migrants. Women comprised 66% of the victims, of whom 18% had been forced into prostitution. The government had repatriated 31% of the victims.

180. In 2000, the Philippine Center on Transnational Crime recorded 153 cases of illegal recruitment, illegal migration and human trafficking. The Commission for Filipinos Overseas recommended the blacklisting of 9 foreign

nationals involved in operating pen pal clubs or recruiting Filipino women for marriage to foreigners.

On May 26, 2003, the Philippine President signed into law Republic Act No. 9208 or the Anti-Trafficking in Persons Act of 2003. In addition to the sensitivity to gender and children exhibited by this law, its passage is an example of the combined advocacy of government agencies and inter-agency councils and the civil society groups that provided both technical inputs and political pressure.

The Philippines is also a State Party to a number of international instruments such as the Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others and the International Convention on the protection of the rights of All Migrant Workers and Members of their Families.

On October 24, 2001, the Philippine Senate ratified the UN Convention Against Transnational Organized Crime and its Supplementary Protocols, namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and the Protocol Against the Smuggling of Migrants by Land, Air and Sea. These Protocols are particularly significant as they open opportunities for local agencies to link up with other countries in a global effort to fight trafficking of women and children.

There are other measures which have been undertaken to prevent trafficking. In 1996, the government designed and implemented a national strategy to combat human trafficking. An information system was set up by Department of Foreign Affairs (DFA) among concerned agencies. Cases of trafficking have also been reported to the Office of the Undersecretary for Migrant Workers' Affairs (OUMWA). Temporary refuge is given at the Filipino Workers' Resource Center. Victims are assisted in filing appropriate charges against the suspected trafficker.

The Social Welfare Department provides counseling and therapy, including reintegration program for trafficked victims.

As early as January 1999, a Philippine Center on Transnational Crime has been established, which put up a shared central database among government agencies for information on criminals, arrests and convictions on various transnational crimes.

Community education programs to raise public awareness on various migration issues have been conducted by the Commission for Filipinos Overseas.

In February 2002, as a result of our participation in the *First Regional Conference in People Smuggling, Trafficking in Persons and Related Transnational Crime*, held in Bali, the President directed DFA to convene the Senior Government Working Group on Human Trafficking and People Smuggling composed of key agencies.

Non-government organizations have also contributed their share in critical advocacy for legislation research and delivery of services such as shelter and pre-departure training and counseling.

The new Anti-Trafficking in Persons law is thus perceived as the product of years of advocacy of both government agencies and non-government groups.

And yet, despite all these measures and official actuations, the Philippines has dropped to Tier 2 of the Watch List Category of the U.S. State Department thereby implying the Philippine Government's failure to provide evidence of increasing efforts to combat severe forms of trafficking, and particularly, the weak implementation of the New Anti-Trafficking Law.

It is essential, for greater impact, therefore, that successful implementation hinge upon the effective coordination of all groups. These groups and agencies are enumerated in the law itself and its Implementing Rules and Regulations and are comprehensive enough in scope.

The intricacies of the crime of trafficking also require the harmonization of the new trafficking law with other related domestic laws and international agreements. It bears emphasizing the need to strengthen the extra-territorial reach of the new law for its effective enforcement. Section 26 of the law enjoins the Department of Justice (DOJ), in consultation with DFA, to exert efforts at including offenses of trafficking in persons among extraditable offenses in our existing and future extradition treaties.

Another important task under Sec. 25 is for DFA to make representation with host governments for the extension of appropriate residency permits and protection to victims of trafficking. This is a crucial measure or form of intervention during the most sensitive stage of the experience of the victim preparatory to repatriation.

As our efforts at combating trafficking begin more systematically, it is worth looking into the experiences of other countries whose citizens have also fallen prey to this phenomenon. A number of international practices may be studied by government in order to find more innovative ways of addressing the root causes of the problem and detecting potential trafficking situations. Some of these examples may be found in the following:

- Panama** — its anti-trafficking law obligates airlines, tour agencies, and hotels to inform customers in writing about the prohibitions of the new law.

- Colombia** – its Department of Administrative Security is authorized to approach outbound travelers that appear to be potential trafficking victims at airports.
- Ghana** – the Government conducted “Operation Bring Your Children Home” to encourage parents who sold their children to traffickers to bring them home in exchange for business assistance, job-training, micro-credit facilities, and assistance with school fees and uniforms.

We could perhaps be more imaginative in our program design in the context of our own socio-economic and political conditions and demands.

The Department of Social Welfare and Development’s (DSWD) recent step in going down to the *barangay* level to boost the campaign against child trafficking could be an example. The Department has noted that a high percentage of child trafficking is noted in areas frequented by tourists and impoverished communities and is taking action to counteract it. It is bringing on board local officials and apprising them of the presence of people victimizing children.

The DOJ could also identify problem areas in the law centering on such matters as the nature of trafficking as a continuing crime and the court with appropriate jurisdiction over the case. Likewise, the necessity of determining under which law to prosecute, given the many related laws, is important. Thus, when the trafficked victim is a child, it may be better to prosecute under R.A. No. 7610 since this law is specially crafted for children. Additionally, issues and concerns in enforcing and prosecuting cases under the Anti-trafficking law should be studied. Should the law be amended so that there could be a provision on presumption of trafficking

considering the difficulty presently being encountered in prosecuting cases.

The Coast Guard could also be asked to assist. Mechanisms should be put in place to prevent and detect traffickers at the port of origin. We must effectively address internal trafficking because it serves as a springboard for trafficking across national borders.

Facilitating services for victims of trafficking must also be effectively addressed. Preventive, protective and rehabilitative programs for them should be organized and implemented so that they could be reintegrated into the mainstream of society.

Simultaneously, we must give support and protect victims and witnesses who give evidence with which to prosecute syndicates and ring leaders.

In sum, coordinated implementation is vital. Harmonization is crucial. Prompt apprehension and prosecution of traffickers is demanded. Effective criminal justice response to human trafficking is essential.

In closing, allow me to underscore the human costs of trafficking in persons as enunciated in the U.S. Department of State Report of June 2004:

Fundamentally trafficking violates the universal human right to life, liberty and freedom from slavery in all its forms. The loss of family and community support networks renders the trafficking victim vulnerable to the trafficker's demands and threats and contributes in several ways to the breakdown of social structures.

Indeed, it cannot be emphasized enough that the trafficking of women and children is a crime against humanity.

UNIFEM Gender Fact Sheet No. 2

Trafficking in Women and Children

The effective suppression of trafficking in women and girls for the sex trade is a matter of pressing international concern... The use of women in international prostitution and trafficking networks has become a major focus on international organized crime. . . Women and girls who are victims of this international trade are at an increased risk of further violence, as well as unwanted pregnancy and sexually transmitted infection, including infection with HIV/AIDS.

Beijing Platform for Action,
chap. I, resolution I, annex II, para. I

CONCEPT OF TRAFFICKING

The definition of trafficking and the exploitation and prostitution of others is set out in Articles 1 and 2 of the 1949 Convention for the Suppression on the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Convention refers to actions at both the national and international levels. Since 1949, the concept of trafficking has been extended to include trafficking for the purpose of other forms of exploitation of women. This wider view of trafficking is reflected in the Beijing Declaration and Platform for Action, which also includes forced marriages and forced labour within the concept.

WHO ARE TRAFFICKED?

- Women and children are the key target group, because of their marginalization, limited economic resources and predominance in the “invisible” formal sector.
- People from impoverished and low income households in rural areas and urban slums, especially women engaged in small farming, petty trading, vending, as labourers scavengers and in other low status work and services.
- Ethnic minorities, indigenous people, hill tribes, refugees, and illegal migrants.
- People with low level of education, a few years of formal schooling, some primary school education, or illiterate.
- Young girls running away from home, or girls from families that expect their daughters to financially contribute to their support are easy targets for traffickers.
- People who lack awareness of their legal rights, their exploited situation, and have no channel for seeking redress.

WHY TRAFFICKING?

Both **supply** and **demand factors** foster the growing trafficking industry:

DEMAND SIDE	SUPPLY SIDE
<p>Demand by employers and enterprises for cheap labour, women's labour is usually in low status work in the domestic and entertainment spheres putting them at risk.</p> <p>An expanding commercial sex industry in the sub-region and increased demand for the services of sex workers. Male client preferences are for younger women and girls because of the fear of HIV infection.</p> <p>Development policies promoting tourism, and patterns of development that depend on temporary migrant workers, particularly males.</p> <p>Male attitudes and perceptions of women in society, and women's unequal socio-economic status.</p>	<p>Poverty - women are the minority of the poor and their poverty is increasing.</p> <p>Inadequate educational and employment opportunities.</p> <p>Economic disparities within countries and between countries and regions, fuels the demand for trafficking from low income to high-income areas.</p> <p>Globalization and economic liberalization have relaxed controls, opened borders between countries, facilitating population mobility.</p> <p>International migration of women into the labour market provides increased opportunities and channels for trafficking.</p> <p>Civil and military conflicts push people to flee their countries, encouraging cross-border trafficking.</p> <p>Erosion of traditional family values and the pursuit of consumerism encourage the sale of women and children.</p> <p>A lucrative business with high monetary returns attractive to crime syndicates.</p> <p>The growth of transnational crime, and the expansion of drug trafficking networks act as mechanism for other forms of exploitation.</p> <p>Weak law enforcement mechanisms and measures to penalize offenders, exploitation by corrupt law enforcers and officials.</p>

TRAFFICKING AND PROSTITUTION – A DEVELOPMENT ISSUE

Trafficking in women and children is clearly both a human rights and a development issue. Apart from the human, social and economic costs of the sex industry, the spread of venereal diseases and HIV/AIDS, child prostitution deprives children of the opportunity to pursue education and to achieve their full potential. It thus deprives the nation of vital human resources for development. This should be a particular concern in a country such as Thailand that has an adult population with comparatively low levels of education but a rapidly increasing demand for an educated and skilled labour force.

Prostitution has often been seen as a development problem from the supply side. That is, it is argued that young women and girls are forced (or pressured) into the sex industry by poverty and a lack of alternative employment and income-earning opportunities.

Increasingly, prostitution and trafficking are also being seen as a development issue from the demand side. The demand for the services of prostitutes and for women to be trafficked, both within this region and to developed countries, is clearly a function of development. It is a function of both the level of development, which creates both supply and demand, and the nature of that development:

- Development projects in comparatively undeveloped regions and countries often bring with them a rapid increase in the demand for commercial sex due to the sharp increase in the numbers of unaccompanied male workers in areas where there are few outlets for recreation and entertainment.

- Patterns of development that depend heavily on temporary migrant workers, particularly male workers, are likely to be associated with a sharp increase in the demand for commercial sex.
- Marked differences in income levels within the region contribute to a strong demand for women and children to be trafficked from low income countries to high income countries where the income to be gained from prostitution by the procurers is many times greater than in the country of origin.
- The increasing ease and frequency of international travel, together with the growing phenomenon of temporary migration for work, has increased the opportunities for trafficking.
- The growth of transnational crime involved in a variety of forms of trafficking, including of drugs, has led to the expansion of these networks into trafficking for the purpose of prostitution and other forms of exploitation.

TRAFFICKING MECHANISMS AND TECHNIQUES

Women and children are generally recruited from rural areas or small towns. In the transshipment process they are handed over and taken over by numerous procurers, brokers and intermediaries, usually not known to authorities as ones with criminal records.

Local contacts

Traffickers enlist the help of local persons and villagers to identify vulnerable families. Traffickers operate in an organized network having their agents make contacts with unsuspecting women and children around bus and train stations.

Direct sales

Women and children are sold to traffickers by parents or other family members. Traffickers sell young girls to brokers across borders in Asian countries for one or two thousand dollars (per child or young women) or more.

Deceit

Unscrupulous agents deceive parents, lure women and girls with false promises of well-paid work in cities or marriages to rich partners.

Debt bondage

Economic incentives to parents and arrangements, which bond children and young women into sex-slavery or other exploitative forms of labour, though details of these debt terms are ill defined.

Kidnapping

Criminal gangs or middlemen kidnap women and children, force them to work against their will, and often sell them to brothels.

Falsification of documents

False documents and passports make it difficult to identify and trace trafficked persons.

Bribes

Bribes are commonly paid to various officials or police to procure false documents, or at border crossings.

Transportation

Women and children are transported by foot, buses, pick-up vans, trains and boats.

STRATEGIES FOR COMBATTING TRAFFICKING

Government agencies and NGOs, together with the international community, have adopted a variety of strategies to combat trafficking in women and children. These include:

- Prevention of trafficking through the legal and criminal system, training of law enforcement officers.
- Control and suppression of prostitution through the legal system.
- Rescue and rehabilitation for women and girl victims of trafficking.
- Protection for and awareness-raising among women and girls to prevent trafficking.
- Demand reduction through advocacy to raise public awareness, particularly in relation to forced and child prostitution and other measures.
- Supply reduction by advocacy and awareness-raising among parents and guardians.
- Supply reduction through the provision of alternative employment and income-earning opportunities for women and girls.
- Supply reduction through campaigns targeting parents on the long-term advantages of girls education.

DATA ON TRAFFICKING AND PROSTITUTION

There are almost no reliable estimates of the number of women who are trafficked or on from where and to where they are trafficked. Trafficking is not reported as such as a category in the

crime statistics collected by the United Nations. However, many countries are beginning to collect information on the phenomenon. The Government of Nepal estimated that in 1992 not less than 200,000 Nepalese women and girls were working in brothels in India. A considerable number had been either forcefully abducted or tricked into going to India and had been sold to brothels. In Thailand, the only estimates available relate to prostitution. A significant proportion of prostitutes, including most child prostitutes, are either forced or tricked into the trade.

Estimates of the numbers of prostitutes in Thailand vary widely, depending on the source of the figures and the method of estimation. In 1995, the Public Health Ministry estimated that there were 81,384 Commercial Sex Workers (CSWs) of whom 16,383 were direct CSWs and 65,001 were indirect CSWs. The total number of brothels was reported as 6,563. One thousand seven hundred ninety-nine (1,799) of these being outright brothels and the remainder places where prostitutes were available but not the main business. These figures were based on a twice yearly survey of sex establishments related to surveillance of venereal diseases.

The Police Department provides the highest estimate of the numbers of CSWs - 500,000 based on the number of registered entertainment places. The National Commission on Women's Affairs estimated the number to be 150,000 to 200,000, of whom not more than 20 per cent were thought to be children. Academics from the Population and Social Research Institute of Mahidol University estimated the numbers to be between 200,000 and 300,000.

By contrast, NGOs working on children's rights issues estimate the number of prostituted children to range between 200,000 (ECPAT 1994) and 800,000 (Centre for Protection of Children's

Rights CPCR, 1989). The latter figure seems too high, implying that one of every four (4) females aged eleven (11) to seventeen (17) was a prostitute. However, in defence of the estimate, the figure includes not only Thai children but also those from the northern hilltribe minorities, Burmese, Chinese, Lao and Cambodian children who are trafficked into Thailand's sex industry.

VOLUNTARY OR FORCED ENTRY INTO PROSTITUTION

Three (3) modes of entry into prostitution have been identified:

Voluntary indicates that the woman, prostitute-to-be, approaches the owner/manager of a sex establishment herself;

Bonded implies the involvement of parents or guardians who receive money from an agency or owner for giving away their daughter; and

Involuntary involves the use of deception and coercion of the women by an agent or owner/manager.

However, the distinctions between them are not as clear as the definitions might suggest. "Voluntary" does not necessarily mean free choice or informed consent. Interviews with victims of child prostitution in Thai NGO shelters revealed that many girls who said that they "knew" they would be working as prostitutes actually did not know what that meant. They thought that it meant "wearing Western clothes in a restaurant." Many also said that they could leave the brothels freely but when asked if they had ever tried, most said that had not dared because they had no money or because they feared being arrested or sold to another brothel. Most also said that they could refuse a customer, but further

questioning revealed that refusal was virtually unheard of because of the fear of repercussions.

CULTURAL CONTEXT OF PROSTITUTION IN THE MEKONG REGION

There are cultural, familial, economic and historical reasons behind the decision to send a child to work in the sex industry. In Thailand and neighbouring countries children are expected to support and obey parents' wishes, and show parents gratitude and respect no matter what the difficulties. Many children who migrate to Thailand to work in difficult, low-paid and dangerous occupations feel that they should not return home "empty handed" due to their traditional responsibility to care for their parents. Prostitution is often perceived as fulfilling a traditional role of daughters who are caretakers of the family and community. Under Theravada Buddhism, women and girls are thought to be unable to achieve enlightenment. Thus, while men can show gratitude and respect to their parents by becoming monks and pursuing the spiritual life, many girls feel that they must make sacrifices for the benefit of their families, villages and their own *karma*.

INTERNATIONAL LEGAL INSTRUMENTS

International Law clearly condemns slavery and slave-related practices. It is well established that the prohibition of these practices has attained the status of customary international law.

Human Watch Rights Watch, 1993: 29

Convention for the Suppression of Traffic in Person of the Exploitation of the Prostitution of Others (The Trafficking Convention)

The international community first denounced trafficking in the Trafficking Convention, which was approved by the General Assembly of the United Nations in 1949. The Convention calls on states parties to punish traffickers and to protect all persons against such abuse. It also calls on states parties “so far as possible” to “make suitable provisions for [trafficking victims] temporary care and maintenance,” to repatriate trafficked persons “only after agreement. . . with the State of destination,” and where, such persons cannot pay the cost of repatriation, to bear the cost “as far as the nearest frontier.” [Convention for the Suppression of the Traffic in Persons, Article 19]. Thailand has not ratified the Trafficking Convention. The Convention deals only with trafficking for the purposes of prostitution, and is now regarded by many NGOs as out-of-date.

Convention on the Elimination for All Forms of Discrimination Against Women (CEDAW)

Under CEDAW, states parties are obliged to eliminate discrimination and must take all appropriate measures to suppress all forms of traffic in women (Articles 2e and 6).

However, the Convention does not explain what these measures might be. Thailand ratified CEDAW in 1985, with reservations on Articles 7, 9, 19, 11, 15, 16 and 29. Some reservations were recently withdrawn.

Some countries have expressed concern that, although the Convention itself does not require that acts of prostitution be criminalized, several of its provisions have the indirect effect of making the practice of prostitution illegal. Australia, for example,

noted that these provisions blur the distinction between voluntary and coerced prostitution. “To consider voluntary sex work and coercive prostitution as the same issue, and therefore to demand the outlaw of prostitution *per se*, is to view prostitution as a moral issue and to consider sex workers as people unable to make informed decisions on their life. Such a view is paternalistic and raises serious human rights implications. Further, criminalization of the voluntary sex industry fosters conditions of violence against women sex workers” [United Nations, 1996, pages 8-9, para 26].

Convention on the Rights of the Child 1989 (CRC)

The CRC defines the child as a person under eighteen (18) years of age, unless the national laws recognize a younger age of majority. States parties are obliged to protect children from all forms of discrimination (Article 2), to protect them from sexual exploitation and abuse, including prostitution and pornography (Article 34) and to make every effort to prevent the sale, trafficking and abduction of children (Article 35). Under Article 39, states parties have an obligation to ensure that victims of exploitation receive appropriate treatment for their recovery and social reintegration. Thailand acceded to the CRC in 1992.

Human Trafficking in the Philippines: A Situationer*

*Ms. Cecilia T. Hofmann***

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* Delivered at the *National Inter-Disciplinary Seminar on Trafficking in Persons*, on June 24, 2004, at the South Sea Resort Hotel, Dumaguete City.

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I. GLOBAL CRISIS

The phenomenon of trafficking in persons has seen such a massive growth in the last two (2) decades that the United Nations Office on Drugs and Crime (UNODC) speaks of epidemic proportions and states that today no country is immune. Some estimates for what is being called modern-day slavery.

- 4 million persons moved across borders and within countries (UN 2001)
- 80% of cross-border trafficking victims are women, 50% children (U.S. State Dept. 4th Annual Trafficking Report 2004)
- 1.2 million children are trafficked (ILO)
- Trafficking believed to be a \$5 to 7 billion operation annually (UN, Europol), the third largest source of profits for organized crime after drugs and arms (U.S. Congressional Research Service, CRS)

II. REGIONS/COUNTRIES OF ORIGIN OF TRAFFICKING VICTIMS

The majority of trafficking victims used to originate in Southeast Asia with the Philippines and Thailand figuring most prominently as source countries of women and girls. But victims also come from South Asia, notably Nepal and Bangladesh, from Africa, Latin America and the Caribbean. Today, trafficking activity is intense in Central and Eastern Europe, and in the countries of

the former Soviet Union where crime groups organized and moved in after the economic and political breakdown in that region.

III. DESTINATION: SEX INDUSTRY

The sex industry, increasingly accepted and mainstreamed as an economic sector in many countries is the main destination of trafficked women and girls. The growing **normalization** of all forms of commercial sex is breaking down earlier social and legal deterrents to the buying and consumption of prostitution sex and other sexual **services**. As a result, expanding male demand is fueling trafficking to increase the supply of bodies that constitute the raw materials for profitable sex businesses.

IV. OTHER TRAFFICKING PURPOSES

Trafficking is not confined to the sex industry, it also supplies persons, men and women, for cheap, bonded or slave labor, particularly for what UNODC calls **three-D jobs** that are dirty, difficult and dangerous. In some countries, boys are trafficked and forced to be child soldiers in military conflicts. Infants and small children are trafficked to be sold for adoption. In extreme cases, adults and children are trafficked for the extraction and sale of human organs.

V. PHILIPPINE SITUATION OF TRAFFICKING

A. Dearth of Data

Although the trafficking of Filipino women figures prominently in many international and regional accounts and reports, in this country there is little to no official statistical data. Systematic

data gathering has not yet been conducted that distinguishes between trafficking, illegal recruitment and human smuggling. Where limited data does exist, it is more likely to be on cases of child trafficking that apparently raise greater concern than the trafficking of women.

Attention to the phenomenon of trafficking has for some years been focused on by NGOs concerned with issues of child labor, marriage and labor migration, and on issues of women's rights especially as they are violated by prostitution and other forms of sexual exploitation. But here too, more qualitative than statistical data has been generated given the limited scope of NGOs' action and resources.

VI. TRAFFICKING WITHIN THE COUNTRY

While media reports have sometimes highlighted cases of trafficking for prostitution of Filipino women to Africa, Malaysia, Korea or Pacific island states, it is safe to say that the most rampant phenomenon is internal or domestic trafficking.

- Mostly young girls (ages 15 to 22/25, PNP, Visayan Forum) and boys are recruited, often with the consent of their parents.
- Movement is from rural areas to urban centers, from one region or province to another, the majority from the Visayas and Mindanao to Luzon.
- Jobs promised are in households, factories, plantations, sales, or restaurants.
- Many girls end up confined in brothels or in male entertainment establishments and are offered up for prostitution sex.

- Other non-sexually exploitative work, especially for boys, is often badly paid, excessive, physically arduous or abusive. In many cases, extremely bad living conditions for the young workers have been reported. Without resources or assistance, the young victims of internal trafficking are often unable to escape their exploiters.

VII. RECRUITERS' RECRUITMENT PROCESSES

- Recruiters can be friends or family members, neighbors or community members, especially those who have worked in urban centers or have been abroad themselves and can offer contacts (sometimes for a fee from prospective employers.)
- **Talent** and employment agencies advertise in print and radio, display streamers and distribute flyers, or deploy **canvassers** to scour rural areas for unemployed young people. In one instance, a German-Filipino couple visited Olongapo high schools close to graduation time and offered attractive graduating girl students, specially white Amerasians, modeling jobs in Metro Manila nightclubs. The possibility of similar future work in Japan was dangled.
- The government-sanctioned category of **Overseas Performing Artist** or OPA all too often masks an unsavory reality. While musicians and singers are respected and generally well-paid entertainers in the Asian region, the young women briefly trained for mostly sexy dancing are destined for sex clubs in Japan. They will find themselves in situations of intense pressure to consent to prostitution.

- Individuals, agencies, internet sites and in one case, a religious sect, facilitating and arranging marriage to foreigners continue to operate and flourish. In one case, a Filipina married a European who then farmed her out to his friends for paid sex.

VIII. INTERNATIONAL TRAVEL ARRANGEMENTS/ TRAFFICKING ROUTES/DESTINATIONS

- Leaving the country with contracts and other documents for overseas employment is no guarantee of security from trafficking. Some years ago, eight (8) women from Bulacan left believing that they would work in the restaurant of a friend in Germany only to find themselves in a brothel in Nigeria.
- Without employment or marriage papers, arrangements are made by traffickers for Filipinos to leave the country as tourists or religious pilgrims. Women from Angeles and Tarlac were taken as tourists to Bangkok and from there to brothers in Korea around the U.S. military bases.
- Even without travel documents traffickers can move their victims through the **backdoor** routes, especially from the south of Mindanao or Palawan. Passenger and cargo shipping lines and even privately-owned sea vessels carry Filipino women and also men to Sandakan and other points in Malaysia. From there they may be moved to Indonesia, Brunei and other points.
- Filipino women and girls have been trafficked to Europe, Africa, the Middle East, Singapore, Malaysia, Brunei, Korea, Taiwan, Japan, Australia, New Zealand, to Pacific islands such as Saipan and the Marianas, and to North America.

IX. WHAT RENDERS FILIPINAS VULNERABLE TO TRAFFICKING?

Many factors reinforce each other and conspire to render Filipina women, girls and also boys vulnerable to the designs of traffickers:

- Economic need caused by rural underdevelopment and poverty provide the main impetus for both women and men to seek work outside their areas of origin.
- Linked to poverty are low educational attainment and lack of job skills that seriously prejudice their work options and force them to accept whatever is offered.
- Natural calamities and military conflicts displace populations and lead people to seek any survival options.
- The government policy and system of overseas employment for Filipinos allows traffickers opportunities to manipulate and exploit the system, especially in cooperation with corrupt government personnel.

X. GENDER FACTORS

Gender factors are determining and explain why in the trafficking phenomenon, women and girls are the vast majority of victims:

- Like some of their Asian sisters, Filipinas internalize a culture of female servitude and self-sacrifice. To try to provide for the needs of their children, husbands or families, this socialization can lead them to accept the unknowns and risks in the offer of recruiters and traffickers.
- Increasingly, parents, siblings and other family members appear willing to put their daughters or sisters at risk or

to sacrifice their welfare for the economic gain of the family. There are many examples of young, sometimes under-age rural girls being offered up in the marriage market to foreigners or urged to become entertainers in Japan.

- When women or girls experience gender-based violence such as incest rape or domestic violence in their own homes, they may fall prey to the offer of recruiters and traffickers in trying to get away from abusive home situations.
- Women may also have aspirations of personal growth, gain and adventure that their own limited or constraining environments cannot satisfy. This can lead them to seek and accept risky recruitment offers.

Gender factors also operate in urban centers and receiving countries:

- More sex establishments are opening in receiving countries. Since the legalization of brothels in the Australian state of Victoria, the number of illegal brothels has tripled and the number of women in street prostitution has increased fivefold, putting more women at risk. Trafficked Filipino women were recently identified as among those in Australian brothels.
- The growing trend of sexual consumerism is also evident in sexualized entertainment establishments, sex tourism activities, in the production of pornography in all its forms are businesses that require a constantly renewed supply of women and girls.
- There is a surging male demand for prostitution sex. The legalization of prostitution in a number of countries is

sending a dangerous message to men that it is their government-sanctioned right to buy the use of women's bodies. With this officially recognized privilege, many more men than in the past are encouraged to exercise this **right**. Buyers of sex want sexual novelty from a variety of races and ages of women, for more **extreme** sexual experiences, which necessarily fuels trafficking of vulnerable women and girls.

- Trafficking is hugely profitable. The **sex sector** requires rapid and high turn-over of women: after some months, sex establishments like to take on new batches of women and the earlier group is re-sold to a new establishment.

XI. WHY IS IT DIFFICULT FOR WOMEN TO GET OUT OF SITUATIONS OF TRAFFICKING AND PROSTITUTION?

- Women's passports and other documents are confiscated by traffickers and their mobility in a foreign country is thus blocked or made difficult.
- They fear of being arrested, imprisoned, deported, publicly exposed and humiliated.
- They are in situations of debt bondage where they are told to have incurred huge debts for travel arrangements, board and lodging, clothing, loans or the like that they must pay back in physical or sexual labor.
- They are threatened with or experience actual physical, psychological and sexual abuse such as rape.
- They are threatened with harm to their families at home.

- Many women are physically and emotionally incapacitated by trauma, drug, or alcohol dependence and are not able to act to get out of their situations.

XII. THE HARM TO WOMEN OF TRAFFICKING AND PROSTITUTION

- Women can suffer injuries, psychosomatic ailments, sexually transmitted infections, gynecological problems, unwanted pregnancies, abortions, and in many cases, HIV infection.
- Psychological harm can include depression, low self-esteem, self-injury or suicide attempts, alcohol and drug abuse, hampered personal development problems with relationships and social reintegration.
- Trafficking and prostitution devastate the lives of women and children and creates intolerable suffering.

XIII. THE HARM AND COST TO SOCIETY AND TO THE GOVERNMENT OF TRAFFICKING AND PROSTITUTION

- The social and political inequality of women is perpetuated and reinforced, thus depriving society of the productive potentials of a large segment of the population.
- The future of trafficked children is severely prejudiced as it deprives them of normal development and opportunities for education. Future vital human resources can be lost to society.

- Related organized criminal activity including documentary fraud, money laundering and migrant smuggling can be fueled by trafficking.
- Human security is seriously threatened.
- Huge financial and human resources are required to respond to the range of problems created by the crime of trafficking through measures and programs for prevention, protection of persons at risk, prosecution of offenders, the rehabilitation of victims, the training of police and other government personnel. This adds enormous pressures on government and drains already inadequate resources.

XIV. INTERNATIONAL RESPONSES TO TRAFFICKING

- Regional and international networks have been organized to lobby at United Nations (UN), European Union (EU), inter-governmental agencies and national governmental levels for policies and programs on trafficking and prostitution that reflect a gendered human rights understanding of the issues. The one hundred forty (140) NGO members of the International Human Rights Network lobbied in Vienna to achieve a definition of trafficking that protects all victims of trafficking and not just those who could prove being forced into situations of trafficking and prostitution.
- The member organizations of this network collaborate on research, policy and legislative advocacy, in particular against the growing trend of the legalization of prostitution, and on programs and services for trafficking victims where possible.

- Inter-UN agency and inter-government technical collaboration on anti-trafficking activities including information exchange and anti-corruption efforts appears to be increasing.
- Some anti-trafficking approaches include legislation and campaigns to empower women by combating violence against women and expand girls' education, as well as to increase economic opportunities for the poor.

XV. PRESENT NATIONAL RESPONSES TO TRAFFICKING

- The government's Inter-Agency Council Against Trafficking (IACAT) is mandated to formulate and implement a comprehensive anti- trafficking program.
- Inter-agency task forces on trafficking monitor some ports and carry out rescue and other interventions as needed.
- Among NGO anti-trafficking programs and services are research studies and publications; radio programs; seminars and campaigns with communities and other target groups; gender and sexuality education for boys; establishments of halfway houses in some ports for children and youth at risk of trafficking; reintegration services for victims of trafficking including counseling and livelihood assistance.

Sexual Trafficking and Prostitution are "Incompatible with the
Dignity and Worth of the Human Person"

*(Convention for the Suppression of the Traffic in Persons and
The Exploitation of the Prostitution of Others,
United Nations, 1949)*

Public Perceptions on Trafficking of Women in the Philippines*

*Ms. Lucita S. Lazo***

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* Report on a survey probe commissioned by The Asia Foundation and undertaken by Pulse Asia, Inc. as a modular component of the November 2002 *Ulat ng Bayan Survey*.

The article was presented prior to the passage of Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003.

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EXECUTIVE SUMMARY

The Filipino public's perceptions on the trafficking of women were obtained through Pulse Asia's *Ulat ng Bayan* survey in November 2002. A module comprising fifteen (15) survey questions on this area of concern was commissioned by The Asia Foundation (TAF) and ran as an integral part of Pulse Asia's nationwide quarterly survey. Based on 1,200 survey respondents representing various groups by age, sex, location, education and socio-economic class, it was found that close to two-thirds of the sample, especially the educated and the upper and middle socio-economic groups, claim awareness of trafficking of women largely through radio or television. Public perceptions were generally found to be realistic in this benchmark study.

Male and female respondents share the same beliefs regarding trafficking of women. It is perceived to consist mainly of illegal recruitment, using force and/or deceit, of women workers for cheap labor or for sexual exploitation. Lack of jobs and livelihood opportunities in the country is seen as the root cause of trafficking. There is a strong belief that women engage in trafficking in a desperate gamble for a better life. Thus, poverty appears as the overriding cause of trafficking.

Clearly, trafficking of women caters to a gendered labor market and the worldwide trend of feminization of migration for labor provide basis for a gender interpretation of the trafficking phenomenon. While the findings point to a gender-poverty connection, public perceptions in respect of the gender dimension of trafficking need to be stressed by more in-depth data. Social attitudes connecting poverty and gender inequality and trafficking must be further explored.

Various agencies are believed to have responsibility for assisting the victims of trafficking but many believe that the police ought to be approached. However, opinions are strong that trafficking of women continues unabated because of police failure to enforce the law and worse, they are seen to be in collusion with agents of trafficking. The role of Philippine Overseas Employment Administration (POEA) in curbing illegal recruitment is not as widely understood by the public and may require more efforts at information dissemination.

Government action in respect of trafficking needs to be bolstered. Only half believe that the government has an effective program to fight trafficking of women and slightly more than half believe that the government is able to eradicate trafficking. Notwithstanding perceived government ineptness on trafficking; the public is generally optimistic that victims can hope to rise and live a new life. Law and its enforcement are cited as the key to solving trafficking of women.

I. INTRODUCTION

Trafficking of women (TOW) is a global issue and

(T)he 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 internally from poor, rural areas to urban centers for the purpose of sexual exploitation or forced work as domestic servants or in other unsafe or exploitative industries. The Philippines is both a destination as well as a transit country for mainland Chinese nationals trafficked to the Pacific Island nations or to North America.”¹

1. Report Home Page, Trafficking in Persons Report, June 5, 2002.

Trafficking involves a mixture of gender, human rights, trade, labor, and immigration issues. It has ramifications on health, law enforcement, workers' protection and welfare, and justice. It is of great concern, especially for the activist women's groups in the country. The National Commission on the Role of Filipino Women (NCRFW) and various women's groups are actively advocating for its effective control through the passage of a law. In fact, a proposed bill on trafficking has been the subject of deliberations at the House of Representatives and has reached second reading at the Senate.

A. Trafficking and Gender

Trafficking is a gender issue. Majority, if not all, of those trafficked are women and girls. The agents of trafficking are usually men, acting as recruiters, legal or illegal. However, it is noted that there have been anecdotal reports that trafficking has expanded and include even men who sell their organs for money. As yet, there is very little documentation of this phenomenon.

Trafficking of women exemplifies the *commodification* of women. Underpinning this is a sex-role ideology that attaches lower value for women as compared to men, making women **disposable** goods in the market. It manifests a contemporary form of subjugation of women, either by force or deceit.

Women can be sacrificed, or is the first to be sacrificed, when times get rough. In fact, some women willingly make the sacrifice of being traded in the market for the sake of their home and family. Poverty provides the platform for women to be traded for money either as cheap laborer or sex worker. For the traders, trafficking is a convenient route to easy money. Hence, it has become a syndicated activity involving foreign nationals in

collaboration with local agents, entailing cross-border operations and amassing huge amounts of money.

B. Definition

Trafficking in persons is the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation or prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.²

In the Philippines, the following definition has been adopted:

Trafficking in persons shall refer to the recruitment, transportation, transfer or harboring or receipt of persons *with or without* the victims' consent or knowledge *through legal or illegal* means within or across national borders by means of threat or use 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 or practices similar to slavery, servitude or the removal or sale of organs.

2. Article 3, United Nations Protocol on Trafficking in Persons.

Some studies have addressed the issue. However, establishing the extent and magnitude of trafficking has proven to be difficult because of its clandestine nature and some women begin as child prostitutes. According to Rene Ofreneo, a former Philippine labor undersecretary and an expert on sex trade, the number of prostituted persons in the Philippines is about the size of the country's manufacturing workforce. There are 400,000 to 500,000 prostituted persons in the Philippines. Prostituted persons are mainly adult women, but there are also male, transvestite and child prostitutes, both girls and boys.³

The report of the Commission on Filipinos Overseas gives a sense of the magnitude of the problem:

- Nine hundred fifty-nine (959) recorded cases of human trafficking (1992 to March 2001); 1999 accounted for thirty-five percent (35%) of the cases;
- Victims came from Region III (12.4%); National Capital Region (NCR) (8.4%); Region IV (8%);
- Sixty-five percent (65%) of the victims were women; twenty-five percent (25%) of women victims were forced into prostitution;
- Fifty-three percent (53%) were trafficked to the Asia Pacific; twenty-five percent (25%) to the Middle East, and nineteen percent (19%) to Europe;
- Almost eight percent (8%) of cases involved inter-marriages;
- Trafficking victims paid as much as eight thousand five hundred dollars (\$8,500) to recruiters;

3. Dario Agnote, "Sex trade key part of S. E. Asian economies, ILO study says," *Kyodo News*, 18 August 1998.

- Fifty-one percent (51%) of victims were trafficked with consent/knowledge; forty-seven percent (47%) were deceived;
- Fifty-six percent (56%) of the victims were recruited by parties not related/nor known to them; and
- Government repatriated thirty-eight percent (38%).

Prostitution and sex trafficking are reported to be pervasive in the countryside. According to a study made by various non-governmental organizations led by the Women's Education, Development, Productivity and Research Organization (WEDPRO), even remote rural areas are becoming favorite sites for sex traffickers and prostitution syndicates. Certain areas in Laoag, General Santos City, Negros, Southern Tagalog provinces, Pinatubo area, and Pagadian, to name a few, have reported increasing numbers of cases of prostitution, and where prostituted women are no longer from other provinces, but are local women.⁴

Teen-age girls are being forced into prostitution due to the Asian economic crisis. In Davao City, the Philippines, there are more than 1,000 prostituted teen-age girls; customers pay as little as from 50 cents to \$2.50. This rise in prostitution increases the spread of AIDS, especially as contraceptive costs have gone up with the currency collapse and bankrupt government cuts in distribution programs.⁵

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4. "Ex-streetwalkers fight VFA: Form advocacy groups in urban centers," *The Philippine Journal*, 18 September 1998.
 5. *Tambayan Center for Abused Street Girls*, "Asians in unhealthy crisis Financial woes produce ill effects on depressed region's poverty-stricken," *Washington Times*, 25 September 1998.

Entertainment is the main channel of trafficking women and girls, but a range of establishments from dirt-floor beer houses to karaoke clubs to beach resort to expensive health clubs provide prostitution for men of every social class. An enormous infrastructure of prostitution had been established by the presence of U.S. military bases for the 'rest and recreation' system especially during and since the Vietnam War.⁶

Filipina entertainers and prostitutes in Japan are known for being the most *totemo akarui*, which means "very warm" and that is why Japanese men like them very much. However, a cause for concern is exploitation. They are forced to go on dates or *dohan* so they can keep their customers and this practice is not written in their contract. The women have no choice because they have to please their *mama-san* or *papa-san* (club owners/managers), a situation known in Japanese colloquial term *shogana*.

A compilation of press releases and news articles point to the increasing incidence of trafficking, to *wit*:

- One hundred fifty thousand (150,000) Filipina women have been trafficked into prostitution in Japan;⁷
- One hundred fifty (150) Filipinas were sold into prostitution to night club operators in African countries, particularly Nigeria. The women were bought for \$5,000 each by international syndicates. Four (4) Filipinas were rescued by the Philippine Embassy in Lagos, Nigeria after they sought help from officials;⁸

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6. Coalition Against Trafficking in Women (CATW)- Asia Pacific, Trafficking in Women and Prostitution in the Asia Pacific.
 7. "Open sale of little girls at Tanbaza brothel," Daily Star, 2 July 1998.
 8. Bureau of Immigration, Lira S. Dalangin, "150 Pinays sold as sex slaves in Africa," Manila Chronicle, 31 May 1995.

- In 1991, Filipinas were being sold in Japan, often to the Yakuza, at \$2,400 to \$18,000 each;⁹
- In Cebu, the number of registered prostitutes increased from 1,557 in 1992, to 2,189 in June 1994 to 2,988 in June 1996. This number does not include the estimated 1,500 non-registered prostitutes;¹⁰
- In Cebu City, the number of registered prostitutes rose from 1,500 in 1993 to 4,500 in 1997. In Davao City, in 1993, there were 80 prostitution establishments, by 1997 there were 135, which increased the number of registered prostitutes by 2,000 and the number of unregistered by 2,000;¹¹
- In Davao, there were 868 prostitutes in 1993 and 1,525 in the first half of 1996. ¹²

Trafficking is closely associated with migration. Philippine embassy officials in the seventy-three (73) embassies and consulates all over the world noted the occurrence of trafficking for prostitution, illegal labor and for bride trade. Filipinas are trafficked as mail-order brides in Australia and in the U.S., for prostitution in Greece, Nigeria, Hongkong and Japan. Within

9. CATW - Asia Pacific, *Trafficking in Women and Prostitution in the Asia Pacific* .

10. Gabriela, *Statistics and the State of the Philippines*, 24 July 1997.

11. Gabriela, Diana Mendoza, "RP has 400,000 Prostitutes," *Today*, 25 February 1998.

12. Gabriela, *Statistics and the State of the Philippines*, 24 July 1997.

the Philippines, an estimated 300,000 women and 30,000 children are in prostitution.¹³

Significantly, public recognition of this issue is reflected in the social actions and advocacy by women's groups which led to the filing of the bill at the legislature. Senator Manuel B. Villar, Jr., Chairman of the Senate Committee on Foreign Relations, said that sexual exploitation and trafficking of women have continued unabated.¹⁴

C. Purpose of the study

The purpose of the present study is to explore public perceptions on trafficking of women in the Philippines. To the author's knowledge, this is the first known effort to establish an empirical benchmark for public awareness of the phenomenon of trafficking of women in the country.

D. Methodology

I. Survey questionnaire

Fifteen (15) questions were included in the Pulse Asia *Ulat ng Bayan* Survey during the last quarter of 2002 to elicit opinions on trafficking of women in the Philippines.

An important feature of the present study is the participatory approach it took in generating the module of questions used in the survey. Non-government organizations involved in development work related to the prevention and elimination of

13. National Commission on the Role of Filipino Women (NCRFW) National Situationer, May 2002.

14. Manila Bulletin, 12 January 2003, p. 8.

trafficking were consulted and assisted in formulating and drafting the survey questions.

2. Respondents

A total of 1,200 respondents participated in the survey, which represented various segments of Philippine society in terms of sex, locale (urban-rural), geographical area, socio-economic class and education. The bulk of the respondents belonged to the lower classes, D and E. All the respondents were eighteen (18) years old and above. Approximately sixty-three percent (63%) were in the age categories from twenty-five (25) to fifty-four (54) years old.

The survey respondents were equally divided in terms of sex; fifty-one percent (51%) were located in urban sites and forty-nine percent (49%) in rural communities. More than half of the survey respondents were from Luzon, fifteen percent (15%) of which were from the NCR. Respondents from the Visayas comprised twenty percent (20%) of the sample and twenty-three percent (23%) from Mindanao. In terms of education, thirty percent (30%) finished elementary level; forty-five percent (45%) had some or completed high school/vocational training and twenty-four percent (24%) had some or completed college. Only forty-four percent (44%) of the survey respondents were working, most (20 percent) of whom were self-employed; the remaining fifty-six percent (56%) were not working.

3. Analysis of data

Data were tabulated using the above-mentioned variables. The findings are presented in Section II of this paper. The discussion is divided into eight (8) parts:

- a. Awareness of trafficking of women;
- b. Frequency and sources of information;

- c. Practices considered as trafficking of women;
- d. Root cause of trafficking of women;
- e. Agencies responsible for combating trafficking of women;
- f. Perceived collusion by agencies;
- g. Attitudes toward trafficking of women; and
- h. Solutions to trafficking.

II. FINDINGS

A. Awareness of Trafficking of Women

Nationwide, sixty-three percent (63%) of the 1,200 survey respondents have either heard or read about trafficking of women although nearly eighty-five percent (85%) of survey respondents do not have personal knowledge of victims of trafficking of women.

The NCR registered a hefty seventy-four percent (74%) in terms of awareness of trafficking of women. The rest of Luzon (minus NCR), registered fifty-seven percent (57%), lower than Visayas, sixty-eight percent (68%) and Mindanao, sixty-three percent (63%).

Consistently, the awareness is higher in the urban areas, seventy-one percent (71%) and this is most marked in urban Visayas, eighty-two percent (82%) and Mindanao, seventy-two percent (72%). Awareness level in urban Luzon stands at sixty-four percent (64%). Notably, an urban-rural differential appears in Visayas and Mindanao where more of those in the urban locals show awareness of the issue.

The wealthy and middle classes of society are very well aware of trafficking as ninety-three percent (93%) of those in the AB

class and seventy-five percent (75%) of the C class reported having heard and read about the issue of trafficking. The poorest sector, E class, showed relatively lesser levels of awareness at fifty-six percent (56%). This class differential may well be a function of differences in access to print and broadcast media.

By working status, farmers show the least level of awareness forty-six percent (46%) while seventy-one percent (71%) of those working in the private sector and the self-employed are well aware of the issue. That farmers do not seem to be in close touch with the phenomenon of trafficking could well be due to lesser exposure to media.

Slightly more males, sixty-five percent (65%) versus sixty-two percent (62%) females claim awareness of trafficking of women.

Across age groups, in general, more than sixty percent (60%) expressed having heard or read about TOW but it is the twenty-five (25) to thirty-four (34) and forty-five (45) to sixty-four (64) age groups who manifest relatively higher levels of awareness. There is a slight dip in awareness level in the thirty-five (35) to forty-four (44) age group and the reason for this is not apparent at the moment.

Educational level has a significant bearing on the awareness of the TOW issue - seventy-six percent (76%) to eighty percent (80%) of those with some college and the college graduates, indicated having heard or read about the issue as compared to those in elementary and high school, fifty percent (50%) and sixty-four percent (64%), respectively.

