

publication registration number

11-1620000-000283-01

# Seoul International Conference Against Human Trafficking in Migrant Women

28 June 2010

Seoul, Republic of Korea

국가인권위원회



EM029761



National Human Rights Commission of Korea



# Opening Speech

Good morning, ladies and gentlemen,

I am Hyun Byung-Chul, Chairperson of the National Human Rights Commission of Korea.

I would like to extend my sincere welcome and appreciation to all the participants of today's conference, especially to our guests from overseas: Ms. Joy Ngozi Ezeilo, the UN Special Rapporteur on Trafficking of Persons, Ms. Amara Pongsapich, the Chairperson of the National Human Rights Commission of Thailand, Liezel Z. Parajas, OIC of the Women's Human Rights Center, Jean Enriquez of the Coalition against Trafficking in Women, Professor Jennifer Burn and Suraina Pasha of Asia Pacific Forum of National Human Rights Institutions.

My special appreciation goes out to Lawmakers Kim Chun-Jin and Kim Dong-Sung who took time out of busy schedules to be with us today. Also, I want to thank all the presenters including Yoo Young-Nim of Durebang and all the panelists including Professor Kim Hyun-Mi.

Human trafficking, the subject of today's conference, should not and must not happen in the world where we live in. Due to the criticisms that there are a large number of human trafficking victims in Korea and other countries of the world, however, the NHRCK started to get more involved and interested in the subject which led to today's conference.

As many of you already know, human trafficking does not simply refer to an act of kidnapping and selling a passerby. The 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime' which was adopted in the 2000 UNGA provides a wider definition of human trafficking. According to the definition, there are a number of instances in Korea which can be defined as human trafficking.

They are migrant women who got their passport confiscated by their employer and are forced into prostitution at entertainment establishments, migrant workers who have to endure unfavorable treatment and working conditions because of their unstable immigration status, and marriage migrants who marry Korean men without being given proper and accurate information on their spouse by international marriage agencies. They fall within the

boundary of human trafficking.

The NHRCK received a complaint from a Filipino woman who got in the country with an entertainer visa in 2008 and who are exploited and forced into prostitution, and started investigation and reviewed possible improvements. Also at the same year, the Commission hosted the 'Seoul International Conference on Protection and Promotion of Human Rights of Migrants in the Multicultural Society' to talk about human trafficking and women's right and pledged cooperation between national human rights agencies and various parties responsible for compliance.

With the initiation of Lawmaker Kim Chun-Jin, the National Assembly of Korea is in the process of deliberating draft legislations on punishment of human trafficking and on prevention of human trafficking incidents and protection of its victims.

I believe today's conference is especially meaningful under such circumstances. I hope it could present an opportunity to share various discourses on human trafficking in Korea and in the global community and to find solution to prevent human trafficking and to help victims of human trafficking. Especially, I hope the conference can help promote international cooperation to protect and promote human rights of female victims of human trafficking.

Once again, I want to thank all the participants for coming here. I wish happiness and wellbeing on all of you. Thank you.

June 28, 2010

Byung-Chul HYUN  
Chairperson  
National Human Rights Commission of Korea

**| Congratulatory Speech |**

# **Seoul International Conference against Human Trafficking in Migrant Women**

Greetings to all the participants of the Seoul International Conference against Human Trafficking in Migrant Women. I am Jin-Young, Lawmaker of Seoul Yong-San District.

I would like to congratulate on the hosting of the Seoul International Conference against Human Trafficking in Migrant Women and to applaud Chairperson Hyun Byung-Chul, Secretary-General Kim Ok-Shin and other members of the National Human Rights Commission of Korea who always work hard for a more democratic society by protecting and promoting fundamental inviolable human rights of each individual and who have done a great job preparing for the conference.

Also, I would like extend my warm gratitude to today's key note speaker Ms. Joy Ngozi Ezeilo, the UN Special Rapporteur on Trafficking of Persons and all the other experts from home and abroad for your presence today.

The world is entering into a multicultural age with ever-increasing transnational exchange of people. Korea is not an exception with increasing number of foreign residents. Due to weak legal and institutional system for such migrants, there are a large number of human rights violations around the world - one of which is human trafficking of the relatively weak, the women. The method of crime has become more sophisticated and complex as it involves new medium such as the internet, and starts to show characteristics of large-scale organized crime involving both domestic and international network.

In Korea, international marriage and entertainer's visa are often used as a tool for human trafficking thereby violating human rights of a large number of migrant women.

I hope this conference can contribute finding ways to eradicate human trafficking on migrant women and to protect the victims by identifying cooperative measures between NGO, governments and national human rights agencies.

I will do my part at the National Assembly to establish relevant laws and regulations.

Once again, sincere congratulations on the hosting of the Seoul International Conference against Human Trafficking in Migrant Women and I wish happiness and wellbeing for all of you. Thank you.

June 28, 2010

JIN YOUNG  
Member of the National Assembly, KOREA



**| Congratulatory Speech |**

## **Seoul International Conference against Human Trafficking in Migrant Women**

Good morning. I am Lawmaker Kim Chun-Jin.

I would like to extend my warm gratitude to all the distinguished participants of the Seoul International Conference against Human Trafficking in Migrant Women.

Also, my special appreciation to Chairperson Hyun Byung-Chul of the National Human Rights Commission of Korea for hosting this meaningful conference, to Ms. Joy Ngozi Ezeilo, the UN Special Rapporteur on Trafficking of Persons who will give us a keynote address on the theme of 'the Status of Human Trafficking of Migrant Women Around the World and the Role of the International Community', to Commissioner MA Victoria Cardona of the Commission on Human Rights of the Philippines, and to Ms. Amara Pongsapich, the Chairperson of the National Human Rights Commission of Thailand.

I will start by briefing talking about human trafficking. With the end of the cold war era and the beginning of the global economy, personal exchanges among countries increased significantly, but on the flip side, human trafficking, an illegal form of exchanges, surfaced as a serious international problem. Human trafficking is one of the most serious crimes against humanity that destroys the human dignity itself. The size of the human trafficking black market is the third largest. And 80% of the victims are women and children.

According to a UNICEF statistics, more than one million children around the world are put to prostitution due to human trafficking; more than 30 million children for the past 30 years or so have lost their childhood due to sexual exploitation. Many international NGOs state that international human traffickers earned 28 billion dollars a year from sexual exploitations on women and children.

On the issue of 'human trafficking in migrant women', the theme of the Seoul International Conference, the NHRCK held a 'Seoul International Conference on Protection and Promotion of Human Rights of Migrants in the Multicultural Society' in 2008 and

adopted 'the Seoul Guidelines' of 72 articles as a practical measures to protect and promote human rights of migrants by human rights agencies of both countries of origin and destinations.

The Seoul Guidelines especially express concern on the severity of human rights violation of migrant women who have fallen victim to human trafficking, and pledged cooperation among national human rights agencies and other interested parties for human rights protection of the victim women. As a follow-up measure, the NHRCK hosted the Seoul International Conference against Human Trafficking in Migrant Women to promote and protect human rights of Asian migrants.

Since I participated in the seminar on prevention of human trafficking organized by the Cambodian government in July 2009, I recognized the severity of the problem and started introducing legislation on human trafficking with a number of seminar and workshops, policy discussions to establish legislation against sexual exploitation and human trafficking. Today the draft legislations on punishment of human trafficking and on protection of human trafficking victims are at the final stages of deliberation.

I will listen to all the valuable comments to be shared in the Conference throughout the day. With all of you actively participating in the discussion and sharing your ideas and concerns with each other, the Conference today will present a valuable opportunity to protect the basic rights of all human being and realize the dignity and value as human.

Lastly, I wish happiness and wellbeing to all the participants of the Seoul International Conference. Thank you.

June 28, 2010

Choon-Jin KIM  
Member of the National Assembly, KOREA

**| Congratulatory Speech |**

## **Venue for Coalition and Cooperation among Human Rights Agency**

Greetings. I am Lawmaker Kim Dong-Sung.

First, I would like to wish all the happiness and luck to all the participants for the Seoul International Conference against Human Trafficking in Migrant Women. And I would like to also thank the organizers for your hard work to make this conference a success.

Human rights is an intrinsic right that any human being is entitled to and as it says in the Declaration of the Rights of Man and of the Citizen of France, there should not be any discrimination or hindrance in exercising those rights.

Still today, however, there are a large number of people who are in the blind spot of human rights cannot lead a life deserving that of a human and asking for a helping hand. Human rights violation against women and/or children of third world countries are especially high and the theme of today's conference, the migrant women who are fallen victim to human trafficking can be viewed to be in the same category.

That is why the Seoul International Conference is especially meaningful.

In order to respond to human trafficking of migrant women that continues to evolve into a more organized manner, collective and coordinated efforts of various organizations and governments instead of that of a single nation is highly necessary.

Recognizing the importance of such cooperation, in 2008 the National Human Rights Commission of Korea and human rights agencies of the other countries announced the 'Seoul Guidelines' as a practical implementation measure.

Now we are here today to establish ways to promote cooperation and develop constructive responses based on the 'Seoul Guidelines'. This is why I believe today's conference will be something highly meaningful for promoting human rights of migrant women.



I sincerely hope today's conference can contribute to promoting human rights of migrant women through active sharing of ideas and experiences. I hope to learn a lot from the Conference and use them to develop quality policies.

Thank you for your attention.

June 28, 2010

Dong-Sung KIM  
Member of the National Assembly, KOREA

# Program

---

09:30 – 09:55	<b>Registration</b>
<hr/>	
10:00 – 10:05	<b>Opening Address</b> Byung–Chul HYUN, Chairperson • The National Human Rights Commission of Korea
<hr/>	
10:05 – 10:15	<b>Congratulatory Remarks</b> Choon–Jin KIM, Member of the National Assembly, KOREA Dong–Sung KIM, Member of the National Assembly, KOREA
<hr/>	
10:15 – 10:35	<b>Keynote Speech</b> The status of human trafficking in migrant women around the world and the role of international community Joy Ngozi EZEILO • Special Rapporteur of the UN Human Rights Council on trafficking in persons
<hr/>	
10:35 – 10:45	<b>Break</b>
<hr/>	
	<b>Session 1: Domestic implementation of international standards combating human trafficking</b>
10:45 – 12:05	MA Victoria V. Cardona, Commissioner • Commission on Human Rights of the Philippines  Young–Nim YOU, Director, Durebang  Jean Enriquez, Executive Director • Coalition Against Trafficking In Women–Asia Pacific  Christian Baureder, Protection Officer, UNHCR Seoul
<hr/>	
12:05 – 13:25	<b>Lunch</b>
<hr/>	

---

**Session 2: Development of rehabilitation and social integration programs for the victims of human trafficking**

13:30 – 14:50

Jennifer Burn, Associate Professor  
• University of Technology Sydney

June J. H. LEE, Chief of Mission, IOM Seoul

Hye-Ryeong CHA, Lawyer  
• Korean Public Interest Lawyer's Group 'GONGGAM'

Hyun-Mee KIM, Associate Professor, Yonsei University

---

14:50 – 15:00      **Break**

---

**Session 3: Regional cooperation to prevent human trafficking in Asia**

15:00 – 16:20

Amara Pongsapich, Chairperson  
• National Human Rights Commission of Thailand

Young-Sook CHO, Chief  
• International solidarity Center, Korean Women's Association United

Kuk-Yom HAN, Representative  
• Women Migrants Human Rights Center of Korea

Anselmo LEE, Executive Director  
• Korea Human Rights Foundation

Suraina Pasha, Project Manager  
• Asia Pacific Forum of National Human Rights Institutions

---

16:20 – 16:30      **Break**

---

16:30 – 17:30      **Open Discussion and closing address**

---

18:30 – 20:00      **Dinner**

---

# Contents

## ❖ Keynote Speech

- The status of human trafficking in migrant women around the world and the role of international community** ..... 1  
Joy Ngozi EZEILO(Special Rapporteur of the UN Human Rights Council on trafficking in persons)