As the figures show, location, class and education appear to be correlated with the awareness on trafficking of women. One might hypothesize that higher levels of awareness among the

urban, the educated and the rich groups is due to their greater access to media.

B. Frequency and Sources of Information

The clandestine nature of trafficking keeps it hidden from view. It is no wonder that eighty-five percent (85%) of the survey respondents say that they have no knowledge of anyone who has been a victim of any kind of trafficking. The phenomenon is usually kept a secret, being a practice that is looked upon with public disfavor and being seen as illegal and/or immoral.

Roughly a quarter of the respondents said that incidents of trafficking of women were heard either monthly (28%), daily (23%) or weekly (23%) as reported by roughly a quarter each of the respondents. Reports on trafficking of women were mainly heard from television, eighty-nine percent (89%) and the radio, sixty-four percent (64%).

Significantly, a good number, forty-two percent (42%) of those from the NCR and those in the ABC socio-economic classes reported having heard of incidents of trafficking everyday. This could well indicate the extent of media coverage on the phenomenon in Metro Manila and the relatively greater access to media of those in the ABC class.

Nationwide, most especially in the NCR and urban locales, television is the primary medium of information on trafficking as indicated by eighty-nine percent (89%) of those aware of trafficking incidents. In most urban areas, more than ninety percent (90%) reported having heard of incidents of trafficking through the **television**:

- NCR 98%
- Urban Luzon 95%

- Urban Visayas 89%
- Urban Mindanao 94%

In the rural communities, **radio** is the more predominant media source for information on trafficking.

- Rural Visayas 77%
- Rural Mindanao 81%

Also, radio seems to be the medium of the farmers and the less literate groups in the sample as seventy-three percent (73%) of them heard of trafficking from the radio.

The **print** medium appears to be an effective medium for information on trafficking of women in the NCR, seventy-four percent (74%) and among the rich – AB classes, eighty-six percent (86%). The print medium was effective among the college-level respondents as fifty-four percent (54%) to fifty-seven percent (57%) reported that they obtained information on trafficking from newspapers in comparison to only twenty-eight percent (28%) of the elementary level respondents.

More women, sixty-seven percent (67%) versus sixty-one percent (61%) of the men, heard of trafficking from radio while more men, ninety-one percent (91%) versus eighty-seven percent (87%) of the women, said that they heard of it from television.

C. Practices Considered as Trafficking of Women

What practices are considered as trafficking of women by the Filipino public? The survey reveals a variety of ideas but the *illegal recruitment of women workers* is considered by the majority, seventy-six percent (76%) of the survey respondents, as trafficking of women. In fact eighty-four percent (84%) of government workers said so.

Across groups by age, sex, geographical area, rural-urban locale, education and working status, the same belief patterns can be observed. However, fifty-nine percent (59%) of government workers saw trading women for money or property as a form of trafficking.

Other practices considered to be a form of trafficking, though not as widespread a view, are as follows:

- Trading women for money 45%
- Bringing women to another place to work without her consent 37%
- Searching foreign husbands for a Filipina in return for money 23%
- Mail-order brides 19%

The above findings show that Filipinos have a fairly circumscribed notion of trafficking of women as they mainly associate it with illegal recruitment of women worker. The subtle or disguised forms of trafficking are not readily perceived as forms of trafficking. For example, the mail-order bride is not as widely recognized as trafficking; only nineteen percent (19%) of the survey respondents view it as trafficking. According to the Coalition Against Trafficking in Women (CATW), Filipina women have been pimped and prostituted by their German and Australian “husbands.”

Gabriela, a militant feminist NGO in the Philippines, reported that there are 20,000 Filipina mail-order brides entering the United States every year since 1986, a total of 55,000 as of 1997 and another 20,000 Filipina mail-order brides in Australia.¹⁵

15. Gabriela, *Statistics and the State of the Philippines*, 24 July 1997.

Trading women for money, material things, or for marriage is not strongly viewed as trafficking as less than fifty percent (50%) of the survey sample indicated.

It would seem that even if a woman is forced into sexual activity, if there is no exchange of money or material gain, it is not necessarily perceived as an act of trafficking. Hence, only thirty-one percent (31%) regarded the reported rape of Filipinas in Sabah to be a form of trafficking. More intriguing is the fact that forty-four percent (44%) did not consider it as trafficking of women at all, especially the eighteen (18) to twenty-four (24) year old group, fifty-four percent (54%) and the rural Visayans fifty sector did not consider it as trafficking of women. A quarter of the survey respondents said they do not know.

This uncertainty or indefiniteness of opinion on the rape of Filipinas in Sabah is likely to be due to the incompleteness of information in the media that clearly associate incidents of rape with trafficking. Relative to this, there were unofficial and unpublished verbal reports that some Filipinas entered Sabah as a staging point for work as prostitutes in Malaysia and Thailand. The women first enter Sabah where immigration authorities used to be lenient until the crackdown in August 2002 and stay there for a while and ply their trade. They later proceed to Malaysia, ply their trade and then they move on to Thailand, ply their trade once more until they decide to move to other countries in Europe or America.¹⁶

16. Author's personal conversations as government official and member of the Philippine government team that inspected the Sabah detention centers in August, 2002.

D. Root Cause of Trafficking of Women

To recruit prostitutes and workers at a cheap price is said to be the usual objective of trafficking agents as perceived by forty-nine percent (49%) of the respondents. Another quarter said it is only to recruit workers at a cheap price and another quarter felt it is to recruit sex workers. Thus, cheap labor and prostitution, either singly or in combination, are the common motives for trafficking of women.

Trafficking of women is attributed by the vast majority, eighty-one percent (81%) of the respondents, to lack of jobs and livelihood opportunities, a sentiment that is strongly felt by the lower socio-economic groups (eighty-nine percent [89%] of E class). This view is shared by most segments of society. Ninety-three percent (93%) of government workers in the survey sample are well convinced that poverty is the root cause of trafficking of women. A good ten percent (10%) claim it is due to the absence or breakdown of morality in society while eight percent (8%) say it is due to the lack of laws against trafficking of women.

The present findings corroborate the findings of previous studies on trafficking. In the literature, vulnerability to trafficking has been attributed to at least six (6) factors, to *wit*:

- a. Poverty and lack of economic opportunities;
- b. Low level of education and lack of information on the process of recruitment;
- c. History of sexual abuse;
- d. Familial pressure;
- e. Sense of personal and economic autonomy of women; and
- f. Alleged success stories of those who migrate for income abroad.

The gender-poverty nexus is obvious in the present findings. Poverty is the milieu that breeds trafficking of women. And in the prevailing sex-role ideology, the women, just like other material goods, can be conveniently traded in the market in exchange for money or material gain.

From a gender perspective:

(W)omen's subordination is the primary cause of the exploitation and trafficking of women. Aggravated by poverty, women are significantly victimized because of gender inequality. While it is true that lack of economic opportunities in developing countries push women, to the international sex trade, forced labor and marriages, etc. it is gender inequality which defines the impact of economic shocks on women. As the presumed sole caretakers of the home, with feminine traits of personalistic, particularistic and concrete concerns, women take on jobs, which are more often than not, comparatively low in remuneration and security of tenure. In the same way, sexual servicing of men is a task that women perform within the reproductive sphere, rendering them vulnerable to be traded as entertainers, mail-to-order spouses, sex slaves, prostitutes, etc.

Trafficking should be viewed in the context of gender inequality and the traditional female roles in the family and society. There is now a gendered labor market and a worldwide feminization of labor migration resulting from, women's increasing responsibility for their economic survival and that of their families. Within a gendered labor market, sexual and domestic works are two (2) of the few income generating options available for women, especially those from poor countries and regions. National/intraregional/international migration patterns reflect this labor division wherein women are trafficked for domestic

labor/slavery and slavery-like practices, marriage, prostitution and other forms of sexual exploitation.”¹⁷

Without negating the gender interpretation of trafficking, one might ask: *are men trafficked?* If they are, does that mean parity with the women? Of late, there have been reports, though yet infrequent compared to publicity on the trafficking of women, that Filipino men are trafficked for the sale of their organs. If such is true, what does it imply?

Does the gender divide dissolve? One might hypothesize that extreme poverty could dissolve the gender divide so that whoever – men or women – fetches the money gets traded in the market. Currently, because women can more rapidly fetch the money as they are used as cheap-laborer or sex worker, then they are the first to be put in the market. Would this mean that women are less valued? Or is it simply a pragmatic response to cope with poverty and ensure life survival?

The present study focused on the trafficking of women; thus, there are no comparative data on the trafficking of men, if at all. Perceptions on the latter could be explored in future studies. More data are needed to nuance the gender interpretation of trafficking of women. Further, it should be interesting to know the profile of the agents of trafficking. Are they mostly men? Or are the women also active participants in the trafficking? What roles do each of them play?

E. Agencies Responsible for Combating Trafficking of Women

Accountability and responsibility for trafficking victims are being charged by most of the survey respondents to the police. Because

17. NCRFW Situationer, May 2002, p. 3.

trafficking involves a mixture of various issues and concerns, it is really an inter-agency responsibility. Various national agencies such as the Department of Foreign Affairs (DFA), the POEA, the Bureau of Immigration and Deportation (BID) and the Department of Social Welfare and Development (DSWD) could assist the victims of trafficking. At the local level, the village or *barangay* officials are the ones closest to the ground who could intervene.

Nationwide, majority sixty percent (60%) of the survey respondents believe that the police is the one agency that ought to be approached by victims of trafficking of women. A third said that Overseas Workers Welfare Administration (OWWA) and twenty-six percent (26%) and twenty-seven percent (27%), respectively said it should be the POEA and DFA. There are a few who say that the courts, twenty-four percent (24%), *barangay* officials, twenty percent (20%) and the BID, eleven percent (11%) should be approached.

In general, the regulation of illegal recruitment is a mandate of the POEA; yet it is not as widely seen as having responsibility over trafficking of women considering that it is the one agency that regulates recruitment for overseas employment in the country. In Luzon, one-third view POEA as the agency to be approached in cases of trafficking but in Mindanao and especially in the Visayas, this perception is not as widely held.

There are more respondents, thirty-three percent (33%) of survey respondents, who see the OWWA as the agency to approach compared to those who see POEA as the proper authority, twenty-six percent (26%). If this is any indication, it would seem that OWWA is more visible among the public than is the POEA.

respondents in the survey group believed that the police are in collusion with agents of trafficking.

Noteworthy is that forty-one percent (41%) of the upper and middle class respondents who believe there is collusion think it is happening with the POEA; thirty-three percent (33%) believe it is with the OWWA and still another twenty-nine percent (29%) think it is with the DFA.

Interestingly, forty-one percent (41%) of urban Mindanao respondents and for that matter, thirty percent (30%) of Mindanao respondents (rural/urban combined) as compared to respondents in Luzon and Visayas appear to be more doubtful of the courts whom they think is in collusion with the agents of trafficking.

Were these figures to be used as trust indices, there is good ground to say that the courts in Mindanao, the national agencies like the police, POEA and the DFA should be put under close watch to ascertain these suspicions of collusion.

Low public trust quotients could be related to the many high profile cases of government officials, politicians and police officers who have sexually assaulted or exploited girls in the Philippines. Many examples have been cited by Gabriela, as follows:

- Congressman Romeo Jalosjos raped a twelve (12) year old girl.
- Biñan Mayor Bayani Alonte was accused of raping a sixteen (16) year old girl.
- Former Quezon Representative Manolet Lavidés was involved in the prostituting of four (4) high school students of Novaliches High School.

- Angeles City Mayor Edgardo Pamintuan was involved in the cases of a sixteen (16) year old model being prostituted by talent manager, Jojo Veloso.
- Five (5) policemen in San Fabian, Pangasinan were accused of raping an eleven (11) year old girl inside police station in Luneta.
- SPO2 Roel Waga, police investigator in *Barangay* Puerto, Cagayan City was involved in the sexual harassment of a thirteen (13) year old girl.¹⁸

G. Attitudes Toward Trafficking of Women

Nine (9) attitudinal statements were presented to the respondents to determine whether they agreed or disagreed with such. The responses showed that the perceptions reflect the social realities surrounding the phenomenon of trafficking.

I. Trafficking always involves deception or force in order that women might be attracted to go with the agents of the practice.

Majority, sixty-seven percent (67%), especially among the upper socio-economic class, feel that there is an element of force or deception in trafficking. This view is relatively stronger in specific segments of the population, particularly in NCR and Luzon (especially rural areas), the elderly (sixty-five [65] years old and above), those with some college or college graduates, the government and self-employed workers. Such a view is consistent with the international definition of trafficking as stated in the introduction. In the Philippine definition, force or legality are

18. Gabriela, Statistics and the State of the Philippines, 24 July 1997.

not essential in considering as trafficking the act of recruiting and transferring persons for sexual exploitation or for labor.

Male and female respondents are both equally convinced that trafficking always involve deception or force.

2. In trafficking, women usually know that they will be turned into sex workers or prostitutes.

Overall, more than half or fifty-six percent (56%) of the respondents believe that victims of trafficking are unknowing that they will be turned into sex workers or prostitutes – a view that seems more strongly held by those in the NCR and those in the ABC socio-economic group, *i.e.*, middle to upper classes. This finding corroborates an earlier cited report by the Commission on Filipinos Overseas (CFO) that forty-seven percent (47%) of the victims of trafficking were deceived.

Males and females, fifty-five percent (55%) and fifty-seven percent (57%) of the survey respondents, do not believe that women know that they will be turned into sex workers. On the contrary, farmers, fifty-four percent (54%) of the respondents, tend to believe that the victims of trafficking know that they will be turned into sex workers. Hence, one could say that in the eyes of the farmers the women involved in trafficking are willing victims.

Deceit is well illustrated in the case of Filipina entertainers recruited to work in Japan, derisively referred to as “*Japayukis*.” In one study, it was reported that ‘deceit’ and ‘fraud’ were strongly present in the recruitment of respondents (referring to forty-four [44] locally and internationally trafficked respondents in the study). A number of respondents were promised work in “decent” jobs, either as singers, dancers or waitresses. One reported:

xxx We were told that we would be waitresses, and that if our customers liked us, we would sit down with them, we would be given drinks, and then we would talk to them. After we gave our passports (to the recruiters), we were told to come back the following day for a briefing.

Another reported:

I was told I would be a dancer, but they never said anything about prostitution.

Filipino entertainers in Japan actually go through a process of being tested for their skills in singing and dancing before they qualify for deployment to Japan. After passing the testing, they are issued Artist Record Books (ARBs), which is required in the issuance of visas to Japan. Thus, the entire procedure is legal but women's organizations have raised concern that some Filipina entertainers actually end up as prostitutes, an observation that was validated by a study, which reported that:

They were compelled to engage in sexually exploitative situations because the need to pay back debts incurred, including cash advances for the air ticket, pre-departure expenses and money left behind for their families. The majority of the women recruited to Japan were eventually given their "salaries" just before they flew back to, the Philippines. Their money was held for them by their managers or *mama-sans*, and they could only get cash advances for some needed personal expenses during the time that they were controlled by the management of sex establishments (e.g., clubs, brothels). Others never received any payment, or were given such measly sums that they had no alternative but to continue in prostitution...¹⁹

19. Aida Santos, *et. al.*, *The Philippines, Interview Findings and Data Analysis, A Survey of Trafficked Women in Prostitution and Mail-Order Brides*, pp. 97.

In 1998, ninety-five percent (95%) of Filipino female “entertainers” who had migrated to countries in Asia ended up in the sex industry of Japan.²⁰ Thus, some quarters feel that the case of Filipina entertainers in Japan involves institutionalized deceit and government has been accused of being complicit in the exploitation of its women. It is also in this context that the Philippine migration for labor policy has been criticized.

3. Often it is a desperate gamble for a better life that women victimized by trafficking undertook.

There is a widespread view that trafficked women are there in a desperate effort to upgrade their lives as stated by a good seventy percent (70%) of the survey respondents. This opinion pattern seems to be the case in the various sub-groups of the population. Again, this confirms findings in previous studies of trafficking.

Males and females, seventy percent (70%) of the survey sample, are both convinced that women trafficking is an act of desperation in search of a better life. This belief is strongly manifested among those in urban sites, seventy-four percent (74%) versus sixty-six percent (66%) for the rural respondents, the poorest group (seventy-five percent [75%] of the E class), and among the college and high school graduates (seventy-four and seventy-two percent [74 and 72%], respectively) as well as those working in government (seventy-four percent [74%]).

That poverty is the main underlying reason for trafficking is well-established in the literature. For example, there are reports of people prostituting for food or water.²¹

20. POEA, 1999.

21. CATW-Asia-Pacific, *Trafficking in Women and Prostitution in Asia Pacific*.

Hence, poverty eradication should be a fundamental part of any attempt to solve the problem.

4. It is still possible to avoid trafficking of women in the Philippines.

A happy note in the configuration of attitudes is that eighty-four percent (84%) of the respondents are optimistic and express the belief that trafficking can still be avoided. The older age groups, forty-five (45) and above, seem to be even more hopeful about being able to avoid trafficking. Optimism is strong among those in urban Mindanao (ninety percent [90%]), the poor (eighty-eight percent [88%] of the E class), the older groups, forty-five (45) to fifty-four (54) years old (ninety-one percent [91%]) and those working in government (ninety-one percent [91%]).

Males and females are equally optimistic about the possibility of avoiding trafficking of women in the country – eighty-four percent (84%) believe so.

5. Victims of trafficking still can hope to rise and have a new life.

An encouraging note is the optimism of renewing life for the victims of trafficking. This hopeful outlook is manifest in the belief of the overwhelming majority, ninety percent (90%), that victims of trafficking can rise and have a new life. This optimism is shared by various sub-groups of the survey population.

The upper and middle classes, ninety-six percent (96%) of the ABC groups and ninety-five percent (95%) of those working in government are strong in their belief that victims of trafficking have rise and have a new life.

6. Victims of trafficking of women should transfer to another place and look for a different job.

A significant number, sixty-five percent (65%), agree that victims of trafficking should transfer to another place and look for a new job. This opinion is strong among the Visayan respondents, seventy-four percent (74%), and even more so among rural Visayans where eighty percent (80%) share this view. The younger respondents, eighteen (18) to twenty-four (24) years old and the older groups, fifty-five (55) to sixty-four (64) years old, strongly adhere to the idea of relocation' for the trafficking victims.

Relocation is the easiest way of avoiding the social stigma that may go with being a trafficking victim. One wonders if the social norms and sanctions against trafficking are strong in the Visayan region. Sociologists could explore this in future studies.

7. Government is able to help in eradicating trafficking of women in our country.

Government's ability to eradicate trafficking of women in the country garnered mediocre. Ratings – Fifty-five percent (55%) believed the government is able to help eradicate trafficking in women. Faith in government's ability to eradicate trafficking is highest among respondents, from Mindanao where seventy-eight percent (78%) say that it has that ability. Likewise, a good number, seventy-one percent (71%) of government workers share this view.

However in the Visayas and Luzon, only sixty-three percent (63%) and forty-five percent (45%), respectively maintain the view that government is able to eradicate trafficking.

Notably, forty percent (40%) of the respondents from the rich group, ABC socio-economic class (only twenty-seven percent

[27%] of the AB classes) believe the government has the ability to eradicate trafficking. This is low compared to sixty percent (60%) of the poor or the E class, who believe that the government is able to do so.

Both male and female respondents are slightly inclined, fifty-five percent (55%) and fifty-six percent (56%), respectively, to believe that government can help eradicate trafficking.

Understandably, it is the government workers – seventy-one percent (71%) of the government workers in the survey sample – who believe that the government is able to help in eradicating trafficking of women in the country.

8. Government has no effective program or action to fight the trafficking of women.

There are mixed opinions about the existence of an effective government program to fight trafficking of women. Half say there is none while the other half of the survey respondents say there is.

Although a good majority of the Mindanao respondents have faith in government's ability to eradicate trafficking, more of them – sixty-seven percent (67%) of survey respondents – feel the absence of an effective government program to combat trafficking. In Visayas and Luzon, forty-nine percent (49%) and forty-three percent (43%), respectively, feel the same.

Sixty-one percent (61%) of government workers agree that there is no effective government program to combat trafficking even if they are convinced that the government is able to help eradicate trafficking. One might say that they perceive the potential of government in eradicating trafficking but that such potential is yet to be unlocked by way of an effective government program.

Public perception conforms with the reality because it has been noted that:

(N)o 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. Although the government introduced a Strategic Plan for a National Coalition Against Trafficking in 2001, the agencies involved have not worked out implementation of the plan, nor has the government passed anti-trafficking legislation to implement and fund the plan.²²

Measures to curb trafficking do exist but it seems their magnitude does not match the extent of the phenomenon as gauged from the above finding. Institutional mechanisms have been established such as for example the Executive Council to Suppress Trafficking in Persons, Particularly Women and Children. It is chaired by the Secretary of Foreign Affairs and co-chaired by the Secretary of Interior and Local Government. The members include the Department of Justice, Department of National Defense, Department of Labor and Employment, Department of Social Welfare, Department of Tourism, and Office of the Executive Secretary and the Executive Secretary of the Office of the President. Through a technical coordinating committee, the Council undertakes programs on advocacy, training, law enforcement, legislative initiatives, criminal justice management, institutional and intelligence build-up and networking, rehabilitation and a reintegration of victims; bilateral, regional and international cooperation; and other areas relevant to the

22. Report Home Page, Trafficking in Persons Report, Office to Monitor and Combat Trafficking in Persons, June 5, 2002.

suppression of trafficking in persons, particularly women and children.²³

“The Department of Foreign Affairs recently formed a working group to discuss the worsening problems on human smuggling, particularly women from Central Luzon, Southern Tagalog, ARMM and the National Capital Region.”²⁴

Also, there are illegal recruitment information drives and campaigns by the POEA and anti-trafficking of children and women projects at the DOLE but these seem to be little known to the general public. In fact Anti-illegal Recruitment Coordinating Councils (AIRCCs) have been created. These are inter-agency groups composed of different sectors concerned with illegal recruitment and serve as venues for consultation at the grassroots level. The councils document their experiences and map out strategies to improve the anti-illegal recruitment program of the government.

9. It is not necessary to have a law to eradicate the trafficking of Filipina women.

About two-thirds of the survey respondents feel the need for a law to eradicate trafficking of Filipinas. This view is stronger among those in urban Luzon, the upper and middle groups (ABC class), those who have reached high school and above. Significantly, government workers are quite strong in their belief that there is need for such a law.

In the recent months prior to the survey, there have been active advocacy on the passage of an anti-trafficking law. Such

23. Philippine Country Paper on Trafficking of Children for Labour and Sexual Exploitation, pp. 3-4, 2002.

24. Manila Bulletin, 12 January 2003, p. 8.

pro-active steps could have influenced the public consciousness as regards trafficking. Media messages on trafficking may have succeeded in 'creating and shaping' public opinions.

H. Solutions to Trafficking

The solution to trafficking is believed to lie in having a clear law that will punish people trafficking women as indicated by seventy percent (70%) of the survey respondents. This corroborates an earlier finding that two-thirds of the survey respondents feel the need for a law to eradicate trafficking. This appears to be the common view of various segments of the survey group.

Government workers and urban and upper and middle class respondents were especially keen in saying that a law against trafficking is vital in solving it. One notes that government workers comprised only three percent (3%) of the survey sample. Nonetheless, this could be taken as an indicative trend, which could be tested in further studies as may be deemed appropriate.

Other solutions were endorsed as follows:

- Strict enforcement of the law against trafficking of women 52%
- Improving the national economy 46%
- Improving the morality of the citizenry 30%

The existence of a law and its enforcement are perceived to be the key to solving trafficking of women, a finding that provides solid basis for the national efforts toward the passage of the anti-trafficking law. In truth, the Philippines is not bereft of laws against trafficking: Revised Penal Code, Articles 202, 272, 341 (defines prostitutes, slavery and slave trade and sanctions against

them); Republic Act No. 6955, the Mail-Order Bride Law; Republic Act No. 8042, Migrant Workers and Overseas Filipinos Act of 1995; Republic Act No. 7610, Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; and Republic Act No. 8043, Inter-country Adoption Act of 1995.

A review of some policies may also be in order. For example, the Philippine government emphasis on labor export to support its balance of payment deficits has contributed to the trafficking of Filipinas to Japan. Three-fourths of the trafficked Filipino women surveyed by IOM were repatriated to the Philippines after being help in prostitution, suffering from various health problems.²⁵

Related to this is the policy in respect of screening Filipino entertainers before they are deployed to Japan. Corruption in the screening process has led to virtual exploitation of women right here in the country. To be able to obtain a visa, they would pay huge sums to ensure that they obtain artist record books, which is the required document when applying for a visa at the Japanese embassy. Some recruitment agencies are now outraged and are actively rallying to protest against alleged rampant corruption at the Technical Education and Skills Development Authority (TESDA), the government agency overseeing the screening of talents.

The NCRFW is seeking for the passage of the Anti-Trafficking in Persons Act of 2001. The Act, when passed, will help prevent and suppress the operations of trafficking of Filipino women and minors and will ensure the implementation of measures that will protect victims of trafficking. It will also

25. "Filipino Women in Japan Trapped in the Sex Business," IOM, No. 792, 11 July 1997.

strengthen the weak provisions of R.A. No. 6955 or the Anti-Mail-Order Bride Law and institute the appropriate penalties commensurate to the gravity of the crimes committed by the violators.

Most recently, Senator Manuel Villar, Jr. has filed Senate Bill No. 1011, which would make it unlawful to use new information technology to promote matching or advertisement of Filipino women for marriage or similar relationship to foreign nationals. He said R.A. No. 6955, which was enacted in 1990, declares the practice of matching women for marriage to foreign nationals as unlawful. He said the law prohibits the advertisement for this purpose in the Philippines, but it cannot be applied overseas where advertisements on Filipino proliferate in the market.”²⁶

The even more crucial step is obviously the enforcement and implementation of these laws that would curtail trafficking of women.

Economic development and moral upgrading are not as strongly viewed as the solutions although at least one-third of the survey respondents cited them as appropriate solutions. There is little basis to say whether or not interventions on the empowerment of women and gender equality should be pursued as measures for solving trafficking. Future studies could look into this.

III. CONCLUSIONS

1. Filipinos, especially among the better off segments of society, the educated, and those in the cities and urban locales, are well aware of trafficking of women as a social issue. Awareness

26. Manila Bulletin, 12 January 2003, p. 8.

quotients are generally high, ranging from fifty-two percent (52%) to ninety-three percent (93%), among the various groups of Philippine society. Males and females are equally aware of the phenomenon of trafficking.

2. Although personal knowledge of victims of trafficking was quite scarce among the survey respondents, many claim awareness of the issue largely through the media. Television is the effective medium among the educated upper class while the rural and lower classes rely on the radio for information on trafficking of women. The print medium is effective among those who have reached some college.
3. Public perceptions confirm that trafficking of women is closely tied up with migration for work. Thus, trafficking is equated with illegal recruitment of women workers either for cheap labor or for prostitution or both. Also, the majority of the survey respondents believe that the underlying reason for trafficking is the lack of jobs and livelihood opportunities in the country; only ten percent (10%) attribute trafficking to either the breakdown of morality or the lack of laws against it. Attribution of trafficking of women to gender inequality in Philippine society is not well-established in the present study. This could be explored further in future surveys.
4. That there is an *element of force* in the trafficking of women is a common belief. At least two-thirds of the survey respondents adhere to this view. More than half or fifty-six percent (56%) of those surveyed take the view that the victims of trafficking are *unknowing* that they will be turned into sex workers or prostitutes. A widespread (seventy percent [70%] of survey respondents) belief is that women are driven into trafficking out of *desperation*, due to the lack of jobs

and livelihood opportunities as was also confirmed in the survey.

5. It would seem that the spread of trafficking is viewed as a police failure. Worse, some segments of society – the elderly, those with some high school education, those in the NCR, urban communities, and the poorest (class E) – have strong feelings that the police are colluding with the agents of trafficking.
6. The police is seen to be the agency that ought to be approached by victims of trafficking. Other agencies like POEA, OWWA, courts and *barangay* officials come as poor second. More inhabitants of Luzon consider POEA to be the accountable agency and in fact, the control of illegal recruitment is the mandate of POEA. This suggests greater scope for information dissemination regarding the POEA's role in the control of illegal recruitment. An intriguing finding is the skeptical opinion of the courts in Mindanao, in particular the view that the court is in collusion with agents of trafficking.
7. The public scored government's ability to eradicate trafficking of women – only fifty-five percent (55%) – five (5) points above chance – perceived government as being able to help eradicate trafficking. That there is no consensus about the existence of an effective government program to combat trafficking comes as no surprise. And no less than sixty percent (60%) of those working in government confirmed that there is no such effective program or action.
8. Relative to government's ability to eradicate trafficking, the "trust quotient" is quite low in Luzon; Mindanaoans and Visayans appear to be more generous in lending their trust in government's capacity to combat trafficking.

9. To control trafficking, there is a fairly strong belief that a law is needed. In fact, it is seen by at least seventy percent (70%) as the appropriate solution although the perceived root cause is poverty. A clear law is needed to punish those responsible for trafficking and strict enforcement of the law is seen as vital in fighting it.
10. There is general optimism that trafficking of women can be avoided. Many (ninety percent [90%]) opined that trafficking victims could rise and build a new life. According to about two-thirds of the interviewees, victims should move to a new place where they can start life anew.

In sum, public perceptions on trafficking of women are quite realistic and are largely derived from the media, especially television and the radio. Public views combine an attitude of doubt and skepticism with optimism. On the one hand, some doubt the government's ability to fight trafficking given the perceived lack of an effective program or action and some forty percent (forty percent) believe there is collusion by the police with the trafficking agents. On the other hand, there is optimism that trafficking can be avoided but we need a clear law to punish the erring parties.

The NCRFW reported a number of existing legislations and policies that address trafficking of women and children. Among these policies are the Revised Penal Code (Articles 202, 272, 341); the Mail-Order Law (Republic Act No. 6955); the Migrant Workers and Overseas Filipinos Act of 1995, (Republic Act No. 8042) and the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act. These are in place but their implementation leaves much to be desired.

The passage of the proposed anti-trafficking bill may yet be an answer. But that is only the beginning because the bigger

challenge is still the enforcement of such a law. Law enforcement remains one of the Philippines' Achilles heel.

To solve trafficking requires at least two (2) long-term strategies: **poverty eradication and law enforcement**. The former should reduce women's vulnerability to trafficking and the latter should be aimed at bringing to justice the victims of trafficking. Collateral strategies are also in order such as women's empowerment through advocacy and information dissemination to prevent more women from being deceived and victimized.

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Sex Trafficking as a Human Rights Violation*

*Dr. Purificacion V. Quisumbing***

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

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

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The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered **trafficking in persons** even if this does not involve any of the means aforementioned.¹

Victims of trafficking, particularly women and children, have been exposed to situations of abuse, exploitation, violence, and the violation of their human rights, thereby rendering them even more vulnerable to the adverse effects of poverty.

As poverty worsens and the living conditions deteriorate in the Philippines, the number of women and children who become vulnerable to sexual abuse and exploitation, including trafficking and prostitution, increases. In their desire to seek employment abroad, a significant number of Filipinos are recruited, either legally or illegally, and promised high paying jobs, but end up as bar girls or prostitutes.

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

Among the countries where Filipino women are abused and prostituted are Hong Kong, Malaysia, Japan, Africa and the Commonwealth of the Northern Marianas Islands. Sometimes the husbands or relatives themselves shove women into prostitution as what happened in the case of Filipinas in Korea and Germany.²

The policies of the Philippine government such as the labor export policy, the aggressive tourism campaign, and the Visiting Forces Agreement (VFA) has clearly become a mode and a vehicle for sex trafficking. In January 2002 alone, during the height of the R.P.-U.S. *Balikatan* exercises, thirty-five (35) cases of trafficking of women and children from Davao to Zamboanga were recorded by Tanikala, Inc. Their ages range from fifteen (15) years old to early twenty's (20's). According to the victims, the recruiters went to the places where they (children and freelancers) could usually be found, telling them that there were customers awaiting them in Zamboanga and that they would be paid in dollars.

The use of the internet has even made more economical and accessible for traffickers to exploit women and children for purposes of pornography, prostitution and marriage matching. Marriage arrangements where Filipino women leave the country as fiancée or wives of foreigners or mail-order bride is also a channel of trafficking in women.

Traditional forms of exchanges such as student exchange programs, training/internship, family tours and religious pilgrimage, among others have also been noted as having been exploited by unscrupulous traffickers. The traffic of young

2. Raymond, Janice G. *et.al.*, CATW. Women in the International Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation, 2002.

children, on the other hand, is done through illegal adoption leading to exploitation, abduction, purchase and sale for prostitution or pornography.

Trafficking in persons, particularly women and children has emerged as a major global issue owing to the involvement of transnational organized criminal groups, which take advantage of the vulnerable conditions of migrants. An alarming article was published in the August 12, 2002 issue of *Time* magazine regarding Filipino women being sold into sexual slavery in the bars and nightclubs that serve U.S. military bases in South Korea, particularly at Camp Casey in Tongduchon. The article reports that Filipino women were recruited to work as bartenders or waitresses in South Korea, but upon arrival at the place, they were forced into prostitution.

Sex trafficking violates the right to health of the victims, for it exposes them to the risk of acquiring sexually transmissible diseases or AIDS due to frequent sexual contacts with different customers. The victims are placed in sexually exploitative situations that may give rise to unwanted pregnancies; and the women may be forced to commit abortion for various reasons, to include pressure from the partner to have the baby aborted, the fact of humiliation, condemnation from their families, and the additional economic responsibility and social obligations of raising up a child; thus the concomitant reproductive health problems as an offshoot of trafficking.

Sex trafficking is likewise prejudicial to the psychological and social well being of the victims, who are normally traumatized by the experience. Worse, sex trafficking may lead to a violation of the right of an individual, as the victim may end up committing suicide, or she may be killed by a trafficker or a customer, for escaping or from too much beating, for instance. Thus, sex trafficking is a

grave affront to human dignity, and corollary, a brazen infringement of human rights.

Human rights instruments of universal application have been adopted by the United Nations General Assembly with the end in view to uphold human dignity, such as the Universal Declaration of Human Rights; Convention on the Elimination of all Forms of Discrimination against Women; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the United Nations Convention on the Rights of the Child; the Convention against Transnational 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.

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,³ states that:

Prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.

Signatories to the aforesaid Convention agree to punish any person who:

- Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

3. Entered into force on 25 July 1951.

- Exploits the prostitution of another person, even with the consent of that person;
- Keeps or manages, or knowingly finances or takes part in the financing of a brothel; and
- Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.⁴

States Parties to the Convention are bound:

- To take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred therein.⁵
- To take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.⁶

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children declares that:

Effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.

4. Articles I and 2.

5. Article 16.

6. Article 208.

Each State Party to the Protocol shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, the provision of:

- a. Appropriate housing;
- b. Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- c. Medical, psychological and material assistance; and
- d. Employment, educational and training opportunities.⁷

The Protocol likewise provides for the repatriation of victims of trafficking in persons. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.⁸

In addition, States Parties to the Protocol have the obligation to:

- I. Establish comprehensive policies, programs and other measures:
 - a. To prevent and combat trafficking in persons; and
 - b. To protect the victims of trafficking in persons, especially women and children, from revictimization.

7. Article 6.

8. Article 8.

2. Take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity;
3. Adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.⁹

Likewise under the Protocol, States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child and gender sensitive issues, and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.¹⁰

We also have the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which expressly provides that:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation to ensure the full development and advancement of women, for the purpose of guaranteeing

9. Article 9.

10. Article 10.

them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹¹

Likewise under the aforesaid Convention:

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.¹²

Of utmost importance is the Convention on the Rights of the Child, which, in part, provides that:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a. The inducement or coercion of a child to engage in any unlawful sexual activity;
- b. The exploitative use of children in prostitution or other unlawful sexual practices;
- c. The exploitative use of children in pornographic performances and materials.¹³

States Parties shall take appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.¹⁴

Under our local law, we have Republic Act No. 7610, which provides special protection to children from abuse, neglect, cruelty,

11. Article 3.

12. Article 6.

13. Article 34.

14. Article 35.

exploitation, discrimination and other conditions prejudicial to their development. The law penalizes child trafficking and attempt to commit child trafficking under Sections 7 and 8 of the aforesaid Act.

Unfortunately, the Philippines does not still have a law that specifically criminalizes trafficking in persons in order to penalize the offenders. However, there is a pending bill in the Senate, S.B. No. 2444, *An Act to Institute Policies to Eliminate the 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*. The Bill declared as State Policies that:

- The State values the dignity of every human person and guarantees the respect of human rights.
- The State recognizes the equal rights of men and women. In pursuit of this, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity. Persons especially women and children shall be afforded protection against violence and exploitation, and definite measures will be taken to eliminate trafficking in persons, especially women and children to achieve full realization of their civil, political, economic and cultural rights and fundamental freedoms.
- It shall likewise be the policy of the state to promote an active and visible policy of mainstreaming gender perspective in all efforts aimed at addressing the attendant issues to migration and violence against persons especially women and children.

- Special recognition is given to the vulnerability of women and children. Toward this end, specific measures and protection will be instituted to mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons especially women and children, but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

The bill penalizes persons, whether natural or juridical, for acts of trafficking, acts that promote trafficking, and qualified trafficking, as follows:

- Persons found guilty of committing acts of trafficking shall suffer the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* and a fine of not less than One Million Pesos (Php1,000,000.00) nor more than Two Million Pesos (Php2,000,000.00);
- Any person who shall commit acts that promote trafficking shall suffer the penalty of *prision mayor* in its medium period to *reclusion temporal* in its medium period and a fine of not less than Five Hundred Thousand Pesos (Php500,000.00) but not more than One Million Pesos (Php1,000,000.00);
- Any person found guilty of qualified trafficking shall suffer the penalty of *reclusion perpetua* and a fine of not less than Three Million Pesos (Php3,000,000.00); *Provided*, That when by reason or on occasion of the trafficking, the person has died, has become insane, has suffered mutilation or has been afflicted with HIV or AIDS, the offender shall not be entitled to any allowance for good conduct, special time allowance for loyalty or parole, and the fine to be imposed shall not be less than Five Million Pesos (Php5,000,000.00).

Trafficking is qualified when:

- a. The trafficked person is a child below twelve (12) years of age;
- b. The adoption of a minor violates Republic Act No. 8043 (Inter-Country Adoption Act of 1995) and said adoption is accompanied by or resulted in physical or sexual abuse, prostitution or forced labor or slavery and slavery-like practices;
- c. The crime is committed by a syndicate or in a 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 a large scale if committed against three (3) or more persons, individually or as a group;
- d. 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; and
- e. The trafficked person is recruited to engage in prostitution with military forces.

If the offender is an employee or official of a government agency, administrative liability may likewise be imposed upon him. Under the bill, any employee or official of a government agency 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 possible criminal liability should the evidence indicate that they have directly or indirectly committed an offense enumerated therein.

The bill, though, still has to be enacted into a law in order to be operative. There is therefore the need for our active participation in the lobbying for the passage of the said bill into a law.

Aside from having an Anti-Trafficking in Persons Law, there are other successful interventions and strategies that we can and must do in order to address the problem of trafficking, among which are:

- A comprehensive and multi-disciplinary approach towards prevention of trafficking is required and that all actors, including judicial and law enforcement personnel, migration authorities, NGOs and civil society, should collaborate in the development of such an approach.
- The Government must take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and children for prostitution and other forms of commercialized sex, forced marriages and forced labour.
- The Government must devise, enforce and strengthen effective measures to combat and eliminate all forms of trafficking in women and children through a comprehensive anti-trafficking strategy consisting of, inter-alia, legislative measures, prevention campaigns, information exchange, assistance and protection for and reintegration of the victims, and prosecution of all the offenders involved.

- The Government must allocate resources to provide comprehensive programmes designed to heal, rehabilitate and reintegrate into society and communities victims of trafficking, including through job training, legal assistance and health care, and by taking measures to cooperate with non-governmental organizations to provide for the social, medical and psychological care of the victims.
- The Government must provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons which should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of victims, including protecting the victims from traffickers. The Government must formulate training manuals for law enforcement and medical personnel and judicial officers who handle cases of trafficked women and children, taking into account current research and materials on traumatic stress and gender-sensitive counseling techniques, with a view to sensitizing them to the special needs of victims.
- The use of new information technologies, including the Internet, for purposes of prostitution, child pornography, pedophilia and other forms of sexual exploitation of children, trafficking in women as brides and sex tourism must be abated.
- There is a need for the Government to provide standard humanitarian treatment to trafficked persons consistent with human rights standards.

There is a much to be done to protect persons against violence and exploitation, and to eliminate trafficking in persons especially women and children in order to achieve full realization of their civil, political, economic and cultural rights and fundamental freedoms. We must act hand-in-hand, and we must act now.

The Universality of the Right Against Trafficking and the Problem of Adopting “Universalizing” Strategies as a Response*

*Prof. Amparita S. Sta. Maria***

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I. TRAFFICKING AND MIGRATION: AN OVERVIEW

Globalization has spawned greater international exchange of capital and goods, and until the 9-11 incident, has facilitated the easing up of national borders. It has also increased migration of labor.¹ In fact, it has been reported that “between 1985 and 2000 the number of people residing outside their country of origin increased by sixty- seven percent (67%).”²

There are various reasons why people migrate; but for those coming from developing countries, the preponderant reason is to seek a better life for their family and themselves. For some, it is a matter of survival; while for others, it is a means to “upgrade” their living conditions.

It is both normal and logical that men and women would migrate from developing and politically less stable countries to

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1. Committee on Feminism and International Law, Women and Migration: Interim Report on Trafficking in Women by Rapporteur Annette Lansink at the Berlin Conference (2004), online: <[ila-hq.org/pdf/Feminism & International Law/Draft Report 2004.pdf](http://ila-hq.org/pdf/Feminism%20&%20International%20Law/Draft%20Report%202004.pdf)> (Hereinafter 2004 Committee on Feminism).
2. *Ibid.*

the more secure and affluent ones either within or outside their region. It is not anticipated that international migration is going to recede; on the contrary, it is predicted to increase over the coming decades.³ It has been estimated that around 175 million reside in countries other than where they were born.⁴ While globalization has been credited with the increase in economic opportunities, it has been equally blamed for aggravating poverty conditions in poorer countries and for enhancing inequality between countries from the “north” and “south.”⁵

Accordingly, globalization, neo-liberalization and the free market economy have led International Financial Institutions such as the World Bank and the International Monetary Fund to follow a “free market logic” in their imposition of structural adjustment programs, wherein social expenditures on the part of the debt-laden countries are cut, in favor of “export-led economic growth in order to service the debt.” With the decrease in government revenue, services and employment opportunities, coupled with environmental degradation, deteriorating peace and order situation, mounting foreign debt, and a dependence on foreign investment, poverty has escalated; and its impact has been felt more acutely by women. Thus, many of them, particularly in Asia, after the latter has undergone a financial crisis, were trafficked to escape poverty.⁶

Whether this is an accurate assessment or not, the fact remains that within the context of globalization, the labor demand created by the economies of more affluent countries which their locals

3. *Ibid.*

4. *Ibid.*, citing IOM, World Migration Report, 2003.

5. *Ibid.*

6. *Ibid.*

could not meet has not translated into more welcoming immigration policies, especially to foreign workers.

But the disconnect between trade rules and development needs is nowhere greater than in the area of international labor mobility. Thanks to the efforts of the United States and other rich countries, barriers to trade in goods, financial services, and investment flows have now been brought down to historic lows. But the one market where poor nations have something in abundance to sell – the market for labor services – has remained untouched by this liberalizing trend. Rules on cross-border labor flows are determined almost always unilaterally (rather than multilaterally as in other areas of economic exchange) and remain highly restrictive. Even a small relaxation of these rules would produce huge gains for the world economy, and for poor nations in particular.⁷

The reasons given by governments for restricting their employment policies against foreign workers are the “changing market labour needs, high unemployment, shrinking public budgets, and an uncharitable public opinion who fear increased migration will bring about instability.”⁸

7. Dani Rodrik “Globalization for Whom?” Harvard Magazine (July-August 2002), online: < <http://www.harvard-magazine.com/on-line/070280.html> >.

8. See Jennifer Brown, “Global Human Trafficking: An International Human Rights or Law Enforcement Struggle?” (*Maîtrise en droit international et politique internationale*, UQAM, January 2004), online: < www.cedim.uqam.ca/articles/Trafficking-Brown.pdf >, citing Niessen, “International Migration on the EU Foreign Policy Agenda.” (Hereinafter Brown)

The reality, however, is that as long as there is a demand or market for work which local residents cannot or will not supply, this demand will be filled in by foreign workers, whether legally or illegally. Trafficking flourishes in this given environment and will continue to do so especially in areas where there is no possibility of meeting this demand by accessing legally channels.⁹

While poverty and lack of employment opportunities dominate the so-called push factors for migration for work, the demand created in market economies of developed countries in the restaurant business, factories, farms, domestic service and the sex industry serve as major pull factors.¹⁰ Since the legal channels for obtaining work in the service, industrial and agricultural sectors are very limited, migrant workers who want to take these jobs fall prey to traffickers who guarantee their employment, either by pretending to go through the “legal” process or by promising that the back-door channel is just as safe and secure for them to take.