## ❖ Session 1

- Domestic implementation of international standards combating human trafficking** ..... 19

[Announcement 1]

- An NHRIP Perspective on the Philippine Domestic Implementation of International Standards to Combat Trafficking ..... 21  
MA Victoria V. Cardona, Commissioner(Commission on Human Rights of the Philippines)

[Announcement 2]

- International Standards on Human Trafficking:  
Implementation Strategy of Korea ..... 29  
Young-Nim YOU, Director(Durebang)

[Announcement 3]

- Domestic Implementation of International Standards Combating Human Trafficking ..... 47  
Jean Enriquez, Executive Director(Coalition Against Trafficking in Women-Asia Pacific)

[Discussion 1]

- HUMAN TRAFFICKING AND REFUGEE PROTECTION: UNHCR'S PERSPECTIVE ..... 55  
Christian Baureder, Protection Officer(UNHCR Seoul)

## ❖ Session 2

- Development of rehabilitation and social integration programs for the victims of human trafficking** ..... 65

[Announcement 1]

- Human rights protections and victim support for trafficked women in

Australia ..... 67

Jennifer Burn, Associate Professor  
(University of Technology Sydney)

[Announcement 2]  
Return and Reintegration of Trafficked Persons-Guidelines for IOM Practices ..... 77

June J. H. LEE, Chief of Mission, IOM Seoul

[Announcement 3]  
Status and Tasks of Human Trafficking Victim support Programs:  
Cases in Korea ..... 79

Hye-Ryeong CHA, Lawyer(Korean Public Interest Lawyer's Group, 'GONGGAM')

❖ Session 3

**Regional cooperation to prevent human trafficking in Asia ..... 85**

[Announcement 1]  
Regional Cooperation to Prevent Human Trafficking in Asia:  
The Case of Thailand ..... 87

Amara Pongsapich, Chairperson(National Human Rights Commission of Thailand)

[Announcement 2]  
Cooperation Measures to Prevent Human Trafficking:  
Demand Oriented Approach ..... 95

Young-Sook CHO, Chief(International Coalition, Korean Women's Association United)

[Announcement 3]  
Importance of a transnational network in Asia to prevent marriage  
migration of human trafficking nature: based on marriage migration  
cases of Korea ..... 105

Kuk-Yum HAN, Representative(Women Migrants Human Rights Center of Korea)

[Discussion 1]  
Cooperation Measures to Prevent Human Trafficking in Asia ..... 123

Anselmo LEE, Executive Director(Korea Human Rights Foundation)

[Discussion 2]  
Regional Cooperation to Prevent Human Trafficking in Asia :  
The role of National Human Rights Institutions ..... 129

Suraina Pasha, Project Manager(Asia Pacific Forum of National Human Rights Institutions)



Keynote  
Speech

**The status of human trafficking  
in migrant women around the  
world and the role of  
international community**

○





# The status of human trafficking in migrant women around the world and the role of international community

Joy Ngozi EZEILO

(Special Rapporteur of the UN Human Rights Council on trafficking in persons)

## I . Introduction

My profound thanks to the organizers of this important event for inviting me to present a keynote address at this occasion on a very topical issue plaguing humanity today trafficking in human beings especially women and children. I have been asked to give a keynote address on specifically the **“Status of Human Trafficking of Migrant Women Around the World and the Role of the International Community”**

Trafficking in persons or human trafficking or trafficking in human beings is in short, modern form of slavery that is unfortunately growing in scale and repercussions. Although, very difficult to quantify it is hugely underestimated because of its insidious, complex and dynamic nature. People are trafficked for the purpose of sexual exploitation, forced labour, slavery or practices similar to slavery or the removal of organs. As one of the fastest growing criminal activities in the world, trafficking in persons results in serious breaches of human rights and dignity of trafficked persons. Trafficking occurs within and across national borders, often with victims crossing many borders to reach their final destination.<sup>1)</sup>

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 (known as Palermo Protocol), defines “Trafficking in Persons” in its Article 3 as follows:

---

1) See the report Joy Ezeilo, the UN Special Rapporteur on Trafficking in Persons, especially women and children-Doc. A/HRC/10/16 of 20th February, 2009 and presented to the Human Rights Council on 12th March 2009; also UN General Assembly Doc. A/64/290 of 12th August 2009 presented on 23rd October, 2009.

**The recruitment, harbouring, 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 shall include at 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.**

Trafficking definition covers the use of minors for commercial sexual activity even if there is no force, fraud, or coercion. Trafficking also covers people who are held against their will to pay off a debt; this is known as peonage. A victim's initial agreement to travel or perform the labour does not allow an employer to later restrict that person's freedom or to use force or threats to obtain repayment. Trafficking in persons can be considered from a number of different perspectives including: human rights; crime control and criminal justice; migration; and labour. An integrated approach that locates human rights at the core of all efforts is most desirable as far as the mandate of the Special Rapporteur on trafficking in persons is concerned and in order to achieve meaningful and sustainable change in addressing the problem.

## **II. Overview of the Global Problem of Human Trafficking and the Scale of trafficking of women**

Although women as well as men are trafficked, there is a consensus that majority of victims of trafficking are women. Women and girls are trafficked for forced marriage, forced prostitution, sexual exploitation and forced labour (including domestic work, working in factories and mines and other forms of social and economic exploitation). Quality data is scarce in the field of human trafficking. Existing data are problematic because they often include smuggled persons, as well as illegal migrants. Another major reason is that victims, particularly adult victims trafficked for sexual exploitation, rarely report their victimization.

Despite the paucity of quality data and statistical difficulties various organizations or institutions have tried to estimate the magnitude of the problem. United Nations Office on Crime and Drugs (UNODC) posits that "Some 2.5 million people throughout the world are at any given time recruited, entrapped, transported and exploited in a process called human trafficking..." According to the U.S. Department of State Trafficking in Persons Report 2007, every year some 800,000 women and children are trafficked across national borders, which does not include the millions trafficked within their own countries. Approximately 80

percent of transnational victims are women and girls and up to 50 percent are minors. According to the UNICEF Executive Director, globally, an estimated 1.2 million children are trafficked each year, within countries as well as across borders.<sup>2)</sup> A report released by the ILO in 2005 places the global minimum estimate number of persons in forced labour as a result of trafficking at 2,450,000. Trafficking represents a significant proportion of forced labour cases, namely about 20 per cent of all forced labour and about one quarter of forced labour cases exacted by private agents.<sup>3)</sup> It is often assumed that people are mainly trafficked for the purpose of commercial sexual exploitation. However, ILO estimates indicate that 32 per cent of all victims were trafficked into labour exploitation, while 43 per cent were trafficked for sexual exploitation and 25 per cent for a mixture of both.<sup>4)</sup> A breakdown of regional statistics by ILO shows that Asia and the Pacific have the highest number of people in forced labour as a result of trafficking. This is put at 1,360,000 out of the global number of 2,450,000,<sup>5)</sup> which constitute more than half the world statistics. Of course this calls for action particularly from government and other stakeholders such as the National Human Rights Institutions in affected region for which South Korea is part of.

On migration, the facts and figures indicate that:

- ① There are more than 200 million estimated international migrants in the world today.<sup>6)</sup>
- ② Migrants comprise 3.0 per cent of the global population.<sup>7)</sup>
- ③ The number of the migrants worldwide would constitute the fifth most populous in the world.<sup>8)</sup>
- ④ Women account for estimated at 51.6 per cent of all migrants in 2010, outnumbering their male counterparts.<sup>9)</sup>
- ⑤ In 2007, remittance flows are estimated at USD 337 billion worldwide, USD 251 billion of which went to developing countries.<sup>10)</sup>
- ⑥ There are roughly 20 to 30 million unauthorized migrants worldwide, comprising around 10 to 15 per cent of the world's immigrant stock.<sup>11)</sup>

---

2) Similar figures are given by the ILO Action Against Trafficking in Human Beings, 2008

3) Ibid. See also ILO, A Global Alliance Against Forced Labour, 2005, p. 14.

4) Ibid.

5) Ibid. Other regional statistics are: Industrial Countries- 270,000; Latin America and the Caribbean- 250,000; Middle East and North Africa 230,000; Transition Countries- 200,000 and Sub-Saharan Africa- 130,000.

6) World Migration 2008: Managing Labour Mobility in the Evolving Global Economy

7) United Nations' Trends in Total Migrant Stock: The 2005 Revision, <http://esa.un.org/migration>

8) See ILO, International labour migration. A rights-based approach Geneva, International Labour Office, 2010 ; also World Bank's Migration and Development Brief 5 (July 10, 2008), Revisions to Remittance Trends 2007, <http://go.worldbank.org/NN93K4Q420>

9) United Nations' Trends in Total Migrant Stock: The 2005 Revision, <http://esa.un.org/migration>

10) World Bank's Migration and Development Brief 5 (July 10, 2008), Revisions to Remittance Trends 2007, <http://go.worldbank.org/NN93K4Q420>

11) United Nations' Trends in Total Migrant Stock: The 2005 Revision, <http://esa.un.org/migration>

⑦ In 2007, there were 26 million internally displaced persons (IDPs) in at least 52 countries as a result of conflict compared to 24.5 million IDPs in 52 countries the year before.<sup>12)</sup>

⑧ In 2007, the global number of refugees reached an estimated 11.4 million persons.<sup>13)</sup>

Migration is a broad general concept and trafficking is a subset or category of migration. Migration is a process of movement of people from one place to another (in case of international migration, one country to another) in order to take up employment or establish residence or change their place of residence for various reasons.<sup>14)</sup>

According to Article 2. 1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), 1990,<sup>15)</sup> the term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

The Preamble of the MWC also states that “the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights.” The MWC seeks to prevent and eliminate, “the clandestine movements and trafficking in migrant workers” and the employment of migrant workers in irregular situations.

Migrant women who are looking for better economic opportunities are often vulnerable to trafficking.

According to ILO report, 2010, Trafficking constitutes the antithesis of any notion of decent work. The consequences are that:

“the trafficking victim will be at the mercy of the traffickers and, far from being able to find work to begin to build a better future, will be forced to labour to pay off debts, as a result of fear of disclosure, violence or reprisals. This labour is likely to be performed without a contract, time off, insurance, access to health or social security services or pay, and often for long hours in the kind of work too often reserved for low skilled migrant workers: in sweatshops, agriculture, construction work, domestic service, food processing or

---

12) Norwegian Refugee Council – Internal Displacement Monitoring Center's Internal Displacement: Global Overview of Trends and Developments in 2007, <http://www.internal-displacement.org>

13) Does not include some 4.6 million Palestinian refugees under the responsibility of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), United Nations High Commissioner for Refugees' 2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, <http://www.unhcr.org/statistics>

14) Md. Shahidul Haque, “Ambiguities and Confusions in the Migration-Trafficking Nexus: A Development Challenge,” Regional Seminar on the Social Implications of International Migration, 24-26 August 2005, Bangkok, p.4.

15) Has 25 ratifications (all sending countries) and entered into force on 1 July 2003 and will have a treaty monitoring body to compliance to it by ratifying states.

labour intensive manufacturing and, of course, for women and older girls, in commercial sex. Such exploitation is at the heart of trafficking.”<sup>16)</sup>

Again, restrictive immigration policies of favoured countries as well as the lumping or labeling trafficked migrant women as illegal migrants accentuates the problem leading to mis identification and lack of protection and assistance to this category of women who have been trafficked.

Human trafficking usually involves moving a person, the “commodity”, from one place to another with the promise of employment, education or marriage by using coercion, fraud, deception or force. Once moved, the person typically is forced to work under harsh conditions or for negligible wages.