Trafficking operates within the continuum of the migration cycle.¹¹ As the migration processes affect women differently than men, so does trafficking. Aside from poverty, other conditions such as domestic violence, lack of educational opportunities and

9. See Amparita Sta. Maria, *The Legal Perspective in The Philippine-Belgian Pilot Project Against Trafficking in Women* (Makati City: Ateneo Human Rights Center, 1999) at 62. (Hereinafter Sta. Maria)

10. See Brown, *supra* note 8.

11. Ma. Christina Bautista, *The Socio-Economic Perspective in The Philippine-Belgian Pilot Project Against Trafficking in Women* (Makati City: Ateneo Human Rights Center, 1999) at 70. (Hereinafter Bautista)

discriminatory practices serve as additional impetus for women to migrate.¹² When they are trafficked, it is more likely to be for cheap labor in domestic work or for sexual exploitation. They are generally under the control of traffickers and their mobility is severely restricted. Many are physically confined with little possibility of escape, especially since their travel documents are confiscated by their “employers.”¹³ Debt-bondage is another means employed by traffickers in order to control the women. They are told that they cannot leave or stop working for them until they have paid their indebtedness. They may also suffer physical and sexual abuse in the hands of their traffickers in order to ensure that they would not attempt any escape or resist customers’ demands.¹⁴

As far as trafficking for sexual exploitation is concerned, although trafficked women are usually those who are economically impoverished, this push factor is not what motivates traffickers to “engage” in this “business;” rather, it is the continuing demand for sexual services from consumers of the sex trade. This demand is usually ignored in dealing with the trafficking problem while attention is more focused on the trafficker who profits from fulfilling this demand.¹⁵

12. Committee on Feminism, *supra* note 1.

13. *Ibid.*

14. Philippine Conference Against Trafficking of Children and Women in Commercial Sexual Exploitation (CATCH_WISE 2005), online:< www.humantrafficking.org/countries/eap/philippines/events/2005_02/registration_form.pdf>. (Hereinafter 2005 Philippine Conference)

15. *Ibid.*

Because trafficking is a covert activity, it is difficult to come up with statistically accurate number of trafficked persons that would give a clear picture of the magnitude of the trafficking problem. Statistics offered are usually just estimates that vary in a wide range of degrees.

Estimates of the number of trafficking victims range from 700,000 to 4 million women and children world-wide each year (O’Neill Richard, 2000; Arlacchi, 2000). The largest number of victims trafficked internationally come from Asia, with more than 225,000 annual victims believed to be coming from South-East Asia and more than 150,000 from South Asia (Derks, 2000).¹⁶

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The United States Government has estimated, that between 600,000 to 800,000 persons are trafficked across international borders annually. This figure is in addition “to a far larger yet indeterminate number of people trafficked within countries.” The U.S. Government estimates that over half of all trafficked persons internationally are trafficked for sexual exploitation. Eighty percent of the trafficked persons are women and half are children.¹⁷

In 1998, the Ukrainian Ministry of Interior has also estimated that around 400,000 Ukrainian women had been trafficked for the past ten (10) years. The trafficking flows have shown women from Eastern Europe generally being trafficked to Western Europe

16. Micah N. Bump and Juliane Duncan, Conference on Identifying and Serving Child Victims of Trafficking (UK: Blackwell Publishing, Ltd., 2003) at 203, online: <blackwellpublishers.co.uk/images/Journal_Samples/.../266.pdf>. (Hereinafter Bump and Ducan)

17. Committee on Feminism, *supra* note 1.

and Central Asia. Moreover, Western Europe has been identified as a destination region for trafficked women coming from Eastern Europe, and countries like Nigeria, Thailand and Brazil.¹⁸ Accordingly,

It is estimated that, more than 100,000 persons come from Latin America and the Caribbean and over 50,000 persons are trafficked from Africa. There is increasing concern about the growth in trafficking in Africa in recent years. Recent research by UNICEF and a survey done by the IOM (International Organization for Migration) indicates an increase in trafficking from African countries to Europe, to the Middle East and within Africa (e.g. from Ghana, Mali to Nigeria; from Mozambique, Swaziland to South Africa). Substantial trafficking takes place within national borders and within a sub-region.¹⁹

As a response to combat trafficking, many countries have imposed even stricter migration policies and have tightened their borders against foreign entrants. It has also been observed that:

anti-trafficking measures have led to restrictions on the movement and migration for women, increased surveillance on sex workers, and increased deportation of migrant sex workers.²⁰

II. TRAFFICKING AND MIGRATION: PHILIPPINE CONTEXT

It is said that “[p]overty starting from the imposition of taxes and forced labor during Spanish colonial regime up to the

18. *Ibid*, citing various reports.

19. *Ibid*, citing various reports.

20. Jennifer Brown, *supra* note 8.

American colonial period” gave rise to trafficking in the Philippines.²¹

As early as the pre-Hispanic times, it has been recorded that children as well as women were already used to pay the debts of the household.²² This situation of debt-bondage continued during the Spanish era. Not only were wives and daughters offered to the clergy and Spanish officials to pay off the gambling debts of Filipino men, but *Hacienda* owners who extended extremely high-interest loans to their workers effectively trapped the latter and their children into indebtedness. Thus, children, in addition to doing chores for the household, became part of the *Hacienda*'s labor force.²³

With the arrival of the Americans, debt-bondage became even more widespread. While children continued to work in the agricultural service and manufacturing sector mainly to pay for their parents' indebtedness, some were treated like chattels: they served as mortgages, and worst, indigenous children, notably Ifugaos and Negritos were sold into slavery.²⁴

The Philippine Commission, the legislative body of the country at that time, acting under the authority of the United States, was prompted to enact several laws to address the practice of slavery and involuntary servitude. Thus, in 1904, the

21. 2005 Philippine Conference.

22. Elizabeth Eviota, *The Political Economy of Gender: Women and the Sexual Division of Labor in the Philippines*, (Manila: Raintree Publishing Inc., 1992), p.36.

23. *Ibid*, p.40.

24. Rosario Del Rosario and Melinda Bonga, *Child Labor in the Philippines*, (Quezon City: UP-OVCRD, 2000), p.159-160. (Hereinafter Del Rosario and Bonga)

Commission granted the Court of First Instance jurisdiction over offenses made punishable by the legislative council of the Moro province in Act No. 8, which defined the crimes of slave holding and slave hunting.²⁵ In 1911, it enacted another law prohibiting “Slavery, Involuntary Servitude, Peonage and the Sale or Purchase of Human Beings in the Mountain Province and the Provinces of Nueva Vizcaya and Agusan, and Providing Punishment Therefor.”²⁶ Then in 1913, the said Commission, later called the Philippine Legislature, enacted Act No. 2300 which prohibited the following acts:

- a. Kidnapping or carrying away another person with the intent of selling into involuntary servitude or hold as slave or someone who assists in the accomplishment of the same;
- b. Peonage – anybody who arrests, holds, returns to or aid in these acts for the purpose of peonage;
- c. Bringing in person from abroad for slavery and involuntary servitude.

It was evident from these laws that aside from children of poor peasants and farmers who borrowed money from their landowners, children of indigenous peoples were likewise especially vulnerable to trafficking and slavery.

However, trafficking in children for debt-bondage was not the only problem plaguing the country, especially the poor rural areas. The children’s (especially the girls) entry into prostitution was also beginning to be a growing concern. In the 1932 report on the Philippines by the Commission on Enquiry into the Traffic

25. Act No. 1078, March 9, 1904.

26. Act No. 2071, August 7, 1911.

in *Women and Children in the East of the League of Nations*, it disclosed that:

internal traffic in native young girls are being carried on mainly by so-called employment agencies, which bring poor and ignorant young girls from the country districts to the large cities, particularly Manila, ostensibly as servants. Here they are lured into dance-halls and houses of prostitution. . . These young ignorant girls are turned over to pimps and panderers.²⁷

On the other hand, the migration of overseas Filipino workers accordingly started in the early 1900s until 1946, with the “first wave” of workers being recruited in the plantations of Hawaii and Guam. By 1934, there were allegedly more than 120,000 plantation workers who were under contract.²⁸

The post-colonial era saw the further perpetuation of the commodification of children. Pimps frequented villages to look for girls ages, twelve (12) to fourteen (14), gave their parents a small amount of money and then took these girls initially to teach them how to sing and dance and eventually to set them up for prostitution.²⁹ The Philippine report to the United Nations Economic and Social Council, in fact, showed that from 1948 to 1950, the number of arrests for offenses connected with the traffic

27. EPCAT, *Historical Background of the Commercial Sexual Exploitation of Children in the Philippines*, citing Fernandez 54-55, (1984), p.10. (Hereinafter EPCAT)

28. Mercedes B. Apilado, *Positive Response: A Guidebook on Handling Migration and HIV/Aids Issues for Foreign Service Personnel* (Quezon City: ACHIEVE, Inc./CARAM-Philippines, 2004) at 5.

29. *Supra* note 2 at 136.

of women and children reached 1,410 and the conviction rate was high at 94%.³⁰

The presence of American soldiers in the early 1940s also increased the demand for women who could provide sexual entertainment. Thus, young girls became part of the commercial sex industry.³¹

In the 70's during the Marcos dictatorship, sex tourism and prostitution grew.³² Then there was a gradual shift in the demand for women in that instead of foreigners coming over to the country, the women started to be "exported" in various ways, from working as entertainers, *au pairs* and mail-order brides.³³

With the pervasiveness of poverty and the not so promising economic opportunities in the country especially in the rural areas, it was obvious that migration from the rural to the urban areas was inevitable. At the same time, there was also a steady rise in the out-migration where more and more Filipinos sought better-paying jobs abroad. Thus, because of the strict immigration policies imposed by countries, which created the demand for these jobs, trans-border trafficking, grew and developed into one of the low risk-high profit "industries" in the country.

III. TRAFFICKING: INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

Trafficking in persons, especially in women and children, is no doubt one of the most severe forms of human rights violation.

30. *Supra* note 7 at 11.

31. 2005 Philippine Conference, *supra* note 21.

32. *Ibid.*

33. Sta. Maria, *supra* note 9 at 25-28.

In trafficking, the victim is not at all treated as a human being but as a commodity – the subject of clandestine commercial transactions. The different modalities by which it is committed reflects the fluidity and invisibility of the trafficking trade itself, making it extremely difficult for law enforcers to go after the traffickers. In more recent developments, trafficking was also observed as the handiwork of organized criminal groups who operate not only within the domestic level but internationally, thus, necessitating a regional and global response and requiring the cooperation of sending, transit and receiving countries. Because of the indignities and abuses that victims suffer, very few of them are willing to come out in the open and prosecute against their traffickers. This, of course, is on the assumption that the traffickers can actually be caught and brought before the courts. Traffickers, especially those belonging to syndicates or cartels have become so moneyed and powerful that they can easily corrupt and bribe their way out of the justice system, if they do not choose to first threaten their pursuers with reprisal. Estimates of profits in the trafficking trade run from 9.5 U.S. Billion dollars a year.³⁴ Thus, with the low probability of prosecution and high profit guarantee, trafficking in persons, especially women and children continues to flourish, with the people from developing countries being most vulnerable to the enticements and false promises offered by traffickers.

A. The Convention Against Organized Crime

The Convention against Transnational Organized Crime was adopted by the United Nations General Assembly on November

34. See U.S., Department of State, Trafficking in Persons Report (June 2004), hereinafter, US Report, at 14, online: <<http://www.state.gov/documents/organization/34158.pdf>>.

15, 2000, through resolution A/RES/55/25.³⁵ As provided for in Article I, the purpose of this convention is “to promote cooperation to prevent and combat transnational organized crime more effectively.” Thus, it mandates States-Parties to take measures to criminalize participation in an organized criminal group (Article 5); criminalize laundering of proceeds of the crime (Article 6); criminalize corruption (Article 8); prosecute, adjudicate and enforce sanctions against offenders (Article 11) and confiscate and seize property or profits derived from such illegal activities (Article 12). The convention also provides for Extradition, Mutual Legal Assistance, Protection of Witnesses, Assistance to Victims, Training and Technical Assistance and Cooperation with Law Enforcers.

Primarily a treaty focused on combating trafficking by using a criminal law framework, it has been criticized for not bringing human rights protection to the foreground, in its response to trafficking. Whatever assistance is given to victims of trafficking remains largely at the discretion of the destination country.³⁶

To be fair, the Human Rights Caucus of the Protocol and Convention negotiations, lobbied hard though failed, to convince the Intergovernmental committee for more protection measures to victims of trafficking. Accordingly,

x x x The Human Rights Caucus was no more successful in including a provision protecting trafficked persons from prosecution for state related offenses such as illegal migration, working without proper documentation, and prostitution, and that trafficking victims not be held in detention centers. Furthermore, the Human Rights Caucus argued for some

35. See <http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html>.

36. Brown, *supra* note 8.

kind of right, allowing trafficked victims to remain, at least temporarily, in the receiving country “for humanitarian purposes and to protect them from being victimized again by traffickers.” The Intergovernmental committee rejected the UN High Commissioner for Human Rights’ view that trafficked victims’ return to their country of origin should be voluntary and safe. At the same time, countries of origin are to facilitate and accept, without undue or unreasonable delay, the return of trafficked nationals. This suggests an obligation upon countries of origin to ensure that the trafficking victims are safe from retaliation. This is important because often governments of origin do not cooperate with repatriation efforts, and it results in the trafficked victims being held for long periods of time in detention centers. This also places the burden of victim protection and assistance on the shoulders of the country of origin. This is not very encouraging considering countries of origin are usually poor, developing countries that have insufficient resources, and lack the political commitment to ensure the protection of their victims. Furthermore, this does not resolve the statelessness of some trafficking victims who have no official documents proving they are nationals of a certain country.³⁷

Protocols to this convention were also an anticipated development. Article 37 specifically states that in order to be a Party to a related Protocol, “a State or a regional economic integration organization must also be a Party to this Convention.” Thus, three (3) months after the Convention took effect on September 29, 2003, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (supplementing the United Nations Convention against Transnational Organized Crime) came into force, on December

37. *Ibid.*

25, 2003.³⁸ Among the three (3) Protocols which were intended to supplement the convention, the Protocol on Trafficking in Persons [Protocol]) was the first to come into force. While the Protocol against the Smuggling of Migrants took effect on January 28, 2004,³⁹ the Protocol against the Illicit Manufacturing of and Trafficking in Firearms has yet to come into force.⁴⁰

B. The Protocol Definition of Trafficking

In the Protocol, trafficking is defined as the:

recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴¹

This definition does not necessarily require any form of movement for trafficking to exist. Mere recruitment is already construed as an act of trafficking so long as the end result or its intendment is

38. See <http://www.unodc.org/unodc/en/crime_cicp_signatures.html>.

39. See <http://www.unodc.org/unodc/crime_cicp_signatures_migrants.html>.

40. See <http://www.unodc.org/unodc/crime_cicp_signatures_firearms.html>.

41. See Section 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

exploitation as defined in the Protocol. The definition has certainly expanded the concept of trafficking which a decade ago has been characterized by the United Nations General Assembly as “the illicit and clandestine movements of persons across national and international borders x x x.”⁴² (underscoring supplied)

C. The Trafficking Victims Protection Acts (TVPA), as amended and the 2004 U.S. Report

Undoubtedly, the trafficking definition in the Protocol has gained wide acceptance. It has been signed by 117 countries and ratified by 79.⁴³ Although the United States (U.S.) has not ratified both the Convention and the Protocol, the trafficking definition in the latter instrument has been incorporated in the latest report of the U.S. (US Report) in relation to the Trafficking Victims Protection Act of 2000 (TVPA). This law, which was later on amended by the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), requires the Secretary of State to submit an annual report to Congress.⁴⁴ The report assesses the different countries’ efforts at combating trafficking through prevention and protection measures with special focus on prosecutions and convictions of traffickers.⁴⁵ On the basis of such assessment, the countries are grouped into four (4) tiers, depending on whether or not they have met the minimum standards set by the TVPRA.

42. See GA/RES/49/166, 94th plenary meeting, 23 December 1994 at <<http://www.un.org/documents/ga/res/49/a49r166.htm>>.

43. *Supra* note 38.

44. See section 110(b)(1).

45. See US 2004 Report at 25 <http://www.state.gov/documents/organization/34158.pdf>, p. 25. (Hereinafter US 2004 Report)

These minimum standards are generally satisfied if a country has an existing legal framework for the prosecution and conviction of traffickers, with penalties commensurate to the severity of their acts; and more importantly, if there is a significant number of prosecutions and convictions of both traffickers and their accomplices, which may come from the government. The Tiers, on the other hand, are divided according to the extent of the countries' compliance with the said minimum standards. Hence, as stated in the report, the following Tiers are categorized as follows:

Tier 1:

Countries whose governments fully comply with the Act's minimum standards.

Tier 2:

Countries whose governments do not fully comply with the Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards.

Tier 2 Watch List:

Countries whose governments do not fully comply with the Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards, and:

The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or

There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or

The determination that a country is making significant efforts to bring themselves into compliance with minimum standards

was based on commitments by the country to take additional future steps over the next year

Tier 3:

Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.⁴⁶

Tier placements of countries are done by the U.S. for a specific purpose. Those who fall under Tier 3 by October 1, 2004 may be faced with certain sanctions. At its discretion, the U.S. Government may withhold non-humanitarian and non-trade-related assistance. Funds may also be withheld for participation in educational and cultural exchange programs. Furthermore, the U.S. will likely oppose assistance sought by a Tier 3 country from the International Monetary Fund and the World Bank, save for humanitarian, trade, and certain development-related assistance.⁴⁷

As of September, 2004, the U.S. Government has imposed sanctions against Burma, Cuba, Equatorial Guinea, North Korea, Sudan and Venezuela.⁴⁸

The **penalizing** provisions against other countries have been subject to criticisms both within and outside the U.S. When the law was first introduced before a *Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children*, convened by the United Nations Economic and Social Council for Asia and the Pacific in Bangkok in 2001, which was attended by the different line ministries representing seventeen (17) countries in the Asian and Pacific region, not a few ministers questioned the source and indicators for falling into the categories.

46. *Id.*, p. 28.

47. *Id.*, p. 31.

48. See <<http://www.state.gov/g/tip/rls/prsrl/36127.htm>>.

38. The presentations gave ground to a lively and heated debate predominantly on the US Act and the recent State Department report. One of the main concerns of the Seminar was the categorization of the countries into tiers, in particular what sources of information had been used for the report and the categorization. The latter was deemed important as countries informed the Seminar that requests had not been given to their governments to provide information filling into the report. It was clarified that the 2001 report was not alterable, and should be seen as a baseline study, and that the sanctions did not come into effect until the year 2003, thus leaving time for governments to alter their status on the list.⁴⁹

The protection offered by TVPA to trafficked victims, particularly the privilege to stay in the U.S. largely depends on the latter's willingness to be a witness for the prosecution of traffickers. A T-visa shall be issued to a trafficked person once he or she is determined to be:

- (1) Willing to assist in the investigation or prosecution of traffickers, and
- (2) Has either made a *bona fide* application for a T-visa with the Bureau of Citizenship and Immigration Services (BCIS) in the Department of Homeland Security (DHS) or is a person whose continued presence in the United States is assured by the Attorney General in order to assist in the prosecution in trafficking cases. Children under age of eighteen (18) are exempt from the certification process but still need the "determination of eligibility"

49. UNESCAP – Report on the Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children (2001) at ¶ 38.

from Office of Refugee Resettlement (ORR) in order to gain access to services.⁵⁰

This has also been criticized as too stringent by some members of the U.S. Congress. Specifically, Congressman Tom Lantos stated that the T-visa should be regarded as a humanitarian measure and not a tool for ensuring cooperation by frightened and suspicious victims with law enforcement.⁵¹ There is also concern that the economic sanctions against countries (which are generally the developing ones) would exacerbate their poverty and vulnerability to traffickers; and that in effect, it is the people who are adversely affected by the economic sanctions and not the traffickers.⁵²

As earlier stated, the benchmark set by the TVPA in gauging a country's efforts at combating trafficking are the number of prosecutions and convictions and the application of proper penalties according to the severity of the acts committed. It is obvious that the U.S. is of the opinion that these measures are the most effective deterrent to trafficking, and are also the most concrete proof of a country's political resolve to address this problem.

***D. The Philippine Law on Trafficking:
Republic Act No. 9208***

From its initial report in 2001 until 2003, the Philippines has consistently been placed in Tier 2. The reason given by the reports was the Philippines' lack of a law that prohibits trafficking, although they acknowledged the existence of some related legislation such as the Migrant Workers Act (R.A. No. 8042).⁵³

50. Bump and Duncan, *supra* note 16 at 206.

51. *Ibid* at 207.

52. Brown, *supra* note 8.

53. <http://www.state.gov/g/tip/rls/tiprpt/>.

With a comprehensive trafficking law coming into effect in 2003, it is ironic that in the latest U.S. Report, the Philippines has been relegated to Tier 2 (Watch List). The reason given for this is the “government’s failure to provide evidence of increasing efforts to combat severe forms of trafficking, particularly in terms of its weak implementation of the anti-trafficking law and a lack of progress in law enforcement.”⁵⁴ The report specifically mentions that although the government has investigated trafficking-related offenses, there were only three (3) prosecutions under the new trafficking law (but no convictions) and only two (2) convictions under other laws. The report recommends immediate corrective action through arrest and prosecution of traffickers and government officials who are likewise involved in trafficking.⁵⁵

Although R.A. No. 9208 generally concentrates on defining criminal acts of trafficking and penalizing their commission, the law also directs the formulation of policies for the prevention of trafficking and the protection of its victims. Thus, while recognizing the importance of punishing traffickers, it also acknowledges that trafficking is a complex social phenomenon brought about by several socio-economic and cultural factors, which must be identified and taken into consideration before a responsive and comprehensive program can effectively be set in place. It attempts to focus both on preventive measures as well as reintegration programs. It requires the coordination and cooperation of various government agencies and departments, including the local government units. Acting as an inter-agency council, these different entities including representatives from non-governmental organizations are mandated to formulate programs

54. Rodrik, *supra* note 7 at 105.

55. *Id.*

on how best to prevent people from being further lured by traffickers, how to assist them posthaste when they become victims and how to help them recover and reintegrate into their communities and the society as a whole. That the law set up a framework through which these agencies, departments and the local government can maximize cooperation and coordination reveals a profound understanding that trafficking is fluid as much as it is invisible; and that nothing less than an integrated approach combining the efforts from all these entities is required to ensure successful implementation of the law. This can be clearly seen in sections 20 to 25, which cover all the services that should be afforded to trafficked and potentially trafficked persons. Hence, the mandate of the entities tasked to combat trafficking ranges from research, data gathering and sharing among the government agencies concerned; massive education on trafficking through information dissemination and trainings for capability building and more effective levels of intervention; to legal assistance and other mandatory services designed to improve efforts to enhance the victim's recovery, rehabilitation and reintegration.

Clearly, it can be argued that the country's efforts in combating trafficking should not be measured merely by the number of prosecutions and convictions of traffickers and their cohorts in the government. There are other just as valid indicators to measure a country's initiatives and efforts to combat trafficking. In reality, whether or not prosecutions and convictions can be secured largely depend on other factors such as an enlightened and informed citizenry, capable law enforcers and a strong criminal justice system. Achieving these is no easy task but efforts toward their realization should equally be appreciated.

IV. ANALYSIS OF THE CRIMINAL LAW APPROACH (AND INTERVENTIONIST APPROACH)

According to the U.S. Report,

In assessing foreign government efforts, the TIP Report highlights the “three P’s” of prosecution, protection, and prevention. But a victim-centered approach to trafficking requires us equally to address the “three R’s” – rescue, removal, and reintegration. We must heed the cries of the captured. Until all countries unite to confront this evil, our work will not be finished. (Trafficking Report, p. 5)

So what is wrong with using a criminal law enforcement approach? Moreover, is there something amiss with the whole process by which the U.S. government is going about fighting trafficking in persons and “encouraging” other countries to do the same? Does its approach fall within Ratna Kapur’s discourse on victimization of women within the violence against women campaign? What of the interventionist approach, which is fueled by the focus on prosecution over protection and prevention strategies espoused by the U.S. government? Is this justifiable in the name of the universality of the right not to be trafficked and exploited? Furthermore, using Gunning’s framework, what right does the U.S. government have in dictating what the appropriate indicators should be in order to determine whether countries are doing enough to combat trafficking in human beings, especially women and children in their own backyard? Would Gunning’s approach of dialogue without punishment yield better results in the fight against trafficking?

A. Cultural Essentialism

According to Kapur, cultural essentialism, has largely ignored the diversity in women’s lives and the need to take into account

national and cultural differences among women.⁵⁶ Furthermore, culture has been used to explain how violence against women has taken various forms.

The interventions or “raid and rescue” operations conducted by the American members of the International Justice Mission (IJM) in Thailand, exemplifies this assertion. This paper is of the view that their activities assume that since Thailand is not doing enough in addressing “[w]idespread sex tourism” which “encourages trafficking for forced prostitution,”⁵⁷ then IJM has taken the cudgels to do the job themselves. Hence, they embark on rescue missions, because the women were forced into prostitution, due to the tolerance of Thailand for sex tourism. As Arnold suggests in her article,

moral superiority should be abandoned by organizations that consistently portray Asians as perpetuating human trafficking by their lack of respect for universal rights.⁵⁸

This moral superiority is also manifested in the way IJM’s efforts undermine the strategies adopted by the Thai NGOs in

56. Ratna Kapur, “The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics” (2002) 15 *Harv. Hum. Rts. J* 13. (Hereinafter Kapur)

57. US Report on Thailand, p. 109.

58. Christina A. Arnold, “AGENDAS AND IDEOLOGICAL BASES OF ‘ANTI-TRAFFICKING’ ACTORS: Representations, Moralities and Realities in US/Southeast Asian Experiences” (April 2004), online: <[www.american.edu/academic.depts/honors/Honors%20Activities/2004%20capstones/Christina % 20Arnold.pdf](http://www.american.edu/academic.depts/honors/Honors%20Activities/2004%20capstones/Christina%20Arnold.pdf)>.

addressing trafficking and the working relationship with government agencies and even with the Thai courts.⁵⁹

While the report emphasized sex tourism as encouraging forced prostitution, the distinction between forced and voluntary prostitution does not seem to make a difference to the raid and rescue operations by IJM. It is also strange that the only prostitution that is viewed by the report as a consequence of sex tourism is that which is “forced.” What is further perplexing is why the report should even distinguish prostitution that is forced or not when it declares that:

it takes a firm stand against proposals to legalize prostitution because prostitution directly contributes to the modern-day slave trade and is inherently demeaning. When law enforcement tolerates or communities legalize prostitution, organized crime groups are freer to traffic in human beings.⁶⁰

It also stated that there is a direct link between prostitution and trafficking⁶¹ and that:

[I]egalized prostitution is therefore a trafficker’s best shield, allowing him to legitimize his trade in sex slaves, and making it more difficult to identify trafficking victims.⁶²

It is also noteworthy that the U.S. Report states that one of the factors that significantly contribute to trafficking in the Philippines is the people’s “cultural propensity toward migration.”⁶³ I am not sure how the need of the Filipinos to look

59. *Ibid.*

60. US 2004 Report, *supra* note 45 at 22.

61. *Ibid.*, p. 15

62. *Ibid.*, p. 22.

63. *Ibid.*, p. 105.

for employment elsewhere because there are not enough of them at home that could sustain them and their families, was associated with Philippine culture. Instead of recognizing the global trend of people from the “south” migrating for work to countries of the “north” because there are employment opportunities there demanding to be filled up, the report imputes its labor export as “culture.” The U.S. must have forgotten also that the “first wave” of migrant workers were spawned by the need to hire agricultural and plantation workers in Hawaii and Guam.

“Blaming” countries for allowing sex tourism and their cultures for the migration of people conveniently ignores the need to address the demand side of the equation in trafficking. As pointed out by the Coalition of Trafficking Against Women (CATW),

2. x x x It is disingenuous to take a position against legalized prostitution and then reward state-sponsored prostitution countries with Tier I status.

xxx xxx xxx

3. Demand - Demand is treated almost in an abstract way and seems to be reducible to “the sex industry and the growing demand for exploitable labor.” What about the customers, the mostly male demand for the sex of prostitution? In the TIP report, demand is treated as if it has no gender. This peculiar description of demand may be a function of trying to lump together the demand for forced labor and demand for prostitution and other forms of sexual exploitation. The demand factors are different in both cases and should be so stated.

5. The TIP report continues to favor mostly demand-side countries while faulting mostly supply-side countries. The fact that countries of supply are poor, disadvantaged, and often politically destabilized gets very little mention in this report. The fact that countries of demand are mostly

rich, advantaged and politically stable by comparison to countries of supply also gets practically no mention in the TIP report. The TIP report would be much better in the future if it at least noted the fact that countries that fuel the demand bear a huge responsibility for trafficking and that demand factors should be taken into consideration when ranking countries.⁶⁴

As correctly pointed out in the interim report on trafficking in women,⁶⁵ a broad human rights approach incorporating development strategies and addressing the social and economic causes of trafficking is essential. Unfortunately, initiatives to combat trafficking have been largely focused on law enforcement and national security. Less assistance has also been given to the victims.⁶⁶ Indeed, most countries impose the condition of cooperation with law enforcement in order for them to stay longer in the country of destination.

B. Gender Essentialism

The U.S. Report also states:

Some countries have established task forces and action plans to create goals and benchmarks for anti-trafficking efforts. However, plans and task forces, on their own, are not weighted heavily in assessing country efforts. Rather, the report focuses on concrete actions governments have taken to fight trafficking, highlighting prosecutions, convictions, prison sentences for traffickers, victim protection, and prevention efforts. The report does not give great weight

64. CATW letter dated July 2, 2004 to Director Miller of the US State Department, online: <www.catwinternational.org>.

65. 2005 Committee on Feminism, *supra* note I.

66. *Ibid.*

to laws in draft form or that have not yet been enacted, though task forces, action plans, or draft laws are sometimes noted in a country narrative as examples of preliminary actions governments have undertaken to combat trafficking. Finally, the report does not focus on other government efforts that contribute indirectly to reducing trafficking, such as education programs, support for economic development, or programs aimed at enhancing gender equality, although these are worthwhile endeavors. (Trafficking Report, pp. 25-26)

Kapur also points out that gender essentialism, (which is “the fixing of certain attributes to women,”) in addressing VAW, has served a strategic purpose, by enabling state actors and non-state actors to adopt “universalizing strategies” in addressing the problem.⁶⁷

“Heed[ing] the cries of the captured,” both the U.S. government and IJM have determined what is the best approach and strategy to combat trafficking within the territories of other countries, with the U.S. threatening to impose economic sanctions if countries fail to comply with the minimum standards it has set to combat trafficking. In fact, it has taken upon itself, through the State Department to impose a so-called “work plans” on Bangladesh and in Sierra Leone, outlining what must be done.⁶⁸

In 1997, Bangladesh totally banned women from working abroad except for high level professionals. Although this was withdrawn after a year, the ban continued to apply to domestic workers.⁶⁹ In 2003, the government of Bangladesh

67. Kapur, *supra* note 56 at 11.

68. See <<http://www.state.gov/g/tip/rls/prsr1/36127.htm>>.

69. Susie Jolly, Emma Bell and Lata Naravanaswamy, “Gender and Migration in Asia: Overview and Annotated Bibliography”

announced that its was considering lifting the ban on domestic workers but stated that:

the actual lifting of the ban would come only when the government can be satisfied that conditions for domestic workers in labour recipient countries have improved.⁷⁰

Yet, despite the restrictions imposed on women migrant workers in Bangladesh, trafficking has not decreased. According to some recruitment agents and a labor recruitment officer, the ban only encouraged irregular migration, and has increased trafficking in women. It was alleged that around 45,000 women have worked illegally in the Persian Gulf countries since 1998, compared to 14,000 who worked legally between 1991 to 1998.⁷¹ It drove Bangladeshis to take advantage of the loophole in the law that allowed women to leave the country as wives or sisters, forging passports and marriage certificates. Harsh economic conditions and lack of employment compelled many poor people, including women, to try their luck abroad.⁷²

There is indeed a need to balance the obligation to protect women from being trafficked and exploited overseas, and the duty to respect their freedom of movement and their right to work. With the TVPA breathing down its neck, the Bangladeshi

(Institute of Development Studies, University of Sussex, UK, March 2003), online: < www.ids.ac.uk/bridge/reports/bb13.pdf>, citing Siddiqui 2001.

70. Tabibul Islam, "Government Mulls Lifting Ban on Domestic Workers" Migration Stories (2003), online: IPS Asian Migration Trail < <http://www.ipsnews.net/migration/stories/ban.html>>.

71. *Ibid.*

72. *Ibid.*

government might yet renew and tighten its restrictions on women who wish to work abroad, instead of focusing its effort on other measures that would not curtail their movement.

According to Lansink, the Rapporteur on Trafficking in Women at the Berlin Conference,⁷³ the international legal response often overlooks not only the socio-economic dimension of migration but also the gendered and political nature of its responses. Quoting Kapur, she states that:

the international regime is produced in part by the “disciplinary and at times punitive legal order that has been erected to address cross-border movements”; and that [f]emale migration, in particular, is not addressed within the framework of the global economy and the search for better economic opportunities, but through a trafficking or smuggling lens.⁷⁴

Lansink further adds:

This response is based on a specific idea of womanhood, victim and lack of agency and produces the woman as a disempowered subject,⁷⁵ to be treated as a perpetual minor. In this scenario men migrate and women are trafficked. It is therefore important to guard against contributing to

73. 2004 Committee on Feminism, *supra* note I.

74. *Ibid*, citing Ratna Kapur ‘Some Comments on the Legal Regulation of Trafficking, Migration and Terrorism: Impact on Cross-border Movements and Women’s Rights’, paper presented at the International Symposium: The International Legal Order, 4-5 November 2002.

75. 2004 Committee on Feminism, *supra* note I, citing Jyoti Sanghera ‘Towards the Construction of an Empowered Subject: A Human Rights Analysis of Anti-Trafficking’ (conference paper on file) (2001).

discursive practices that produce the female migrant as a person continuously in need to be protected or rescued. Moreover, cultural, racial or religious prejudices and stereotypes are often part of such ‘Othering’ practices as well. It is essential to guard against reifying a cultural ‘Other’ by locating migration and trafficking within simplified paradigms of helpless women, hapless victims of a variety of oppressive regimes or sexist attitudes in so-called “second” or “third world” countries, and always in need to be “rescued” by Western or other feminists.⁷⁶

Neither should the failure to prosecute and convict traffickers be simply imputed against the sending country’s lack of political will or inefficient criminal justice system. The United Nations High Commissioner for Human Rights has observed that trafficked persons are usually not willing to prosecute against their traffickers and cooperate with law enforcement for various reasons, including fear or reprisal, irregular migration status, debt-bondage or lack of better alternatives.⁷⁷

Added to this, at least within the Philippine context, is the women’s desire not to expose themselves and their families to further “dishonor” before the community and the society in general. Trafficking, as with other sexually-related crimes, are heavily stigmatizing, and it is the women who bear the brunt of shame and humiliation of these acts, more than the perpetrators. It is not, therefore, surprising that they would rather not go through trial proceedings and have their experiences recounted before

76. See, for example, Jo Doezema ‘Ouch! Western Feminists’ ‘Wounded Attachment’ to the ‘Third World Prostitute’ vol 67 *Feminist Review* (Spring 2001)16.

77. 2004 Committee on Feminism, citing UNHCR Recommended Principles 1,2, and 3 ‘The Primacy of Human Rights.’

prosecutors and judges who would likely be men. Thus, before prosecutions and successful convictions can be achieved, the Philippine government must address not only the concern with regard to changes in the criminal justice system and the judiciary, but also the need to address gender socialization, where so much value is attached on a woman's virtue such that it factors heavily on her standing in the community, and on her credibility as a witness.

Adopting the criminal law approach as the benchmark of government initiatives to combat trafficking is sorely inadequate and misogynic. Even on the assumption that the U.S. has been successful in securing the cooperation of Filipino women who were trafficked there, it is not an indication that these same women would readily help prosecutors had the proceedings been in the Philippines. There are various reasons why they might be constrained to cooperate in the U.S. but not in the Philippines. For one, their guarantee against deportation may depend on their testimony. It is also not difficult to imagine that they would be more forthcoming with their stories in the U.S. since they would generally know less people there, and therefore, the degree of humiliation is much lessened.

V. CONCLUSION

Both Thailand and the Philippines have developed strategies, which do not solely focus on prosecutions. This is in recognition that trafficking is a complex problem requiring complex solutions. While the urgency to address it cannot be ignored, a deeper understanding of trafficking suggests that it would be naive to expect that this problem could be addressed by the mere passage of a comprehensive law with stiff penal sanctions, or by prosecutions and convictions for that matter.

No country wants to be accused of sanctioning the trafficking of their nationals or of cuddling traffickers. Even if the Convention and Protocol on Trafficking have not yet been widely ratified, it is safe to assume that in the international community, there is a consensus that trafficking in human beings, especially in women and children need to be addressed. In a way, it could be said that the right not to be trafficked has attained a universal acceptance.

In her article,⁷⁸ Isabelle Gunning posed the query on whether there are “universally valid moral beliefs and right and wrong rules and modes of conduct.” This paper posits that there is a universal and valid moral belief, at least in the 21st century, that trafficking in human beings is an intolerable practice that should not be countenanced. That said, how this phenomenon should be addressed is best left to each country confronted by the problem.

The U.S. Report on the Philippines states that:

Fourteen government agencies coordinate the government’s anti-trafficking efforts, much of which is prevention-oriented.⁷⁹

While there is a need to have standards that each country is expected to meet in order to determine whether it has not been remiss in protecting the right of its people not to be trafficked, its efforts should not be measured by a single approach imposed by no less than just one country (with accompanying threat of

78. Isabella Gunning, “Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries” (1992) 23:2 Colum. Hum. Rts. L. Rev. 190. (Hereinafter Gunning)

79. US 2004 Report, at 105, online: <<http://www.state.gov/documents/organization/34158.pdf>>.

sanctions) that does not care to know how other approaches can be equally effective, if not more. Gunning was correct in saying that:

the development of such laws (in this case the standards to be met), must be the result of a multicultural dialogue and consensus. Their implementation must forego the use of punishment or force in favor of more dialogue and education.⁸⁰

Human rights can attain universality when there is more respect and appreciation from among countries on how different methodologies can be used by each one in order to protect and promote these rights. The trafficking problem, and how the US and NGOs like the IJM have imposed their own strategies and approach, show that the debate on universality goes beyond building consensus around values and rights. It must engage a respectful dialogue around how universally accepted rights can be promoted and protected, such that whatever indicators for compliance are set can truly be claimed by the international community as universally standard-setting.

80. Gunning, at 193.

A Critique of Philippine Laws and Policy Related to Trafficking*

*Atty. Carolina S. Ruiz-Austria***

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I. INTRODUCTION

The stories seem trite. Young barrio lass comes to the city to fulfill her dreams and winds up in Japan under an assumed name, with a fake passport and gets sold off to a nightspot to “work off” her debt as a prostitute.

Public school teacher, wife and mother to three (3) children goes to Singapore, works as a domestic and is maltreated by her employers. She escapes and is accused of a crime she did not commit.

Young Muslim woman, barely eighteen (18), wanting to support her family, leaves for the Middle East as a domestic. She gets raped and beaten. She serves sentence in jail for defending herself and is lashed in public.

Passing herself off as eighteen (18), young girl meets her Australian beau through the Internet. She exchanges letters with him and sends photographs. They agree to marry. She is surprised that he does not look like his picture but decides she fell in love with the man who wrote the letters. They got married and left for Australia where she discovered the man is already married. She gets sent to work in a brothel along with other Filipino and Thai women.

These stories and many more seem to be stuff of *telenovelas*, life stories on cinema and hackneyed dime novels and yet many of them actually still do happen to many Filipino women.

Steering Committee. Her work has been published by Reproductive Health Matters (RHM), a bi-annual Journal in the United Kingdom and Littlefield Publishers in the United States. For Tagalog on Site (TOS), Attorney Ruiz-Austria lectures on the status of the Filipina.

At the rate of over 2,300 thousand Filipino women leaving everyday to work abroad as entertainers, domestics, and nurses, these stories do not seem to serve the least bit discouraging to Filipino women from seeking employment or going abroad.¹

For Filipino women, going abroad spells the difference between getting decent pay for jobs, which do not get paid much (or anything at all) in the country (nursing, domestic work). The prospect of getting even double or more than nurses and domestics by becoming “entertainers” (usually in Japan) even makes the offer more irresistible.

Filipino women go abroad in droves precisely because economic opportunities at home are scarce. Meanwhile, the clear unequivocal government policy on overseas employment since the late seventies has been to encourage the export of labor.²

Riding on the dollar remittances of Overseas Filipino Workers (OFWs), the Philippine government constantly boasted about staying afloat amid the Asian market crash of 1997. Many

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1. Statement at Lyceum University, Secretary of Labor, Patricia Sto. Tomas, March 2002.
 2. The case of the Philippines illustrates the way this has occurred. The Philippines once had the second highest standard of living in Asia, behind Japan. It is now one of Asia’s poorest nations. The country became impoverished after then-President Ferdinand Marcos bankrupted the country in the late 1960s/early 1970s. The solutions the government adopted then to address the country’s problems included: 1) establishing export production zones; 2) developing the tourism industry; and 3) contracting out surplus labor. They received loans from the International Monetary Fund (IMF) and World Bank (WB) to develop tourism and export production zones. The external debt ballooned from \$.5 billion to \$26 billion in two (2)

economists however pointed out this was not the least bit surprising anyway since the Philippine economy never really took off and had nowhere worse to go.

II. DEFINING THE POLICY ISSUE

A discussion of the policy and legal environment which impacts on the phenomenon of Human Trafficking, specifically the trafficking of Filipino women necessitates a framework for looking at the effects of the globalized economy on women as a whole.

When we discuss the trafficking of Filipino women as an issue, it tends to presuppose that Philippine Government is aware, let alone also considers the problem as one of **trafficking**, which is really the sale and profit from human slavery, in this case, the slavery of Filipino women.

Yet this is not wholly accurate. Until the establishment of the Philippine Center on Transnational Crimes (PCTC) in 1999 whose members were some of the delegates to the International Convention on Transnational Crimes, not a single law enforcement agency categorized the problem as such.

The earliest use of the term **trafficking** in written government policy was in fact in 1994 in the Implementing Rules and Regulations of the Anti-Child Abuse Law (Republic Act No. 7610) and in 1997 when President Fidel V. Ramos issued Executive Order No. 976 declaring the period January to December 1997 as the “Anti Trafficking of Migrants Year.”

decades. Globalization, Public Policy, and the Gendered Division of Labor Jean L. Pyle, PhD Department of Regional Economic and Social Development and Center for Women and Work, University of Massachusetts Lowell, MA 01854 USA Keynote Address at the Third International Congress on Women, Work and Health Stockholm, Sweden June 2, 2002.

The Executive Order even uses the term “Illegal Trafficking”(sic) as if there were such a thing as the legally sanctioned “trafficking” of persons:

THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period January 1 to December 30, 1997 as the Anti-Migrant Trafficking Year. During this period, the Departments of Labor and Employment, Foreign Affairs, Justice, Interior and Local Government, Transportation and Communications and National Defense, are hereby tasked to adopt measures, including allocation of its resources, to the drive against *illegal trafficking*. (Itsals supplied)

In fact, to date, most of government bureaucracy still adheres to the view that the problem is simply one of **Illegal Recruitment**.³

Categorizing **illegal recruitment** presumes that massive labor export as a primary economic strategy is not an issue, but rather it is the *illegal nature of deployment* (undocumented and ergo outside the realm of taxation) is the more serious concern.⁴

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3. The Philippine National Police (PNP), The National Bureau of Investigation (NBI) (Law Enforcement Agencies) as well as the Philippine Overseas Employment Administration (POEA) have “Illegal Recruitment” Divisions, which focus on the illegal nature of “deployment,” more than anything else.
 4. Statement of Labor Secretary Patricia Sto. Tomas:

We are not oblivious, of course, to the attendant costs of overseas employment. Family displacement and its consequences is the price paid by Filipino workers who get separated from their families for a substantial length of time. We also need to strengthen efforts to curb illegal recruitment and at the same time address the plight of unrecorded or undocumented workers, *Id.* at I.

Indeed, that Filipino women lack enough economic opportunities in the local economy is not or rarely been identified as the major problem.

The gendered (stereotyped) categories of jobs available for Filipino women are well established and documented. The type of work Filipino women are expected to do are also the types of work for which there is very little or no payment at all if they were to perform it in the context of the local economy.

In the same way, these types of jobs (classified as women's work) also offer *cheaper* pay in the context of the host or destination country's economy so that migrant women workers are often the demand.

Thus in many ways, the peril that is trafficking is in many ways considered and accepted as a **built-in** risk for women seeking overseas employment.

III. CURRENT LAWS RELATED TO TRAFFICKING

There are only three (3) types of laws that have relation to the issue of trafficking in the Philippines. A handful of them are **penal in nature**, imposing fines and imprisonment after the fact of trafficking, assuming a victim survives the experience and is in any condition to file or initiate a complaint.

The *second* type of laws are those **administrative in nature**, focusing on the regulation and licensing of the labor export industry as well as coverage of administrative liabilities in "Illegal Recruitment."

A *third* set of laws and policies are the **government incentives and schemes of promoting the overseas labor export**, which range from medical benefits as well as tax exemptions to Overseas Filipino Workers (OFWs).

IV. CRIMINAL LAWS/PROVISIONS

There are four (4) sets of laws, which contain penal provisions in relation to some trafficking activities. These are the:

1. Migrant Workers and Overseas Filipinos Act of 1995, or Republic Act No. 8042;
2. Labor Code (Presidential Decree No. 442 as amended);
3. Anti-Mail Order Bride Law, or Republic Act No. 6955; and the
4. White Slave Trade provision in the Revised Penal Code.

A. Migrant Workers and Overseas Filipinos Act of 1995

Republic Act No. 8042 basically takes off from the same premises of the Labor Code (it refers to the Labor Code definition and adopts the same) and in fact punishes the same types of *acts*, which are essentially, *Illegal Recruitment* and a set of *prohibited acts* committed by recruiters (*i.e.*, contract substitution, collection of usurious fees and rates etc.)

Both laws define illegal recruitment essentially as deployment activities⁵ undertaken by non-licensed agencies. The crime is the act of deployment without authority, the main damage of which is tax evasion. In effect, existing penal laws focused on **illegal recruitment**, do not focus on the problem as it is actually experienced by the survivor/ victim of trafficking.

5. Sec 6. of Republic Act (R.A.) No. 8042 provides:

SEC. 6. **Definition.** - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit

This narrow definition actually poses a problem when it comes to prosecuting acts of Illegal Recruitment perpetrated by officially licensed agencies and individuals connected with such agencies. This type of illegal recruitment in fact is so common place that OFWs with long standing records of overseas work and experience are very familiar and on guard about the practice of licensed agencies, which change their business names and offices quite often to evade liability.

Because the provision is penal in nature, courts are wont to strictly construe in the interpretation of the law. And unless the licensed recruiter is also proven guilty of the other prohibited acts, they are not likely to be convicted of **illegal recruitment** even if the act was essentially illegal recruitment, that is deploying the worker through the back door channels or under assumed and fake names and documents.