In simple terms, the difference could be as follows:<sup>17)</sup>

- ① Trafficked persons are deceived or forced (actual or by threat) to move. Whereas, regular migrants are not usually deceived or forced to leave their place of residence. But, sometimes it could be difficult to draw a line between the two concepts as there are grey areas in between blurring a clear distinction.
- ② Both trafficking in persons and migration share the same “migratory space” as both involved movement. Nevertheless, the two phenomena have very different reasons behind movement and outcomes, with trafficked persons being exposed to a “harm” situation and end up in slave like situations. Exploitation, profit and illegality are all central to the idea of trafficking in persons. That is certainly not the case in the regular migration process.
- ③ The presence of exploitation or violations of rights are trafficking outcomes irrespective of the nature of mobility.
- ④ Trafficking is a development retarding phenomenon whereas regular migration is generally a development enhancing process.
- ⑤ Trafficking is viewed as an anti social and morally degrading heinous event. However, migration is widely considered as a process that could enhance social process in both the origin and destination countries, if managed properly; it could also be an empowering process for the migrants.

---

16)

17) Md. Shahidul Haque, “Ambiguities and Confusions in the Migration-Trafficking Nexus: A Development Challenge,” Regional Seminar on the Social Implications of International Migration, 24-26 August 2005, Bangkok, pp.5-6.

### III. Trafficked Migrant Women Domestic Workers Situation

As warned by ILO, although migration for the purposes of work can be an empowering experience for some women from traditional societies, it can also lead them into situations of abuse and exploitation. Women migrant workers may be victims of “double discrimination”

- as migrant workers and as women. Attention must be paid to protecting women from the problems and conditions they can face, such as sexual exploitation, violence and trafficking, and to the conditions of certain forms of work held predominantly by women migrant workers, such as domestic work.<sup>18)</sup>

The exploitation of female migrants trafficked into sex industry and sexually and economically exploited has been documented unlike the case of migrant women trafficked into domestic work that is more insidious because of the private spaces where this takes place and sheer difficulty of gathering statistics of the number involved.

As rightly observed by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), migrant domestic workers suffer discrimination, not only because they belong to a group with low status in society but also because they are non nationals. Often they are engaged in irregular work without a contract; employers don't usually pay social security contributions for their workers and sometimes salaries are withheld. Conditions of work are often difficult, with excessively long working hours. The irregular migration status of many migrant domestic workers makes them more vulnerable to abuse, including sexual abuse. Employers very often confiscate the identity documents of migrant domestic workers. It was remarked that women, who constitute the majority of migrant domestic workers, suffer a further vulnerability to abuse and have often no access to justice or other forms of assistance.<sup>19)</sup>

Recent studies<sup>20)</sup> to this ugly phenomenon indicate that women formed the bulk of those trapped in this situation and suffer untold abuse physically and psychologically. They are held in domestic servitude and forced labour. Globally trafficking of migrant domestic workers is growing in scale and is a multi billion dollar business, for which the demand and supply is not in short fall. The services of migrant domestic workers are widely used even in diplomatic circles making it extremely difficult to eradicate.

In a story covered by Sunday Independent Newspaper titled “Diplomat's nanny lifts lid

---

18) See ILO, International labour migration, A rights-based approach Geneva, International Labour Office, 2010 p. 94

19) Report of the Day of General Discussion on Migrant Domestic Workers- See CMW/C/11/2 -29 October 2009

20) ILO, Decent work for domestic workers (2009)

on modern slavery”<sup>21)</sup> Woman alleges horrific sexual and physical abuse and fears reprisals by employers protected under diplomatic immunity law. A woman who claimed she was beaten and sexually assaulted by a diplomat and his royal wife, who brought her to London, has spoken of her fear of reprisals.

The 23 year old, who has been granted refugee status, is owed more than £20,000 following an employment tribunal order, but has been unable to get justice as the couple have returned home.

The woman said she had been treated as little more than a slave after having been promised paid work as a nanny, a room in the couple's magnificent house and days off to enjoy London. Instead, she alleged, they violently beat her, sexually assaulted her and locked her away to work 19 hour days for no pay.

The domestic worker was 21 when she came to Britain. “From the first night I knew something was wrong,” she said. “I was made to share a room with the diplomat and he came into my bed and touched me all over.

“I was so scared but I spoke no English and had no money and no phone. I was trapped. I was paid nothing, never allowed to leave the house, and only given scraps to eat.

“They made me get up at six to cook, clean and care for them and their children; I didn't get to bed until one in the morning. They treated me like dirt, throwing things at me, shouting at me and hitting me ... I hand washed all their clothes until my hands were inflamed. If I didn't do what they asked they would beat me and smash my head against the wall. Every time I asked to go home they threatened me. They said they would destroy my passport and harm my family. I was terrified because I knew they could; they have power in my country.”

According to the Independent newspaper report “Her tale of modern slavery is one that is all too familiar in Britain. There are more than 20,000 migrant domestic workers estimated to be in the UK. Those working for diplomats are particularly vulnerable because visa restrictions prevent them changing employer. Last year 189 visas were issued to domestic workers accompanying diplomats, and every year some of these will be subjected to abuse. Now campaigners are demanding a change in the law.”

Another migrant domestic worker victim described her predicament thus: “I was in a prison, a cage, a slave,” she says. “I had no family, I had no friends. There was a point where I was even thinking I should commit suicide.”<sup>22)</sup>

---

21) <http://www.independent.co.uk/news/uk/home-news/diplomats-nanny-lifts-lid-on-modern-slavery-1769711.html> Sunday, 9 August 2009 by Emily Dugan

22) The Times, January 21, 2010



As rightly observed by Kalayaan, a charity dedicated to helping migrant domestic workers in the UK – “the power that employers can wield over vulnerable individuals is akin to bonded labour and leads to human trafficking.”

On 17 March 2010, an adjournment debate on the “visa rights of migrant domestic workers” was held in the House of Commons, United Kingdom. This debate was tabled by Martin Salter MP and Anthony Steen MP, who explained that the current system where domestic workers who come with diplomats cannot change their employer without losing their immigration status and facing deportation is effectively bonded labour. I cannot but agree with this assertion. The current system must be changed and governments must provide safe migration for female migrant workers devoid of exploitation and gender biases. First of all we need credible data to determine the magnitude of the problem, and its pattern and manifestation in order to design appropriate and effective response.

Some countries have enacted anti trafficking legislations or forced labour, slavery or servitude laws to deal with the problem. However, large number are yet to take action despite being State Parties to the Protocol to Prevent, Suppress and punish Trafficking in Persons as well as the Convention on the Human Rights of Migrant Workers and their Families. Undoubtedly we need legislations at national level to tackle the large scale trafficking of female migrant workers into forced prostitution, forced labour and domestic servitude. We need to prosecute and punish persons responsible and ensure that even where the female migrant worker has not been trafficked but, however, held in a situation of forced labour that she can obtain justice including compensation for human rights violations and economic loss suffered thereto and importantly that the employer will be held criminally liable.

#### **IV. Root Causes of TIP especially women:**

1. The root causes of trafficking include growing poverty, youth unemployment and gender inequalities, discrimination, gender based violence, especially of women and girls including the prevailing cultural and social frameworks all work to increase women’s vulnerability to trafficking.
2. As I observed in my recent report to the United Nations General Assembly: “The current world economic crisis has further exacerbated the desperation and the quest for human security, survival and development. Trafficking for labour exploitation is more likely to escalate particularly during this global economic crisis and increasing poverty caused by massive unemployment and employer’s tendencies to use cheap labour in order to cut costs and maximize profits. In order to tackle this States should organize trainings particularly for labour inspectors to understand the interface between migration and trafficking and to enhance mechanism for identification of trafficked

- persons in exploitative labour and mixed migration situation.”<sup>23)</sup>
3. Trafficking by its nature, characteristics and consequences is intertwined with violence chiefly directed at the female gender and shares underlying causes with violence against women, which includes unequal power relations, gender inequalities, discrimination, feminization of poverty, sexual objectification and commercialization of women and ingrained sex stereotypes and gender based discrimination reinforced by cultural and religious tenets.
  4. Trafficking of migrant women workers is chiefly due to poverty and unequal access to employment and means of livelihood for women in countries of origin. Women want to migrate to earn income or run away from gender based violence at home country. Sometimes their migration is facilitated by family members who want to exploit their sexuality to make money for the family.
  5. It is pertinent to be aware that although trafficking affects women, men, boys and girls; however, there is a consensus that trafficking disproportionately affects women and constitutes a form of violence.
  6. However, the long term effects of trafficking in person against the female gender are devastating; impacting not only on the individual victim but also on their family and the society at large. The severe trauma, shame and humiliation experienced by victims often prevent them from seeking treatment and support. Despite the severity of the problem, there exist capacity gaps on the part of key groups to respond effectively to trafficking and gender based violence particularly to prevent and protect victims while bringing perpetrators to account. Therefore, there is need to increase the knowledge and skills of key groups namely judges, police, prosecutors, immigration/border guards, labor inspectors, including health workers on effective response to human trafficking and the need to respect international treaties on women’s rights as well as the expansion of support services for victims/survivors of human trafficking. Again and as I noted in my annual report to Human Rights Council March 2009 international cooperation is imperative in eradicating human trafficking and promoting respect for human rights of trafficked victims.<sup>24)</sup>

## V. The Role of the International Community

Trafficking in persons continues to pose a serious challenge to humanity and requires a concerted international assessment and response through genuine multilateral cooperation

---

23) See UN General Assembly Doc. A/64/290 of 12th August 2009 presented on 23rd October, 2009

24) See Doc. A/HRC/10/16 of 20<sup>th</sup> February, 2009 and presented to the Human Rights Council on 12th March 2009

among countries of origin, transit and destination in order to be eradicated.

A major step taken by the international community aimed at responding to this modern day slavery is the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, in 2000<sup>25</sup> , which came into force 25th December, 2003. As at today 137 countries are State Parties to it.

The TIP Protocol requires ratifying State Parties to take effective and comprehensive action to prevent and combat trafficking in persons, especially women and children, protect and assist the victims as well as prosecute and punish traffickers.

The purposes of the Protocol as stated in article 2 are threefold namely:

- (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 comprehensively defines trafficking while article 4 deals with the scope of application of the Protocol. Further, article 5 criminalizes the offence of trafficking and places obligations on each State Party to 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.

Article 6 deals with assistance and protection to victims of trafficking (VOTs), which includes protection of privacy and identity of victims, undertaking measures to ensure 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 amongst others.

Furthermore, State Parties were required to 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.<sup>26</sup>

---

25) Adopted by G.A. Res. 25, (A/Res/55/25 of 15 November 2000); annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force December 25, 2003.

Importantly, there is an obligation on each State Party to provide for the physical safety of victims of trafficking in persons while they are within its territory and to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.<sup>27)</sup>

*There is also a provision in connection with the status of victims of trafficking in persons in receiving States to the effect that they should be granted stay to remain either on temporary or permanent, basis in appropriate cases.*<sup>28)</sup>

Article 8 stipulates the procedures for repatriation of victims of trafficking in persons placing high premium of their safety and assistance that will facility their return without unnecessary delay. The Protocol places emphasis on information exchange and training.<sup>29)</sup> The law enforcement, immigration or other relevant authorities of States Parties are expected to cooperate as appropriate with one another by exchanging necessary information that will enhance efforts at combating trafficking.

According to article 10 (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.

Today discussions are on going by State Parties to have a review mechanism for the Protocol so that it can have a treaty body that will monitor its implementation. If this move succeeds as I hope in a few months time then it will definitely strengthen accountability based on the Protocol's standards.