This means the simplest way to evade prosecution is simply to secure a license as a legal recruitment firm and engage **illegal recruitment** activities on the side.

Ironically, while the 1995 law still adopts a narrow definition of Illegal Recruitment, its policy statements in fact give the impression that the law adopts comprehensive measures **protective** of OFWs.

or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more person shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority.

In one section, the law purports that the country will only deploy workers to countries, which have signed bilateral agreements as well as ratified international conventions for the protection of migrant workers.⁶

At the rate of over 7 million Filipinos (documented) working abroad,⁷ it is not surprising the provisions of this law are hardly being observed at all.

By the Secretary of Labor's own admission, there are hardly any bilateral agreements for the protection of OFWs in many of the countries where the Philippines deploys workers.⁸ Likewise,

6. Sec. 4 of R.A. No. 8042 provides:

SEC. 4. ***Deployment of Migrant Workers.*** - The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- (c) It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- (d) It is taking positive, concrete measures to protect the rights of migrant workers.

7. 2002 March DOLE Figures.

8. The only agreements already concluded were with Austria way back in 1982, United Kingdom and Spain in 1989, France in

many of these states have yet to ratify existing international agreements on the protection of migrant workers.⁹

The maximum penalty is life imprisonment under (R.A. No. 8042) and a fine of not less than Php500,000.00 (but not more than Php1,000,000.00) under two (2) circumstances:

I. If the act constitutes *economic sabotage*; and

1994, and Canada in 1996. Other treaties are at present in their various stages of negotiations. Ratified in November 1997 is the RP-Quebec Understanding on Social Security covering around 5,000 Filipino migrant workers. On the other hand, for signing are bilateral agreements with Belgium and Italy, which are expected to cover over 100,000 OFWs. Arrangements for possible ties with the USA, Greece, Cyprus and Saudi Arabia have been initiated by Social Security System (SSS). The SSS has also coordinated with the Department of Foreign Affairs (DFA) to explore possibilities of bilateral agreements with other countries. (Social Security System Website).

9. As of 20 June 2002, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families had been ratified or acceded to by nineteen (19) States, namely, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, Ghana, Guinea, Mexico, Morocco, the Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay. In addition, eleven (11) States, namely, Bangladesh, Burkina Faso, Chile, Comoros, Guatemala, Guinea-Bissau, Paraguay, Sao Tome and Principe, Sierra Leone, Togo and Turkey, signed the Convention. The Convention will enter into force when at least twenty (20) States have ratified or acceded to it. Therefore, only one more ratification or accession is needed for the Convention to enter into force. Distr. GENERAL A/57/2919 August 2002.

2. If the victim of illegal recruitment by the non-licensee is less than eighteen (18) years old.¹⁰

The same law defines Economic Sabotage as follows:

SEC. 10. *Crime Involving Economic Sabotage.* - Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage. Illegal recruitment 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. (R.A. No. 8042)

B. Anti-Mail Order Bride Law

The other law, which penalizes some acts of trafficking is the Anti-Mail Order Bride Law, or Republic Act No. 6955.

The following acts are prohibited under the law:

SEC. 2. Pursuant thereto, it is hereby declared unlawful:

- (a) For a person, natural or juridical, association, club or any other entity to commit, directly or indirectly, any of the following acts:

- (1) To establish or carry on a business which has for its purpose the matching of Filipino women for

10. The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (Php500,000.00) nor more than One million pesos (Php1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein. Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.(R.A. No. 8042)

marriage to foreign nationals either on a mail-order basis or through personal introduction;

- (2) To advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flyer, or any *propaganda* material calculated to promote the prohibited acts in the preceding subparagraph;
 - (3) To solicit, enlist or in any manner attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals either on a mail-order basis or through personal introduction for a fee;
 - (4) To use the postal service to promote the prohibited acts in subparagraph I hereof.
- (b) For the manager or officer-in-charge or advertising manager of any newspaper, magazine, television or radio station, or other media, or of an advertising agency, printing company or other similar entities, to knowingly allow, or consent to, the acts prohibited in the preceding paragraph.

Apart from the fact that this law does not have a set of implementing rules and regulations, there has never been a single case successfully prosecuted using this law.

One celebrated case initiated by the Department of Justice (DOJ) involved the trafficking of Filipino women who were **married** to Korean Nationals (many of them in *absentia*) at a Mass Wedding conducted by the Moonies (United Church of Rev. Sun Myung Moon) here in Metro Manila. It was in 1997. A year later, the DOJ Secretary reversed their own findings when the Moonies represented by Attorney Rene Saguisag, used the

defense of **free expression** and **religious freedom** for conducting the so-called **inter-cultural** marriages.

While the same law mentions **other media**, the same law has yet to be amended to likewise specifically cover trafficking activities perpetrated through the Internet. The e-Commerce Law of 2000 unfortunately does not have a provision regarding sex trafficking, which is actually the leading means of facilitating sex trafficking activities today.

C. White Slave Trade

Yet another law, which penalizes acts of trafficking is the White Slave Trade provision in the Revised Penal Code:

ART. 341. *White Slave Trade.* - The penalty of *prision mayor* in its medium and maximum periods shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of any other person for the purpose of prostitution.¹¹

Notably, this is the only law, which significantly focuses on the act of profiting and enlisting the services of any person for prostitution. Yet between 1901 and 2002, only three (3) cases involving white slavery reached the Supreme Court. The most recent was not even a prosecution for white slavery but an administrative case brought against a judge accused of facilitating the same acts.

11. As amended by *Batas Pambansa Blg.* 186, March 16, 1982.

V. ADMINISTRATIVE LAWS REGULATING THE INDUSTRY OF RECRUITMENT/PLACEMENT

Since the seventies, the policies on recruitment have been shaped by the government's **quick fix** recipe to pump foreign exchange into its ailing economy. Since the late 80s, this labor export policy has cashed in on the increasing demand for young women workers. In 1987, women were already 48.22% of all OFWs. By 1998, they comprised 55% of all OFWs.

The Labor Code as well as its revised implementing rules regarding the Philippine Overseas Employment Association (POEA) are still the controlling law on overseas placement/licensing/regulation. However, R.A. No. 8042 officially ushered in the demands of globalization to eventually **de-regulate** the export of labor.

R.A. No. 8042 conspicuously provides for the phase out of regulation now being done by the POEA.¹²

12. VII. Deregulation and Phase-Out

SEC. 29. **Comprehensive Deregulation Plan on Recruitment Activities.** - Pursuant to a progressive policy of deregulation whereby the migration of workers becomes strictly a matter between the worker and his foreign employer, the DOLE, within one (1) year from the effectivity of this Act, is hereby mandated to formulate a five-year comprehensive deregulation plan on recruitment activities taking into account labor market trends, economic conditions of the country and emerging circumstances which may affect the welfare of migrant workers. (R.A. No. 8042)

SEC. 30. **Gradual Phase-out of Regulatory Functions.** - Within a period of five (5) years from the effectivity of this Act, the DOLE shall phase-out the

The law actually provides that de-regulation should have begun in 2001.

On March 20, 2002, Regional Trial Court Judge Lucas Bersamin of Quezon City, handed down a decision ordering the POEA and the Department of Labor and Employment (DOLE) to desist from continuing its activities regulating overseas placement and recruitment.¹³

The same ruling came in the wake of a case filed by talent managers and trainers in the recruitment and placement industry

regulatory functions of the POEA pursuant to the objectives of deregulation.

13. WHEREFORE, judgment is hereby rendered:

1. Dismissing the petitions for *certiorari* and prohibition;
2. Granting the writ of *mandamus*, and ordering respondents DOLE Secretary Patricia Sto. Tomas; POEA Administrator Rosalinda D. Baldoz; and Director-General Lucita Lazo of the Technical Education and Skills Development Authority:
 - a) To forthwith comply with Sec. 29 and Sec. 30, Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995; and
 - b) To rescind DOLE Department Order No. 10 and POEA Memorandum Circular No. 15, Series of 2001, and all orders, circulars, and issuances not tending to implement the deregulation plan to be adopted by DOLE hereafter;
3. Enjoining permanently respondents DOLE Secretary Patricia Sto. Tomas; POEA Administrator Rosalinda D. Baldoz; and Director-General Lucita Lazo of the Technical Education and Skills Development Authority (TESDA), from regulating the migration of workers.

who questioned the DOLE Secretary's orders as well as to compel the DOLE and POEA to adopt a deregulation plan. This case was later taken up by the DOLE to the Supreme Court and is still pending.

To date, it is unclear to what degree the phase-out of POEA's functions has been accomplished.

In fact, in the context of R.A. No. 8042's provisions on workers' welfare, gender sensitivity, references to international conventions and the establishment of a fund for repatriation, the **Phase-out** and **De-regulation** policies stand apart from the rest of the seemingly politically correct provisions.

Yet the agenda is clear. The push towards de-regulation can be understood in the context of the demands of the globalized economy wherein capital economies will profit from the inevitable crash of labor costs in a de-regulated labor market.

In fact very early into her term, President Gloria Macapagal Arroyo (GMA) already agreed to cuts in wages for Filipinos in Hong Kong and Taiwan just as government also sanctioned the **trainee** scheme for OFWs in Taiwan where they are not entitled to minimum wages as **trainees**.¹⁴ In midst of growing protests, Hong Kong officials backtracked and announced that the cuts will not take effect until March of 2003.

14. Migrante has come down particularly hard on President Gloria Macapagal Arroyo (GMA) and her spokesman Rigoberto Tiglao, claiming they have sold out Filipino workers in Hong Kong and Taiwan by secretly agreeing to across the board wage cuts which came into effect last November.

In Hong Kong, current wages were cut from 15 to 30%, while in Taiwan all newly hired OFWs face salary cuts of 20% from previous levels. According to Migrante, GMA agreed to these

With the prospect of a fully de-regulated labor export industry, labor standards (minimum wage requirements, employment conditions) can be expected to worsen. In such a context, Filipino women already in vulnerable occupations will become even more prone to being trafficked.

Even the DOLE itself recognized this danger in its own Petition to the Supreme Court.¹⁵

significant wage cuts on the condition that Hong Kong, Taiwan and South Korea would not cut back on the total number of Filipinos they hire every year. The group also charges that the Philippine government is supporting the new trainee schemes in South Korea and Japan, in an effort to keep OFW deployment figures up at any cost. URL: http://www.inq7.net/vwp/2001/dec/22/text/vwp_I-I-p.htm (Philippine Daily Inquirer, 21 December 2001).

15. Secs. 29 and 30 of R.A. No. 8042 must be understood and interpreted in the light of the constitutional mandate and duty of the government to afford full protection to Filipino workers locally or overseas.

Contrary to the lower court's ruling, deregulation does mean the total phase-out of the POEA's regulatory power over the recruitment of overseas Filipino workers (OFWs), which would put migration beyond the pale of State or government regulation or legal scrutiny, the DOLE petition said.

It stressed that to rule otherwise would run afoul of the basic tenet that a statute should be interpreted in harmony with the Constitution, particularly the duty of the government to afford full protection to labor.

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The immediate, total phase-out of the POEA, the DOLE stressed, would cause chaos, confusion and disorder to the disadvantage of OFWs and the nation.

The third body of laws are the policies, which extend certain benefits to Overseas Filipino Workers. These consist of the tax exemption,¹⁶ the overseas workers investment fund,¹⁷ a Medicaid program for OFWs and their dependents,¹⁸ loan amnesty¹⁹ as well as key provisions of R.A. No. 8042 regarding free legal assistance and the emergency repatriation fund.

Many of these policies do not cover undocumented migrants or workers although again, R.A. No. 8042 does not make the distinction between documented and undocumented workers in the provisions on repatriation.

Yet it is not uncommon to hear about deported trafficking survivors who have had to raise their own funds to come back because the Philippine embassy cited the lack of funds for their travel.

VI. CONCLUSION/RECOMMENDATIONS

The shape of policies by their focus illustrates that human trafficking is not currently being addressed as a problem by

This would defeat the very objective of R.A. No. 8042 to establish a higher standard of protection and promotion of the welfare of migrant workers and their families.

The five-year deregulation plan mandated under R.A. No. 8042 was not absolute as it was subject to the condition that the country first attain the status of a newly industrialized country (NIC) by the year 2000. (DOLE Petition, I April 2002)

16. Executive Order (E.O.) No. 25 (1986).

17. R.A. No. 7111 (1991).

18. E.O. No. 195 (1994).

19. E.O. No. 329 (2000).

government. At best it is treated as a built-in job hazard for Filipino women.

Policies since the 70's and even to the present have solely focused on promoting overseas employment (which increasingly became the export of women workers in the late 80s) without factoring in the vulnerability of women workers in the occupations for which they have been massively recruited.

Government despite its pronouncements and glorification of the status of OFWs has turned a blind eye to the prevalence of trafficking, facilitated and reinforced by government's inability to provide economic opportunities for women. It has also treated labor/human resource export as a primary and even sole economic strategy even as it all began as a stop-gap strategy for an ailing economy.²⁰

With such a framework, any foreign remittance (whether under conditions of slave labor or not) is obviously treated still as more foreign exchange in the coffers of government.

The year 2002 was even proclaimed as "the year of the Overseas Providers" by GMA supposedly to recognize the significant contribution of private licensed agencies and their associations in helping provide overseas employment and welfare protection to migrant workers.

This **closeness** between the recruitment industry and government is not surprising at all given that for a long time during the term of former President Fidel V. Ramos, the infamous Memorandum Circular No. 41 by the DOLE banned direct hiring

20. Case Study on the Development of Filipino Migrants Movement in Some Selected Countries in the Asia Pacific and Middle East Regions, Asia Pacific Forum on Women, Law and Development.

(through government channels) and required OFWs to go through placement agencies at exorbitant and usurious costs.²¹

The same favorable treatment can also be gleaned from the arbitration procedures undertaken in cases of recruitment violations. Recruitment agencies are virtually shielded from prosecution even as government officials act as the **mediators**. Migrants only get 20 to 50% of what they paid and are made to sign waivers by the labor representatives that further prohibit them from filing any other charges against the recruitment agencies.²²

Indeed, in order to even begin improving the system of laws and policies on the issue of trafficking, government has to take stock of the current situation.

This will mean among others, recognizing the actual connection of many legal recruiters to the phenomenon of trafficking and taking steps to investigate these cases.

Likewise, high on the agenda is the passage of the Anti-Trafficking Law, which will re-define the issue altogether and set the framework for viewing the phenomenon of trafficking as a serious human rights violation. (November 14, 2002)

21. This Memorandum Circular was revoked by Secretary Patricia Sto. Tomas recently in the face of stiff opposition.

22. *Id.*, at 19.

Review of Current Legal Remedies Related to Sex Trafficking*

*Commissioner Myrna S. Feliciano***

Women and children are not property; but human beings, the international community should declare loudly and more strongly than ever, that we are all members of the human family. Slavery simply has no place in a world of human rights.

Kofi Annan

02 December 2000

* Delivered at the *Inter-Disciplinary Seminar on Sex-Trafficking*, on March 13, 2003, at PHILJA, Tagaytay City.

The article was presented prior to the passage of Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003.

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I. INTRODUCTION

The problem of trafficking of women is by no means a new phenomenon. It dates back to the early 20th century where concerns of **white slave traffic** prompted the signing of the International Agreement for the Suppression of White Slave Traffic in 1904.¹

Trafficking of persons is said to be on the increase around the world. The United Nations estimate that four (4) million persons

Senate Policy and Studies Group of Congress, the Department of Foreign Affairs Sub-Committee on Legal Issues, the Committee on Legal and Political Issues of the National Preparatory Committee for the World Conference on Women, and to various projects on women and gender issues of the United Nations.

- I. Radhika Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective; Violence Against Women*, p. 10 (E/CN.4/2000/68, 29 Feb. 2000).

a year are traded against their will, earning profits for their captors of up to \$7 Billion annually.²

The victims are lured from their home countries through various coercive methods such as trafficking through migrational channels by recruiting women to work as domestic helpers and entertainers, trafficking via marriage arrangement (“mail-order brides”), trafficking specifically for prostitution, trafficking using force, abduction or deceit, sex tourism, and military tourism.³ They are brought within the country or across borders where they are forced into exploitative situations against their will.⁴

Trafficking in women flourishes in many less developed countries because of the vulnerabilities arising from women’s lack of access to resources, poverty and gender discrimination are maintained through the collusion of the market, the state, the community and the family unit.⁵

Documentation on trafficking patterns reveal that trafficking is undertaken for numerous purposes, including but not limited

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2. B. Young, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, GEORGETOWN IMMIGRATION LAW J. 73 (Fall, 1998); R. Jacobson, “United Kingdom Safeguards Against Human Trafficking Within the Boundaries of Legislation,” p. 1 (Paper presented before the ASEM Meeting of Law Enforcement Agencies on Child Welfare, Guangzhou, 10-12 November 2001).
 3. A. De Dios-Javate, *Trafficking in Women and Girls; A Global Human Crisis* 5-6 (Paper read in Human Rights Meeting, Colombo, Sri Lanka, June 22-26, 1997).
 4. B. Young, *ibid.*
 5. R. Coomaraswamy, *op cit.*, p. 20.

to prostitution or other sex work, domestic, manual or industrial labour and marriage, adoptive or other intimate relationships. The common elements found in all of the trafficking patterns are:

1. The lack of consent;
2. The brokering of human beings;
3. The transport; and
4. The exploitative or servile conditions of the work or relationship.⁶

Thus, any definition of trafficking must capture these elements.

Dr. Radhike Coomaraswamy, the UN Special Rapporteur on Violence Against Women, observes:

The movement or transport involved is such to place the victim in an unfamiliar milieu where she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases the trafficked women's marginalization and therefore increases the risk of abuse, violence, exploitation, domination or discrimination both by traffickers and by State officials such as the police, the courts, immigration officials, etc. although the crossing of geographic or political borders is sometimes an aspect of trafficking, it is not a necessary prerequisite for these elements to be present. Trafficking occurs within, as well as across, national borders.⁷

Mail-order brides, prostitutes, sex-slaves – these are only a few of the degrading forms of work that Filipina women have in various sectors of the world. All these **jobs** are associated with what is known as sex-trafficking, which is the systematic and

6. *Ibid.*, p. 10.

7. *Ibid.*, p. 9.

organized transport of women and children for the purpose of sex for profit.⁸ Put simply, “sex trafficking is the reduction of human lives to mere commodities and instruments of pleasure.” A look at the following statistics will show the plight of our Filipinas:⁹

- The Philippines (preceded by Thailand and Brazil) ranks as the third highest country that exports women to **entertainment** industries.
- There are at least 75,000 Filipinas working in Japan as dancers, entertainers, or commercial sex workers.
- There are over 600,000 prostituted women, men and children in the Philippines, the highest in the world.
- In 1995, at least 150 Filipinas were reported to have been sold for sex in Nigeria.

II. REVIEW OF PHILIPPINE LAWS

Except for Republic Act (R.A.) No. 7610, which defines “child trafficking,” “trafficking” in general, is not found in our laws.

In order to address the manifestations of trafficking in women, this paper will review Philippine laws related to sexual exploitation that may be used to bring traffickers to justice.

These laws are divided into: **penal in nature**, which imposes penalties after the victim has already experienced trafficking and is able to file a complaint; **administrative in nature**, which focuses on the regulation of the labor export industry covering

8. <<http://jinx.sistm.unsw.edu.au/~greenlft/1995/181//181p17b.htm>>

9. Statistics taken from Purple Rose Campaign Website <<http://www.shaman.drak.net/silver/purplerose.html>>

administrative liabilities in illegal recruitment; and **laws**, which provide government incentives and schemes of promoting the overseas labor market, which range from medical benefits as well as tax exemptions to Overseas Filipino Workers (OFWs).¹⁰

A. Revised Penal Code (Act No. 3815 [1930], as amended)

The Revised Penal Code contains provisions on slavery and the white slave trade, Article 272 states:

The penalty of *prision mayor* and fine not exceeding 10,000 pesos shall be imposed upon anyone who shall purchase, sell, kidnap or detain a human being for the purpose of enslaving him.

If that crime be committed for the purpose of assigning the offended party to some immoral traffic, the penalty shall be imposed in its maximum period.

How is this distinguished from kidnapping and detention? The distinction lies in the purpose. If the purpose is to enslave the victim, it is considered slavery, otherwise, it is kidnapping and illegal detention.¹¹

There is also Article 341 of the Code, which penalizes acts constituting white slave trade, which provides:

The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the

10. Carolina S. Ruiz-Austria, "A Critique of Current Philippine Laws and Policy Related to Trafficking," p. 4 (Statement at Lyceum University, Secretary of Labor, Patricia Sto. Tomas, March 2002).

11. 2 L.B. Reyes, THE REVISED PENAL CODE; CRIMINAL LAW 530 (Rev. 12th ed., 1981).

business or shall profit by prostitution or shall enlist the services of women for the purpose of prostitution.

Once it is proven that a person enlisted the services of women for the purpose of prostitution, he is criminally liable even if there is no proof that he shared in the profit. And even if there is no proof that he enlisted the services of women for the purpose of prostitution, he would still be liable if he shared in the income of the prostitutes.¹²

Habituality is not a necessary element of white slave trade.¹³ Note that the provision specifies “women,” which connotes that to enlist the service of more than one woman is necessary to convict the accused. Moreover, the person responsible under Article 341 is the person who maintains or engages in the business,¹⁴ and he need not be present at the time of a raid or arrest.¹⁵

B. The Labor Code and Republic Act No. 8042 or Migrant Workers and Overseas Filipinos Act of 1995

According to Article 25 of the Labor Code:¹⁶

the private employment sector shall participate in the recruitment and placement of workers, locally and overseas,

12. *People v. Nuevas*, 76 Phil. 276 (1946); *People v. Go Lo*, CA-G.R. No. 21787-R, August 25, 1959, 56 O.G. 4056 (June 6, 1960).

13. *People v. Bueno*, CA-G.R. No. 01378-CR, Oct. 17, 1964, 62 O.G. 1381 (February 28, 1966).

14. *People v. Gomez*, CA-G.R. No. 1140, June 21, 1939; 40 O.G. Suppl. 4, 157 (August 23, 1941).

15. *People v. Sta. Maria*, CA-G.R. No. 12875-R, June 21, 1957, as cited in 3 R. AQUINO, THE REVISED PENAL CODE 437 (1988 ed.).

16. Presidential Decree No. 442 (1974), as amended.

under such guidelines, rules and regulations as may be issued by the Secretary of Labor.

Under the Philippine Overseas Employment Administration (POEA) Regulations,¹⁷ an applicant for license to operate a private employment agency or manning agency should submit an undertaking under oath stating, among others, that the applicant:

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(3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, health and disability compensation and repatriation.

(4) Shall guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of recruited persons.

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In *Catan v. NLRC*,¹⁸ the Supreme Court ruled that the recruitment agency is solidarily liable for the unpaid salaries of a worker it recruited for employment with a foreign principal pursuant to Sec. 10, Rule V, Book I of Implementing Regulations of the Labor Code.

Even if the recruitment agency and the principal had already severed their agency agreement at the time of the worker was injured, the recruitment agency may still be sued for violation of the employment contract. The contract between the local agent and its foreign principal not coterminous with the term of such

17. Book II, Rule II.

18. G.R. No. 77279, April 15, 1988, 160 SCRA 691.

agreement is either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end. It extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted.

It has been held that even if it was the petitioner's principal, which entered into contract with private respondent, nevertheless, petitioner, as the manning agent in the Philippines is jointly and solidarily responsible with its principal.¹⁹

R.A. No. 8042 (1995), otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 has its salient features the codification and institution of the policies of overseas employment and the establishment of a higher standard of protection and promotion for the welfare of migrant families and overseas Filipinos in distress. The Act has limited the countries of deployment to those that will protect the rights of Filipino workers, and limited only to jobs that require skilled Filipino workers. Likewise, both documented and undocumented workers are given equal protection and treatment. It also addresses the various issues of labor migration, from funding to illegal recruitment.

Under this law, illegal recruitment is defined as:

Any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not when undertaken by a non-license or non-holder of authority contemplated by

19. *Seagull Maritime Corp. v. Balatongan*, G.R. No. 82252, February 2, 1989, 170 SCRA 813.

under Article 13(f) of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-license or non-holder who in any manner, offers or promises for a fee employment abroad to two (2) or more persons shall be deemed as engaged.

Other acts of illegal recruitment whether committed by any person, a non-licensee, non-holder, licensee, or holder of authority include among others the following acts:²⁰

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document, or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;
- (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- (e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public.

20. Rep. Act No. 8042 (1995), sec. 6.

On the other hand, Article 13(b) of the Labor Code states that:

“recruitment and placement” refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether, for profit or not: *Provided*, That any person or entity, which, in any manner, offers or promises for a fee employment to two (2) or more persons shall be deemed engaged in recruitment and placement.

In *People v. Panis*,²¹ the Supreme Court interpreted Article 13(b) and ruled that the number of persons is not an essential ingredient of the act of recruitment and placement of workers. Any of the acts mentioned in basic rule of Article 13(b) will constitute recruitment and placement and the *proviso* merely lays down a rule of evidence. The Court also laid down in *People v. Goce*,²² that to prove that the accused was engaged in recruitment activities, it must be shown that the accused gave the distinct impression that she had the power or ability to send the complainant abroad for work, such that the latter was convinced to part with her money in order to be employed where such act or representation is not proven, there is no recruitment activity and conviction for illegal recruitment has no basis.

In *Darvin v. Court of Appeals (CA) and People*,²³ Justice Romero, speaking for the Court, noted the lack of evidence to prove that the receipt of the amount for airfares and U.S. visa for an individual could hardly qualify as recruitment activities.

21. G.R. Nos. 58674-77, July 11, 1986, 142 SCRA 664.

22. G.R. No. 113161, August 29, 1995, 247 SCRA 780.

23. G.R. No. 125044, July 13, 1998, 292 SCRA 534.

Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage. Illegal recruitment 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.²⁴ The persons criminally liable for the above offense are the principals, accomplices, and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.²⁵

In *People v. Tan Tiong Meng*²⁶ the acts of the accused in accepting placement fees from job applicants and representing to them jobs in Taiwan constituted recruitment and placement under the Labor Code. Since the Philippine Overseas Employment Association (POEA) certified that the accused is not authorized to recruit for overseas employment, it is clear that the offense committed is illegal recruitment in large scale against six (6) complainants, which merited life imprisonment and a fine of Php100,000.00.

A person convicted for illegal recruitment under the Labor Code can also be convicted for violation of the Revised Penal Code provisions on *estafa* provided the elements of the crime are present.

Section 7 of R.A. No. 8042 provides the penalties for illegal recruitment stated:

- (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6)

24. Rep. Act No. 8042 (1995), Sec. 6, paras. 3 and 4; LABOR CODE, art. 38(b).

25. Rep. Act No. 8042 (1995), Sec. 6, last para.

26. G.R. Nos. I20835-40, April 10, 1997, 271 SCRA 125.

years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (Php200,000.00) nor more than Five hundred thousand pesos (Php500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (Php500,000.00) nor more than One million pesos (Php1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

A criminal action arising from illegal recruitment shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense. The court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts. These provisions also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act.²⁷

The preliminary investigations of cases under this Act shall be terminated within a period of thirty (30) calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecutor and a *prima facie* case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a *prima facie* case is found to exist, the corresponding information shall be filed by the proper prosecution officer within forty-eight (48) hours from the date of receipt of the records of the case.²⁸

27. Rep. Act No. 8042, sec. 9.

28. Rep. Act No. 8042, sec. 11.

Illegal recruitment cases under this Act shall prescribe in five (5) years; *Provided, however,* That illegal recruitment cases involving economic sabotage as defined herein shall prescribe in twenty (20) years.²⁹

A mechanism for free legal assistance for victims of illegal recruitment is to be established with the Department of Labor and Employment (DOLE) and its regional offices. Such mechanism must include the Department of Justice (DOJ), the Integrated Bar of the Philippines (IBP), and non-governmental organizations and other groups. Any victim of illegal recruitment is entitled to the Witness Protection Program under Republic Act No. 6981. Note that the victims of violence including rape can also avail of the compensation of not more than Php10,000.00 from the DOJ's Board of Claims under Republic Act No. 7309 (1992).

To date, there have been fifty (50) cases decided by the Supreme Court on illegal recruitment since 1999, but there are no cases on sex trafficking. Two (2) days ago, the Regional Trial Court of Bulacan decided a case involving girls who were trafficked to Nigeria but were able to escape and filed an action here in the Philippines against their recruiter.

The inadequacies of the Labor Code and R.A. No. 8042 are pointed out by Atty. Carolina Ruiz-Austria of WomenLEAD as follows:

Republic Act No. 8042 basically takes off from the same premises of the Labor Code (it refers to the Labor Code definition and adopts the same) and in fact punishes the same types of acts which are essentially, *Illegal Recruitment* and a set of *prohibited acts* committed by recruiters (*i.e.*,

29. Rep. Act No. 8042, sec. 12.

contract substitution, collection of usurious fees and rates, etc.).

Both laws define illegal recruitment essentially as deployment activities undertaken by non-licensed agencies. The crime is the act of deployment without authority, the main damage of which is tax evasion. In effect, existing penal laws focused on “illegal recruitment,” do not focus on the problem as it is actually experienced by the survivor/victim of trafficking.

This narrow definition actually poses a problem when it comes to prosecuting acts of Illegal Recruitment perpetrated by officially licensed agencies and individuals connected with such agencies. This type of illegal recruitment in fact is so common place that OFWs with long standing records of overseas work and experience are very familiar and on guard about the practice of licensed agencies which change their business names and offices quite often to evade liability.

Because the provision is penal in nature, courts are wont to strictly construe in the interpretation of the law. And unless the licensed recruiter is also proven guilty of the other prohibited acts, they are not likely to be convicted of “illegal recruitment” even if the act was essentially illegal recruitment, that is deploying the worker through the back door channels or under assumed and fake names and documents.

This means the simplest way to evade prosecution is simply to secure a license as a legal recruitment firm and engage “illegal recruitment” activities on the side.

Ironically, while the 1995 law still adopts a narrow definition of Illegal Recruitment, its policy statements in fact give the impression that the law adopts comprehensive measures “protective” of OFWs.

In one section, the law purports that the country will only deploy workers to countries, which have signed bilateral agreements as well as ratified international conventions for the protection of migrant workers.

At the rate of over seven (7) million Filipinos (documented) working abroad, it is not surprising the provisions of this law are hardly being observed at all.

By the Secretary of Labor's own admission, there are hardly any bilateral agreements for the protection of OFWs in many of the countries where the Philippines deploys workers. Likewise, many of these states have yet to ratify existing international agreements on the protection of migrant workers.³⁰

C. The Anti Mail-Order Bride Law or Republic Act No. 6995 (1990)

This law has been enacted in order to protect the Filipino women from being exploited in utter disregard of human dignity in their pursuant of economic upliftment. Section 2 declares that it is unlawful:

30. *Supra.*, note 10 at p. 6-7. It cites that:

The only agreements already concluded were with Austria way back in 1982, United Kingdom and Spain in 1989, France in 1994, and Canada in 1996. Other treaties are at present in their various stages of negotiations. Ratified in November 1997 is the RP-Quebec Understanding on Social Security covering around 5,000 Filipino migrant workers. On the other hand, for signing are bilateral agreements with Belgium and Italy which are expected to cover over 100,000 OFWs. Arrangements for possible ties with the USA, Greece, Cyprus and Saudi Arabia have been initiated by SSS. The SSS has also coordinated with the DFA to explore possibilities of bilateral agreements with other countries (Social Security System Website).

- (a) For a person, natural or juridical, association, club or any other entity to commit, directly or indirectly, any of the following acts:
- (1) To establish or carry on a business, which has for its purpose the matching of Filipino women for marriage to foreign nationals either on a mail-order basis or through personal introduction;
 - (2) To advertise, publish, print or distribute or cause the advertisement, publication, printing, or distribution of any brochure, flyer, or any propaganda material calculated to promote the prohibited acts in the preceding subparagraph;
 - (3) To solicit, enlist or in any manner attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage in foreign nationals either on a mail-order basis or through personal introduction for a fee;
 - (4) To use the postal service to promote the prohibited acts in subparagraph I hereof.
- (b) For the manager or officer-in-charge or advertising manager of any newspaper, magazine, television or radio station, or other media, or of an advertising agency, printing company or other similar entities, to knowingly allow or consent to, the acts prohibited in the preceding paragraph.”³¹

In case of violation of this Act by an association, club, partnership, corporation, or any other entity, the incumbent officers thereof who have knowingly participated in the violation of this Act shall be held liable.³² Any person found guilty by the court

31. Rep. Act No. 6995 (1990), sec. 2.

32. *Id.*, sec. 3.

to have violated any of the acts herein prohibited shall suffer an imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and a fine of not less than Eight thousand pesos (Php8,000.00) but not more than Twenty thousand pesos (Php20,000.00). *Provided*, That if the offender is a foreigner, he shall be immediately deported and barred forever from entering the country after serving his sentence and payment of fine.³³

To date, this law does not have any implementing rules and regulations nor was it tasked any administrative agency/agencies to monitor the implementation of the law. Likewise, the law does not cover advertisements in the Internet where the transactions are being carried out. Neither does the e-Commerce Law of 2000 have a provision regarding sex trafficking.

Between 1989 to 1998, the Commission on Overseas Filipinos reported that 148, 074 Filipinos left the country either as fiancées or spouses of foreigners. In 1993 alone, a total of 19,396 Filipinos live in the United States, Japan, Australia, Germany, Canada, United Kingdom as mail-order brides. Despite the enactment of R.A. No. 6955 in 1990, these statistics would indicate that the mail-order bride industry is still flourishing.

A man in search of a Filipina bride-to-be will find it unnecessary to do more than an Internet search. The term **Filipina women** is enough to bring countless Internet sites,³⁴ which contain pictures and physical description of women who are ready to go at any moment. All that it needs is Internet access and a major credit card. The companies and individuals indicate

33. *Id.*, sec. 4.

34. <www.filipina.com; www.filipinaladies.com;
www.singlefilipina.com>

in their website that it is relatively easy to deal with the immigration authorities. Moreover, there are men who pose as husbands but become their pimps and force the women into prostitution. In other instances, the wives are **killed** by their husbands in order to obtain the insurance proceeds.

In 1996, nine hundred eighty-four (984) Filipino women were computer-matched by a Korean religious sect on the so-called Moonies (The United Church of Reverend Sun Myung Sam) with predominantly Korean men who were reported to have paid \$2,000 each for the service.³⁵ The mass wedding of the Filipinas to the Korean nationals was conducted through a giant screen officiated by Reverend Sun in Korea. A team of agents of the National Bureau of Investigation (NBI) and the POEA went to Seoul to look into the activities of the Moonies. The interviewed Filipinas stayed at the different Unification Churches rendering voluntary service for the church and doing all the household chores. All of them entered Korea on a tourist visa (C-3) for ninety (90) days and upon expiration, their visas were changed to trainee visas (D-4). They were issued Certificates of Alien Registration by the Ministry of Justice of the Republic of Korea. The change in the status to trainee was done by the Unification Church without the women leaving Korea first. The investigation team recommended the prosecution of the **Moonies** and that the Moonies be banned in the Philippines for violating the laws of the country and for exploitation and deception of Filipinas.³⁶ But in March 1998, the Department of Justice (DOJ) Secretary reversed their own findings when the Moonies, represented by

35. Philippine Daily Inquirer, January 25, 1996, p. 1; Manila Chronicle, February 4, 1996.

36. Amparita S. Sta. Maria, *Applicable Philippine Criminal Statutes Relative to Trafficking in Human Beings*, 18 CRIM. JUSTICE J. 30, 37 (1999-2000).

Attorney Rene Saguisag, used the defense of **free expression** and religious freedom “for conducting the so-called inter-cultural” marriage.³⁷

D. Republic Act No. 8239 or the Philippine Passport Act of 1996

A passport is a travel document issued by the Philippine government to its citizens and requesting other government to allow its citizens to pass safely and freely, and in case of need to give him/her all lawful aid and protection.³⁸ If a minor is applying for a passport, an affidavit of consent from a parent as indicated in the application is required if the minor is traveling with either parent and a clearance from the Department of Social Welfare and Development (DSWD) if the minor is traveling with a legal guardian or a person other than a parent.³⁹ However, if the applicant is an adopted person, the duly certified copy of court order of adoption, together with the original and amended birth certificates duly issued and authenticated by the Office of the Civil Registrar have to be presented. In case the adopted person is an infant or a minor or the applicant is for adoption by foreign parents, an authority from the DSWD is required. The adopting foreign parents shall also submit a certificate from their embassy or consulate that they are qualified to adopt such infant or minor child.⁴⁰

The application for a passport may be denied on the following grounds:

37. C. Ruiz, *op. cit.*, *supra*, note 10 at p. 7.

38. Rep. Act No. 8239 (1996), sec. 1 (d).

39. *Id.*, sec. 5(f).

40. *Id.*, sec. 5(g).

1. On orders of the court, after due notice and hearing, to hold the departure of an applicant because of a pending criminal case;
2. When so requested by the natural or legal guardian, if the applicant is a minor;
3. When the applicant has been found to have violated any of the provision of this Act; and
4. Such other disqualifications under existing laws.⁴¹

The application for a passport may be cancelled:

1. When the holder is a fugitive from justice;
2. When the holder has been convicted of a criminal offense; provided that the passport may be restored after service of sentence; or
3. When a passport was acquired fraudulently or tampered with.⁴²

Any aggrieved person whose application for a passport has been denied or cancelled, has the right to appeal to the Secretary of Foreign Affairs, from whose decision, judicial review may be had to the courts in due course. The Philippine passport remains at all times the property of the Government, the holder being a mere possession thereof as long as it is valid and the same may not be surrendered to any person or entity other than the government or its representative.⁴³

More often, once a migrant reaches her job destination, the trafficker takes hold of the passport so that the victim cannot

41. *Id.*, sec. 8(a).

42. *Id.*, sec. 8(b).

43. *Id.*, sec. 11.

escape. Other syndicates produce forged or fake Philippine passports in order to accommodate their evil schemes.

A passport being a proclamation of the citizenship of a Filipino, is a document that is superior to all other official documents and as such, the holder being a mere possessor thereof as long as it is valid and cannot be surrendered to any person or entity other than government or its representative. Any person that do damage to its integrity and validity is a serious crime which is penalized accordingly.

There are five (5) types of offenses which are penalized:⁴⁴

- (a) **Offenses relating to issuances of a passport**, which are committed by a diplomatic or consular officer or any person claiming to act in any capacity of office. Penalties range from a fine of Php15,000.00 to Php60,000.00 and imprisonment of eighteen (18) months to six (6) years;
- (b) **Offenses relating to false statements in any application for passport or the use of any passport**, which was secured by reason of any false statement. Penalties range from Php15,000.00 to Php60,000.00 and imprisonment of not less than three (3) years to ten (10) years.

Travel and recruitment agencies whose agents or representatives convicted of offenses relating to false statements shall in addition to fines and penalties will have their licenses revoked and all depositors, escrow accounts or guarantee funds deposited forfeited in favor of government without prejudice to the officials of the agency being charged as accessories to the offense and upon

44. *Id.*, sec. 18.

conviction barred from engaging in the travel agency business.

- (c) **Offenses relating to forgery.** Any person who forges, counterfeits, mutilates or alters any passport or supporting document with intent of using the same. A penalty of a fine of not less than Php60,000 to Php150,000 and imprisonment from six (6) to fifteen (15) years willfully or knowingly uses or attempts to use or furnishes to another for use any false, forged, counterfeited, mutilated or altered passport or travel document or any valid/issued passport which has become void. Penalty imposed by a fine of Php60,000.00 to Php150,000.00 and imprisonment from six (6) to fifteen (15) years.

Travel and recruitment agency officers would be held similarly as their agents or representatives. Forgeries of five (5) or more passports would be considered as massive forgery tantamount to national sabotage and penalized by a fine of Php250,000.00 to Php1,000,000.00 and imprisonment from seven (7) to seventeen (17) years.

- (d) **Offenses relating to improper use.**

- Uses or attempts to use any passport issued or designed for the use of another; or
- Uses or attempts to use any passport or supporting documents in violation of the conditions or restrictions contained herein; or
- Furnishes, disposes or delivers a passport to any person, for use by another or other than the person for whose use it was originally issued or designed; or

- Defaces or destroys a Philippine passport penalties imposed range from Php60,000.00 to Php150,000.00 and imprisonment of not less than six (6) to fifteen (15) years.
- (e) **Offenses relating to multiple possession.** No person or individual may hold more than one valid passport and for every unexplored passport found in his possession, be punished by a fine from Php15,000.00 to Php60,000.00 and imprisonment of eighteen (18) months to six (6) years.

Any duly accredited travel or recruitment agency, which violates the prescription on application for passport shall have such accreditation suspended without prejudice to civil, criminal, or administrative sanctions including revocation of its license to operate.⁴⁵

E. Republic Act No. 7610 (1992) or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act

Child trafficking is committed by:

Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of *reclusion temporal* to *reclusion perpetual*. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.⁴⁶

45. *Id.*, sec. 20.

46. Rep. Act No. 7610 (1992), sec. 7.

There is an attempt to commit child trafficking under the preceding section:

- (a) When a child travels alone to a foreign country without valid reason therefore and without clearance issued by the Department of Social Welfare and Development (DSWD) or written permit or justification from the child's parents or legal guardian;
- (b) When a pregnant mother executes an affidavit of consent for adoption for a consideration;
- (c) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking;
- (d) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or
- (e) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-caring institutions who can be offered for the purpose of child trafficking.

A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act.⁴⁷

Under this law, a child refers to a Filipino citizen who is below eighteen (18) years of age or those over but are unable to take care of themselves.⁴⁸

47. *Id.*, sec. 8.

48. *Id.*, sec. 3(a).

In section 5 of R.A. No. 7610, it also provides that children, whether male or female, who for money, profit, or any consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct are deemed to be children exploited in prostitution and other sexual abuse.

There is an attempt to commit child prostitution under Section 5(a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances, which would lead a reasonable person to believe that the child is about to be exploited in prostitution or sexual abuse.⁴⁹ There is also an attempt to commit child prostitution when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed under the consummated penalty shall be imposed upon the principals of the attempt to commit child prostitution under this Act or under the Revised Penal Code.

For child prostitution, the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed to:

- a. Those who engage in or promote, facilitate or induce child prostitution, which include but not limited to the following:
 1. Acting as a procurer of a child prostitute;
 2. Inducing a person to be a client of a child prostitute by means of written or oral advertisements on other similar means;

49. R.A. No. 7610 (1992), sec. 6.

3. Taking advantage of influence or relationship to procure a child as a prostitute;
 4. Threatening or using violence towards a child to engage him as a prostitute; or
 5. Giving monetary consideration, goods, or other pecuniary benefit to a child with the intent to engage such child in prostitution.
- b. Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution on subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and
- c. Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Complaints on cases of unlawful acts committed against children may be filed by the following:

- a. Offended party;
- b. Parents or guardians;

- c. Ascendant or collateral relative within the third degree of consanguinity;
- d. Officer, social worker or representative of a licensed child caring institution;
- e. Officer or social worker of the DSWD;
- f. *Barangay* Chairman; or
- g. At least three (3) concerned responsible citizens where the violation occurred.⁵⁰

The offended party shall be immediately placed under the protective custody of the DSWD. In the regular performance of this function, the DSWD officer shall be free from any administrative, civil, or criminal liability.⁵¹

At the instance of the offended party, his/her name may be withheld from the public until the court acquires jurisdiction over the case.

The media is also prohibited from causing undue and sensationalized publicity of any case, which results in the moral degradation and suffering of the offended party.⁵²

The Family Court has exclusive original jurisdiction, among others, to hear and decide cases on:

- I. Criminal cases where one of the accused is below eighteen (18) years but not more than nine (9) years, or where one or more of the victims is a minor at the time of the commission of the offense;

50. R.A. No. 7610 (1992), sec. 27.

51. *Id.*, sec. 28.

52. *Id.*, sec. 29, 2nd par.

2. Petitions for guardianship, custody of children;
3. Petitions for voluntary or involuntary commitment of children;
4. Violations of R.A. No. 7610, as amended.⁵³

The creation of the Family Courts by R.A. No. 8369 spurred the drafting of special rules by the Supreme Court Committee on the Revision of the Rules of Court.

The Rule on the Examination of a Child Witness was promulgated on November 21, 2000. Its objectives are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth. This Rule shall be liberally construed to uphold the best interests of the child and to promote the maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

Among its important features are:

1. The appointment of a guardian *ad litem* for child;
2. The right of the child to be accompanied by a support person;
3. The provision of waiting areas for child witnesses;
4. The use of testimonial aids such as anatomically - correct dolls, puppets and drawings, mannequins or any appropriate device; the use of live-link television testimony in criminal cases where the child is a victim or witness; use of screens, one-way mirrors and other devices to shield children from accused; the use of videotaped deposition;

53. Rep. Act No. 8369 (1997), sec. 5.

6. The hearsay exception in child abuse cases; and
7. The protection of privacy and safety of the child.

The Rule on Commitment of Children was promulgated on February 28, 2002 and became effective April 15, 2002. This Rule seeks to protect the child from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to his development. A petition for the involuntary commitment by the DSWD or duly authorized child-placement or child-caring agency can be filed with the Court when they have knowledge of a child who appears to be dependent, abandoned or neglected. A guardian *ad litem* is appointed by the Court if neither of the parents cannot be located or the court finds them incompetent to protect the best interests of the child. On the other hand, a parent or guardian of a dependent, abandoned, or neglected child may voluntarily commit him to the DSWD or duly licensed child placement agency upon a verified petition before the court.