Prior to the adoption of the Palermo Protocol, the United Nations and its agencies had over the years adopted various human rights instruments which contain provisions relevant to addressing trafficking in persons. These include:

- The Universal Declaration of Human Rights<sup>30)</sup> ;
- The International Covenant on Civil and Political Rights;<sup>31)</sup>
- The International Covenant on Economic, Social and Cultural Rights;<sup>32)</sup>

---

26) Article 6 (4)

27) Ibid, Art. 6 (5) and (6)

28) Ibid, article 7

29) See art. 10

30) See arts. 1, 2, 4, 22, 23 and 25

31) Arts. 2, 3, 7, 8, 9, 12, 14, 23 and 26)

32) Specifically, arts. 2, 3, 6, 7, 10, 11 and 12)

- The Convention on the Elimination of All Forms of Discrimination against Women;<sup>33)</sup>
- The Convention on the Rights of the Child (CRC);<sup>34)</sup>
- The Optional Protocol to CRC on the sale of children, child prostitution and child pornography;<sup>35)</sup>
- The Optional Protocol to CRC on involvement of children in armed conflict;<sup>36)</sup>
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>37)</sup>
- The International Convention on the Elimination of All Forms of Racial Discrimination;<sup>38)</sup>
- ILO Convention No. 29 on Forced or Compulsory Labour;<sup>39)</sup>
- ILO Convention No. 138 concerning Minimum Age for Admission to Employment;<sup>40)</sup>
- ILO Convention No. 182 on Worst Forms of Child Labour;<sup>41)</sup>
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime;
- The Rome Statute of the International Criminal Court;<sup>42)</sup>
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;<sup>43)</sup>
- The General Assembly Declaration on Violence against Women;<sup>44)</sup>
- The Vienna Declaration and Programme of Action;
- The Beijing Platform of Action;<sup>45)</sup> and also the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002.<sup>46)</sup>

---

33) Arts. 2, 6, 9, 11, 12, 14, 15 and 16

34) Arts. 7, 16, 19, 28, 31, 32, 34, 35, 36, 37 and 39

35) Arts. 1, 2, 3 and 8

36) Articles 1-4

37) Specifically, arts. 1, 3, 13 and 14

38) Arts. 2, 5 and 6

39) Arts. 1, 2 and 6

40) Arts. 1-3

41) In particular, art. 3 (1)

42) In particular, art. 7 (1) (c) and (2) (c)

43) Arts. 1, 3, 5, 6 and 7. See also the Slavery Convention, 1926, amended by Protocol, 1953.

44) Arts. 2 and 3.

45) See Joy Ezello, Special Rapporteur's annual report to the Human Rights Council- A/HRC/10/16 p. 10-11

46) In 2002, the United Nations, Office of the High Commissioner for Human Right (OHCHR) developed principles and guidelines in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. In Guideline 1 it reiterates the fact that "Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place

The General Assembly has also through its resolution in 2009 approved an initiative to have a Global Plan of Action (GPA) for combating trafficking and high level consultations are ongoing in respect thereto. I believe that such global action can bring added value to current efforts by providing comprehensive, holistic and integrative approach to combating human trafficking. It will also enhance coordination, increase accountability and competitiveness to take individual and collective actions; as well as foster political and economic will including better resource mobilization.<sup>47)</sup>

The mandate of the Special Rapporteur on Trafficking in Persons, especially women and children is part of international community response to combat trafficking. It was created first in 2004 by the then Commission on Human Rights and renewed by the United Nations Human Rights Council resolution in 2008.

The Council's resolution 8/12 expressly calls upon the Special Rapporteur to

- (a) Promote the prevention of trafficking in persons in all its forms and the adoption of measures to uphold and protect the human rights of victims;
- (b) Promote the effective application of relevant international norms and standards and to contribute to the further improvement of them;
- (c) Integrate a gender and age perspective throughout the work of his or her mandate, inter alia through the identification of gender and age specific vulnerabilities in relation to the issue of trafficking in persons;
- (d) Identify and share best practices as well as challenges and obstacles in order to uphold and protect the human rights of the victims and to identify protection gaps in this regard;
- (e) Give particular emphasis to recommendations on practical solutions with regard to the implementation of the rights relevant to the mandate, including by the identification of concrete areas and means for international cooperation to tackle the issue of trafficking in persons;
- (f) Request, receive and exchange information on trafficking in persons from Governments, treaty bodies, special procedures, specialized agencies, intergovernmental organizations and non governmental organizations and other relevant sources, as appropriate, and, in accordance with current practice, respond effectively to reliable information on alleged human rights violations with a view to protecting the human rights of actual or potential victims of trafficking;

---

the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.”

47) See Joy Ezeilo, “Articulating a Global Plan of Action: Drawing upon practice at the national and regional level” presented at an Interactive Thematic Dialogue of the United Nations General Assembly on “Taking collective action to end human trafficking” United Nations Headquarters, New York 13 May 2009.

- (g) Work in close cooperation, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Council, relevant United Nations bodies and mechanisms, including the Inter-agency Coordination Group on Trafficking in Persons, the treaty bodies and regional human rights mechanisms, as well as national human rights institutions and civil society and the private sector; and finally
- (h) to report to the Human Rights Council and the General Assembly.

Consequent upon this resolution I was appointed as a mandate holder<sup>48)</sup> in 2008 and in discharging the above enumerated functions I carry out the following tasks: (a) reporting on an annual basis to both the Human Rights Council, Geneva and the UN General Assembly, New York; (b) Undertakes country visits or fact finding missions and issue specific reports on that; (c) Issue press release and (d) receive letters of allegations concerning human trafficking against UN Member States and send communications to government in respect thereof. The mandate undoubtedly, has helped to raise the profile of the problem of trafficking in persons, however, the task of eradicating trafficking is far from being over and would require concerted efforts by all stakeholders not just government or inter governmental agencies but National Human Rights Institutions as well as non governmental organizations including the private sector.

Beyond international organizations and UN agencies, regional organizations have a huge role to play in promoting a human rights based approach to combating human trafficking.

As I noted in my recent report to the Human Rights Council, regional and sub-regional mechanisms play a key role in providing a response that is both multilateral and sufficiently close to countries' realities and specificities within a certain region. Thus, we need better synergetic relationship between international, regional and sub-regional organizations to maximally harness those potentials in the fight against trafficking in persons.

Importantly, and in view of the fact that trafficking "knows no border" there is a need to increase cooperation and capacity of States to handle readmission and reintegration of trafficking victims in line with human rights standards particularly the UN Trafficking Protocol.