The DSWD estimates that there are 1.5 million street children and this number increases annually by 6,365. Of the 1.5 million street children, 60,000 are prostituted. The DSWD claims that the annual average increase of prostituted children is 3,266. The Philippines is the fourth country with the most number of prostituted children.⁵⁴

The demand for child sex in the Philippines comes from both local men and foreigners (including tourists). Tourists are concentrated in big urban areas but according to the Economic and Social Commission for Asia and the Pacific (ESCAP) study, local men frequent sex establishments in all the provinces of all

54. Philippine Resource Network, "Child Protection in the Philippines; Facts and Figures, citing DSWD, ECPAT, 1996 and Intersect, December 1995.

the countries studied. In the Philippines, nine (9) out of ten (10) customers of children in commercial sex are Filipinos.⁵⁵

Given the specific topographical make-up of the Philippines, children are moved from island to island by sea and so easily slip through the cracks in port based oversight. Such **invisibility** puts the children, especially girls, at risk of recruitment into commercial sex. Once they are moved around, children easily fall through the cracks, even of parental oversight.⁵⁶

In order to fight this phenomenon, the government should:

- Promote community mobilization and vigilance to counter trafficking;
- Strengthen multi-sectoral alliances across borders;
- Undertake time-bound measures linked to national development goals;
- Mobilize international cooperation and support;
- Strengthen existing laws, including ILO Convention I82 and the Optional Protocols, their implementation in order to stop impunity at national and sub-regional levels; and
- Raise awareness, including among children themselves, schools, and parents.

III. CONCLUSION

The trafficking of women and children for forced labor, domestic servitude and prostitution is increasing on a global scale. With

55. International Labour Organization, *Trafficking and Sexual Exploitation of Children; An Evaluation of ILO-IPEC Programmes in Thailand, Philippines, Colombia, Costa Rica and Nicaragua*, 8 (June 2001).

56. *Ibid.*, p. 9.

the advancements made in technology, it has made it easier for traffickers to illegally transport persons in and among countries. Trafficking has emerged as a multi-billion dollar industry.

The worsening economic crisis in Asia and in the Philippines has resulted in more and more families seeking work abroad as a solution to their economic hardships. More and more, it is the women who take risks of working abroad for their families. This has resulted in the increasing feminization of migration. Traffickers have taken advantage of this. Many of them become victims to traffickers under the pretext of employment. They end up working in slavery-like conditions or are forced into prostitution. They face physical and sexual abuse; psychological violence and even death. Many of the victims are children.

Presently, the House Substitute Bill No. 4432, which is 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 Victims of Trafficking, Providing Penalties, Therefor, and For Other Purposes” has been approved by the House in May 2002. The Senate version is lodged with the Senate Committee on Youth, Women, and Family Relations, which is chaired by Senator Luisa “Loi” Estrada.

The advocacy efforts of the National Commission on the Role of Filipino Women (NCRFW) and many non-governmental organizations such as Coalition Against Trafficking in Women-Asia Pacific (CATWAP), Women’s Education, Development Productivity and Research Organization, Inc. (WEDPRO), Women’s Legal Bureau (WLB), Women’s Legal Education, Advocacy and Defense Foundation, Inc. (WomenLEAD), etc is necessary so that it could address our urgent concern regarding the trafficking of women and children.

Participation of the Courts under Republic Act (R.A.) No. 9208*

*Hon. Jaime N. Salazar***

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I. INTRODUCTION

I do not see anybody here who is not smart and attractive so good morning to all attractive and smart eradicators and extirpators of traffickers of persons, especially of women and children.

My assigned topic is the “Participation of Courts on Matters Involving Republic Act (R.A.) No. 9208.” Since R.A. No. 9208

* Delivered at the *Seminar on Anti-Trafficking in Persons (R.A. No. 9208 and its Implementing Rules and Regulations)*, on September 4, 2004, at the Orchid Garden Suites, Manila.

** Honorable Jaime N. Salazar, Jr. is the Presiding Judge of the Regional Trial Court, Branch 103, Quezon City. He served in the Philippine Judiciary as a Senior Attorney at the Office of the Supreme Court’s Chief Justice from 1974 to 1978 and became a Judge at the Metropolitan Trial Court of Quezon City from 1978 to 1986. He is both an author and a writer.

appears to have a lot of relatives housed in the same legal compound as pointed out yesterday by Atty. Rosa Maria T. Juan Bautista, so our discussion would have to cover that too.

In a nutshell the judge's role under R.A. No. 9208, seems quite uncomplicated. The court simply:

- (a) Receives the information or indictment filed by the prosecutor;
- (b) Schedules it for arraignment;
- (c) Conducts a pre-trial;
- (d) Hears the evidence-in-chief of the prosecution and the defense and any rebuttal or sur-rebuttal evidence;
- (e) Renders judgment; and
- (f) Orders the enforcement of its decision.

He authored the four (4) editions of the Compendium on Evidence and wrote the Trial Court Bench Book and Bench Book on Penalties under the Revised Penal Code (RPC). He was an Assistant Editor of the Philippine Law Journal in 1966 and an Editor-in-Chief of the Bench Bulletin in 1990. He is also a syllabi maker and an annotator of the Supreme Court Reports Annotated (SCRA). Among the courses handled by Judge Salazar are Criminal Law Review, Obligations and Contracts, Legal Method, Legal Profession, Special Proceedings, Roman Law, Administration of Criminal Justice and Legal Technique. He finished his Bachelor of Arts degree from the University of the Philippines and his Bachelor of Laws from the same university.

II. VENUE AND JURISDICTION

Simple as it may seem, the entry of an information in court requires correct answers as to (a) where to file the information; and (b) with whom, both of which are jurisdictional matters.

Under R.A. No. 9208, Section 9, the venue of a criminal action is (a) where the offense was committed; or (b) where any of its elements occurred, which means that an R.A. No. 9208 violation is conceptualized as a *delicto continuado* or continuous crime; (c) where the trafficked person actually resides at the time of the commission of the offense, which means none of the elements of the crime need to happen within the territorial jurisdiction of the court where the case is filed.

Section 9 also provides that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts, which means that fickle-mindedness or equivocation is prohibited by law.

Let us now go to the question of with whom a R.A. No. 9208 information should be filed.

Perhaps, this question should not be asked here. But inasmuch as not everyone here is a lawyer, it is best to dwell on it.

Section 10 of R.A. No. 9208 imposes very stiff sanctions, such as twenty (20) years imprisonment and fine for ordinary acts of trafficking¹; fifteen (15) years and fine for promoting trafficking²; and life in jail plus fine for qualified trafficking³, qualified because the person trafficked is a child or an inter-country

1. § 4.

2. § 5.

3. § 6.

adoption⁴ was effected for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; or trafficking was committed by three (3) or more persons; or against three (3) or more persons; or was done by an ascendant, sibling, guardian, public officer, or for the benefit of the military or law enforcement agencies; or the trafficked victim dies, becomes insane, suffers mutilation or becomes afflicted with HIV or AIDS.

Under *Batas Pambansa Blg. 129*, as amended, the jurisdiction between the Regional Trial Court (RTC) and the Municipal Trial Court (MTC) is split in terms of the impossible penalty prescribed by law for the offense charged. The cut-off is a jail term of six (6) years and one (1) day in which case the case goes to RTC, regardless of the fine imposed by law.

Is there any chance that an R.A. No. 9208 offense will go to an MTC? The answer is Yes. Because under Section 11, any person who buys or engages the services of a trafficked person for prostitution incurs a penalty of six (6) months of community service, for the first offense; and one (1) year in jail plus Php 100,000.00 fine for the second and succeeding offenses.

By the way, the term **prostitution** in R.A. No. 9208 is defined as:

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.

This definition greatly differs from the definition of Prostitution in Article 202 of the Revised Penal Code (RPC) which says that a prostitute is a woman (so not a man) who, for

4. R.A. No. 8043.

money or profit, habitually indulges (so not just once) in sexual intercourse or lascivious conduct.

Can the two (2) stand together? I believe so, because in R.A. No. 9208 the person used in prostitution is a victim who need not be a woman and R.A. No. 9208 expressly stipulates that such a person “shall not be penalized for crimes directly related” to any act of trafficking or in obedience to a trafficker’s order. The consent of the trafficked person to exploitation is irrelevant, so says the law. On the other hand, Article 202 of RPC penalizes a woman who engages in prostitution and I do not think that such a woman is, in every case, a trafficked victim which is where R.A. No. 9208 is entirely confined. In effect, R.A. No. 9208 decriminalizes prostitution. This is of course not the same as saying that prostitution is now legal. It is still illegal.

Going back to the matter of jurisdiction, within the RTC system there are, as you know, various types of Regional Trial Courts of which the Family Courts are one. Family Courts are given exclusive jurisdiction to try criminal cases in the following:

1. (a) Where one or more of the accused is below eighteen (18) but not less than nine (9) years old; or (b) where one or more victim is a minor at the time of the commission of the offense;
2. Where a minor runs a foul of the Dangerous Drugs Law (R.A. No. 9165);
3. Where a person acts in violation of R.A. No. 7610 – the law giving special protection to children victims of abuse, exploitation or discrimination. Section 32 of R.A. No. 9208 by the way, states that it does not in any way amend or repeal R.A. No. 7610; and
4. Where a person as defined in R.A. No. 9262 employs domestic violence against a woman or a child, provided that

where this incident of battering or abuse crops up in a case before a regular court, said incident shall be determined in said court. By the way, Battered Woman Syndrome (BWS) is now considered as a complete justifying circumstance of self defense, not just mitigating as was decided recently by the Supreme Court in the case of *People v. Genosa*.⁵

In passing, it is interesting to mention that under R.A. No. 7610, Family Courts are required to give preference, to the hearing of violations of R.A. No. 7610, except in *habeas corpus*, election cases, cases involving detention prisoners or cases covered by R.A. No. 4908 (trial of cases where offended party is tourist). This prioritization is clearly meant to enable a child to proceed with a normal life soonest as well to preserve the freshness of her recollections. Family Courts, however, are so heavily loaded with cases that the law's expectations might not work as expected.

But R.A. No. 9262, which I mentioned earlier, does one big step better than R.A. No. 7610 by providing that when an application for issuance of a protection order thereunder is made, whether in an *ex parte* or adversarial hearing, such cases "shall have priority over all other proceedings," and all other hearings shall be suspended to hear applications for a protection order.

From the above discussion of venue and of the jurisdiction of family courts, it is readily seen that not all violations of R.A. No. 9208 will involve a family court.⁶

III. ARRAIGNMENT

Let us now turn to the next major step in the adjudication process – the arraignment.

5. 419 SCRA 529 (2004).

6. R.A. No. 9262, § 20.

Arraignment is the simple process of reading an information in a language known to the accused so that he may know the nature and cause of the accusation against him.

This simple process, however, can become quite complicated and especially stressful to an offended party, when the accused before entering his plea files a motion to quash the information. This is normally done by the defense to avoid a waiver of certain defenses otherwise available to the accused.⁷

At times, the defense will also ask for a re-investigation all the way up to the Secretary of Justice, which further delays the arraignment process.

At other times, if a search warrant had been issued, the defense will move to quash the warrant under Rule 126 of the Revised Rules on Criminal Procedure. Again, delay and an added stress to victim of trafficking, especially to children.

By the way, the rule enshrined in Rule 126 that a search warrant may be applied for only in any court within whose territorial jurisdiction a crime was committed or, for special reasons in any court within the judicial region where the crime was committed, otherwise the warrant is null and void for lack of jurisdiction, has been modified recently by the Supreme Court (SC) in A.M. No. 03-8-02, re: "Selection of Executive Judges and Defining their Powers." Section 12 of this SC Circular re-states the old rule that executive judges of RTC Quezon City and RTC Manila may issue search warrants, which may be served outside the territorial jurisdiction of the said courts in applications involving:

1. Heinous crimes;
2. Illegal gambling;

7. Rule 117 of the Revised Rules on Criminal Procedure, § 3.

3. Illegal possession of firearms;
4. Violations of the dangerous drugs act;
5. The Intellectual Property Code;
6. The Anti-Money Laundering Act;
7. The Tariff Code; and
8. Other relevant laws the Supreme Court may include in the list.

IV. PRE-TRIAL

After arraignment, the case, as you know, goes to Pre-Trial. Pre-trial is mandatory in criminal cases.

Generally, pre-trial in criminal cases takes only a few minutes as the defense denies everything the prosecution proposes except the identity of the accused and the jurisdiction of the court and, then, proposes nothing at all.

So, the court immediately dictates a Pre-Trial Order in open court and sets the case for trial.

However, recently the Supreme Court issued new “*Guidelines on Pre-Trial.*” The new guidelines encourages prior reference and appearance of the parties before the branch clerk usually at noontime where the parties would be required to mark and identify their exhibits, discuss possible settlement of the civil aspect of the criminal case, and make use of discovery procedures before trial. Non-availment of these options means the affected exhibits cannot be proffered during trial, among other consequences. This added procedure could possibly douse cold water on the prosecution in an environment where the trial fiscal meets his witnesses for the first time only during the trial, gets to know his exhibits only during the trial, and where one of the major headaches

haunting the fiscal is the frequent absence of his witnesses. In short, given these factors, how can the fiscal oblige his witnesses to appear before the branch clerk to identify and mark exhibits when he has enough trouble as it is just getting his witnesses to come to court during trial?

V. THE TRIAL

At the trial, the judge's role is simply to hear evidence and make rulings thereon.

Where the one testifying is not a child, the judge follows the rules of admissibility prescribed in Rules 128 to 132 of the Revised Rules of Court. However, when a child is the witness, whether as accused, victim or plain witness, the Rule on Examination of a Child Witness applies primarily.

In terms of admissibility, the two (2) sets of rules differ in several respects. Under the Child Witness Rule, for example:

1. The child is presumed competent to testify, without prejudice to a prior competency or *voire doire* examination if one is requested and is granted;
2. The hearsay testimony of an adult about a statement made to him by a child describing any act or attempted act of child abuse is also admissible in evidence, subject to certain conditions. If the child is available, he can be cross-examined thereon. If the child is not available because deceased, mentally ill, or is suffering from lapse of memory or severe trauma or simply could not be located, the testimony of the hearsay witness is admissible too if corroborated by other admissible evidence;

3. Videotaped or audiotaped as well as non-videotaped or non-audiotaped investigative or disclosure interviews of the child in child abuse cases is also admissible even if the child is not available to testify, subject to certain conditions, such as the competence and objectiveness of the interviewer and the proximity of the interview to the time of the commission of the questioned act following, apparently, the *de recenti* doctrine in British procedure.

The Child Witness Rule also provides for a *Sexual Abuse Shield* or *Kalasang Laban sa Panghahalay*, which says that in any criminal proceeding involving child sexual abuse, evidence is not admissible if offered to prove that the victim engaged in other sexual behavior or if offered to prove the sexual predisposition of the victim. In short, the sexual history or past moral behavior of a child is not subject to inquiry in sexual abuse cases.

It is important to remember this *Sexual Abuse Shield* because under Rule 130, Section 51 (a) (3) of the Rules of Court:

The good or bad moral character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.

It will be recalled, in this connection, that R.A. No. 8505 known as the Rape Victim Protection and Assistance Act contains a Rape Shield Provision or *Kalasang Laban sa Panggagahasa or Panghahalay*, which says that:

In prosecutions for rape, evidence of complainant's sexual conduct, opinion thereof of his/her reputation shall not be admitted unless and only to the extent that the court finds that such evidence is material and relevant to the case.

Apparently, these shields or *panangga* against the presentation of the complainant's prior immoral and indecent conduct or reputation were enacted in order not to penalize those complainants, particularly women, in sexual abuse cases, like rape, who defy generally accepted social and moral standards, or whom judges may perceive as persons of "loose morals" or not a typical Filipino woman.

The Rape Shield Rule has been criticized as a useless shield on the ground that the complainant's prior sexual conduct and reputation (which the Rape Shield does not shield) are never relevant or material in a rape case.

It seems that the Sexual Abuse Shield for child witnesses is therefore an improvement over that of the Rape Shield Provision as it does not provide a similar exception other than evidence of sexual behavior to prove that a person not the accused was the source of semen, injury or other physical evidence of sexual abuse.

The creation of these shields to my mind denotes that the Court must also shield itself against any gender insensitivity or bias, particularly against any gender insensitivity or bias, particularly against women.

Apart from an awareness of the Rule on the Examination of a Child Witness, the Court must also be aware of the filial privilege rule in Section 25 of Rule 130 of the Revised Rules of Court as it is dealt with in relation to Article 215 of the Family Code.⁸

Under Section 25 of Rule 130 of the Revised Rules of Court:

No person may be compelled to testify against his parents or other direct ascendants.

8. Executive Order No. 209.

Article 215 of the Family Code on the other hand, states that:

No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other.

Note that Rule 130 of the Revised Rules of Court prescribes a total ban on compelling an unwilling child to testify whereas, Article 215 of the Family Code provides for two (2) exceptions where a child can be so compelled.

Which rule shall prevail? Your guess is as good as mine. The quick eradication of a likely conflict between these two (2) rules of procedure is important because while Article 215 apparently contemplates of a case where a parent is a direct participant in a crime committed against a descendant and therefore there would be no insurmountable need in practical terms to prevail upon the child to testify against the parent. R.A. No. 9208 violations cover a large field of cases of various nature wherein it is likely that a child or descendant victim, whether below or above eighteen (18) years of age, may not see his or her parent or grandparent as a direct sexual abuser, as in rape and, therefore, the question arises as to whether the court can compel a trafficked descendant, where the trafficker's penal acts do not constitute a direct physical abuse against the descendant, to testify against a parent charged under R.A. No. 9208, particularly where the trafficked victim is already of the age of reason, can fully express her will and can stand on her own.

Another aspect of a trial under R.A. No. 9208 that is worth keeping in mind is the statement in Section 17 of R.A. No. 9208 that the trafficked person is a victim of the trafficker in relation to the disqualification by reason of marriage rule referred

to in Section 22 of I30 of the Rules of Court. Rule I30 requires prior marital consent before a spouse may testify for or against the other. The specific question is whether or not a wife, for example, may testify against her husband without his consent for alleged violation of R.A. No. 9208. My answer is Yes, since R.A. No. 9208 expressly recognizes that a trafficked person is a victim of the trafficker and Section 22, Rule I30 requires no prior marital consent in a criminal case for a crime committed by one spouse against the other or the latter's direct descendants or ascendants. In short, where there is intrafamilial trafficking, a spouse may testify even without the prior consent of her husband (or, for the same reason, the husband against his wife.)

VI. JUDGMENT

After trial, it is judgment time which occasionally becomes a show time. The case is scheduled for promulgation where the judgment is read, and where tears may flow in the process.

If acquitted, the accused is ordered released and if convicted, he is served a commitment order for service of sentence. Under R.A. No. 9208 the maximum sentence is imprisonment for life and, payment of fine, and damages as in Qualified Trafficking. The lowest sentence is six (6) months of community service plus payment of a fine for one who buys the services of a trafficked person in prostitution.

Aside from rendering a final decision, the courts are empowered also to issue interlocutory orders of a significant nature.

For example, all courts, except first level courts or MTCs, may issue a hold departure order if a valid reason for such issuance is shown.

Under R.A. No. 9262, both MTCs and RTCs may issue protection orders – a Temporary Protection Order or TPO, which is issued *ex parte* and effective for thirty (30) days subject to a series of 30-day extensions until a Permanent Protection Order or PPO is issued.

Incidentally, a *Barangay Chairman*, and in his absence a *Kagawad*, may also issue a protection order after hearing called *Barangay Protection Order* (BPO) effective for fifteen (15) days. Non-lawyer advocates are allowed to attend such proceedings at the *barangay* level.

An application for a protection order may be filed independently or requested as incident to a criminal action or a civil proceeding, like marital annulment or legal separation. Protection proceedings take precedence over all other court hearings and if the victim is an indigent or there is an imminent or life threatening danger, the application shall be accepted without payment of filing fee and Transcript of Stenographic Notes (TSN). Under R.A. No. 9208, when the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall also be exempt from the payment of filing fees.

The basic rules on bail availment are of course well known and need not be further belabored. Suffice it though to say that under Section 14 of Rule 114 of the Revised Rules of Court, if a cash bond is posted it shall be applied to the payment of fine and costs if the accused is convicted. Only the excess, if any, shall be returned to the accused or whoever made the deposit.

Likewise, in case of conviction, R.A. No. 9208 prescribes that the court shall order the confiscation and forfeiture of all

proceeds and properties derived from the commission of the crime unless they are the properties of a third person not liable for the unlawful act.

The personal properties of the offender shall first be levied upon and, if not sufficient, his other properties.

Where the properties and instruments of the offense have been destroyed or rendered worthless by the offender or have been concealed converted or transferred to prevent forfeiture or confiscation, the offender shall be ordered to pay an amount equal to the value of the proceeds or instruments of the offense.

In conclusion, may I say that demons have always been with us and probably will be with us. I hope all of us present here will be active participants in assisting your judges in keeping these demons at bay.

Thank you.

Psychological Trauma of Sex Trafficking Victims*

*Dr. Ma. Rosanna E. de Guzman M.D., F.P.P.A.***

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* Delivered at the *National Inter-Disciplinary Seminar on Trafficking in Persons*, on June 24, 2004, at the South Sea Resort Hotel, Bantayan, Dumaguete City.

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I. INTRODUCTION¹

This module proposes a holistic approach in assessing the multiple aspects of a sexually trafficked victim in the administration of justice. For a holistic approach provides a comprehensive model in which major aspects of a victim's life are explored. To focus exclusively on either a biological, psychological, or sociological area while neglecting the other leads to a narrow-fundamentally mistaken viewpoint. In the conduct of an examination of a sexually trafficked victim, necessity and urgency may lead the police officers, hospital staff personnel, and court officials to focus on one given area initially without realizing that they are doing more harm than good. They must be educated as to the needs of a sexually trafficked victim from various vantage points and agree on such particulars as the specific handling of historical and evidentiary matters within their jurisdiction.

One must not lose sight of the psychosocial sequelae, the effects that it may have on the other aspects of the sexually trafficked victim's life. It is common knowledge that any person, man, woman or child, who is a victim of violence, will have a psychological reaction to that trauma, whether it is anxiety, dread, terror, sadness, depression or despair. How a person reacts to violence, together with his/her psychological make-up and socio-cultural milieu will influence abuse. It is therefore critical that all police officers, hospital staff personnel and court officials be knowledgeable not only about the sexually trafficked victims' physical condition. They also would need to understand how the victims' individual psychology and social milieu affect the medical

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- I. a. Studies of prostituted women which document the health effects of prostitution including the harm from violence;
 - b. The literature on the health burden of women victims of sex trafficking;

condition of violence and abuse, and the emotional responses to that condition.

Rebuilding the lives of these victims means more than simply addressing their physical and material needs. The psychosocial trauma of prostitution and abuse, on the other hand, is more hidden and subtle. Being so, it is difficult to identify and, on occasions, difficult to understand and empathize with. The crisis has so traumatized the victims that there is now a pervading sense of loss of control over their lives. However, if no action is taken to prevent, to minimize, if not altogether eliminate the abnormal manifestations of this trauma, the psychosocial stresses of rape could lead to a disability far worse than the consequences of a physical trauma.²

Just as there is a need to address the sex trafficked victims' physical needs, there is also the equally pressing need of giving them back control over their lives by restoring their mental and emotional well-being through a holistic approach in the administration of justice. After all, the common pathway of all physical effects of violence is ultimately man, woman and child, with all their feelings, emotions, and consciousness. Thus ultimately, man, woman, and child must be the focus in administration of justice.³

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- c. Philippine General Hospital (PGH) Women's Desk unpublished research: interview of 30 Filipino rape survivors 1999 - 2000.
 2. Perlas, Antonio, "Psychosocial Issues in Disasters," Proceedings of the Symposium on the Management of Psychosocial Problems in Disaster: The Philippine Experience, September 1990.
 3. *Ibid.*

II. OBJECTIVES

- I. To provide a holistic framework in helping them understand the victims of rape according to the Biopsychosocial Model of Health and Illness.
 - a. To impart a knowledge of abuse and violence in sexually trafficked victims as a severe form of psychological trauma.
 - b. To identify the health consequences and burden of violence.
2. To develop skills in the appropriate handling and dealing of sexually trafficked victims.

III. THE BIOPSYCHOSOCIAL MODEL OF HEALTH AND ILLNESS – TO UNDERSTAND THE PLIGHT OF SEXUALLY TRAFFICKED WOMEN

The guiding principle in improving the administration of justice in victims of sex trafficking is that sexual violence is an extreme life experience outside the range of usual human experience and is therefore, markedly distressing. These women and girl victims are normal people in very abnormal circumstances. Since sexual violence is a traumatic event, it triggers the onset of identifiable stress symptoms. Stress reactions that would be deemed excessive at other times are normal now.

**FIGURE I: CONCEPTUAL FRAMEWORK OF THE
STRESS PROBLEM**

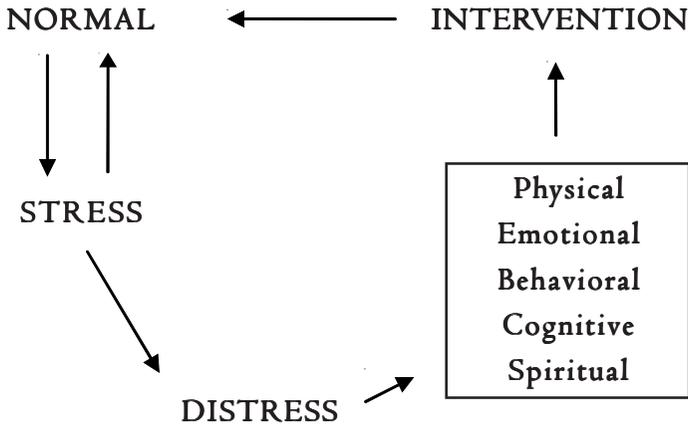


Figure I illustrates the basic conceptual framework of the stress problem. Stress has been defined as “the state manifested by a specific syndrome, which consists of all the nonspecifically induced changes within the body.” Obviously, not all stress can or should be avoided. A normal adoptive stress reaction occurs where the source of stress is identifiable and clear. When this particular challenge is met, one returns to a normal level of functioning relatively quickly. Most people pull together and function following a crisis, but their usual effectiveness may be diminished due to the multiple factors that affect them, e.g., the huge number of tasks to be accomplished; the diminished cognitive functioning (short-term memory loss, difficulty setting priorities, confusion), and frustrations in securing help. An intervention may be necessary to respond to the physical, emotional, behavioral, psychological as well as social reactions brought about by stress.

TABLE I: ACUTE STRESS

	PHYSICAL	EMOTIONAL	COGNITIVE AND BEHAVIORAL
Sexual assault Violence	Increase in heartbeat and respiration. Elevation in blood sugar. Increase in perspiration. Dilation of pupils. Slowing of digestion.	Fear Anger Frustration Relief	All the actions you take to solve the problem/immediate crisis. Mind racing Mind blank

Table I shows some of the typical *acute stress reactions* to a stressful life experience, e.g., sexual assault. These are subdivided into *physical*, *emotional*, *cognitive* and *behavioral* reactions.⁴ *Physical reactions* refer to what happens to one's body. Acute stress reaction brings about physical symptoms such as increase in heartbeat, respiration, increase in perspiration, and slows digestion. *Emotional reactions* refer to the things, which one feels. The emotional symptoms, on the other hand, include fear, anger, and frustration. *Cognitive reactions* refer to the things, which one thinks of, and these include feelings of guilt and shame. *Behavioral reactions* refer to the things that one does, which include easy fatigability, psychomotor retardation or agitation. The cognitive and behavioral reactions consist of the actions the victim takes to resolve the immediate problem. All of these adaptive reactions identified in a victim may or may not lead to a psychiatric illness.

4. Ignacio, LL. *et al.*, Critical Incident Stress Debriefing A Manual for Disaster Workers, UP-PGH Psychiatrists Foundation Inc., 1992.

Whether or not illness follows depends on many factors related to physical vulnerability, the availability of a social support system and the personality factor before, during and after the sexual assault incident.

TABLE 2: CHRONIC STRESS REACTIONS

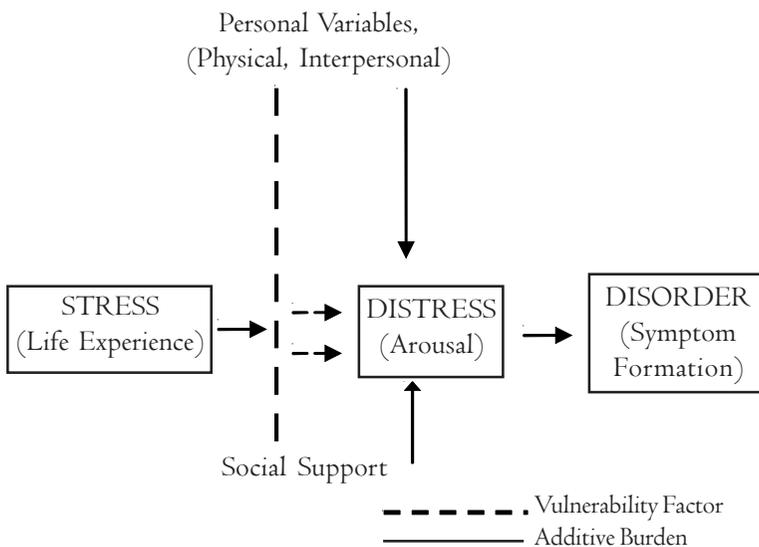
PHYSICAL	EMOTIONAL	COGNITIVE AND BEHAVIORAL	SPIRITUAL
Tension in the musculo-skeletal system (Head, neck, back) Digestive problems Lowered immunity CVS effects: Heart rate, chest pain Fatigue, sleep problems, change in appetite	Mood swings Anxiety Irritability Depression Feeling of alienation Suspiciousness Boredom Feeling of immobilization Negativism/Cynicism Feeling of always meeting needs	Unexpected reactions Uneven performance Disorganization Difficulty with concentration Reluctance to begin projects Distraction Proneness to accidents Absenteeism Withdrawal Excesses/Abuses	Declining interest in the others Doubt value system Questioning of major life areas Self pre-occupation Disillusionment

Table 2 lists down the *chronic stress reactions*. The categories follow closely those of **Table 1** except for an added dimension of spiritual reactions. It will be noticed in the enumeration that there are many possible consequences of sexual assault should the victim of sex trafficking continue to be exposed to a mishandling of the case and its aftermath without arriving at a resolution. It must also be pointed out that the aberrations, if left unattended, becomes more deep-seated in the long-term, affecting the very personality structure of the victim. As shown in **Table 2**, some of the personality disruptions are declining interest in others,

doubting of one's value systems and religious beliefs, questioning of major life areas, and disillusionment.

Just like any stressful event, an extreme life experience as violence and sexual assault results from a complex of reactions. If the victim's adaptive reactions are not enough, these may lead to psychological distress. Whether or not illness follows depends on many factors (e.g., physical factors, vulnerability factors, and availability of social support) that may lead to the development of psychiatric disorder as seen in **Figure 2** below:

**FIGURE 2: DEVELOPMENT OF A DISORDER
(SYMPTOM FORMATION)**



On psychiatric evaluation of victims of sex trafficking, the further aggravation of a normal response to violence and/or sexual assault incident could lead to significant distress and subsequently to a psychiatric disorder (symptom formation). These psychiatric disorders can vary depending on the individual factors affecting the degree of trauma experienced by the victims of sex

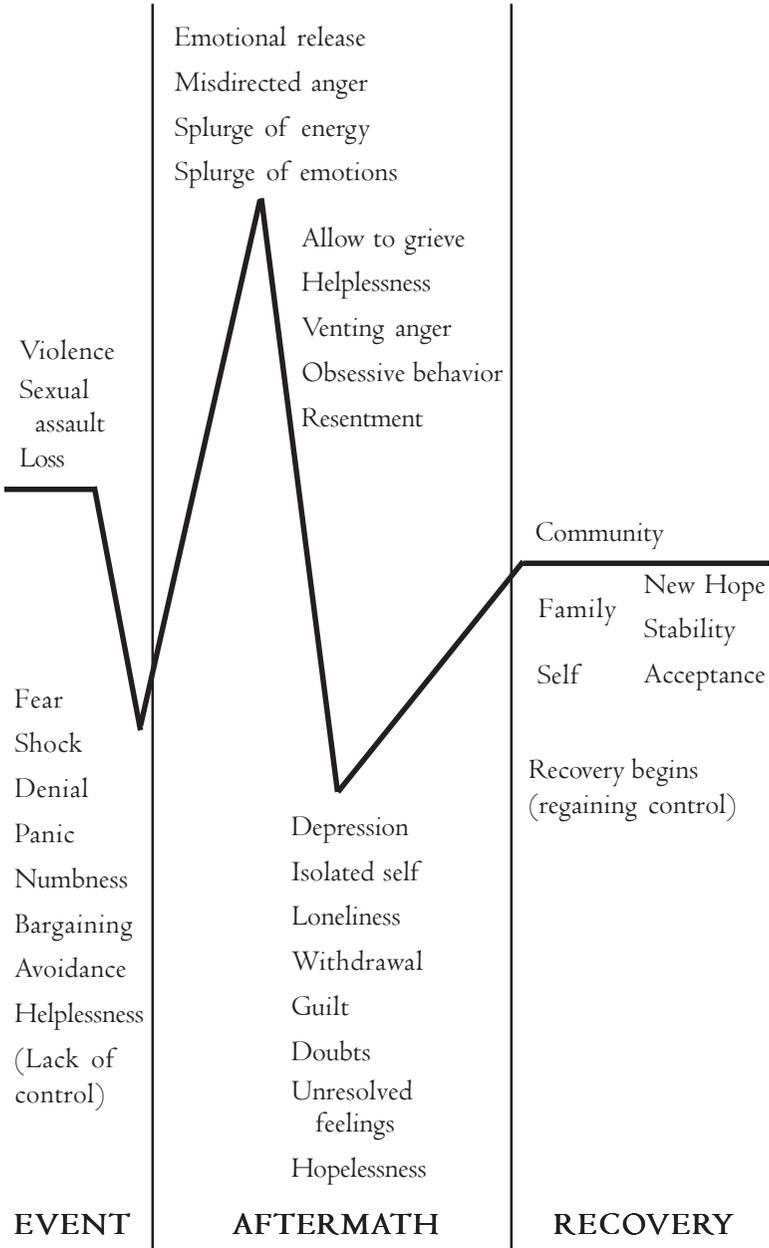
trafficking. It can include, see **Appendix I: *Acute Stress Disorder, and Post-Traumatic Stress Disorder (PTSD), Dissociative Disorder, Mood Disorders, Adjustment Disorders, and Schizophrenia and Psychotic Disorders***, which are all directly related to traumatic stress. The different classification of mental disorders is based on the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) of the American Psychiatric Association. The purpose of DSM IV is to provide clear descriptions of diagnostic categories in order to enable clinicians and investigators to diagnose, communicate about, study, and treat people with various mental disorders.⁵

From the different reactions manifested in the aftermath of a stressful life experience, which maybe even life threatening, it can be gleaned that various factors seem to influence how a woman victim of sex trafficking reacts and reorganizes her life. The woman's individual responses are determined by their vulnerability factors and personality style, the life stage considerations, the people available for support, and the way they are treated by people who learn of the circumstances. Thus, sexual violence represents a disruption of a victim's lifestyles, not only during the immediate days and weeks following the incident, but well beyond that to many weeks, months, and even years.

Figure 3 shows the grieving process during the event, in the aftermath to an unexpected stress such as violence and sexual assault, and through the recovery stage.

5. Diagnostic and Statistical Manual of Mental Disorders (DSM IV), American Psychiatric Association, 1994.

**FIGURE 3: UNEXPECTED STRESS
(GRIEVING PROCESS)**



A. The Health Consequences of Trafficking in Prostitution

Sexually trafficked victims confront endless new situations from the time they are recruited and initiated and as they go through the criminal judicial system. A woman who is the victim of sexual trafficking suffers psychological injury in addition to physical harm. It is necessary that those involved be provided with the necessary knowledge and skill in understanding sexual abuse and violence as a severe form of psychological trauma for the sexually trafficked victim.⁶ It must be remembered that the sexually trafficked victim experiences the trauma and its disruptions in all areas of her life: physical, emotional/psychological, and social. It will describe the cognitive and emotional sequelae before, during and in the aftermath of a crisis situation, in its short-term and long-term consequences. The crisis focuses on the different forms of violence and abuse against women: physical, sexual psychological, economic, and social. It is intended to describe the severe psychological stress response of sexually trafficked victims in order that the social workers, police officers, prosecutors, and court officials to be aware of the basic patterns of response many sexually trafficked victims experience and to which is added the effects of trial preparation and courtroom procedures.

Take for example, sexual violence, e.g., rapes, sexual abuse, in sexually trafficked victims. Sexual violence is a crisis situation in which a traumatic external event breaks the balance between the self and the environment. Since it is an interaction between an extreme environmental stimulus and the adaptive capacity of the

6. Malkah, T. *et al.*, American Journal of Psychiatry, "The Rape Victim: Psychodynamic Considerations," 133-134, April 1976.

victim, sexual violence is described in the literature as a severe form of psychological trauma. The unexpectedness of the assault and the variability of the sexually trafficked victims' resources for coping with an experience that may be viewed as life-threatening are critical factors, as in other crisis situations.⁷ Those who work with victims of sex trafficking need to understand how strong an impact the ordeal had on these victims and their support systems, e.g., family, spouses, children, relatives and friends.

The lack of protection to women in sex work and the absolute control of brothel or sex-ring operators over the women victims have given rise to several serious health issues:

- I. Torture and Inhuman Treatment
 - a. Beating by brothel owners and clients with electric wires, electric shock, torture with liquid acid, and forced confinement in locked dark rooms, some commercial sex workers have been beaten to death. These may give rise to bodily injury and disability.
 - b. The forced intake of drugs so that the women will service many clients. High incidence of substance abuse.
 - c. Malnutrition.
2. Violations of personal security and bodily integrity
 - a. Forced sex during times of menstruation or sickness.
 - b. Forcing women to undergo unhygienic and dangerous surgical procedures to restore their hymens in order to create the illusion that they are virgins.

7. *Ibid*, p. 409.

- c. The freedom of the male workers who work at the brothel to rape sex worker after being sold to the first client.
 - d. Rape by local authorities without payment.
 - e. Unwanted pregnancy, miscarriages, abortions, and infertility.
3. Forced to engage in unprotected sex and be vulnerable to Sexually Transmitted Diseases (STDs) and Human Immunodeficiency Virus-Acquired Human Immunodeficiency Syndrome (HIV-AIDS)
- a. High risk behavior of unprotected sex is the culprit in the spread of HIV-AIDS and STDs. The women victims are required to see multiple male customers per day.
 - b. Refusal of demands of clients, even for unprotected sex, usually means harsh measures including various forms of physical and mental torture.
4. Social factors
- a. Stereotyping of women victims of sex trafficking, as providers of pleasure to men, a role that is reinforced by media's depiction of women as sex objects.
 - b. Societal ostracism of victims of sex trafficking, making it difficult for them to seek, assistance for their health and security needs.
 - c. Medical neglect often are isolated so that there is very little time to establish contacts with those who could assist them.

- d. Unequal access of women to education resulting in their marginalization.

After such a life threatening, stressful, frightening and degrading, experience as sexual violence; one can expect an immediate psychological and physiological stress response. It is important to remember that sexually trafficked victims present with an extremely wide range of behavior and emotions, which vary in intensity and duration. This was confirmed by an unpublished research of the PGH Women's Desk on the profile and coping reactions of Filipino rape victims. The study looked into a wide range of coping reactions in the hours before the rape attack, during the rape attack, immediately following the rape, and in the aftermath of a rape, with its short-term and long-term consequences.

Figure 4 on page 15 presents a framework of the coping behavior of Filipino rape victims.

I. Acute Stress Disorder

The essential features of *Acute Stress Disorder*⁸ is the development of characteristic anxiety, dissociative, and other symptoms that occurs within one (1) month after exposure to an extreme traumatic stressor. As a response to the traumatic event, the individual develops dissociative symptoms: a subjective sense of numbing, detachment or absence of emotional responsiveness; a reduction of awareness of his/her surroundings; derealization; depersonalization and dissociative amnesia. Following the trauma, the traumatic event is persistently experienced, and the individual displays marked avoidance of stimuli that may arouse recollections of the trauma and has marked symptoms of anxiety or increased

8. See Appendix I.

FIGURE 4: COPING BEHAVIOR OF THE RAPE VICTIM**BEFORE THE ATTACK: Coping Behavior in a Threatening Situation**

Early awareness of danger

Cognitively: Feeling of impending danger.

Coping task: To react quickly to this warning.

Threat of attack

- The person realizes there is a definite danger to his or her life.

Coping task: Attempt to avoid or escape the situation.

Basic strategies:

Cognitive: Assess the situation to determine possible alternatives. e.g. how to escape, or worry and plan how to keep calm.

Verbal tactics: Talking one's way out of the situation, stalling for time, reasoning, trying to gain sympathy, using flattery, bargaining, feigning illness, verbal aggression, joking or sarcasm, etc.

Physical action: Direct action in preventing the attack or fighting the assailant.

Lack of strategies:

- Rape victim may be physically paralyzed and totally overpowered by the assailant.

- Use of drugs and alcohol.

DURING THE ATTACK: Coping with Rape

Actual rape attack

Coping task: To survive the rape despite many demands forced upon the victim.

Cognitive strategies: Mentally focusing and directing their attention to some specific thought to keep their mind off the reality of the event



and focus on their survival; remaining calm; talking to herself; memorizing details; praying for help to decrease stress and tension.

Verbal strategies: Screaming and yelling for help to relieve tension; talking to the assailant during the attack; verbal tactics to calm the assailant; scaring the assailant.

Physical action: Struggling and fighting with their assailants to avoid penetration.

Psychological defenses: Defense mechanism to cope with the overwhelming fear of the attack: denial, dissociation, rationalization.

Physiological responses: Choking, gagging, nausea, vomiting, pain, urination, hyperventilating, and losing consciousness.

AFTER THE ATTACK: Escaping from the Assailant

After the attack *Coping task:* To be free. Escape from the assailant.
 - Alerting others, bargaining for freedom, freeing oneself.

arousal. These may be accompanied with associated symptoms of despair and hopelessness. Survivors may have painful guilt feelings about having survived or about the things they had to do to survive, e.g., giving in to the perpetrator. They are at an increased risk for the development of Post-Traumatic Disorder and the other mental disorders, *Mood Disorders*, *Dissociative Disorders*, *Adjustment Disorders*, and *Schizophrenia and Psychotic Disorders*, which may develop after the trauma.

2. Post-traumatic Stress Disorder

The symptoms of *Post-Traumatic Stress Disorder*⁹ can be categorized into hyperarousal symptoms, intrusive symptoms and

9. See Appendix I.

constrictive symptoms.¹⁰ The development of these characteristic symptoms follow exposure to an extreme traumatic stressor as rape involving direct personal experience of the event that involves actual or threatened death or serious injury, and/or threat to one's physical integrity. Hyperarousal symptoms reflect the persistent expectation of danger where the rape victim startles easily, reacts irritably to small provocation, and sleeps poorly. Intrusion symptoms occur when the rape victim reexperiences the event as though it was continually recurring in the present with flashbacks and nightmares. Constrictive symptoms manifest as numbing of thoughts and memory and restriction of their lives. All these are powerful emotions produced by a powerful disruption in the rape victim's ordinary life. Unless these emotions are handled properly, they could lead to long-standing disability and personality difficulty. Emotional consequences of severe stress and psychological trauma include: depression, anxiety, self-medication through alcohol and drugs, eating disorders and suicide. Rape survivors are nine (9) times as likely to attempt suicide and suffer severe depression as non-victims.

Thus, law enforcement officers and hospital staff personnel who are the first professionals with whom the victims interact after the crime must be able to cope with the emotional difficulty of dealing with victims of sexual violence. It is imperative that those concerned impress upon the victims that he/she is concerned not only with the arrest and conviction of the offenders but also with the victim's welfare. That is why the first step, when interviewing the victim, is the most crucial one. It is only through the victim that one can elicit the information necessary to complete the analysis of the crime.

10. Herman, J.L., Trauma and Recovery: From Domestic Abuse to Political Terror. Harper Collins Publisher, 1992, pp. 35- 40.

Therefore, it is essential for the investigator to establish rapport with the victims through a professional and empathic approach to overcome her feelings of fear, guilt, and anger.¹¹ For it is critical to both the well-being of the victims and to the criminal investigation that she be able to successfully resolve the emotional turmoil being experienced and be able to go through the whole process. If the victim is to proceed to the phase of recovery, the most important accomplishment is to regain control in her life and to establish a reconnection with the world.

B. The Health Burden of Violence

Women victimized by violence and abuse suffer bodily injury, disability, homicide, and suicide; severe stress and psychological trauma; substance abuse; a plague of sexually transmitted diseases, infectious and non-infectious diseases; unwanted pregnancies, miscarriages, abortions and infertility.

World Bank study has estimated that women worldwide between the ages of fifteen (15) and forty-four (44) lose as many years of healthy life to the above-cited consequences of rape and violence. Rape survivors are nine (9) times as likely to commit suicide and suffer severe depression as non-victims are.

C. Basic Requirements in the Assessment of Victims of Sex Trafficking

An effective professional should have two (2) basic requirements that will facilitate his/her work:¹²

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11. Hazelwood R.R. and Burgess A., ed., *Practical Aspects of Rape Investigation: A Multidisciplinary Approach*, CRC Press, 1995, pp. 35-40.
 12. Ignacio, L. and Tronco, A., *Mental Health in the Community (new edition) from the draft of the Manual for the Training of Primary Health Workers on Mental Health*, World Health Organization (WHO) Publication.

1. The capacity to establish rapport with the victim; and
2. The capacity to empathize with the victim.

When the professional has been able to establish rapport and show empathy that has been truly experienced, the victim leaves the room relieved and assured that he/she has somehow been understood and helped.

1. Establishment of Rapport

Rapport is present when there is a feeling of mutual regard and trust between the professional and the victim of sex trafficking. The victim feels that she is understood if she is well-regarded despite her problems and difficulties. When rapport is established, both the professional and the victim become more comfortable with each other. More importantly, the victim feels safe enough to talk about things that she cannot ordinarily talk about with others especially in Violence Against Women (VAW) cases. The victim does so this time because she trusts that her problems will be respected and kept in confidence. The assurance that she is understood and accepted makes the victim more open to the professional's suggestions.

2. Capacity to Empathize

As the professional listens to the victim's worries and concerns, he/she develops the capacity to put themselves in the victim/s situation and understand the meaning of the victim/s feelings, thoughts and behavior. Because he/she is able to feel and care for the victim, the professional's interest and capability to help the patient is sustained. If the professional dislikes the patient, he/she will likely be ineffective in dealing with the victim. If he/she is angry with the victim, the victim usually becomes angry too and becomes uncooperative. As a result, the professional may lose

interest in helping the victim. If the professional understands what the victim is going through after the crisis and the trauma, he/she will be able to have the victim's loyalty and cooperation.

3. Conduct of the Interview

When there is rapport and empathy between the victim of sex trafficking and the professional, the examination can proceed without much difficulty. There are however, several important considerations that every professional must remember in order to facilitate the course of the interview:

- a. Use a setting that is quiet, free from interruption and if possible, private;
- b. Be courteous, considerate and tolerant in order to help put the victim at ease;
- c. Avoid making the victim feel that you are busy or in a hurry since this attitude will make her inhibited. Rather, give her your full attention;
- d. Use simple language that the victim can understand. Avoid using technical terms;
- e. Avoid being moralistic, judgmental, castigating, and dictatorial;
- f. Attempt to help the victim acquire a clear and objective understanding of her difficulties at the end of the interview; and
- g. Be flexible.

In summary, alarming as it is responses to these problems have been weak and largely uncoordinated. Official action has been more punitive towards the victim of sex trafficking than to those responsible for trafficking and forcing women and children to become sex slaves. Yet, those responsible cannot turn a blind eye to this sad reality.

To study psychological trauma is to come face to face with human vulnerability in the natural world and with the capacity for evil in human nature. To study psychological trauma means bearing witness to horrible events. When the events are natural disasters or “acts of God,” those who bear witness sympathize readily with the victim. But when the traumatic events are of human design, those who bear witness are caught ill the conflict between victim and perpetrator. It is morally impossible to remain neutral in this conflict.

Judith Herman, *Trauma and Recovery*

Appendix I

ACUTE STRESS DISORDER

- A. The person has been exposed to a traumatic event in which both of the following were present:
 - 1. The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury or a threat to tile physical integrity of self or others;
 - 2. The person's response involved intense fear, helplessness, or horror.

- B. Either while experiencing or after experiencing the distressing event, the individual has three (3) or more of the following symptoms:
 - 1. A subjective sense of numbing, detachment or absence of emotional responsiveness;
 - 2. A reduction in awareness of his or her surroundings (e.g., being in a daze);
 - 3. Derealization (experience the world as unreal or dreamlike);
 - 4. Depersonalization (feeling detached from their bodies);
 - 5. Dissociative amnesia (having increasing difficulty recalling specific details of the traumatic event).

The traumatic event is persistently reexperienced in at least one of the following ways: recurrent images, thoughts, dreams, illusions, flashback episodes, or a sense of reliving the experience; or distress on exposure to reminders of the traumatic event.

- C. Marked avoidance of stimuli that arouse recollections of the trauma (e.g., thoughts, feelings, conversations, activities, places, and people).
- D. Marked symptoms of anxiety or increased arousal (e.g., difficulty sleeping, response, and motor restlessness).
- E. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning or impairs the individual's ability to pursue some necessary task, such as obtaining necessary assistance or mobilizing personal resources by telling family members about the traumatic experience.
- F. The disturbance lasts for a minimum of two (2) days and a maximum of four (4) weeks and occurs within four (4) weeks of the traumatic event.

Post-Traumatic Stress Disorder

- A. The person has been exposed to a traumatic event in which both of the following are present:
 - 1. The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others; and
 - 2. The person's response involved intense fear, helplessness, or horror.
- B. The traumatic event is persistently reexperienced in one (or more) of the following ways:
 - 1. Recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions;

2. Recurrent distressing dreams of the event;
 3. Acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative flashback episodes, including those that occur on awakening or when intoxicated);
 4. Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event;
 5. Physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.
- C. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (3) or more of the following:
1. Efforts to avoid thoughts, feelings, or conversations associated with the trauma;
 2. Efforts to avoid activities, places, or people that arouse recollections of the trauma;
 3. Inability to recall an important aspect of the trauma;
 4. Markedly diminished interest or participation in significant activities;
 5. Feeling of detachment or estrangement from others;
 6. Restricted range of affect (e.g., unable to have love feelings);
 7. Sense of foreshortened future (e.g., does not expect to have a career, marriage, children, or a normal life span).

- D. Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (2) or more of the following:
1. Difficulty falling asleep;
 2. Irritability or outbursts of anger;
 3. Difficulty concentrating;
 4. Hypervigilance; and
 5. Exaggerated startle response.
- E. Duration of disturbance (symptoms in Criteria B, C, and D) is more than one (1) month.
- F. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Specify if:

Acute: if duration of symptoms is less than three (3) months

Chronic: if duration of symptoms is three (3) months or more

Specify if:

With delayed onset: if onset of symptoms is at least six (6) months after the stressor

Adjustment Disorder

- A. The development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within three (3) months of the onset of the stressor(s).

- B. These symptoms or behaviors are clinically significant as evidenced by either of the following:
1. Marked distress that is in excess of what would be expected from exposure to the stressor.
 2. Significant impairment in social or occupational (academic) functioning.

The stressor may be a single event, or there may be multiple stressors, or continuous.

Dissociative Disorder

The essential feature of the Dissociative Disorders is a disruption in the usually integrated functions of consciousness, memory, identity, or perception of the environment. The disturbance may be sudden or gradual, transient or chronic. The following disorders are included in this section:

Dissociative Amnesia (formerly Psychogenic Amnesia) is characterized by an inability to recall important personal information usually of a traumatic or stressful nature, that is too extensive to be explained by ordinary forgetfulness.

Dissociative Fugue is characterized by sudden, unexpected travel away from home or one's customary place of work accompanied by an inability to recall one's past and confusion about personal identity or the assumption of a new identity.

Dissociative Identity Disorder (formerly Multiple Personality Disorder) is characterized by the presence of two (2) or more distinct entities or personality states that recurrently take control of the individual's behavior accompanied by an inability

to recall important personal information that is too expensive to be explained by ordinary forgetfulness.

Depersonalization Disorder is characterized by a persistent or recurrent feeling of being detached from one's mental processes or body that is accompanied by intact reality testing.

Dissociative Disorder Not Otherwise Specified is included for coding disorders in which the predominant feature is a dissociative symptom, but do not meet the criteria for any specific Dissociative Disorder.

Dissociative symptoms are also included in the criteria sets or Acute Stress Disorder, Post-traumatic Stress Disorder, and Somatization Disorder. An additional Dissociative Disorder diagnosis is not given if the dissociative symptoms occur exclusively during the course of one of these disorders.

Mood Disorder

Major Depressive Disorder is characterized by one or more Major Depressive Episodes. The essential feature of a Major Depressive Episode is a period of at least two (2) weeks during which there is either depressed mood or the loss of interest or pleasure in nearly all activities. The mood may be irritable rather than sad. The individual must also experience at least four (4) additional symptoms drawn from a list that includes:

- Changes in appetite or weight;
- Sleep disturbance;
- Psychomotor activity changes including agitation (e.g., the inability to sit still, pacing, hand wringing; or pulling or rubbing of the skin) or retardation (e.g., slowed speech, thinking, and body movements);

- Decreased energy, tiredness, and fatigue are common;
- Feelings of worthlessness or guilt, blaming oneself for being sick and for failing to meet occupational or interpersonal responsibilities;
- Impaired ability to think, concentrate, or make decisions. They are easily distracted or complain of memory difficulties; and
- Recurrent thoughts of death or suicidal ideation, plans of attempts.

The symptoms must persist for most of the day, nearly everyday, for at least two (2) consecutive weeks. The episode must be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning. For some individuals with milder episodes, functioning may appear to be normal, but requires markedly increased effort.

Schizophrenia and other Psychotic Disorder

The disorders included in this section are all characterized by having psychotic symptoms as the defining feature.

The term psychotic in its narrowest definition is restricted to delusions or prominent hallucinations, with the hallucinations occurring in the absence of insight into their pathological nature. Broader still is the definition that also includes other positive symptoms of schizophrenia (*i.e., disorganized speech, grossly disorganized or catatonic behavior*). Finally, the term has been defined conceptually as a loss of ego boundaries or a gross impairment in reality testing.

Schizophrenia

Schizophreniform Disorder

Schizoaffective Disorder

Delusional Disorder

Brief Psychotic Disorder

The essential features of Schizophrenia are a mixture of characteristic signs and symptoms (both positive and negative) that have been present for a significant portion of time. The characteristic symptoms involve a range of cognitive and emotional dysfunctions that include perception, inferential thinking, language and communication, behavioral monitoring, affect, fluency and productivity of thought and speech, hedonic capacity, volition and drive, and attention. No single symptom is pathognomonic of Schizophrenia. The diagnosis involves the recognition of a constellation of signs and symptoms associated with impaired occupational or social functioning.

Handling of Victims of Trafficking* (Psycho-social Aspects)

*Ms. Lourdes G. Balanon***

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I. INTRODUCTION

Trafficking violates the human rights of women and children. The abuse and exploitation of this most vulnerable sector of our society has been attributed to a number of causes particularly poverty, lack of education and opportunities, dysfunctional family life, migration, political and economic regression, globalization

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and information technology and the increasing demand for sex-related services. While trafficking in its various forms has been “tolerated” in the past as a means to respond to family needs, there is a growing awareness of the impact of trafficking of women and children particularly in terms of the psycho-social effects on the victims themselves.

A glance of the causes attributed to trafficking of women and children are socio-cultural and poverty related factors. Poverty is a complex problem, the alleviation and reduction of which has been the focus of all administrations; but to this day, more than half of the population are still poor. Poverty, however, should

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She has been in the government service since 1969, holding various positions such as Supervising Social Worker, Senior Social Welfare Analyst, Social Welfare Project Supervisor, Senior Executive Assistant II and Officer-in-Charge of the Special Child Welfare Service Unit, Director of the Bureau of Child and Youth Welfare, all at the DSWD until her appointment as Assistant Secretary and eventually as Undersecretary of the same office.

She holds designations as ASEAN Children’s Desk Officer for the Philippines since 1992; ESCAP Focal Person on the Elimination of Child Sexual Abuse Project in the ESCAP Region since 1997; Asia-Europe Meeting (ASEM) Focal Person on RP-UK Child Welfare Initiative also since 1997.

never be an excuse to the exploitation, and trafficking in persons particularly women and children. Yet, our *kababayans ay kapit sa patalim* in order to survive! They are easy prey by unscrupulous individuals and groups who exploit to the hilt, the extreme poverty of our people, for their own gains and interests.

II. UNDERSTANDING THE VICTIM OF TRAFFICKING

The consequences of the trafficking experience for its victims, and especially for the women trafficked for sexual purposes are tremendous. Everyone who gets in touch with the victim must have a basic understanding of the behavior of the victim within the context of her/his background and current situation. Thus, the police, the prosecutor and the judge, among others, must possess this knowledge, which would lead to a more child and gender-sensitive handling of the victim of trafficking. The social worker, psychologist and, other service providers responsible in the recovery, healing, rehabilitation and reintegration of the victim are expected to have deeper knowledge and skills to enable them to work with the victim cope and plan with his/her traumatic experiences and also plan for his/her future.

Women who are trafficked suffer the same, or often worse, injuries, infections and traumas as those suffered by women who are battered, sexually assaulted or raped. For the victims of trafficking, apart from the sexual violence, the repeated incidents of surprise, isolation, threats, and the deliberately malicious “treatment” inflicted on them by the traffickers contribute to the greater impact of the experience.

Traffickers exert extremely brutal and manipulative control over their victims, both physical and psychological. They use rape,

beating, torture, starvation, physical exhaustion, isolation, deception and death threats to force the victims to obey their rules and orders. Their strong faith in God helps them endure these thus, most victims suffer in silence hoping that these will eventually end and hope for a better tomorrow.

The trafficking experience violates a person's autonomy at the level of basic bodily integrity. The victim is not allowed to decide when or if he/she eats, when or if he/she can rest, and repeatedly, his/her body is injured and invaded. This loss of control is often recounted as the most humiliating aspect of the trauma. In many cases, this dehumanizing process is carried to the level of taking away the victim's personal documents/passport and giving him/her a false identity in return. He/she may now be known as another person using spurious documents, with or without the consent of the victim.

The trafficking experience includes repeated instances of severe abuse, with no mental respite or period of "normalcy or peace," because the victim never knows what will happen next; when the next outburst or violent episode will occur.

The tremendous and constant level of violence and emotional pressure places the victims in a situation where they learn to accept anything. All of their means and abilities to respond to or face danger are reduced to nothing and the traffickers use these techniques to subjugate women often into sexual exploitation.

The accumulated trauma and fears also make the victim incapable of trusting anyone. The reality around them is distorted and the victims become doubtful of themselves and of others. Therefore, it becomes very difficult for them to make a radical decision to break the cycle of violence and look for help to go back home.

The debilitating effects of uncontrollable and aversive events on animals and human beings were the subject of studies by Martin Seligma of the Pennsylvania University. He termed the phenomenon of passively accepting one's circumstances as "learned helplessness." When the victims begin to believe that they are unable to control events, they become passive and withdrawn in order to avoid the disappointment and possible loss of self-esteem that would result from repeated failed attempts to control seemingly controllable events. Most victims reported that they tried, at least once, to directly oppose the traffickers or to escape from them. However, when their efforts fail, they become passive and repressive toward their own feelings and beliefs. The victim has low self-esteem as a result of the repeated abuse she has endured and comes to believe that there are no "better" alternatives to the abusive situation.

This further explains the reasons why most of the victims become numb, passive and doubtful; and seem incapable of fighting the terrible situation in which they end up. We often blame or criticize the victims for this passivity instead of understanding it as one of the outcomes of the criminal treatment that these women are forced to endure. We fall into the trap of "blaming the victim."

III. PSYCHOSOMATIC REACTIONS IN RELATION WITH TRAUMA

Traumatic events generally involve threats to life or bodily integrity or a close personal encounter with violence or death. The ordinary human response to danger includes both biological and psychological reactions. When a person perceives danger, the body reacts by increasing the flow of adrenaline and going into a state

of alert. This explains why people, who are in threatening conditions/situations, are often able to disregard hunger, fatigue or pain. Danger focuses a person's attention on the immediate situation. All of these reactions are accompanied by intense emotions of fear and/or anger that can either mobilize or paralyze a person. In other words, in a crisis situation, a person chooses to fight or flee.

Traumatic reactions occur when re-action (the escape) fails or when mere resistance is impossible, and the human self-defense system becomes overwhelmed and disorganized. At this point, the traumatic event produces profound and long-lasting changes (damage) in physiological arousal, affection and cognition. The traumatic event not only affects these functions individually, but also alters the way in which they inter-connect and work with one another.

The following are normal human reactions to abnormal events including those suffering from trauma as a result of trafficking experience:

A. Physical Reactions

- Aches and pains like headaches, backaches and stomach aches;
- Sudden sweating and/or heart palpitations;
- Changes in sleep patterns and appetite;
- Greater susceptibility to colds and illnesses (weakened immune system); and
- Increase use of alcohol or drugs, and/or overeating.

B. Psychological Reactions

- Shock and fear;

- Disorientation and cognitive confusion;
- Irritability, restlessness;
- Worrying or ruminating – intrusive thoughts of the trauma;
- Nightmares and flashbacks of the events;
- Attempts to avoid anything associated with trauma;
- Minimizing the experience;
- Tendency to isolate oneself and feelings of detachment;
- Difficulty trusting and/or feelings of betrayal;
- Feelings of helplessness, panic, and loss of control;
- Diminished interest in everyday activities; and
- Loss of a sense of order or fairness in the world; expectations of doom and fear of the future.

Due to the nature of the trafficking phenomenon, the type of chronic trauma experienced by the victim is not limited to a single disruptive event; instead the trauma is extended over a much longer period of time. Accordingly, the longer the victims remain under the control of their traffickers, the more severe and long lasting are the effects of their trauma.

IV. SERVICES TO VICTIMS/SURVIVORS OF TRAFFICKING

The Anti-Trafficking in Persons Act (Republic Act No. 9208) mandates the Department of Social Welfare and Development (DSWD), the local government units and other concerned agencies to provide comprehensive, gender-sensitive and child-

friendly program for the recovery, rehabilitation and reintegration of victims/survivors of trafficking. This is in consonance with the UN principle that:

Victims should be treated with compassion and respect for their dignity and they are entitled to access to the mechanisms for justice and to prompt redress for the harm they had suffered.

The provision of social and psycho-social services need to be responsive to specific needs and situation of the victim. Once a victim is identified and reported to the authorities, immediate rescue operation should be undertaken. In some instances, it is the victim who would escape and seek help from authorities.

The first intervention is the provision of a safe and adequate shelter where his/her basic needs are met. Oftentimes, the victim is in a state of shock or in great fear for his/her life, anxious, disoriented, confused and sometimes emotionally unstable. It is therefore important that he/she is assured of his/her safety and security, that he/she is protected from harm, threats and intimidation by the traffickers. The DSWD and some non-governmental organizations manage residential facilities providing temporary shelter for these victims including those trafficked abroad. The DSWD operates Haven for Women and Homes for Girls nationwide. The victim is oriented about the center's activities and what is expected of him/her.

Intake interviews are conducted to gather information about the victim, his/her family and the trafficking experience. The interview should also give an indication about the psychological state of the victim. A referral to a psychological state is made to have more in-depth assessment as to the level and source of stress and his/her reactions to these stresses. A physical/medical examination is also undertaken to determine if the victim has

injuries and have a general information on the victim's health condition. The results of these shall be the basis in formulating a rehabilitation plan with the victim, which will include specific time frames particularly discharge and reintegration plans.

The program in the center or in the community includes counseling, educational and therapeutic activities, which would help change behavior, self-perception and to enable the victim have a sense of control over his/her body and his/her life. The victim is encouraged to participate in social activities to establish relationships and once more trust people. The privacy of the victim is respected and confidentiality of the case is observed.

Preparation for the reintegration process is in the form of learning some skills for livelihood such as sewing, computer studies and others. Educational assistance may be provided to a trafficked child. Those severely traumatized continue to be under the care of a psychiatrist/psychologist for psychotherapy.

The family of the victim is contacted and prepared for the return of the victim to them and their community. Counseling is oftentimes needed for the family members as well to have a better understanding of the circumstances of the victim. There are families who have high expectations and are unable to accept the reality that their son/daughter is coming home empty handed. In fact, some families are the ones who push the victim into the situation or have contacts with the recruiters. The acceptance of the victim by his/her family is important in the recovery and healing process. The community's acceptance and understanding would reduce/remove the stigma on the victim.

The victim is assisted to make a decision whether to file criminal, civil or other actions against the traffickers. He/she must be helped to understand the justice system and what is expected

of his/her and his/her family. The law provides for preferential entitlement under the Witness Protection Program and the availability of free legal assistance. In coordination with the lawyer, the victim must be prepared for the court hearing and must understand the proceedings in the language he/she understands. Caution must be made not to “revictimize” the victim. Feelings of uncertainty and anxiety are minimized if the victim is informed periodically about the process and the status of the case. In many instances, the victims lose hope and interest to pursue the case in view of the long investigation process and court proceedings. They just want to move on with their lives.

After care services are provided upon the victim’s return to his/her family and community. Improvement in the economic situation of the victim and his/her family is a priority and access to livelihood services, loans and other economic opportunities must be provided, or else, the victim may find his/her way back to the trafficking situation once more. There is a need to assess existing programs and develop a comprehensive, holistic and integrated victim assistance program to respond to the various needs of the victims of trafficking.

V. CONCLUSION

Victims are not just beneficiaries of services but are also survivors taking stock of their own destiny, charting their future for a better life. With the provision of psycho-social interventions, the coping mechanisms and resiliency of the victim is strengthened. It has been shown that the victims can overcome the trauma and other psycho-social effects of the trafficking experience. As survivors, they can share their experiences and be activists in the prevention of trafficking and in promoting the welfare of other victims. They can be our partners in the fight against trafficking.

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Philippine Country Paper

Current Practices Leading to Good Practices: Meeting the Needs with Regard to Recovery, Repatriation and Integration in Countries of Origin*

*Hon. Ma. Merceditas N. Gutierrez***

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I. INTRODUCTION

The economic condition of the country, which started to dip during the 1970s, and the scarcity of employment opportunities

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forced Filipinos to seek overseas job opportunities. Filipinos responded to the increasing demands for skilled construction workers, engineers, nurses, care-givers, domestic helpers and entertainers in the Middle East, East Asian countries, Europe and the United States.

Currently, the Philippines is one of the largest migrant countries in the world. Despite of the existence of legal channels for employment, the number of intermediaries who offer their services for the expeditious but illegal alternatives seems to be on the rise, and this contributes to the problem of trafficking.

To most Filipinos, working or staying abroad offers opportunities for a better future for themselves as well as for their families. Notably, most of the Overseas Filipino Workers (OFWs) come from the poorest sectors who are either unemployed for lack of qualification or underemployed in that their meager earnings are inadequate to meet their basic needs. Because of these, overseas employment, even through irregular means or procedures, is always viewed as a better alternative to local employment. As a result, this group of people becomes vulnerable to manipulation and exploitation by scrupulous individuals and recruitment agencies, foreign employers and even by crime syndicates. It is usually the same OFWs who not having passed through the usual procedures such as pre-departure briefings by proper authorities, and due also to lack of knowledge of their basic human rights, become victims of injustice, to include the non-payment of salary, illegal termination, maltreatment, physical and sexual abuse, and even mysterious deaths. A significant number of this group are women and, at times, minors who are hired as domestic helpers or factory workers but, who, upon entry to the country of employment, become prostitutes, mail-order brides and land in

other lowly employment far different from what their contracts stipulate.¹

As of December 2002, it is estimated that there were about 7.57 million Filipinos overseas.² Three million five hundred (3.5M) 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. These irregular migrants were 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 ninety (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 (43%) 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 Hong Kong (24.8%), Taiwan (11.8%), and Japan (8%), while male OFWs still prefer the Middle East (43%), particularly Saudi Arabia (37.2%).³

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1. Report on Trafficking in Human beings from the Philippines: A Survey of Government Experts and Law Enforcement Case Files, National Police Commission, Philippines.
 2. Data from Commission on Filipino Overseas (CFO).
 3. Data from the Philippine Overseas Employment Administration (POEA).

From 1993 to December 2002, there were 1,013 documented cases of trafficking in the Philippines.⁴ However, it has to be understood that in trying to determine the extent and magnitude of sex trafficking of women and girls in the Asian Region important considerations have to be made. The clandestine character of trafficking makes it very difficult to establish definite figures as many trafficked women and children are kept in captivity and sexual slavery. It is also important to note at the outset, 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.

There is a dearth of information on transnational trafficking of children. On the other hand, there are reports that a number of Filipino children were trafficked for purposes of prostitution, brides for international marriage, and sexual exploitation.

The purposes for which trafficking in persons is committed have evolved over time. There are reports that trafficking is committed not only for prostitution and sexual exploitation but also for purposes of forced labor, slavery, debt bondage and removal or sale of organs.

The last decade has been marked by heightened awareness on issues related to trafficking in women and children. Towards this end, the Philippines has actively participated in several regional and multilateral initiatives to protect the rights and promote the welfare of women and children. It has played a leading role in raising global awareness of the plight of women migrant workers and the pernicious traffic in women and children.

4. Combined report of the Department of Foreign Affairs (DFA) and CFO.

On May 26, 2003, the President of the Philippines signed into law the “Anti-Trafficking in Persons Act of 2003,” which 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 enactment of the new law is meant to fill the gaps in the current policies, programs and practices in the Philippines to curb trafficking in persons especially women and children.

II. SCOPE AND LIMITATION

This paper provides a picture of the Philippine responses to the problem of trafficking in persons in terms of legislation, policies and programs, and its current initiatives regarding the recovery, repatriation and reintegration of trafficked persons. While significant efforts have been undertaken along these areas, it may be premature to consider them as best practices as still much remains to be done. The enactment of the new law on trafficking in the Philippines is seen to institutionalize existing policies, programs and services and ensure coordination and cooperation among domestic government agencies and non-government organizations. While the new law addresses both international and domestic trafficking, for purposes of this paper, the discussion will be limited to international trafficking.

III. NATIONAL EFFORTS

Being a major country of origin, the issue of trafficking in persons is of critical importance to the Philippine government. The alarming increase in human trafficking cases affecting Filipinos during the past decade and the heightened complexity of the

problem has brought to the fore international and national debate the urgency to combat this transnational crime at all fronts, using a multi-pronged approach and with the cooperation and collaboration of all stakeholders.

A. Legal and Policy Framework

I. At the International Level

The Philippines is a signatory and/or a State Party to a number of international human rights instruments promoting and protecting the rights of women and children. Among the significant ones are the following:

- a. United Nations (UN) Universal Declaration of Human Rights;
- b. UN Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others;
- c. UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- d. UN Convention on the Rights of the Child (CRC) and its Optional Protocols;
- e. UN Convention on the Protection of Migrant Workers and Members of their Families;
- f. UN Convention Against Transnational Organized Crimes (UNTOC) Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; and
- g. ILO Convention No. 182 Elimination of the Worst Forms of Child Labor.

2. At the domestic level

a. The new “Anti-Trafficking in Persons Act of 2003” (Republic Act No. 9208).⁵

The new law 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.⁶

Prior to the enactment of the law, trafficking as a crime was loosely defined by law enforcement agencies. Trafficking in persons had been used interchangeably and confused with human smuggling and illegal recruitment. This has resulted in various methods of categorizing trafficking in persons, thus, making statistics on the

5. “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.”

6. Republic Act No. 9208, § 3(a).

matter inaccurate. With the new law, it is believed that the problem will be properly addressed and remedied.

The law further provides legal protection and establishes mechanisms for the support of trafficked persons as follows:

- Considers trafficked persons as victims rather than as offenders.⁷
- Recognizes the right to privacy of trafficked persons during investigation, prosecution and trial.⁸
- Gives trafficked persons preferential entitlement under the government's Witness Protection Program.⁹
- Provides protection and assistance to trafficked persons who are foreign nationals.¹⁰
- Mandates government agencies to establish and implement preventive, protective and rehabilitative programs for trafficked persons.¹¹
- Establishes a trust fund to be used exclusively for prevention, protection, rehabilitation, and reintegration programs.¹²

7. *Ibid*, § 17.

8. *Id*, § 7.

9. *Id*, § 18.

10. *Id*, § 19.

11. *Id*, § 16.

12. *Id*, § 15.

- Creates the Inter-Agency Council Against Trafficking in Persons (IACAT)¹³ which is mandated, among others, to:¹⁴
 - a. Formulate a comprehensive and integrated program to prevent and suppress trafficking in persons including reintegration program.
 - b. Develop a mechanism for the timely, coordinated and effective response to trafficking cases.

b. Other Relevant Statutes

Prior to the enactment of the new law against trafficking, there have been several existing laws that are relevant to the trafficking process. These include, among others, laws that regulate the provision of recruitment services to prospective migrants and passport applications, and laws that criminalize certain activities, such as the manufacture or production of fraudulent documents and the provision of **mail-order bride** services. Among these are the following:

- **Migrant Workers and Overseas Filipinos Act (R.A. No. 8042)** – Defines the crime of illegal recruitment

13. The IACAT is composed of the Secretary of the Department of Justice as Chairperson; the Secretary of the Department of Social Welfare and Development as Co-Chairperson; and the following as members: The Secretary of the Department of Foreign Affairs; the Secretary of the Department of Labor and Employment; the Administrator, Philippine Overseas Employment Administration; the Commissioner of the Bureau of Immigration; the Director General of the Philippine National Police; The Chairperson of the National Commission on the Role of Filipino Women; and three (3) representatives from non-government organization, each coming from the women, children and the overseas Filipino workers sectors.

14. *Id.*, § 20.

and prescribes penalties therefor. It provides for mandatory repatriation of underage migrant workers and strengthens government assistance through the country-team approach.

- **Special Protection of Children Against Child Abuse, Exploitation and Discrimination (R.A. No. 7610)** – 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.
- **Philippine Passport Act (R.A. No. 8239)** – Mandates the State to maintain the integrity of passports and travel documents and provides stiff penalties for offenders.
- **Mail Order Bride Law (R.A. No. 6985)** – Penalizes the practice of matching Filipino women for marriage to foreign nationals on a mail order basis.
- **Inter-Country Adoption Law (R.A. No. 8043)** – Sets the policies and procedures in inter-country adoption including penalties for violations. It also creates a Board as the central authority on matters relating to inter-country adoption.
- **Revised Penal Code (Act No. 3815)** – Defines Corruption of Minors and White Slave Trade as crimes.
- **Illegal Recruitment (R.A. No. 8062).**

B. Institutional Mechanisms

Several institutions or bodies were likewise established to principally provide policy directions against trafficking in persons and institutional support for trafficked persons. These include:

- **The Inter-Agency Council Against Trafficking (IACAT)** – Created under the new trafficking law (R.A. No. 9208), the Council is mandated, among others, to formulate a comprehensive and integrated program for the prevention of trafficking and the protection and support for trafficked persons including appropriate reintegration program.
- **The Senior Government Working Group (SGWG) on Human Trafficking and People Smuggling** – The SGWG 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 Office of the Undersecretary for Migrant Workers Affairs (OUMWA)** – Operating under the Department of Foreign Affairs (DFA), OUMWA 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 Sub-Committee on Human Trafficking of the National Law Enforcement Coordinating Committee (NALECC)** – The sub-committee 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)** – The 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 Anti-Illegal Recruitment Coordinating Councils (AIRCCs)** – The 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 Local Councils for the Protection of Children** – Established at the provincial, city, municipality and *barangay* (village) levels, the local Councils for the Protection of Children 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.

C. Support Programs and Services

The Philippine Government has acknowledged the problem of trafficking in women and children and has carried out activities through the collective efforts of various national and local government units in collaboration with the non-government organizations (NGOs) and the private sector. The church through its international networks and the various migrant-focused organizations, provide counseling, referrals and crisis care for Filipino workers abroad.

The Philippines has an active and vigilant civil society that assists the government in the prevention and protection of women and children as well as the recovery and reintegration of victims of trafficking.

Significant steps have been undertaken to address the problem of trafficking in women and children by developing several interventions and testing a few strategies in the areas of prevention, protection, prosecution and reintegration.¹⁵

The Senior Government Working Group (SGWG) on Trafficking in Persons and People Smuggling has adopted a National Strategy to address the problem using a comprehensive and holistic approach that includes prevention, protection, prosecution, and repatriation and reintegration, involving all stakeholders which include the communities, NGOs, civil society and the government.

The national strategy particularly on the matter of trafficking in persons shall be assumed and carried out by the Inter-Agency Council Against Trafficking (IACAT), it being mandated under the new trafficking law to formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons including the reintegration of trafficked persons.

IV. CURRENT PRACTICES IN RECOVERY, REPATRIATION AND REINTEGRATION

There are a variety of government responses that address the needs and interests of OFWs as a result of the enactment of Republic

15. 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.

Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995. The protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen abroad, in general, shall be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts.

These policy, programs and services which generally apply to distressed migrant workers and Filipinos overseas similarly apply to trafficked persons as they are likewise considered **in distress**. These programs and services include:

- **Legal Assistance Fund** used exclusively for providing legal services to migrant workers and overseas Filipinos in distress which includes fees for the foreign lawyers hired to represent migrant workers facing charges abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses. The DFA extends services to Filipinos abroad, including legal assistance, through the Philippine embassies and consulates, which are open to Filipino migrants, whether documented or undocumented, without need of any special requirement or qualification.
- **Assistance-to-Nationals Fund** under the DFA is used to pay for the repatriation expenses of Filipinos in distress.
- **Filipino Workers Resource Centers (FWRC)** have been established in countries where there is a large concentration of Filipinos. These centers operate daily on twenty-four (24) hour basis, and provide counseling, legal services, and welfare assistance, among others.

- **Repatriation Programs for Trafficked Persons** are undertaken by the Philippine foreign service posts with dispatch, with the view to repatriate the victim at the soonest. Temporary refuge is given to them at the FWRC, while appropriate interventions are done with the employer and the labor department.
- **Emergency Repatriation Fund** for the repatriation of workers during emergencies and where the principal (*i.e.*, foreign employer) or recruitment agency cannot be identified.

There are also existing rehabilitation and reintegration programs for women and children aimed at facilitating recovery from traumatic experience and return to normal life. It consists of individual or group counselling/therapy focusing on, among others affirming self-worth, getting victims and survivors out of a trap of negative emotions such as fear, shame, self-denied, guilt and self blame, and providing information on their situation to enable them to clearly see their options and plan for the future.¹⁶

The programs also include provision of opportunities for continuing education, as well as vocational and skills training. The livelihood assistance addresses the economic aspects of the reintegration process. As a support service, it provides grant of financial and technical assistance in project planning and training for those who would like to venture into income-generating projects or to expand their present business. Community organizing is also a component of the program.¹⁷

Some of these rehabilitation and reintegration programs are provided by the following institutions and centers:

16. *Ibid*, at p. 8.

17. *Id*.

- **The Department of Social Welfare and Development (DSWD) Crisis Intervention Unit**, which operates a twenty-four (24) hour hotline in the fifteen (15) regions of the country. It provides counseling service through the telephone, rescue operation to children and women victims of abuse and exploitation, and 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.¹⁸
- **DSWD Centers**, which include twelve (12) Girls Home, twelve (12) Reception and Study Centers for Children, four (4) *Lingap* Centers and twelve (12) Substitute Homes for Women. These centers provide temporary shelter and rehabilitation to women and children in especially difficult circumstances. The services include the following: 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.
- **Project Haven (Hospital-Assisted Crisis 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 (DOH), Women's Crisis Center (a non-government organization), and East Avenue Medical Center, piloted a government hospital-based healing center for victims of violence against women (VAW). This was the first hospital-based crisis center and the first GO-NGO model.

18. Philippine Policies and Initiatives to Address Trafficking of and Violence Against Women (1996-2001), p.5.

This pilot project also incorporated the 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 VAW, 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 DOH. 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
- **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

19. *Id.*, p. 7.

20. *Id.*, p. 3.

project included cross-cultural legal research component, a preventive education component and social assistance and health component.²¹

The implementation of the new law on trafficking is likewise meant to address the issues and concerns on repatriation and reintegration. The existing programs and services on rehabilitation and reintegration have been further strengthened by the provision of the new law, requiring mandatory services for trafficked persons such as emergency shelter or appropriate housing; counseling; free legal services; medical or psychological services; livelihood and skills training; and educational assistance to a trafficked child.²²

The rules and regulations implementing the new law on trafficking provides for the procedure for the rescue, recovery, repatriation and reintegration of trafficked persons. These procedures are basically those that are currently being followed with some enhancements to address the unique situation of trafficked persons.

A. Procedure for Rescue/Recovery at the Country of Destination

The embassy or consulate (Post), which has jurisdiction over the place where the victim is residing, has the primary responsibility for rescue/recovery at the country of destination. Upon receipt of a report, the Post shall verify the alleged incidence of trafficking and inquire about the condition of the victim. It shall then send a team composed of a consular officer and personnel from the Philippine Overseas Labor Office (POLO) or the Filipino Workers Resource Center (FWRC), the Office of the Social

21. *Id.*

22. R.A. No. 9208, § 23.

Welfare. Attaché as the case may be, to conduct a visit to the jail, establishment, work site or residence of the victim. Representations with the police authorities or other relevant law enforcement agencies shall be undertaken with respect to the conduct of rescue operations. Rescue operation shall be made in cooperation and close coordination with some NGO's, local contacts or rival individuals when necessary.

In countries and areas where the services of the FWRC is not accessible, a mobile type of services shall be extended by the country team members to trafficked persons regardless of their status in the host country.

The victim will be encouraged to execute a sworn statement, recounting among others, the people/establishment involved in the recruitment/transfer and deployment, the *modus operandi* employed to recruit, transport and deploy the victim, and other pertinent information, which could provide a lead in the investigation and eventual prosecution of the perpetrators.

B. Procedure for the Repatriation of Trafficked Persons

The DFA, in coordination with the Department of Labor and Employment (DOLE) and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked person regardless of whether they are documented or not. If, however, the repatriation of trafficked persons shall expose the victims 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. In appropriate cases and to avoid re-victimization, the Post may withdraw the passport of the victim and forward it to the DFA and in its place issue a travel document valid for direct travel to the Philippines. The Post concerned shall report to the DFA,

through the OUMWA, copy furnished the Office of Consular Affairs, the actual date of repatriation and other pertinent information and submit a copy of the sworn statement and other relevant documents.

In appropriate cases, especially when the victim is suffering from mental illness, has suffered physical or sexual abuse or has received serious threats to his or her life and safety, the victim will be met upon arrival in the Philippines by DSWD personnel, in coordination with other government agencies such as Overseas Workers Welfare Administration (OWWA), Bureau of Immigration (BI) and the DOH. The victim will be encouraged, if he or she has not done so before, to execute a sworn statement with the view of filing the appropriate charges against the suspected trafficker in the Philippines. In cases where recruitment agencies are involved, the case shall also be referred to the Philippine Overseas Employment Administration (POEA) for appropriate action. The report shall also be forwarded to the BI for case build up.

The victim may be referred to the DSWD/Local Social Welfare and Development Office or to the National Bureau of Investigation (NBI) One-Stop Shop for psycho-social interventions, psychological and medical examination and follow-through therapy sessions. Protective custody and emergency shelter shall also be provided to the victim, in appropriate cases.

C. Rehabilitation and Reintegration

A comprehensive, gender-sensitive and child friendly program for the rehabilitation and reintegration of victims/survivors of trafficking shall be provided, such as but not limited to residential care, child placement, educational assistance, livelihood and skills training and other community-based services. Such programs must

be responsive to the specific needs and problems of the victims/survivors and their families. Thus, the active involvement and participation of the victims/survivors in the rehabilitation and reintegration process is encouraged. The cooperation of NGOs and other members of the civil society including the business community, tourism-related industries as well as the media in the rehabilitation and reintegration of victims/survivors is similarly undertaken.

In the rehabilitation and reintegration process, the victim's family is likewise involved.

V. ISSUES AND CONCERNS

A. Recovery and Repatriation

From the point of view of countries of origin, the issues concerning recovery and repatriation are intertwined. The Philippine Post's ability to rescue and recover victims of trafficking affects its ability to ensure a safe and orderly repatriation process for victims.

The following are the issues and concerns that have a bearing on the Philippines capacity to meet the needs of victims of trafficking during recovery and repatriation:

I. Limited number of Foreign Service Posts.

As earlier mentioned, Filipinos are found in over ninety (90) countries worldwide. However, the Philippines has only eighty-three (83) Posts abroad. In areas where there are huge concentrations of Filipinos such as Saudi Arabia where there are almost a million Filipinos, there are only two (2) Foreign Service Posts.

This severely curtails the Philippines' ability to promptly and proactively meet the needs of its citizens abroad, especially those who are in distress. To further illustrate, the Philippine Post in Nairobi has jurisdiction over twenty (20) African countries.

2. Trafficking destinations beyond embassy range.

To further aggravate the situation, some trafficking destinations are beyond embassy range. Moreover, trafficking syndicates can change routes as often as they change *modus operandi* to evade interception by law enforcement agents.

3. Clandestine and syndicated nature of trafficking.

The clandestine and syndicated nature of trafficking operations severely hinders the capacity of Foreign Service Posts to recover trafficked persons and to prevent potential victims, from being victimized in the first place.

4. Identification of trafficked persons.

The first and most important step in any recovery and assistance system is to identify a victim of trafficking in persons as such. It is critical to correctly identify a person as trafficked since failure to do so can likely result in further denial of that person's rights.

Apart from the logistical limitations that the Philippines face, its Foreign Service personnel are yet to undergo a comprehensive capability training on handling trafficking cases, including identifying trafficked persons. And one of the main problems identifying trafficked persons and treating them as such is that they often do not see themselves as **victims**. Filipino migrant workers may

prefer to suffer exploited labor conditions in a wealthier destination country and be able to support their families rather than face impoverishment back home. To emphasize this point, according to Anti-Slavery International:

People who migrate in search of employment or a better life, and end up being trafficked, tend to be those who had the initiative and courage to change their situation, be seeking better fortune and opportunity in migration. These are not people who will always blame others for misfortune, and they certainly do not start by seeing themselves as victims.²³

5. Lack of cooperation from victims.

Wrong expectations of how a **victim** should behave often leads to misinterpretation by both authorities and service providers, which may often shift the blame to the trafficked person.²⁴ For many trafficked persons, they are not **rescued** from their situation, but are **captured** by the authorities. It is important to address trafficked persons who are **hostile victims** and witnesses, in the sense of being unwilling to cooperate with the authorities.²⁵

23. See E. Pearson, *Human traffic, human rights: redefining victim protection* (London, Anti Slavery International, 2002), pp. 32-33.

24. *Id.*

25. According to a draft ILO Information Guide (Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, Booklet 6, Trafficking of women and girls), it is necessary, for example, to recognize that their hostility may be a direct result of the situation of abuse they have suffered and that treatment by authorities generally compounds, rather than overcomes, this. Since trafficked persons are rarely treated or

6. Trafficked persons are treated as criminals.

In both countries of destination and origin, trafficked persons are often treated as criminals rather than as victims. While in the country of destination, they may be prosecuted and detained for violations of immigration and labor laws as well as anti-prostitution laws. Returning to their countries of origin, they may face prosecution for using false documents and/or assuming fraudulent identities.

B. Reintegration

Since most countries of destination consider trafficked persons as illegal migrants and corollary to this, do not provide trafficked persons with permanent legal residence status, they are deported or voluntarily returned to their countries of origin. *En route* and upon return home, trafficked persons face several additional risks, including being recaptured by traffickers. The following are the issues and concerns that pose as challenges in reintegrating victims of trafficking:

I. Lack of resources to implement reintegration program.

A developing country like the Philippines is perennially confronted with the lack of resources to implement a comprehensive, adequate and appropriate reintegration program for victims of trafficking. Apart from the lack of temporary shelters for victims, there is lack of personnel who can provide timely and appropriate psycho-social interventions and follow-through therapy sessions.

identified as victims of crime, they are unlikely to be helpful in assisting in prosecutions right away.

2. Lack of capability of service providers.

Working with trafficked persons is a very difficult and long-term process. It requires well-trained and committed staff, a good understanding of the issue and a well-developed work methodology and an individual approach to each case.²⁶

3. Security and safety.

While the security is a priority in the country of destination and during the journey, there is a lack of consideration for the safety of the victim upon return. The victim may suffer from reasonable fear of reprisals from traffickers. Their unwillingness to cooperate in the prosecution of the traffickers is largely due to serious threat to their lives and safety or that of their families.

4. Stigmatization.

The shame and stigma associated with being a prostitute, particularly for victims of sex trafficking hinders them from returning and reintegrating with their families and communities of origin. Those who are not able to overcome the stigma are most prone to becoming re-victimized.

VI. PROPOSED MEASURES FOR ACTION

As stated in the beginning of this paper, the Philippines' effort to address trafficking in persons (limited to transnational, for

26. See UNICEF, UNOHCHR and OSCE-ODHIHR, *Trafficking in Human Beings in Southeastern Europe* (Belgrade, UNICEF, June 2003) pp. 144-143.

purposes of this paper) is a work in progress. Even with the passage of the new anti-trafficking law, the Philippine situation is still in 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:²⁷

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.

27. Most of the recommendations were culled from United Nations, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 6, pp. 10-11.

- 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 ²⁸

- 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

28. See Article 8 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.

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 for purposes of this country paper, the following are general recommendations that have bearing on recovery, repatriation and reintegration:

I. Ratify UN instruments.

Countries are encouraged to ratify the United Nations Convention on Transnational Organized Crime and its two (2) 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.

2. 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.

3. 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.

4. 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.

5. 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.

**Protocol to Prevent, Suppress and
Punish Trafficking in Persons,
Especially Women and Children,
Supplementing the United Nations
Convention Against Transnational
Organized Crime**

United Nations

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/III of 9 December 1998, in which the Assembly decided to establish an open-ended inter-governmental *ad hoc* committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. GENERAL PROVISIONS

ARTICLE 1. *Relation with the United Nations Convention Against Transnational Organized Crime.*

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with Article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

ARTICLE 2. *Statement of Purpose.*

The purposes of this Protocol are:

- a. To prevent and combat trafficking in persons, paying particular attention to women and children;
- b. To protect and assist the victims of such trafficking, with full respect for their human rights; and
- c. To promote cooperation among States Parties in order to meet those objectives.

ARTICLE 3. *Use of Terms.*

For the purposes of this Protocol:

- a. “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be

considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

4. “Child” shall mean any person under eighteen (18) years of age.

ARTICLE 4. *Scope of Application.*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with Article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

ARTICLE 5. *Criminalization.*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - a. Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph I of this article;
 - b. Participating as an accomplice in an offence established in accordance with paragraph I of this article; and
 - c. Organizing or directing other persons to commit an offence established in accordance with paragraph I of this article.

II. PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

ARTICLE 6. Assistance to and Protection of Victims of Trafficking in Persons.

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - a. Information on relevant court and administrative proceedings;
 - b. Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - a. Appropriate housing;
 - b. Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

- c. Medical, psychological and material assistance; and
 - d. Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
 5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.
 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

ARTICLE 7. *Status of Victims of Trafficking in Persons in Receiving States.*

1. In addition to taking measures pursuant to Article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

ARTICLE 8. *Repatriation of Victims of Trafficking in Persons.*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent

residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. PREVENTION, COOPERATION AND OTHER MEASURES

ARTICLE 9. *Prevention of Trafficking in Persons.*

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - a. To prevent and combat trafficking in persons; and
 - b. To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to

discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

ARTICLE 10. *Information Exchange and Training.*

- I. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - a. Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - b. The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - c. The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it

should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

ARTICLE II. *Border Measures.*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with Article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or

revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to Article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

ARTICLE 12. *Security and Control of Documents.*

Each State Party shall take such measures as may be necessary, within available means:

- a. To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- b. To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

ARTICLE 13. *Legitimacy and Validity of Documents.*

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. FINAL PROVISIONS

ARTICLE 14. *Saving Clause.*

- I. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under

international law, including international humanitarian law and international human rights law and, in particular where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

ARTICLE 15. *Settlement of Disputes.*

- I. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two (2) or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six (6) months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party

that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 16. *Signature, Ratification, Acceptance, Approval and Accession.*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of

the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

ARTICLE 17. *Entry into Force.*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph I of this article, whichever is the later.

ARTICLE 18. *Amendment.*

1. After the expiry of five (5) years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties

to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph I of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph I of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

ARTICLE 19. *Denunciation.*

- I. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations.

Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

ARTICLE 20. *Depositary and Languages.*

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Republic Act No. 9262

AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

SECTION 1. *Short Title.* - This Act shall be known as the “Anti-Violence Against Women and Their Children Act of 2004.”

SECTION 2. *Declaration of Policy.* - It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

SECTION 3. *Definition of Terms.* - As used in this Act,

- (a) “Violence against women and their children” refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with

whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

- A. "Physical Violence" refers to acts that include bodily or physical harm;
- B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
 - a. Rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
 - b. Acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
 - c. Prostituting the woman or child.
- C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or

humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

- D. “Economic abuse” refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:
1. Withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
 2. Deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
 3. Destroying household property;
 4. Controlling the victims’ own money or properties or solely controlling the conjugal money or properties.
- (b) “Battery” refers to an act of inflicting physical harm upon the woman or her child resulting to the physical and psychological or emotional distress.
- (c) “Battered Woman Syndrome” refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.

- (d) “Stalking” refers to an intentional act committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof.
- (e) “Dating relationship” refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship.
- (f) “Sexual relations” refers to a single sexual act which may or may not result in the bearing of a common child.
- (g) “Safe place or shelter” refers to any home or institution maintained or managed by the Department of Social Welfare and Development (DSWD) or by any other agency or voluntary organization accredited by the DSWD for the purposes of this Act or any other suitable place the resident of which is willing temporarily to receive the victim.
- (h) “Children” refer to those below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610. As used in this Act, it includes the biological children of the victim and other children under her care.

SECTION 4. Construction. - This Act shall be liberally construed to promote the protection and safety of victims of violence against women and their children.

SECTION 5. *Acts of Violence Against Women and Their Children.* - The crime of violence against women and their children is committed through any of the following acts:

- a. Causing physical harm to the woman or her child;
- b. Threatening to cause the woman or her child physical harm;
- c. Attempting to cause the woman or her child physical harm;
- d. Placing the woman or her child in fear of imminent physical harm;
- e. Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
 1. Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
 2. Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 3. Depriving or threatening to deprive the woman or her child of a legal right;

4. Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties.
- f. Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- g. Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- h. Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
 1. Stalking or following the woman or her child in public or private places;
 2. Peering in the window or lingering outside the residence of the woman or her child;
 3. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 4. Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
 5. Engaging in any form of harassment or violence;

6. Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/ children.

SECTION 6. Penalties. - The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

- a. Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of *prision mayor*; those constituting less serious physical injuries shall be punished by *prision correccional*; and those constituting slight physical injuries shall be punished by *arresto mayor*.

Acts falling under Section 5(b) shall be punished by imprisonment of two (2) degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than *arresto mayor*.

- b. Acts falling under Section 5(c) and 5(d) shall be punished by *arresto mayor*;
- c. Acts falling under Section 5(e) shall be punished by *prision correccional*;

- d. Acts falling under Section 5(f) shall be punished by *arresto mayor*;
- e. Acts falling under Section 5(g) shall be punished by *prision mayor*;
- f. Acts falling under Section 5(h) and section 5(i) shall be punished by *prision mayor*.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (Php100,000.00) but not more than Three hundred thousand pesos (Php300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

SECTION 7. *Venue.* - The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant.

SECTION 8. *Protection Orders.* - A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of

the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the *barangay* protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

- a. Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;
- b. Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- c. Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;
- d. Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;

- e. Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- f. Granting a temporary or permanent custody of a child/children to the petitioner;
- g. Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, *the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer and for the same to be automatically remitted directly to the woman.* Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for *indirect contempt of court*;
- h. Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on matter;

- i. Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, child care expenses and loss of income;
- j. Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and
- k. Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

Any of the reliefs provided under this section shall be granted even in the absence of a decree of legal separation or annulment or declaration of absolute nullity of marriage.

The issuance of a BPO or the pendency of an application for a BPO shall not preclude a petitioner from applying for, or the court from granting a TPO or PPO.

SECTION 9. *Who may file Petition for Protection Orders.*

- A petition for protection order may be filed by any of the following:

- a. the offended party;
- b. parents or guardians of the offended party;
- c. ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- d. officers or social workers of the DSWD or social workers of local government units (LGUs);
- e. police officers, preferably those in charge of women and children's desks;

- f. *Punong Barangay* or *Barangay Kagawad*;
- g. lawyer, counselor, therapist or healthcare provider of the petitioner;
- h. At least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.

SECTION 10. *Where to Apply for a Protection Order.* -

Applications for BPOs shall follow the rules on venue under Section 409 of the Local Government Code of 1991 and its implementing rules and regulations. An application for a TPO or PPO may be filed in the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court with territorial jurisdiction over the place of residence of the petitioner: Provided, however, That if a family court exists in the place of residence of the petitioner, the application shall be filed with that court.

SECTION 11. *How to Apply for a Protection Order.* -

The application for a protection order must be in writing, signed and verified under oath by the applicant. It may be filed as an independent action or as incidental relief in any civil or criminal case the subject matter or issues thereof partakes of a violence as described in this Act. A standard protection order application form, written in English with translation to the major local languages, shall be made available to facilitate applications for protection orders, and shall contain, among other, the following information:

- a. names and addresses of petitioner and respondent;
- b. description of relationships between petitioner and respondent;

- c. a statement of the circumstances of the abuse;
- d. description of the reliefs requested by petitioner as specified in Section 8 herein;
- e. request for counsel and reasons for such;
- f. request for waiver of application fees until hearing; and
- g. an attestation that there is no pending application for a protection order in another court.

If the applicant is not the victim, the application must be accompanied by an affidavit of the applicant attesting to (a) the circumstances of the abuse suffered by the victim and (b) the circumstances of consent given by the victim for the filing of the application. When disclosure of the address of the victim will pose danger to her life, it shall be so stated in the application. In such a case, the applicant shall attest that the victim is residing in the municipality or city over which court has territorial jurisdiction, and shall provide a mailing address for purpose of service processing.

An application for protection order filed with a court shall be considered an application for both a TPO and PPO.

Barangay officials and court personnel shall assist applicants in the preparation of the application. Law enforcement agents shall also extend assistance in the application for protection orders in cases brought to their attention.

SECTION 12. *Enforceability of Protection Orders.* - All TPOs and PPOs issued under this Act shall be enforceable anywhere in the Philippines and a violation thereof shall be punishable with a fine ranging from Five Thousand Pesos (Php 5,000.00) to Fifty Thousand Pesos (Php 50,000.00) and/or imprisonment of six (6) months.

SECTION 13. *Legal Representation of Petitioners for a Protection Order.* - If the woman or her child requests in the applications for a protection order for the appointment of counsel because of lack of economic means to hire a counsel *de parte*, the court shall immediately direct the Public Attorney's Office (PAO) to represent the petitioner in the hearing on the application. If the PAO determines that the applicant can afford to hire the services of a counsel *de parte*, it shall facilitate the legal representation of the petitioner by a counsel *de parte*. The lack of access to family or conjugal resources by the applicant, such as when the same are controlled by the perpetrator, shall qualify the petitioner to legal representation by the PAO.

However, a private counsel offering free legal service is not barred from representing the petitioner.

SECTION 14. *Barangay Protection Orders (BPOs); Who May Issue and How.* - Barangay Protection Orders (BPOs) refer to the protection order issued by the *Punong Barangay* ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A *Punong Barangay* who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after *ex parte* determination of the basis of the application. If the *Punong Barangay* is unavailable to act on the application for a BPO, the application shall be acted upon by any available *Barangay Kagawad*. If the BPO is issued by a *Barangay Kagawad* the order must be accompanied by an attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time for the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay* or *Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the *Punong Barangay*.

SECTION 15. *Temporary Protection Orders.* - Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

SECTION 16. *Permanent Protection Orders.* - Permanent Protection Order (PPO) refers to protection order issued by the court after notice and hearing.

Respondent's non-appearance despite proper notice, or his lack of a lawyer, or the non-availability of his lawyer shall not be a ground for rescheduling or postponing the hearing on the merits of the issuance of a PPO. If the respondent appears without counsel on the date of the hearing on the PPO, the court shall appoint a lawyer for the respondent and immediately proceed with the hearing. In case the respondent fails to appear despite proper notice, the court shall allow *ex parte* presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the applicant is made.

The court shall, to the extent possible, conduct the hearing on the merits of the issuance of a PPO in one (1) day. Where the court is unable to conduct the hearing within one (1) day and the TPO issued is due to expire, the court shall continuously extend or renew the TPO for a period of thirty (30) days at each particular time until final judgment is issued. The extended or renewed TPO may be modified by the court as may be necessary or applicable to address the needs of the applicant.

The court may grant any, some or all of the reliefs specified in Section 8 hereof in a PPO. A PPO shall be effective until revoked by a court upon application of the person in whose favor the order was issued. The court shall ensure immediate personal service of the PPO on respondent.

The court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application.

Regardless of the conviction or acquittal of the respondent, the Court must determine whether or not the PPO shall become final. Even in a dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

SECTION 17. *Notice of Sanction in Protection Orders.* -

The following statement must be printed in bold-faced type or in capital letters on the protection order issued by the *Punong Barangay* or court:

“Violation of this order is punishable by law.”

SECTION 18. *Mandatory Period For Acting on Applications For Protection Orders.* -

Failure to act on an application for a protection order within the reglementary period

specified in the previous sections without justifiable cause shall render the official or judge administratively liable.

SECTION 19. *Legal Separation Cases.* - In cases of legal separation, where violence as specified in this Act is alleged, Article 58 of the Family Code shall not apply. The court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the mandatory period specified in this Act.

SECTION 20. *Priority of Applications for a Protection Order.* - *Ex parte* and adversarial hearings to determine the basis of applications for a protection order under this Act shall have priority over all other proceedings. *Barangay* officials and the courts shall schedule and conduct hearings on applications for a protection order under this Act above all other business and, if necessary, suspend other proceedings in order to hear applications for a protection order.

SECTION 21. *Violation of Protection Orders.* - A complaint for a violation of a BPO issued under this Act must be filed directly with any municipal trial court, metropolitan trial court, or municipal circuit trial court that has territorial jurisdiction over the *barangay* that issued the BPO. Violation of a BPO shall be punishable by imprisonment of thirty (30) days without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

A judgment of violation of a BPO may be appealed according to the Rules of Court. During trial and upon judgment, the trial court may *motu proprio* issue a protection order as it deems necessary without need of an application.

Violation of any provision of a TPO or PPO issued under this Act shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

SECTION 22. *Applicability of Protection Orders to Criminal Cases.* - The foregoing provisions on protection orders shall be applicable in criminal cases and/or shall be included in the civil actions deemed impliedly instituted with the criminal actions involving violence against women and their children.

SECTION 23. *Bond to Keep the Peace.* - The Court may order any person against whom a protection order is issued to give a bond to keep the peace, to present two (2) sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented.

Should the respondent fail to give the bond as required, he shall be detained for a period which shall in no case exceed six (6) months, if he shall have been prosecuted for acts punishable under Sections 5(a) to 5(f) and not exceeding thirty (30) days, if for acts punishable under Section 5(g) to 5(i).

The protection orders referred to in this section are the TPOs and the PPOs issued only by the courts.

SECTION 24. *Prescriptive Period.* - Acts falling under Sections 5(a) to 5(f) shall prescribe in twenty (20) years. Acts falling under Sections 5(g) to 5(i) shall prescribe in ten (10) years.

SECTION 25. *Public Crime.* - Violence against women and their children shall be considered a public offense which may be

prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.

SECTION 26. *Battered Woman Syndrome as a Defense.* - Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/ psychologists.

SECTION 27. *Prohibited Defense.* - Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under this Act.

SECTION 28. *Custody of children.* - The woman victim of violence shall be entitled to the custody and support of her child/ children. Children below seven (7) years old or older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

A victim who is suffering from battered woman syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the perpetrator of a woman who is suffering from Battered Woman Syndrome.

SECTION 29. Duties of Prosecutors/Court Personnel. -

Prosecutors and court personnel should observe the following duties when dealing with victims under this Act:

- a. Communicate with the victim in a language understood by the woman or her child; and
- b. Inform the victim of her/his rights including legal remedies available and procedure, and privileges for indigent litigants.

SECTION 30. Duties of Barangay Officials and Law Enforcers. - *Barangay* officials and law enforcers shall have the following duties:

- a. Respond immediately to a call for help or request for assistance or protection of the victim by entering the dwelling if necessary whether or not a protection order has been issued and ensure the safety of the victim/s;
- b. Confiscate any deadly weapon in the possession of the perpetrator or within plain view;
- c. Transport or escort the victim/s to a safe place of their choice or to a clinic or hospital;
- d. Assist the victim in removing personal belongs from the house;
- e. Assist the *barangay* officials and other government officers and employees who respond to a call for help;
- f. Ensure the enforcement of the Protection Orders issued by the *Punong Barangay* or by the courts;
- g. Arrest the suspected perpetrator without a warrant when any of the acts of violence defined by this Act is occurring,

or when he/she has personal knowledge that any act of abuse has just been committed, and there is imminent danger to the life or limb of the victim as defined in this Act; and

- h. Immediately report the call for assessment or assistance of the DSWD, Social Welfare Department of LGUs or accredited non-government organizations (NGOs).

Any *barangay* official or law enforcer who fails to report the incident shall be liable for a fine not exceeding Ten Thousand Pesos (Php10,000.00) or whenever applicable criminal, civil or administrative liability.

SECTION 31. *Healthcare Provider Response to Abuse.* -

Any healthcare provider, including, but not limited to, an attending physician, nurse, clinician, *barangay* health worker, therapist or counselor who suspects abuse or has been informed by the victim of violence shall:

- a. Properly document any of the victim's physical, emotional or psychological injuries;
- b. Properly record any of victim's suspicions, observations and circumstances of the examination or visit;
- c. Automatically provide the victim free of charge a medical certificate concerning the examination or visit;
- d. Safeguard the records and make them available to the victim upon request at actual cost; and
- e. Provide the victim immediate and adequate notice of rights and remedies provided under this Act, and services available to them.

SECTION 32. *Duties of Other Government Agencies and LGUs.* - Other government agencies and LGUs shall establish programs such as, but not limited to, education and information campaign and seminars or symposia on the nature, causes, incidence and consequences of such violence particularly towards educating the public on its social impacts.

It shall be the duty of the concerned government agencies and LGUs to ensure the sustained education and training of their officers and personnel on the prevention of violence against women and their children under the Act.

SECTION 33. *Prohibited Acts.* - A *Punong Barangay, Barangay Kagawad* or the court hearing an application for a protection order shall not order, direct, force or in any way unduly influence the applicant for a protection order to compromise or abandon any of the reliefs sought in the application for protection under this Act. Section 7 of the Family Courts Act of 1997 and Sections 410, 411, 412 and 413 of the Local Government Code of 1991 shall not apply in proceedings where relief is sought under this Act.

Failure to comply with this Section shall render the official or judge administratively liable.

SECTION 34. *Persons Intervening Exempt from Liability.*
- In every case of violence against women and their children as herein defined, any person, private individual or police authority or *barangay* official who, acting in accordance with law, responds or intervenes without using violence or restraint greater than necessary to ensure the safety of the victim, shall not be liable for any criminal, civil or administrative liability resulting therefrom.

SECTION 35. *Rights of Victims.* - In addition to their rights under existing laws, victims of violence against women and their children shall have the following rights:

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

SECTION 36. *Damages.* - Any victim of violence under this Act shall be entitled to actual, compensatory, moral and exemplary damages.

SECTION 37. *Hold Departure Order.* - The court shall expedite the process of issuance of a hold departure order in cases prosecuted under this Act.

SECTION 38. *Exemption from Payment of Docket Fee and Other Expenses.* - If the victim is an indigent or there is an immediate necessity due to imminent danger or threat of danger to act on an application for a protection order, the court shall accept the application without payment of the filing fee and other fees and of transcript of stenographic notes.

SECTION 39. *Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC).* - In pursuance of the abovementioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their Children, hereinafter known as the Council, which shall be composed of the following agencies:

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

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.

The Council members may designate their duly authorized representative who shall have a rank not lower than an assistant

secretary or its equivalent. These representatives shall attend Council meetings in their behalf, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

SECTION 40. *Mandatory Programs and Services for Victims.* - The DSWD and LGUs shall provide the victims temporary shelters, provide counseling, psycho-social services and/or, recovery, rehabilitation programs and livelihood assistance.

The DOH shall provide medical assistance to victims.

SECTION 41. *Counseling and Treatment of Offenders.* - The DSWD shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement.

SECTION 42. *Training of Persons Involved in Responding to Violence Against Women and Their Children Cases.* - All agencies involved in responding to violence against women and their children cases shall be required to undergo education and training to acquaint them with:

- a. The nature, extent and causes of violence against women and their children;
- b. The legal rights of, and remedies available to, victims of violence against women and their children;
- c. The services and facilities available to victims or survivors;
- d. The legal duties imposed on police officers to make arrest and to offer protection and assistance; and

- e. Techniques for handling incidents of violence against women and their children that minimize the likelihood of injury to the officer and promote the safety of the victim or survivor.

The PNP, in coordination with LGUs shall establish an education and training program for police officers and *barangay* officials to enable them to properly handle cases of violence against women and their children.

SECTION 43. *Entitled to Leave.* - Victims under this Act shall be entitled to take a paid leave of absence up to ten (10) days in addition to other paid leaves under the Labor Code and Civil Service Rules and Regulations, extendible when the necessity arises as specified in the protection order.

Any employer who shall prejudice the right of the person under this section shall be penalized in accordance with the provisions of the Labor Code and Civil Service Rules and Regulations. Likewise, an employer who shall prejudice any person for assisting a co-employee who is a victim under this Act shall likewise be liable for discrimination.

SECTION 44. *Confidentiality.* - All records pertaining to cases of violence against women and their children including those in the *barangay* shall be confidential and all public officers and employees and public or private clinics or hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court.

Any person who violates this provision shall suffer the penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand pesos (Php500,000.00).

SECTION 45. *Funding.* - The amount necessary to implement the provisions of this Act shall be included in the annual General Appropriations Act (GAA).

The Gender and Development (GAD) Budget of the mandated agencies and LGU's shall be used to implement services for victim of violence against women and their children.

SECTION 46. *Implementing Rules and Regulations.* - Within six (6) months from the approval of this Act, the DOJ, the NCRFW, the DSWD, the DILG, the DOH, and the PNP, and three (3) representatives from NGOs to be identified by the NCRFW, shall promulgate the Implementing Rules and Regulations (IRR) of this Act.

SECTION 47. *Supplementary Application.* - For purposes of this Act, the Revised Penal Code and other applicable laws, shall have supplementary application.

SECTION 48. *Separability Clause.* - If any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions shall not be affected.

SECTION 49. *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.

SECTION 50. *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.

(*Sgd.*) **JOSE DE VENECIA, Jr.** (*Sgd.*) **FRANKLIN DRILON**
Speaker of the House President of the Senate
of Representatives

This Act, which is a consolidation of Senate Bill No. 2723 and House Bill Nos. 5516 and 6054, was finally passed by the Senate and the House of Representatives on January 29, 2004 and February 2, 2004, respectively.

(*Sgd.*) **ROBERT P. NAZARENO** (*Sgd.*) **OSCAR YABES**
Secretary General of the House Secretary of the Senate
of Representatives

Approved: March 8, 2004

(*Sgd.*) **GLORIA MACAPAGAL-ARROYO**
President of the Philippines

Republic Act No. 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

*Be it enacted by the Senate and House of Representatives of the
Philippines in Congress assembled:*

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

SECTION 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 mitigation 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.

SECTION 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 participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force or 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 value 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 shows, 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.

SECTION 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; and
- (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

SECTION 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 promoting 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, of 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 facilitating the acquisition of clearances and necessary exit documents 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, tampered or fraudulent travel documents for the purpose of promoting 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; and
- (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.

SECTION 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 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).

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 10. *Penalties and Sanctions.* - The following penalties and sanctions are hereby established for the offenses enumerated in this 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 (Php1,000,000.00) but not more than Two million pesos (Php2,000,000.00);
- (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 (Php500,000.00) but not more than One million pesos (Php1,000,000.00);
- (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 (Php2,000,000.00) but not more than Five million pesos (Php5,000,000.00);
- (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 (Php500,000.00) but not more than One million pesos (Php1,000,000.00);
- (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.

SECTION 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 (Php50,000.00); and
- (b) *Second and subsequent offenses* - imprisonment of one (1) year and a fine of One hundred thousand pesos (Php 100,000.00).

SECTION 12. *Prescribed 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.

SECTION 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.

SECTION 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.

SECTION 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, NGO and international organizations; and
- (e) Promotion of information and education campaign on trafficking.

SECTION 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 eliminating 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 and 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 the 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 (POs), civic organizations and other volunteer groups.

SECTION 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.

SECTION 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.

SECTION 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 be entitled to appropriate 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 of offenders.

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

SECTION 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 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 for migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and 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.

SECTION 22. *Secretariat to the Council.* - The Department of Justice shall establish the necessary Secretariat for the Council.

SECTION 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.

SECTION 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.

SECTION 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 victims 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.

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

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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 provisions of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

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

Approved,

(*Sgd.*) **FRANKLIN DRILON** (*Sgd.*) **JOSE DE VENECIA, JR.**
President of the Senate Speaker of the House of
Representatives

This Act, which is a consolidation of Senate Bill No. 2444 and House Bill No. 4432 was finally passed by the Senate and the House of Representatives on May 12, 2003, respectively.

(*Sgd.*) **OSCAR G. YABES** (*Sgd.*) **ROBERTO P. NAZARENO**
Secretary of Senate Secretary General of the
House of Representatives

Approved: May 26, 2003

(*Sgd.*) **GLORIA MACAPAGAL-ARROYO**
President of the Philippines

Rules and Regulations Implementing Republic Act No. 9208, Otherwise known as the “Anti-Trafficking in Persons Act of 2003”

Pursuant to the authority of the Inter-Agency Council Against Trafficking (IACAT) under Section 29 of Republic Act No. 9208, otherwise known as the “Anti-Trafficking in Persons Act of 2003,” the following rules and regulations are hereby promulgated to implement the provisions of said Act:

Article I General Provisions

SECTION 1. *Title.* These rules and regulations shall be known and cited as “The Rules and Regulations Implementing the Anti-Trafficking in Persons Act of 2003.”

SECTION 2. *Purpose.* These rules and regulations are hereby promulgated to institute policies, establish the institutional mechanism for the support and protection of trafficked persons and prescribe the procedures and guidelines for the implementation of Republic Act No. 9208 in order to facilitate compliance therewith and achieve the objectives thereof.

SECTION 3. *Declaration of State Policy.* The State values the dignity of every human person and guarantees the respect for individual rights. Towards this end, the State shall give the 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.

The State also recognizes the equal rights and inherent human dignity of women and men, as well as the rights of children, as enshrined and guaranteed in the following international instruments:

- (i) United Nations Universal Declaration on Human Rights;
- (ii) United Nations Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others;
- (iii) United Nations Convention on the Elimination of all Forms of Discrimination Against Women;
- (iv) United Nations Convention on the Rights of the Child and its Optional Protocols;
- (v) United Nations Convention on the Protection of Migrant Workers and Members of their Families;
- (vi) United Nations Convention Against Transnational Organized Crimes including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- (vii) ILO Convention No. 182 (Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor); and

- (viii) All other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a State Party.

In all actions concerning children, their best interests shall be the paramount consideration.

SECTION 4. Construction. These rules and regulations shall be liberally construed in favor of the trafficked persons to promote human dignity; ensure their recovery, rehabilitation and reintegration into the mainstream of society; eliminate trafficking in persons; and achieve the objectives of the Act.

Article II **Definition of Terms**

SECTION 5. Definition of Terms. As used in these rules and regulations, unless the context otherwise requires, the following terms shall be understood to mean:

- (a) **Act** - refers to Republic Act No. 9208, otherwise known as the “Anti-Trafficking in Persons Act of 2003;”
- (b) **Council** - refers to the Inter-Agency Council Against Trafficking (IACAT) created under Section 20 of the Act;
- (c) **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;

- (d) **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;
- (e) **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;
- (f) **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;
- (g) **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;

- (h) **Sexual Exploitation** - refers to participation 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;
- (i) **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 value of the services as reasonably assessed is not applied toward the liquidation of the debt;
- (j) **Pornography** - refers to any representation, through publication, exhibition, cinematography, indecent shows, 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 primarily for sexual purposes; and
- (k) **Involuntary Servitude** - refers to a condition of enforced, compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or other forms of abuse or physical restraint, or the abuse or threatened abuse of the legal process.

Article III
The Inter-Agency Council
Against Trafficking (IACAT)

SECTION 6. *Creation.* The Inter-Agency Council Against Trafficking (IACAT) shall be established which shall be primarily tasked to coordinate, monitor and oversee the implementation of the Act.

SECTION 7. *Composition.* The Council shall be composed of the following:

- (a) Secretary, Department of Justice (DOJ) as Chairperson;
- (b) Secretary, Department of Social Welfare and Development (DSWD) as Co-Chairperson;
- (c) Secretary, Department of Foreign Affairs (DFA) as Member;
- (d) Secretary, Department of Labor and Employment (DOLE) as Member;
- (e) Administrator, Philippine Overseas Employment Administration (POEA) as Member;
- (f) Commissioner, Bureau of Immigration (BI) as Member;
- (g) Director-General, Philippine National Police (PNP) as Member;
- (h) Chairperson, National Commission on the Role of Filipino Women (NCRFW) as Member;
- (i) One (1) representative from an NGO representing the women sector as Member;

- (j) One (1) representative from an NGO representing the Overseas Filipino Workers (OFWs) sector as Member; and
- (k) One (1) representative from an NGO representing the children sector as Member.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an Assistant Secretary or its equivalent to attend the meetings of the Council.

SECTION 8. *Qualifications, Selection and Appointment of NGO and its Representatives.* The NGOs, with national and international networks, and its representatives to the Council must have a proven track record of involvement in the prevention and suppression of trafficking in persons. They shall be nominated by any of the government agency representatives of the Council and shall be selected by majority vote thereof and endorsed to the President. They shall be appointed by the President for a term of three (3) years.

SECTION 9. *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 the Act;
- (c) Monitor and oversee the strict implementation of the 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 the 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 the Act;
- (j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and 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 the Act.

SECTION 10. *Reportorial Function.* Within sixty (60) days after the closing of each calendar year, the Council shall submit to the Office of the President a comprehensive report on the actions and programs taken by the Council relative to and concerning the implementation of the Act.

SECTION 11. *Meetings of the Council.* The Council shall meet regularly at least once a month. Special meetings may be called by the Chair as the need arises. Majority of the members of the Council shall constitute a quorum to transact business.

SECTION 12. *Honoraria or Emoluments.* The Members of the Council or their designated permanent representatives shall receive honoraria or emoluments as may be determined by the

Council in accordance with existing budget and accounting rules and regulations.

SECTION 13. *Implementation of the law at Sub-National and Local Levels.* The Council shall, as far as practicable, develop mechanisms to ensure the implementation of the law at the sub-national and local levels.

Article IV Secretariat

SECTION 14. *Organization.* The Department of Justice shall establish a Secretariat to assist the Council in the performance of its functions. The Secretary of Justice shall determine the organizational structure and staffing pattern of the Secretariat.

SECTION 15. *Functions.* The Secretariat shall have the following functions:

- (a) Coordinate and monitor, under the direction of the Council, the implementation of the policies and guidelines promulgated by the Council;
- (b) Provide secretariat, records keeping and other services to the Council;
- (c) Establish, maintain and manage a central database on trafficking in persons; and
- (d) Perform such other functions as may be directed by the Council.

Article V

Roles and Responsibilities

SECTION 16. *Common Roles and Responsibilities of Council Member Agencies.* All member government agencies of the Council shall have the following common roles and responsibilities:

- (a) Develop policies and programs supportive of and consistent with the objectives of the Act;
- (b) Enhance the capability of its officers and personnel involved in trafficking issues and concerns through appropriate training and staff support programs;
- (c) Undertake information, education and advocacy campaigns against trafficking in persons;
- (d) Maintain a databank on trafficking in persons to be shared among relevant agencies and complement the central databank to be established by the Council; and
- (e) Document good practices as bases for policy formulation and program development.

SECTION 17. *Specific Roles and Responsibilities of National Government Agencies which are Members of the Council.* The following national government agencies, which are member agencies of the Council, shall have, but not limited to, the following roles and responsibilities in the prevention and suppression of trafficking in persons:

- (a) **Department of Justice (DOJ)**
 - (i) Ensure the prosecution of persons for violations of the Act;

- (ii) Designate and train special prosecutors who shall investigate and prosecute cases of trafficking;
- (iii) Establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Commission on Human Rights (CHR), Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups;
- (iv) Provide, when applicable, witness protection and immunity from prosecution to trafficked victims and their witnesses;
- (v) Conduct training and continuing education program on investigation and prosecution for trafficking in persons and other related offenses for prosecutors and law enforcement officers;
- (vi) Receive, evaluate, process and investigate claims for compensation by trafficked victims, when applicable, pursuant to Republic Act No. 7309 (Victims Compensation Act);
- (vii) Review and recommend policies and measures to enhance protection against trafficking in persons;
- (viii) Recommend the negotiation, of mutual legal assistance and extradition treaties with other countries in coordination with the DFA; and
- (ix) Coordinate with and/or provide assistance to the Anti-Money Laundering Council (AMLC) on cases of trafficking in persons with possible money laundering underpinnings.

(b) **Department of Social Welfare and Development (DSWD)**

- (i) Provide psycho-social counseling, temporary shelter and other support services to victims/survivors of trafficking and their families;
- (ii) Make available skills training and livelihood services to victims/survivors of trafficking;
- (iii) Develop program and other support interventions to facilitate the recovery and reintegration of trafficked victims into their families and communities;
- (iv) Provide social welfare services to Filipino victims of trafficking in other countries through the DSWD Social Welfare Attaché and social workers posted in foreign countries, which may include but not limited to stress management, repatriation and other appropriate psychosocial interventions for their protection and welfare;
- (v) Conduct technical assistance and capability building activities for social welfare officers/social workers of LGUs and NGOs;
- (vi) Accredite NGOs that provide programs and services to ensure that they meet the standards set by the Department; and
- (vii) Provide temporary shelter and psycho social services to foreign nationals who are victims of trafficking in persons as confirmed by the Bureau of Immigration.

(c) **Department of Foreign Affairs (DFA)**

- (i) Make available its resources and facilities overseas and to provide services for trafficked persons regardless of the manner of their entry to the receiving country;
- (ii) Explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs;
- (iii) Actively participate in bilateral, regional and international initiatives and cooperative arrangements aimed at suppressing trafficking in persons and protecting and assisting victims of trafficking to include monitoring of inter-country adoption cases;
- (iv) Take necessary measures for the efficient implementation of the Machine Readable Passports and Visas to protect the integrity of Philippine passports, visas, and other travel documents to reduce the incidence of trafficking in persons through the use of fraudulent identification documents;
- (v) Establish and implement pre-marriage, on-site and pre-departure counseling program on inter-marriages. For this purpose, the DFA shall promulgate the necessary guidelines to implement the said program; and

- (vi) Integrate into the pre-departure orientation seminars for foreign service personnel a training module on trafficking in persons.

(d) **Department of Labor and Employment (DOLE)**

- (i) Ensure the strict implementation of and compliance with rules and guidelines relative to the employment of persons locally and overseas; and
- (ii) Monitor, document and report cases of trafficking in persons involving employers and labor recruiters.

(e) **Philippine Overseas Employment Administration (POEA)**

- (i) Implement an effective pre-employment orientation seminar and pre-departure counseling program to applicants for overseas employment;
- (ii) Formulate a system providing free legal assistance to trafficked persons which shall include the following:
 - (a) Provision of legal assistance to victims of trafficking in persons by means of, or in the guise of, recruitment for overseas employment, as defined in Section 6 of R.A. No. 8042, such as free legal advice, assistance in the preparation and filing of administrative and criminal actions for trafficking as defined in the Act, without prejudice to the filing of administrative and/or criminal actions for illegal recruitment, as defined in R.A. No. 8042, when proper;

- (b) Assistance in the prosecution of persons who engage in, promote and facilitate trafficking in persons by means of, or in the guise of, recruitment for overseas employment, as defined in Section 6 of R.A. No. 8042;

In this connection, the POEA shall likewise adopt a policy of confidentiality in all cases referred to it which involve possible violations of the Act.

- (iii) Adopt policies and procedures, prepare and implement programs geared towards the eradication of trafficking in persons as well as acts that promote trafficking in persons such as, but not limited to, the following:
 - (a) Provide a Comprehensive and Integrated Education Program on overseas employment which shall be undertaken in partnership with other relevant organizations and government entities. Such education program shall cover all stages of recruitment and employment and shall provide information useful for overseas workers including a module on anti-trafficking program and measures;
 - (b) Conduct a nationwide multi-media and sustainable grassroots information campaign to create public awareness on the realities of overseas employment and dangers of becoming victims of illegal trafficking activities;
 - (c) Conduct special operations, complementary to the power of the PNP, on persons and

entities engaged in recruitment for overseas employment reported to be violating the provisions of the Act for the purpose of effecting closure of said establishments pursuant to the provisions of R.A. No. 8042;

- (d) Maintain database of cases involving, and personalities involved in, trafficking persons separate and distinct from its illegal recruitment cases for monitoring purposes; and
 - (e) In cases of repatriation involving workers recruited and deployed by licensed agencies, the POEA shall notify the agency concerned to provide a plane ticket or Prepaid Travel Advice (PTA) and shall impose sanctions on said agencies for failure to cooperate in providing welfare assistance to OFWs they have deployed.
- (iv) Continue to regulate private sector participation in the recruitment and overseas placement of workers through its licensing and registration system pursuant to its rules and regulation on overseas employment. It shall formulate and implement, in coordination with appropriate entities concerned, when necessary, a system of promoting and monitoring the overseas employment of Filipino workers, taking into consideration their welfare and protection from the dangers and risks inherent in overseas employment, including illegal trafficking.

(f) **Bureau of Immigration (BI)**

- (i) Strictly administer and enforce immigration and alien registration laws;
- (ii) Adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure;
- (iii) Ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the pre-departure and counseling program requirement of the Act;
- (iv) Strictly implement the requirement for a parental travel authority duly processed by the DSWD for minors traveling abroad unaccompanied by one parent, and the travel clearance for minors traveling abroad unaccompanied by both parents;
- (v) Ensure compliance by Overseas Filipino Workers of the departure requirements of the POEA;
- (vi) Conduct periodic training and seminar on fraudulent document detection and passenger assessment to enhance the level of skill and competence of all its immigration officers and agents in document fraud detection;
- (vii) Conduct periodic study of the trends, routes and *modus operandi* employed by the traffickers including its recruitment base, transit countries and country of destination;
- (viii) Establish a network with other law enforcement agencies and immigration counterparts of source, transit and country destination to facilitate

exchange and sharing of information on the activities of trafficking syndicates;

- (ix) Establish network with LGUs for the effective apprehension of suspected traffickers and their cohorts;
- (x) Develop a program for the procurement and installation of International Civil Aviation Organization (ICAO) - compliant machine readers and fraud detection equipment at all international airports and seaports in the country to deter trafficking in persons; and
- (xi) Develop and distribute materials containing advisory and other pertinent information to enhance awareness against trafficking in persons.

(g) **Philippine National Police (PNP)**

- (i) Serve as the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking;
- (ii) Closely coordinate with various law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. For this purpose, it shall also:
 - (a) Pursue the detection and investigation of suspected or alleged trafficking activities at airports through its Aviation Security Group, at seaports and/or harbors through its Maritime Group, and at land transportation terminals through its police station and when

- proper, file the appropriate charges against traffickers in the proper court;
- (b) Coordinate with the Philippine Ports Authority (PPA) which may have initially processed complaints at their “Balay Silungan sa Daungan;” and
 - (c) Coordinate with local and *barangay* officials with respect to the apprehension and/or arrest of traffickers.
- (iii) Establish a system to receive complaints and calls to assist trafficked persons, and the conduct of rescue operations;
 - (iv) Direct and supervise the enforcement of its mandate under the Act and its rules and regulations;
 - (v) Supervise the conduct of investigations relating to apprehension occurring at land transportation terminals, domestic seaports and airports and monitor the filing of appropriate cases against traffickers;
 - (vi) Formulate plans and programs for the prevention and/or reduction of trafficking in persons;
 - (vii) Integrate in the program of instruction comprehensive, gender sensitive and child-friendly investigation and handling of cases of trafficking in persons in the Philippine National Police Academy (PNPA); Philippine Public Safety College (PPSC) and other training schools operated and managed by the PNP; and

(viii) Establish anti-trafficking section under the Women and Children Complaint Desk (WCCD) in all city and municipal police stations.

(h) **National Commission on the Role of Filipino Women (NCRFW)**

(i) Actively advocate and participate in international and regional discussion and initiatives in trafficking in women and include the same in all of its international commitments and policy pronouncements. Where possible and appropriate, work with the Department of Foreign Affairs in forging bilateral and multilateral collaborative projects on trafficking;

(ii) Assist the Council in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies;

(iii) Assist the Council in the conduct of information dissemination and training to frontline government agencies, NGOs and the general public;

(iv) Assist in the development of gender responsive documentation system in coordination with other agencies and the National Statistical Coordination Board (NSCB) through its monitoring of the situation of women particularly on violence against women;

(v) Assist the Council in the formulation of prevention and reintegration programs for victims of trafficking including the demand side; and

- (vi) Conduct studies on the root causes, magnitude and forms of trafficking in women and document best practices in prevention programs.

SECTION 18. Roles and Responsibilities of Other Relevant National Government Agencies. Consistent with their mandates under existing laws, the following agencies shall integrate human trafficking issues in their strategy and program formulation and implement programs and services for the prevention and suppression of trafficking and for the protection of trafficked victims. They shall likewise have the following roles and responsibilities:

(a) Department of the Interior and Local Government (DILG)

- (i) Conduct a systematic information dissemination/ advocacy and prevention campaign against trafficking in persons;
- (ii) Maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons;
- (iii) Issue directives to the LGUs and *barangays* to institutionalize recruiter-monitoring mechanisms and increase public awareness regarding trafficking in persons;
- (iv) Promote family and community empowerment to prevent human trafficking; and
- (v) Strengthen, activate and mobilize existing committees, councils, similar organizations and special bodies at the local level to prevent and suppress trafficking in persons.

(b) **Department of Tourism (DOT)**

- (i) Formulate and implement preventive measures to stop sex tourism packages and other activities of tourism establishments which might contribute to the trafficking in persons in coordination with local government units; and
- (ii) Provide training on surveillance, investigation and rescue operation strategies for tourist security officers.

(c) **Department of Education (DepEd)**

- (i) Integrate in the appropriate subject areas core messages on migration and trafficking in the elementary and secondary levels by providing lesson with emphasis on their implications and social costs to persons and country;
- (ii) Provide opportunities for trafficked persons in the educational mainstream through the basic education and non-formal education curricula; and
- (iii) Provide education and raise consciousness of boys/men in schools and communities in order to discourage the “demand side” or the use/buying of trafficked women and children.

(d) **Department of Health (DOH)**

- (i) Make available its resources and facilities in providing health care to victims of trafficking which shall, at all times, be held confidential.

(e) **Department of Transportation and Communication (DOTC)**

- (i) Provide guidelines for the land, sea and air transport providers to train their personnel in trafficking in persons;
- (ii) Standardize guidelines for monitoring trafficking in persons in every port; and
- (iii) Monitor the promotion of advertisement of trafficking in the Internet.

(f) **Commission on Human Rights (CHR)**

- (i) Conduct advocacy and training programs relating to anti-trafficking;
- (ii) Investigate and recommend for prosecution violations of the Act;
- (iii) Provide legal and financial assistance to victims of trafficking; and
- (iv) Activate the *Barangay* Human Rights Action Center (BHRAC) for anti-trafficking.

(g) **National Bureau of Investigation (NBI)**

- (i) Conduct surveillance, monitor and investigate recruiters, travel agencies, hotels and other establishments suspected to be engaged in trafficking in persons;
- (ii) Coordinate closely with all the Council member agencies for effective detection and investigation of suspected traffickers;

- (iii) Formulate plans and programs for the detection and prevention of trafficking, and the arrest and prosecution of suspected traffickers;
 - (iv) Sharing of intelligence information on suspected traffickers to all Council member agencies; and
 - (v) Foster cooperation and coordination with the law enforcement agencies of other countries and the INTERPOL in the investigation and apprehension of suspected traffickers.
- (h) **Philippine Center on Transnational Crime (PCTC)**
- (i) Continue to function in accordance with its mandate pursuant to Executive Order No. 62, s. 1999, on matters concerning trafficking in persons with transnational dimension.
- (i) **Overseas Workers Welfare Administration (OWWA)**
- (i) Assist in the information and advocacy campaign among OFWs to prevent trafficking in persons;
 - (ii) Assist in the documentation of cases of trafficking and ensure the provision of its programs and services to OFWs and their families; and
 - (iii) Include a module on anti-trafficking to its pre-departure seminar.
- (j) **Council for the Welfare of Children (CWC)**
- (i) Integrate in its development and strategic frameworks issues and concerns affecting trafficking in children and ensure the adoption of such frameworks by the LGUs and other stakeholders;

- (ii) Vigorously advocate against trafficking of children;
 - (iii) Improve data on trafficking in children through integration of critical and relevant indicators into the monitoring system for children;
 - (iv) Adopt policies and measures that will protect and promote the rights and welfare of children victims of trafficking and coordinate and monitor their implementation; and
 - (v) Address issues on trafficking of children through policy and program interventions.
- (k) **Philippine Information Agency (PIA)**
- (i) Enhance public awareness on trafficking in persons, pertinent laws and possible actions to prevent victimization and re-victimization by developing public advocacy program as well as printing and distributing appropriate information materials.
- (l) **Technical Education and Skills Development Authority (TESDA)**
- (i) Provide skills and entrepreneurial training to trafficked victims; and
 - (ii) Formulate a special program to ensure the provision of appropriate skills training for trafficked victims.

SECTION 19. *Roles and Responsibilities of Local Government Units (LGUs).* The LGUs shall have the following roles and responsibilities:

- (a) Monitor and document cases of trafficked persons in their areas of jurisdiction;

- (b) Effect the cancellation of licenses of establishments which violate the provisions of the Act and ensure its effective prosecution;
- (c) Undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities and provinces in coordination with the DILG, PIA, Commission on Filipino Overseas (CFO), NGOs and other concerned agencies;
- (d) Encourage and support community based initiatives which address trafficking in persons;
- (e) Provide basic social services for the prevention, rescue, recovery, rehabilitation and reintegration/after care support services to victims of trafficking in persons and their families; and
- (f) Strengthen, activate and mobilize existing committees, councils, similar organizations and special bodies at the provincial, city, municipal and *barangay* levels to prevent and suppress trafficking in persons.

SECTION 20. *Roles and Responsibilities of Non-Government Organizations which are Members of the Council.* The NGO members of the Council shall have the following roles and responsibilities:

- (a) Assist government agencies in formulating and implementing policies, programs and IEC campaign against trafficking;
- (b) Coordinate with concerned government agencies, LGUs and other NGOs in reporting alleged perpetrators, rescuing victims of trafficking, and conducting investigation/surveillance, if indicated;

- (c) Undertake programs and activities for the prevention, rescue, recovery and reintegration of the victims of trafficking and other support services for their families;
- (d) Document and/or assist in the documentation of cases of trafficking;
- (e) Disseminate guidelines to all its network members, local and international, on policies and programs addressing issues on trafficking in persons;
- (f) Formulate educational module to address the demand side of trafficking; and
- (g) Perform such other tasks as may be agreed upon by the Council.

SECTION 21. *Assistance of Other Agencies and Institutions.* In implementing the Act and these rules and regulations, the agencies concerned may seek and enlist the assistance of NGOs, people's organizations (POs), civic organizations and other volunteer groups, which will all likewise be encouraged to assume the same roles and responsibilities enumerated in the preceding Section.

Article VI

Reporting of Suspected/Alleged Trafficking Incident

SECTION 22. *Who May and To Whom to Report.* Any person who has any knowledge or learns of facts or circumstances that give rise to a reasonable belief that a person will be, or may be, or has been trafficked shall immediately report the same, either orally, in writing or through other means, to any member of the Council, the *barangay* authorities, the nearest police or other law

enforcement agency, the local social welfare and development office or the local Council for the Protection of Children.

In the case of trafficking cases abroad, the report shall be made to the nearest Philippine Embassy/Consulate.

SECTION 23. *Action on the Report.* The agency, entity or person to whom the report is made shall immediately act as soon as the report is received in coordination with other relevant government agency for appropriate intervention.

For this purpose, the Council shall develop a mechanism to ensure the timely, coordinated and effective response to cases of trafficking in persons.

Article VII

Interception, Arrest and Investigation of Traffickers

SECTION 24. *Procedure in the Interception, Arrest and Investigation of Traffickers in Persons at International Airport or Seaport.* When an offense punishable under the Act or any other offense in relation thereto or in furtherance thereof has been committed, or is actually being committed in the presence of an immigration officer assigned at the international airport or seaport, he shall immediately cause the interception and/or arrest of the persons involved for investigation. The DOJ Task Force Against Trafficking shall cause the filing of appropriate case in court when evidence warrants.

If the person arrested is a foreigner, the concerned B.I. investigating unit shall take full custody over the arrested person, conduct the investigation proper *motu proprio* and endorse the complaint and supporting documents to the prosecutor for inquest or MTC Judge for appropriate proceedings.

SECTION 25. *Procedure in the Interception, Arrest and Investigation of Traffickers in Persons at Local Airport, Seaport and Land Transportation Terminals.* In cases where the violation is committed at local seaport, airport or in land transportation terminals, the members of the law enforcement agency shall immediately cause the interception and/or arrest of the suspected traffickers. Thereafter, the investigation shall be conducted by the law enforcement agency on the person/s intercepted/arrested, and referred to the Prosecutor's Office of the place where the offense was committed or to the DOJ Task Force Against Trafficking in Persons or Task Force on Passport Irregularities or Municipal Trial Court of the place where the crime was committed in case of municipalities and non-chartered cities for purposes of inquest or preliminary investigation as the case may be.

SECTION 26. *Creation of a Joint Task Force Against Trafficking in Persons.* For the purpose of the above provisions, there shall be created a Joint Task Force Against Trafficking in Persons assigned at airports to be composed of Prosecutors, BI, PNP, and NBI personnel and another Task Force assigned at land transportation terminals and local seaports and airports to be composed of Prosecutors, PNP, BI, PPA, and PCG personnel. The DOJ National Task Force Against Trafficking in Persons shall issue the necessary operational guidelines for the effective coordination, apprehension, investigation and prosecution of violations of the Act. The DOJ Task Force assigned at local seaports, airports and land transportation terminals shall cooperate or coordinate with the active NGOs concerned with trafficking in persons.

SECTION 27. *Rights of the Person Arrested, Investigated or Detained.* In all cases, the rights of the person arrested, investigated or detained as provided by the Philippine Constitution and under Republic Act No. 7438 (An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation As Well As The Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties For Violations Thereof) shall, at all times, be respected.

Article VIII **Rescue/Recovery and Repatriation of Victims**

SECTION 28. *The Country Team Approach.* The country team approach under Executive Order No. 74, series of 1993 and further enunciated in Republic Act No. 8042 shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons regardless of their immigration status. Under the Country Team Approach, all officers, representatives and personnel of the Philippine government posted abroad regardless of their mother agencies shall, on a per country basis, act as one-country team with mission under the leadership of the Ambassador or the head of mission.

SECTION 29. *Rescue at the Country of Destination.*

(a) **Procedure.** When the victim is a Filipino national and at the time of rescue is residing abroad, the embassy or consulate which has jurisdiction over the place where the victim is residing shall verify the veracity of the report of incidence of trafficking and inquire about the condition of the victim.

Consistent with the country team approach, the Post concerned shall send a team composed of a consular officer and

personnel from the Philippine Overseas Labor Office (POLO) or the Filipino Workers Resource Center (FWRC); the Office of the Social Welfare Attaché as the case may be, to conduct a visit to the jail, establishment, work site or residence of the victim. In the case of Posts without attached services, the team will be composed of a consular officer and personnel from the Assistance-to-Nationals section.

The Post shall make representations with the police authorities or other relevant law enforcement agencies with respect to the conduct of rescue operations.

Rescue operation shall also be made in cooperation and close coordination with some NGO's, local contacts or private individuals when necessary.

In countries and areas where the services of the FWRC is not accessible, a mobile type of services shall be extended by the country team members to trafficked persons regardless of their status in the host country.

Thereafter, the victim will be encouraged to execute a sworn statement, recounting among others, the people/establishment involved in the recruitment/transfer and deployment, the *modus operandi* employed to recruit, transport and deploy the victim, and other pertinent information which could provide a lead in the investigation and eventual prosecution of the perpetrators.

(b) **Assistance to Trafficked Persons.** The trafficked person shall be provided with temporary shelter and other forms of assistance.

In countries where there is a Filipino Workers Resource Center, the services available to overseas Filipinos as provided for in Republic Act No. 8042 shall also be extended to trafficked persons regardless of their status in the host country.

(c) **Legal Assistance Fund.** Trafficked persons shall be considered under the category “Overseas Filipinos in Distress” and may avail of the Legal Assistance Fund created by Republic Act No. 8042, subject to the guidelines as provided by law, including rules and regulations issued by the DFA as to its utilization and disbursement.

SECTION 30. *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 trafficked persons shall expose the victims 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.

SECTION 31. *Procedure for Repatriation.* In accordance with existing rules and regulations on the use and disbursement of Assistance-to-Nationals Fund of the DFA for the repatriation of distressed OFWs, the Post shall immediately request the DFA, through the Office of the Undersecretary for Migrant Workers’ Affairs (OUMWA), allocation of funds for the repatriation of the victim.

In appropriate cases and to avoid re-victimization, the Post may withdraw the passport of the victim and forward it to the DFA and in its place issue a Travel Document (FA Form 79(B)) valid for direct travel to the Philippines.

The Post concerned shall report to the DFA, through the OUMWA, copy furnished the Office of Consular Affairs, the

actual date of repatriation and other pertinent information and submit a copy of the sworn statement and other relevant documents.

In appropriate cases, especially when the victim is suffering from mental illness, has suffered physical or sexual abuse or has received serious threats to his or her life and safety, the victim will be met upon arrival in the Philippines by DSWD personnel, in coordination with the Joint Task Force Against Trafficking in Persons and other government agencies such as OWWA, BI and DOH. In the case of mentally ill patients, minors, and other persons requiring special care, the Post shall designate a duly authorized individual to escort said victims to the Philippines.

The victim will be encouraged, if he or she has not done so before, to execute a sworn statement with the view of filing the appropriate charges against the suspected trafficker in the Philippines.

Should the victim request the assistance of DFA, OUMWA shall interview the victim and make recommendations for investigation with law enforcement agencies such as the PNP and the NBI. In cases where recruitment agencies are involved, the case shall also be referred to the POEA for appropriate action. The report shall also be forwarded to the BI for case build up.

The victim may be referred to the DSWD/Local Social Welfare and Development Office or to the NBI One-Stop Shop for psycho-social interventions, psychological and medical examination and follow-through therapy sessions. Protective custody and emergency shelter shall also be provided to the victim, in appropriate cases.

SECTION 32. *Rescue Within the Country.* Rescue operations within the country shall be primarily undertaken by the law enforcement agencies in coordination with LGUs, DOLE, DSWD and DOH. Upon receipt of a report of a suspected or alleged trafficking incident or activity, the law enforcement agency to which the report is made shall conduct rescue operations of trafficked persons. At the minimum, rescue operations shall be guided by the following:

- (a) Conduct of rescue operation of trafficked persons shall be properly coordinated with the concerned agencies particularly DSWD/local social welfare and development officer;
- (b) The rescue team shall ensure full protection of the rights of the trafficked person as well as the traffickers while under its custody and control;
- (c) After the rescue operation, the investigation of the case shall be referred to the Women and Children Complaint Desk (WCCD) desk of the Law Enforcement agencies concerned;
- (d) After the completion of the necessary documents for the filing of cases, the rescue team shall effect the appropriate and immediate turn-over of the trafficked person to DSWD/local social welfare and development officer; and
- (e) In the course of investigation of the trafficked person, the investigator handling the case shall ensure that the victim shall be accorded with proper treatment and investigated in a child friendly and gender sensitive environment. For this purpose, the investigators shall be properly trained in the handling of cases of trafficked persons.

Article IX

Rehabilitation and Reintegration of Victims

SECTION 33. *Comprehensive Program.* The DSWD, LGUs and other concerned agencies shall provide a comprehensive, gender sensitive and child friendly program for the recovery, rehabilitation and reintegration of victims/survivors of trafficking, such as but not limited to the following:

- (a) Implementation of residential care, child placement, educational assistance, livelihood and skills training and other community-based services must be responsive to the specific needs and problems of the victims/survivors and their families;
- (b) Active involvement and participation of the victims/survivors in the rehabilitation and reintegration process shall be encouraged. In order to empower them and to prevent their re-victimization, capability building programs must be provided; and
- (c) Active cooperation and coordination with NGOs and other members of the civil society including the business community, tourism-related industries as well as the media in the rehabilitation and reintegration of victims/survivors shall be undertaken.

SECTION 34. *Procedure.* The following procedure shall be undertaken in implementing a comprehensive program for the recovery, rehabilitation and reintegration of victims/survivors of trafficking:

- (a) The victim/survivor of trafficking may go to the nearest DSWD/LGU Social Welfare and Development Office for assistance;

- (b) Upon referral/interview the DSWD/Local Government Social Worker shall conduct an intake assessment to determine appropriate intervention with the victim/survivor;
- (c) The social worker shall prepare a social case study report/case summary for the victim/survivor's admission to a residential facility for temporary shelter or community-based services;
- (d) Provide services/interventions based on the rehabilitation plan in coordination with appropriate agencies, e.g., counseling, legal, medical and educational assistance; livelihood and/or skills training; as well as appropriate services to the family of the trafficked victim/survivor; and
- (e) Monitor implementation and periodically evaluate/update the rehabilitation plan until the victim/survivor has been reintegrated with his/her family and community.

SECTION 35. *Capability Building of Service Providers.*

The frontline agencies and the service providers must undergo training and other capability building activities to enhance their knowledge and skills in handling cases of trafficking to prevent exacerbation of traumatic stress and facilitate more effective crisis interventions, healing and reintegration services.

SECTION 36. *Documentation.* Data banking, research and documentation of best practices in rehabilitation and reintegration programs shall be conducted to identify efficient and effective measures and services for the victims of trafficking and their families.

Article X
Prosecution, Civil Forfeiture
and Recovery of Civil Damages

SECTION 37. *Who May File a Complaint.* Complaints for violations of the Act may be filed by the following:

- (a) Any person who has personal knowledge of the commission of the offense;
- (b) The trafficked person or the offended party;
- (c) Parents or legal guardians;
- (d) Spouse;
- (e) Siblings; or
- (f) Children.

The foregoing persons may also seek the assistance of the Council in the filing of complaint.

SECTION 38. *Institution of Criminal Action; Effect.* The institution of the criminal action before the Office of the Prosecutor or the court, as the case may be, for purposes of preliminary investigation shall interrupt the running of the period for prescription of the offense charged. The prescriptive period 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.

SECTION 39. *Institution of Criminal and Civil Actions.* When a criminal action is instituted, the civil action arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

SECTION 40. *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.

SECTION 41. *Venue.* The offenses punishable under the Act shall be considered as a continuing offense and may be filed in the place 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.

SECTION 42. *Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons.*

- (a) After conviction, all proceeds and instruments, including any real or personal property used in the commission of the offense, shall be ordered confiscated and forfeited in favor of the State unless the owner thereof can prove the lack of knowledge of the use of such property in the said illegal activity. Any award for damages arising from the commission of the offense may be satisfied and charged against the personal and separate properties of the offender and if the same is insufficient to satisfy the claim, the balance shall be taken from the forfeited properties as may be ordered by the court.
- (b) During the pendency of the criminal action, no property or income used or derived therefrom which are subject to confiscation and forfeiture, shall be disposed, alienated or transferred and the same shall be in *custodia legis* and no bond shall be admitted for the release of the same.

- (c) The trial prosecutor shall avail of the provisional remedies in criminal cases to ensure the confiscation, preservation and forfeiture of the said properties.
- (d) If the offender is a public officer or employee, the forfeiture of his/her property found to be unlawfully acquired shall be governed by Republic Act No. 1379, otherwise known as “An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor.”

Article XI

Legal Protection and Other Services

SECTION 43. *Legal Protection.* Trafficked persons shall be recognized as victims of the act or acts of trafficking. As such, they shall not be penalized for crimes directly related to the acts of trafficking enumerated under the Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of the trafficked person to the intended exploitation set forth in the Act shall be irrelevant.

SECTION 44. *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.

SECTION 45. *Immunity from Criminal Prosecution.* Any person who has personal knowledge in the commission of any of the offenses penalized under the Act and who voluntarily gives material information relative thereto and willingly testifies against

the offender shall be exempt from prosecution for the offense with reference to which his information and testimony were given, subject to the following conditions:

- (a) The information and testimony are necessary for the conviction of the accused; and
- (b) Such information and testimony are not yet in the possession of the state.

SECTION 46. *Mandatory Services.* 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.

SECTION 47. *Legal Protection of Trafficked Persons Who are Foreign Nationals.* Trafficked persons in the Philippines

who are nationals of a foreign country shall be entitled to appropriate protection, assistance and services available to the trafficked persons and shall be allowed to continued presence in the Philippines for a period of fifty-nine (59) days to enable them to effect the prosecution of the offenders. Such period may be renewed upon showing of proof by the trial prosecutor that their further testimony is essential to the prosecution of the case. The trial prosecutor shall course his request for extension to the Council which shall accordingly act upon the same. If such request is granted, the registration and immigration fees of such foreign nationals shall be waived.

The Council, for this purpose, shall develop additional guidelines to implement this provision.

Article XII

Trust Fund

SECTION 48. *Trust Fund; Sources.* All fines imposed under the Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 of the Act and Article IX, Section 5 of these rules and regulations shall accrue to a Trust Fund to be administered and managed by the Council.

SECTION 49. *Utilization.* The Trust Fund shall 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 the 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 among the public, the academe, government, NGOs and international organizations; and
- (e) Promotion of information and education campaign on trafficking.

The Trust Fund may also be used to support the operations of the Secretariat.

SECTION 50. *Use and Disbursement of Trust Fund.* The use and disbursement of the trust fund shall be subject to the approval of at least two-thirds (2/3) of the members of the Council and shall be governed by existing government accounting and auditing rules and regulations.

Article XIII **International Cooperation**

SECTION 51. *International Cooperation.* The Council, in close coordination with the DFA and other concerned agencies, shall promote cooperation, technical assistance and partnership among governments and regional and international organizations on the following aspects:

- (a) Prevention, protection, prosecution, repatriation and reintegration aspects of trafficking in persons, especially women and children;

- (b) Systematic exchange of information and good practices among law enforcement and immigration, authorities;
- (c) Prevention, detection, investigation and prosecution of trafficking in persons, including the protection of victims through exchanges and joint training at the bilateral, regional and international levels, between and among relevant officials including police, judges, prosecutors, immigration officers, other law enforcement agents as well as consular authorities; and
- (d) Repatriation of victims of trafficking with due regard to their safety and in consideration of humanitarian and compassionate factors.

Article XIV **Confidentiality**

SECTION 52. 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 case when the prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, 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 or information technology to cause publicity of any case of trafficking in persons.

Article XV

Offenses and Penalties

SECTION 53. Acts of Trafficking in Persons. Any person, natural or juridical, who commits any of the following acts shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (Php1,000,000.00) but not more than Two million pesos (Php2,000,000.00):

- (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 with 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; and
- (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

SECTION 54. *Acts that Promote Trafficking in Persons.*

Any person, natural or juridical, who shall commit the following acts which promote or facilitate trafficking in persons, shall be penalized with the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (Php1,000,000.00) but not more than Two million pesos (Php2,000,000.00):

- (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting 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 of 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 facilitating the acquisition of clearances and necessary exit documents 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, tampered or fraudulent and travel documents for the purpose of promoting 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; and

- (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.

SECTION 55. *Qualified Trafficking in Persons.* The following are considered as qualified trafficking and shall be penalized with the penalty of life imprisonment and a fine of not less than Two million pesos (Php2,000,000.00) but not more than Five million pesos (Php5,000,000.00);

- (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).

SECTION 56. *Violation of Confidentiality Provisions.*

Any person who violates Section 7 of the Act and Section I, Article XIII hereof shall suffer the penalty of imprisonment of six (6) years and a fine not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00).

SECTION 57. *Application of Penalties and Other Sanctions.* The following shall be applied in the imposition of penalties:

- (a) If the offender is a corporation, partnership, association, club, establishment or any judicial 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;
- (b) 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 or entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishment in a different name;

- (c) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;
- (d) 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 judicial 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 the 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
- (e) Conviction by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

SECTION 58. 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 (Php50,000.00); and
- (b) **Second and subsequent offenses** - imprisonment of one (1) year and a fine of One hundred thousand pesos (Php100,000.00).

The Council shall coordinate with the Supreme Court through the Office of the Court Administrator for the issuance of appropriate guidelines and measures for the judiciary to implement this provision particularly on the aspect of implementing the penalty of community service.

Article XVI

Funding

SECTION 59. *Inclusion in Agency Appropriations.* The heads of departments and agencies concerned shall include in their annual appropriations the funding necessary to implement their programs and services for the implementation of the Act.

In the interim, the funding necessary to carry out their mandate under the law may be charged against their Gender and Development (GAD) budget.

Article XVII

Final Provisions

SECTION 60. *Non-Restriction of Freedom of Speech and of Association, Religion and the Right to Travel.* Nothing in these rules and regulations shall be interpreted as a restriction of the freedom and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

SECTION 61. *Saving Clause.* The provisions of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act” shall remain applicable and shall not in any way be amended or repealed by the provisions of the Act and these rules and regulations.

SECTION 62. *Separability Clause.* The declaration of invalidity of any provision of these rules and regulations or part thereof shall not affect the validity of the remaining provisions.

SECTION 63. *Repealing Clause.* Pertinent provisions of all laws, presidential decrees, executive orders and rules and regulations, or parts thereof, contrary to or inconsistent with the provisions of the Act and these rules and regulations are hereby repealed or modified accordingly.

SECTION 64. *Effectivity.* These rules and regulations shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.

Republic Act No. 8239

Philippine Passport Act of 1996

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* - This Act will be called as the "Philippine Passport Act of 1996."

SECTION 2. *Statement of Policy.* - The people's constitutional right to travel is inviolable. Accordingly, the government has the duty to issue passport or any travel document to any citizen of the Philippines or individual who complies with the requirement of this Act. The right to travel may be impaired only when national security, public safety, or public health requires. To enhance and protect the unimpaired exercise of this right, only minimum requirements for the application and issuance of passports and other travel documents shall be prescribed. Action on such application and the issuance shall be expedited.

SECTION 3. *Definitions.* - As used in this Act:

- a) *Department* means the Department of Foreign Affairs;
- b) *Secretary* means the Secretary of Foreign Affairs;
- c) *Post* means a Philippine diplomatic and consular post such as an Embassy or Consulate;
- d) *Passport* means a document issued by the Philippine government to its citizens and requesting other governments to allow its citizens to pass safely and freely,

and in case of need to give him/her all lawful aid and protection;

- e) *Travel Document* means a certification or identifying document containing the description and other personal circumstances of its bearer, issued for direct travel to and from the Philippines valid for short periods or a particular trip. It is issued only to persons whose claim to Philippine citizenship is doubtful or who fall under the category enumerated in Section 13 of this Act;
- f) *Supporting Documents* mean any paper or document which is required to be submitted with the passport application supporting claims to Filipino citizenship to complete the application for a passport without which such application would be deemed incomplete or otherwise become subject to denial by the issuing authority;
- g) *Ambassadors* mean those who have been appointed as chiefs of mission and have served as Ambassador Extraordinary and Plenipotentiary.

SECTION 4. *Authority to Issue, Deny, Restrict or Cancel.*

- Upon the application of any qualified Filipino citizen, the Secretary of Foreign Affairs or any of his authorized consular officer may issue passports in accordance with this Act.

Philippine consular officers in a foreign country shall be authorized by the Secretary to issue, verify, restrict, cancel or refuse a passport in the area of jurisdiction of the Post in accordance with the provisions of this Act.

In the interest of national security, public safety and public health, the Secretary or any of the authorized consular officers

may, after due hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: *Provided, however,* That such act shall not mean a loss or doubt on the person's citizenship: *Provided, further,* That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: *Provided, finally,* That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

SECTION 5. *Requirements for the Issuance of Passport.* -

No passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who has complied with the following requirements:

- a) A duly accomplished application form and photographs of such number, size and style as may be prescribed by the Department;
- b) The birth certificate duly issued or authenticated by the Office of the Civil Registrar General: *Provided, however,* That if the birth of the applicant has not been registered yet, or if his birth certificate is destroyed, damaged, or not available due to other causes, he shall apply for delayed registration of his birth with the Office of the Civil Registrar General which shall issue to said applicant a certification of pending application for delayed registration of birth attaching thereto a copy of an accomplished certificate of live birth. Such certification and the accomplished certificate of live birth shall be sufficient to support an application for passport in addition to other papers which the Department may require from the applicant;

- c) In the absence of a birth certificate, a baptismal certificate for those who are members of a Christian religious organization, or similar or equivalent certificate issued by a non-Christian religious group, attesting to the applicant's having been admitted to such religious group or sect at an early age and where it is indicated that the applicant is a Filipino citizen, which should be accompanied by a joint affidavit by two (2) persons who have personal knowledge of the applicant and of such age as to credibly state the applicant's date and place of birth, citizenship, and names of parents: *Provided*, That Filipinos who do not believe in any religion and whose parents for any reason failed to have the said applicant baptized shall be exempted from the baptismal certificate requirement: *Provided, further*, That in lieu thereof, the applicant shall execute an affidavit to that effect duly corroborated by affidavit of at least two (2) persons of good reputation who personally know such fact;
- d) In case of a woman who is married, separated, divorced or widowed or whose marriage has been annulled or declared by court as void, a copy of the certificate of marriage, court decree of separation, divorce or annulment or certificate of death of the deceased spouse duly issued and authenticated by the Office of the Civil Registrar General: *Provided*, That in case of a divorce decree, annulment or declaration of marriage as void, the woman applicant may revert to the use of her maiden name: *Provided, further*, That such divorce is recognized under existing laws of the Philippines;
- e) In the case of naturalized citizens, a certified copy of the naturalization certificate; or a certified naturalization

certificate of husband or parent duly issued and authenticated by the Office of the Civil Registrar General if citizenship is claimed through naturalization of spouse or parent;

- f) For an applicant who has not reached the age of majority, an affidavit of consent from a parent as indicated in the passport application if the minor is travelling with either parent, and a clearance from the Department of Social Welfare and Development, if the minor is travelling with a legal guardian or a person other than a parent;
- g) If the applicant is an adopted person, the duly certified copy of court order of adoption, together with the original and amended birth certificates duly issued and authenticated by the Office of the Civil Registrar General shall be presented: *Provided*, That in case the adopted person is an infant or a minor or the applicant is for adoption by foreign parents, an authority from the Department of Social Welfare and Development shall be required: *Provided, further*, That the adopting foreign parents shall also submit a certificate from their embassy or consulate that they are qualified to adopt such infant or minor child;
- h) In case of discrepancy between the applicant's name in the birth certificate and in any other private documents, the former shall prevail over the latter unless by operation of law or through court order, the applicant is permitted to use name other than what is officially recorded in the Civil Register; and
- i) If the applicant is a government employee, the travel authority issued by the head of department, agency or

office, may be required only if said applicant is applying for an official passport.

SECTION 6. *Application.* - The application may be filed by:

- a) The applicant himself or herself; or
- b) The parent or legal guardian on behalf of an applicant who is below the age of majority.

In case of first time applicants, the applicant must present himself/herself in person to prove that he or she is the same person and of the age claimed in the application form. In case of renewal the application may be filed by any licensed travel agency duly accredited by the Department of Foreign Affairs: *Provided*, That the agent shall be responsible for the authenticity or *bona fide* of the supporting documents being presented to meet the requirements for the application of passports.

SECTION 7. *Types of Passports.* - The Secretary or the authorized representative or consular officer may issue the following types of passports:

- a) *Diplomatic passport* for persons imbued with diplomatic status or are on diplomatic mission such as:
 1. The President and former Presidents of the Republic of the Philippines;
 2. The Vice-President and former Vice-Presidents of the Republic of the Philippines;
 3. The Senate President and the Speaker of the House of Representatives;
 4. The Chief Justice of the Supreme Court;

5. The Cabinet Secretaries, and the Undersecretaries and Assistant Secretaries of the Department of Foreign Affairs;
6. Ambassadors, Foreign Service Officers of all ranks in the career diplomatic service; Attaches, and members of their families;
7. Members of the Congress when on official mission abroad or as delegates to international conferences;
8. The Governor of the *Bangko Sentral ng Pilipinas* and delegates to international or regional conferences when on official mission or accorded full powers by the President; and
9. Spouses and unmarried minor children of the above-mentioned officials when accompanying or following to join them in an official mission abroad.

The President of the Philippines and the Secretary of the Department of Foreign Affairs may grant diplomatic passports to officials and persons other than those enumerated herein who are on official mission abroad.

- b) *Official Passport* to be issued to all government officials and employees on official trip abroad but who are not on a diplomatic mission or delegates to international or regional conferences or have not been accorded diplomatic status such as:
 - I. Undersecretaries and Assistant Secretaries of the Cabinet other than the Department of Foreign Affairs, the Associate Justices and other members of the Judiciary, members of the Congress and all other government officials and employees travelling on official business and official time;

2. Staff officers and employees of the Department of Foreign Affairs assigned to diplomatic and consular posts and officers and representatives of other government departments and agencies assigned abroad;
 3. Persons in the domestic service and household members of officials assigned to diplomatic or consular posts;
 4. Spouses and unmarried minor children of the officials mentioned above when accompanying or following to join them.
- c) *Regular Passport* issued to Filipino citizens who are not eligible or entitled to diplomatic or official passports, including government officials or employees going abroad for pleasure or other personal reasons. Government officials and employees and members of their families may, during their incumbency in office, hold two (2) passports simultaneously; (1) a regular passport for private travel; (2) a diplomatic or official passport when travelling abroad on diplomatic or official business. The wife and minor children of persons entitled to a diplomatic or official passport shall be issued regular passports, if they are not accompanying or following to join them.

SECTION 8. *Grounds for Denial, Cancellation or Restrictions.* - The application for passport may be denied, cancelled or restricted only on the following grounds:

- a) *Denial of Passport*
 - I. On orders of the court, after due notice and hearing, to hold the departure of an applicant because of a pending criminal case:

2. When so requested by the natural or legal guardian, if the applicant is a minor;
 3. When the applicant has been found to have violated any of the provisions of this Act;
 4. Such other disqualification under existing laws.
- b) *Cancellation*
1. When the holder is a fugitive from justice;
 2. When the holder has been convicted of a criminal offense; Provided, That the passport may be restored after service of sentence; or
 3. When a passport was acquired fraudulently or tampered with.
- c) *Restricted*
1. When the country of destination is in a state of political instability which could pose a danger to the Filipino traveler;
 2. When diplomatic ties have been fractured or severed with the Philippines;
 3. When the country of destination is subject to travel restriction by government policy, enforcement of action by the United Nations or in a state of war.

SECTION 9. *Appeal.* - Any person who feels aggrieved as a result of the application of this Act of the implementing rules and regulations issued by the Secretary shall have the right to appeal to the Secretary of Foreign Affairs from whose decision judicial review may be had to the Courts in due course.

SECTION 10. *Validity.* - Regular passports issued under this Act shall be valid for a period of five (5) years: *Provided, however,* That the issuing authority may limit the period of validity to less than five (5) years; whenever in the national economic interest or political stability of the country such restriction is necessary: *Provided, finally,* That a new passport may be issued to replace one which validity has expired, the old passport being returned to the holder after cancellation.

SECTION 11. *Ownership of Passports.* - A Philippine passport remains at all times the property of the Government, the holder being a mere possessor thereof as long as it is valid and the same may not be surrendered to any person or entity other than the government or its representative: *Provided,* That a Filipino citizen may voluntarily surrender his/her passport to a Philippine Service Post for storage and safekeeping for which a proper receipt shall be issued for use when reclaiming the passport at a later date.

SECTION 12. *Names and Titles.* - The passport shall contain the full name of the applicant, but shall not include his title or titles or profession or job description. If an applicant's name is changed by order of the court, a certified copy of the court order or decree shall be submitted together with the birth certificate or old passport on application.

SECTION 13. *Travel Documents.* - A travel document, in lieu of a passport, may be issued to:

- a) A Filipino citizen returning to the Philippines who for one reason or another has lost his/her passport or cannot be issued a regular passport;

- b) A Filipino citizen being sent back to the Philippines;
- c) An alien spouse of a Filipino and their dependents who have not yet been naturalized as a Filipino and who are travelling to the Philippines or is a permanent resident of the Philippines;
- d) Aliens permanently residing in the Philippines who are not able to obtain foreign passport and other travel documents;
- e) A stateless person who is likewise a permanent resident, or a refugee granted such status or asylum in the Philippines.

SECTION 14. *Amendments.* - A passport may be amended at the request of the holder for any lawful purpose, but such amendment should be approved by the Secretary or his duly authorized diplomatic or consular officers.

Diplomatic and official passports shall be submitted for revalidation before each departure of the holder.

SECTION 15. *Loss or Destruction.* - The loss or destruction of a passport should be immediately reported to the Department or the Post. The holder of such passport shall submit to the Department or Post an affidavit stating in detail the circumstances of such loss or destruction. The holder of such a passport who is in the Philippines, should also furnish the National Bureau of Investigation and the Bureau of Immigration copies of the affidavit. For those who are abroad, copies of the affidavit will be forwarded by the Post to the Department's Office of Consular Services, and in coordination with the Office of Legal and Intelligence Services, shall transmit a copy of the affidavit to the National Bureau of Investigation and Bureau of Immigration.

The transmittal of the affidavit shall be accompanied by a request for the confiscation of the said passport if found, and to investigate or detain if necessary, the person attempting to use or has used the passport. All Posts will be informed of the lost passport, including pertinent information on the passport and the circumstances of loss.

No new passport shall be issued until satisfactory proof is shown that the passport was actually lost and after the lapse of fifteen (15) days following the date of submission of the affidavit of loss as herein required: *Provided, however,* That in the case of a passport reported lost be a Filipino travelling abroad, the Consulate may waive the fifteen (15) days requirement if the loss has been proven to the Consular Official's satisfaction: *Provided, further,* That in case the Filipino who reported a loss of passport is returning to the Philippines, the holder may be issued a Travel Document: *Provided, finally,* That in the event the lost passport is found, it should be destroyed if a replacement has been issued, or mailed to the holder who was issued a Travel Document.

In all cases, the head of Office of Consular Services or the head of the Consular Section of an Embassy or the Consul General of a consulate may, upon his discretion, waive the fifteen (15) day waiting period.

SECTION 16. Fees. - Reasonable fees shall be collected for the processing, issuance, extension, amendment or replacement of a lost passport and the issuance of a Travel Document as may be determined by the Department: *Provided, however,* That any fee shall not be increased more than once every three (3) years.

SECTION 17. *Passport Revolving Fund.* - The Department may charge a service fee of not more than Two Hundred Fifty Pesos (Php250) for such service rendered to applicants relating to the processing and issuance of passports requiring special consideration, waiver or issuance beyond regular office hours. The service fees received by the Department under this section shall constitute a revolving fund to be called the "Passport Revolving Fund" which may be utilized by the Department for the improvement of its passporting and consular services and other Department services except travel and transportation allowances and expenses.

The setting up, use and disbursement of funds shall be subject to review, accounting and auditing rules and regulations of the Commission on Audit and will be subject to an annual review by Congress, but the Secretary will submit a report on the disbursement of the fund every six (6) months to both the Senate and the House Committees on Foreign Relations.

SECTION 18. *Waiver.* - The Secretary of Foreign Affairs is solely authorized to waive any requirements set forth in Section 5 of this Act.

SECTION 19. *Offenses and Penalties.* - A passport being a proclamation of the citizenship of a Filipino, is a document that is superior to all other official documents. As such, it should be accorded the highest respect by its holder that to do damage to its integrity and validity is a serious crime that should be penalized accordingly:

a) *Offenses Relating to Issuances:*

Penalties. - Any person who:

1. Acting or claiming to act in any capacity or office under the Republic of the Philippines, without lawful authority, grants, issues or verifies any passport or travel document to any or for any person whomsoever shall be punished by a fine of not less than Fifteen thousand pesos (Php15,000) nor more than Sixty thousand pesos (Php60,000) and imprisonment of not less than eighteen (18) months nor more than six (6) years; or
2. Being a diplomatic or consular official authorized to grant, issue, amend or verify passports, knowingly and willfully grants, issues, amends or verifies any such passport to any or for any person not owing allegiance to the Republic of the Philippines, whether citizen or not, shall be punished by a fine of not less than Fifteen thousand pesos (Php15,000) nor more than Sixty Thousand Pesos (Php60,000) and imprisonment of not less than eighteen (18) months but not more than six (6) years, and upon conviction, be disqualified from holding appointive public office;
3. Being a diplomatic or consular officer knowingly and willfully grants and issues to, amends or certifies to the authenticity of any passport or travel document for any person not entitled thereto, or knowingly and willfully issues more than one passport to any person except as provided for in this Act, shall be punished by a fine of not less than Fifteen thousand pesos (Php15,000) nor more than Sixty thousand pesos (Php60,000) and imprisonment of not less than eighteen (18) months nor more than six (6) years and upon conviction, be disqualified from holding appointive public office.

b) *Offenses Relating to False Statements:*

Penalties. - Any person who willfully and knowingly:

1. Makes any false statement in any application for passport with the intent to induce or secure the issuance of a passport under the authority of the Philippine Government, either for his own use or the use of another, contrary to this Act or rules and regulations prescribed pursuant hereto shall be punished by a fine of not less than Fifteen thousand pesos (Php15,000) nor more than Sixty thousand pesos (Php60,000) and imprisonment of not less than three (3) years nor more than ten (10) years: or
2. Uses or attempts to use any passport which was secured in any way by reason of any false statements, shall be punished by a fine of not less than Fifteen thousand pesos (Php15,000) nor more than Sixty thousand pesos (Php60,000) and imprisonment of not less than three (3) years, but not more than ten (10) years; or
3. Travel and recruitment agencies whose agents, liaison officers or representatives are convicted of offenses relating to false statements shall in addition to the fines and penalties abovementioned have their license revoked with all deposits, escrow accounts or guarantee funds deposited or made as a requirement of their business forfeited in favor of the government without prejudice to the officials of the branch office or of the agency being charged as accessories to the offense and upon conviction barred from engaging in the travel or recruitment agency business.

c) *Offenses Relating to Forgery:*

Penalties. - Any person who:

1. Falsely makes, forges, counterfeits, mutilates or alters any passport or travel document or any supporting document for a passport application, with the intent of using the same shall be punished by a fine of not less than Sixty thousand pesos (Php60,000) nor more than One hundred fifty thousand pesos (Php150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years; or
2. Willfully or knowingly uses or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated or altered passport or travel document or any passport validly issued which has become void by the occurrence of any condition therein prescribed shall be punished by a fine of not less than Sixty thousand pesos (Php60,000) nor more than One hundred and fifty thousand pesos (Php150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years: *Provided, however,* That officers of corporations, agencies or entities licensed in the travel and recruitment industry would be held similarly liable as their agents, liaison officers or representatives: *Provided, finally,* That forgeries of five (5) or more passports or travel documents, would be considered as massive forgery tantamount to national sabotage and shall be punished by a fine of not less than Two hundred and fifty thousand pesos (Php250,000) nor more than One Million pesos (Php1,000,000) and imprisonment of not less than seven (7) years nor more than seventeen (17) years.

d) *Offenses Relating to Improper Use:*

Penalties. - Any person who willfully and knowingly:

1. Uses or attempts to use, any passport issued or designed for the use of another or any supporting documents for a passport application which belongs to another; or
2. Uses or attempts to use any passport or supporting documents in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant thereto; or
3. Furnishes, disposes, or delivers a passport to any person, for use by another or other than the person for whose use it was originally issued or designed; or
4. Defaces or destroys a Philippine passport, shall be punished by a fine of not less than Sixty thousand pesos (Php60,000) nor more than One hundred fifty thousand pesos (Php150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years.

e) *Offenses Relating to Multiple Possession:*

Penalties. - No person or individual may hold more than one valid passport, except as provided for in Section 7 hereof, and any individual who possesses more than one unexpired passport shall, for every unexpired passport found in his possession, be punished by a fine of not less than Fifteen thousand pesos (Php15,000) nor more than Sixty thousand pesos (Php60,000) and imprisonment of not less than eighteen (18) months but not more than six (6) years: *Provided*, That the maximum fine and imprisonment shall be imposed by the court if he attempts

to use or actually uses an unexpired passport which is not in his name.

In case any of the offenses prohibited in this Act constitutes a violation of the Revised Penal Code and the penalty imposed in said Code is heavier than that provided in this Act, the latter penalty shall be imposed.

SECTION 20. *Suspension of Accreditation.* - Any duly accredited travel or recruitment agent or agency which violates the prescription on application for passport under Section 6 hereof shall have such accreditation suspended without prejudice to civil, criminal or administrative sanctions including revocation of its license to operate.

The mere submission of spurious, forged or falsified documents supporting a passport application by any duly accredited travel or recruitment agent or agency shall be *prima facie* evidence that the said travel or recruitment agent or agency is the author of such forgery or falsification.

SECTION 21. *Rules and Regulations.* - The Secretary shall issue such rules and regulations as may be necessary to implement the provisions herein within sixty (60) days from date of effectivity of this Act without extension or delays.

SECTION 22. *Separability Clause.* - Should any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder thereof shall not be affected thereby.

SECTION 23. *Repealing Clause.* - All laws, decrees, orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SECTION 24. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in at least five (5) newspapers of general circulation or in the Official Gazette.

Approved: November 22, 1996.

Relevant Statutes on Trafficking in Persons*

*WomenLEAD Foundation, Inc.***

On 26 May 2003, President Gloria Macapagal-Arroyo signed into law Republic Act No. 9208, otherwise known as the “Anti-Trafficking Persons Act of 2003.” This law defines trafficking in persons and criminalizes the acts of trafficking and acts that promote and facilitate trafficking. It institutes policies to eliminate trafficking in persons, especially women and children, as well as establishes the necessary institutional mechanism for the protection and support of trafficked persons.

Prior to the enactment of R.A. No. 9208, however, some statutes were used in investigating, prosecuting, and hearing cases involving trafficking in persons. While a new law has been passed to address both domestic and international trafficking, these laws

* Matrix presented at the *Inter-disciplinary Seminar on Anti-Trafficking in Persons*, on June 24 to 25, 2004, at South Sea Resort Hotel, Dumaguete City.

** WomenLEAD was founded on June 12, 2000 by nine feminist advocates with backgrounds in the fields of law and the social sciences. It was incorporated in August 24, 2000 at the Securities and Exchange Commission (SEC). WomenLEAD is an organization by women for women.

WomenLEAD’s programs and services include Feminist Counseling and Legal Services, Training and Legal Education, campaigns and External Linkages, Research, Publications and Library, Administrative Support and Finance Program.

are still relevant and might be applicable on some cases. Hence, it will still help the various stakeholders to revisit the other local laws that are relevant to the issue of trafficking in persons.

For purposes of dealing with the issue of trafficking in women and children, the matrix on Article 341 of the Revised Penal Code (White Slave Trade); Republic Act No. 6955 (Mail-Order Bride Law); Republic Act No. 7610 (Child Trafficking under Special Protection of Children Against Abuse, Exploitation and Discrimination Act), and Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act) has been prepared. There are still more statutes that have not been included herein. On the next page is the abovementioned matrix.

CRIME/ OFFENSE	ACTS PENALIZED	PERSONS LIABLE	PENALTY	JURISDICTION
<p>White Slave Trade (Article 341, Revised Penal Code)</p> <p>[As amended by <i>Batas Pambansa Blg. 186</i>, March 16, 1982]</p>	<p>Any person who in any manner, or under any pretext shall:</p> <p>a. Engage in the business of prostitution; or</p> <p>b. Profit by prostitution; or</p> <p>c. Enlist the services of any other for the purpose of prostitution.</p>	<p>(1) One who maintains or engages in the business of prostitution. He need not be the owner of the house. He may only be the manager or the man in charge of the house with a fixed salary. (<i>People v. Gomez</i>, CA 40 OG Supp., 4, 157).</p> <p>(2) Monetary consideration is not the controlling element. Even if there's no proof of profit, once enlistment of women for purposes of prostitution is proven. (<i>People v. Nueva</i>, 76 Phil 276 [1946]).</p> <p>(3) Engaging in the business of prostitution; profiting by prostitution; and enlisting the services of women for the purpose of prostitution – one of the above-mentioned acts is sufficient to constitute the offense. (<i>People v. Nuevas</i>, 18 March 1946).</p>	<p><i>Prison Mayor</i> in its medium and maximum period or eight (8) years and one (1) day to twelve (12) years.</p>	<p>Regional Trial Court</p> <p>But when one of the offended party is a minor at the time of the commission of the offense, the Family Courts shall have jurisdiction. (Sec. 5a, Republic Act No. 8369 or the Family Courts Act)</p>
<p>Mail-Order Bride Law (<i>Republic Act No. 6955</i>)</p>	<p>1. To establish or carry on a business which has for its purpose the matching of Filipino women for marriage to foreign nationals either on mail basis or through personal introduction;</p> <p>2. To advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier, or any propaganda material</p>	<p>Any person, natural or juridical, association, club, or any other entity who commits, directly or indirectly, any of the specified prohibited acts.</p> <p>Manager or officer-in-charge or advertising manager of any newspaper, magazine, television or radio station, or other media, or of an advertising agency, printing company or other similar entities who knowingly allows, or consents, to the specified prohibited acts.</p>	<p>Imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and</p> <p>Fine of not less than Pphp8,000 but not more than Pphp20,000.</p> <p>If the offender is a foreigner, he shall be immediately deported and barred forever from entering the country after service of sentence and payment of fine.</p>	<p>Regional Trial Court</p>

CRIME/ OFFENSE	ACTS PENALIZED	PERSONS LIABLE	PENALTY	JURISDICTION
<p>Child Trafficking (<i>Republic Act No. 7610</i>)</p>	<p>calculated to promote the prohibited acts in the preceding paragraph. 3. To solicit, enlist, or in any way attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals either on a mail-order basis or through personal introduction for a fee; and 4. To use the postal service to promote the prohibited acts in paragraph I hereof.</p>	<p>Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter.</p>	<p><i>Reclusion temporal</i> to <i>reclusion perpetua</i> When the victim is under twelve (12) years of age, the penalty shall be in its maximum period. A penalty lower by two (2) degrees than that prescribed for the consummated felony under sec. 7 hereof shall be imposed upon principals to attempt to commit child trafficking under this Act.</p>	<p>Family Courts. (Sec. 5a, Republic Act No. 8369 or the Family Courts Act)</p>
<p>Attempt to Commit Child Trafficking (<i>Republic Act No. 7610</i>)</p>	<p>1. When a child travels alone to foreign country without valid reason therefore and without clearance issued by the Department of Social Welfare and Development (DSWD) or written permit or justification form the child's parents or legal guardian; 2. When a pregnant mother executes an affidavit of consent for adoption for a consideration;</p>			

CRIME/ OFFENSE	ACTS PENALIZED	PERSONS LIABLE	PENALTY	JURISDICTION
<p>Illegal Recruitment (<i>Republic Act No. 8042</i>)</p>	<p>3. When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking;</p> <p>4. When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or</p> <p>5. When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-caring institutions who can offer for the purpose of child trafficking.</p>	<p>Non-licensee or non-holder of authority</p> <p>Licensee/Holder of Authority</p> <ul style="list-style-type: none"> • Juridical Person • Officers having control, management or direction of the business. • Natural Person • Principals, accomplices, accessories. 	<p>Imprisonment of twelve (12) years and fine of Php500,000.</p> <p>Imprisonment of six (6) years and one (1) day to twelve (12) years and fine of Php200,000 to Php500,000.</p>	<p>Regional Trial Court</p> <p>Province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense. Provided, court where first filed shall acquire jurisdiction to the exclusion of other courts.</p>

CRIME/ OFFENSE	ACTS PENALIZED	PERSONS LIABLE	PENALTY	JURISDICTION
	<p>To charge of accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;</p> <p>To furnish or publish any false notice or information or document in relation to recruitment or employment;</p> <p>To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;</p> <p>To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;</p> <p>To influence or attempt to influence any person or entity not to employ any worker</p>	<p>Both licensed or holder of authority or not.</p>	<p>When victim is eighteen (18) years or younger, imprisonment of twelve (12) years and fine of Php500,000.</p>	

CRIME/ OFFENSE	ACTS PENALIZED who has not applied for employment through his agency;	PERSONS LIABLE	PENALTY	JURISDICTION
	<p>To engage in the recruitment of placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;</p> <p>To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;</p> <p>To fail to submit reports on the status of employment, placement, vacancies, remittances of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;</p> <p>To substitute or later to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment (DOLE) from the time of actual signing thereof by the parties up to and including the period of</p>			

CRIME/ OFFENSE	ACTS PENALIZED	PERSONS LIABLE	PENALTY	JURISDICTION
Economic Sabotage (<i>Republic Act No. 8042</i>)	<p>the expiration of the same without the approval of the DOLE;</p> <p>To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;</p> <p>Failure to actually deploy without valid reason as determined by the DOLE;</p> <p>To be an officer or member of the Board of any corporation engaged in travel agency or be engaged directly or indirectly in the management of a travel agency.</p>	<p>Officer or agent of a recruitment or placement agency.</p>	<p>Life imprisonment and fine of Php500,000 to Php1,000,000.</p>	<p>Regional Trial Court</p>
Conflict of Interest (<i>Republic Act No. 8042</i>)	<p>If IR is committed against three (3) or more persons individually or as a group.</p> <p>To engage, directly or indirectly, in the business of recruiting migrant workers as defined in this Act.</p>	<p>IR committed by a syndicate</p> <p>IR in large scale.</p> <p>Official or Employee of DOLE, Philippine Overseas Employment Administration (POEA), Overseas Workers Welfare Administration</p>	<p>If liable for illegal recruitment: Imprisonment of twelve (12) years and fine of Php500,000.</p>	<p>Regional Trial Court</p>

CRIME/ OFFENSE	ACTS PENALIZED	PERSONS LIABLE	PENALTY	JURISDICTION
<p>Failure to Observe Mandatory Periods for Recruitment of Illegal Cases (<i>Republic Act No. 8042</i>)</p>	<p>Failure to observe the following:</p> <p>a. Preliminary investigation shall be terminated within a period of thirty (30) days from the date of their filing.</p> <p>b. If <i>prima facie</i> case is established, Information shall be filed in Court –</p> <ul style="list-style-type: none"> • By the Investigating Prosecutor within twenty-four (24) hours from the termination of the investigation. • If investigation conducted by Judge, by the proper Prosecution Officer within forty-eight (48) hours from receipt of the records of the case. 	<p>(OWWA), Department of Foreign Affairs (DFA), or other government agencies involved in the implementation of this Act;</p> <p>Relatives within the fourth (4th) civil degree of consanguinity/ affinity of the persons above-described.</p> <p>Responsible government officials:</p> <ul style="list-style-type: none"> • Investigating Judge or Prosecutor; and • Prosecution Officer. 	<p>If liable for economic sabotage: Life imprisonment and fine of Php500,000 to Php1,000,000.</p> <p>Any applicable criminal penalty as provided for in other laws.</p> <p>Any or all of the following:</p> <ul style="list-style-type: none"> • Salary shall be, or shall be caused to be, withheld until the said official renders decision. • Suspension for not more than ninety (90) days; or • Dismissal from the service with disqualification to hold any appointive public office for five (5) years. 	