---

48) Mandate-holders are independent experts appointed based on their individual professional and personal qualities, expertise and experience in the area of the mandate, integrity, independence and impartiality. They serve in their personal capacity, and are not staff of the UN. They do not receive salaries nor any other financial compensation for their work. Mandates are global in scope and do not require ratification of the relevant instrument(s) by the concerned State, and have as their fundamental reference framework the Universal Declaration of Human Rights and the main international human rights treaties.



## VI. Conclusion and the Way Forward for Combating Trafficking in human beings especially women

The root causes of trafficking, such as demand for cheap labour, sex tourism, wide spread poverty, gender discrimination, conflicts, corruption and restrictive immigration policies of favored countries for migrants are insufficiently tackled and must therefore be dealt with as a matter of priority to effectively combat trafficking especially of migrant women.

Trafficking in person results in cumulative breaches of human rights and this need to be recognized in any intervention effort. The office of the High Commissioner for Human Rights (OHCHR) at the United Nations in 2002 developed the principles and guidelines in order to provide practical, rights based policy guidance on the prevention of trafficking and the protection of victims of trafficking.

Guideline 1 on the promotion and protection of human rights states that:

*Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.*

As far as the mandate of the Special Rapporteur is concerned, the real challenge is not just in adopting strategies that will effectively catch the perpetrators and punish them. Rather, it is preferable to put in place strategies that will focus equally on the victim by recognizing and redressing the violations suffered, empowering the victim to speak out without being doubly victimized/jeopardized or stigmatized while also targeting root causes of human trafficking. The strategies must be people centred bearing in mind that human trafficking is about people whose basic right to live free particularly from fear and want is under constant threat. We must recognize the dignity of the victims and their right to survival and development. Thus, restorative justice is central to combating human trafficking.

While addressing root causes, innovative approaches need to be sought in tackling the complex problem of human trafficking. The Special Rapporteur believes that international, regional and national strategies for combating trafficking rest on the following 5 P's; 3 R's and 3 C's.

- (a) 5 Ps: Protection, Prosecution, Punishment, Prevention, Promoting international cooperation and partnership including public and private partnership;

- (b) 3R's : Redress, Recovery (Rehabilitation) and Re integration; and
- (c) 3 C's: Capacity, Cooperation and Coordination.

In terms of the challenges associated with tackling human trafficking, the lack of reliable and complete data is a major problem. Therefore, an effective means for combating trafficking in persons will require enhanced information sharing between States through bilateral and multilateral cooperation and increased data collection capacities, including through the systematic collection of gender and agedisaggregated data.

Furthermore, there is a need for close international cooperation. Since trafficking is mostly a cross border phenomenon, no one State can tackle it alone and cooperation is therefore imperative. Hence, there is a need to increase cooperation and capacity of States to handle readmission and reintegration of trafficking victims in line with human rights.

Victims are often hidden in the community and the unregulated sectors of the economy, and are engaged in sex work, domestic work, begging, armed conflicts, or farm labour; therefore resources must be committed for law enforcement and redress for victims. Even though trafficking is intertwined with other criminal activities such as smuggling, drugs and arms trafficking, States must avoid treating trafficking only from a crime and border control perspective or simply as a migration issue. Multilevel approaches are needed that will focus on various perspectives including human rights; crime control and criminal justice; migration; and labour.



**Session 1**

**Domestic implementation of  
international standards  
combating human trafficking**

○



**An NHRIP Perspective on the  
Philippine Domestic Implementation  
of International Standards to  
Combat Trafficking**

---



MA Victoria V. Cardona Commissioner  
(Commission on Human Rights of the Philippines)



# An NHRIP Perspective on the Philippine Domestic Implementation of International Standards to Combat Trafficking

MA Victoria V. Cardona Commissioner  
(Commission on Human Rights of the Philippines)

## ABSTRACT

As a national human rights institution created to safeguard a legal regime which, under an authoritarian government was only a faint resonance of freedom unbeknownst to Filipinos, the Commission on Human Rights of the Philippines endeavors to effectively discharge two mutually reinforcing functions. First, it seeks to help achieve the full realization of all Filipinos within the Philippine territory and those abroad, their human rights by the facility of having access to or being able to exercise them. Second, it undertakes monitoring of domestic implementation of treaty obligations to ensure that in its reports, it notes of development in terms of compliance or submissions in issues where there is need for refinement or further action on the part of the government. Using this thesis, this paper shall specifically discuss the strength of the CHRP as a national human rights institution, the development in combating trafficking, and the possible areas of collaboration between states and NHRIs, and amongst NHRIs.

## 1. INTRODUCTION

The Commission on Human Rights of the Philippines was established in 1987 by a Constitutional fiat which stipulates for the general function to promote and protect the human rights of all Filipinos within the national territory and those abroad. In the exercise of this two-pronged mandate, the Commission undertakes human rights education and research, investigation, and monitoring.

In addition to the responsibilities outlined in the Constitution, the CHRP serves as the Gender Ombud of the state under the Magna Carta of Women, the anti-discrimination law of the Philippines. CHRP is also named Ombudsman for Children under the Juvenile Justice and Welfare Act. In other capacities, CHRP joins state departments in efforts to address Violence Against Women, including various forms of trafficking. Under the anti-VAW law for example, CHRP is part of the oversight

---

\*Presented by Commissioner Ma. Victoria V. Cardona at the Seoul International Conference Against Trafficking in Migrant Women organized by the National Human Rights Commission of Korea on June 29, 2010 in Seoul, South Korea. Ms. Cardona is the Focal Commissioner of the Commission on Human Rights of the Philippines for Women, Children, Migration and Trafficking Issues. Before joining the CHRP, she held the post of Executive Director in the Philippine Juvenile Justice and Welfare Council under the Department of Justice.

Comm. Cardona completed her Juris Doctor at the Ateneo de Manila University, and her Master of Laws in Human Rights at the Queen Mary College London.

council on the implementation of programmes, and is also delegated the tasks to give free legal aid to victims, and other forms of intervention under the human rights protection services, including assistance in the application of Court Protection Orders. Under the anti-trafficking law, while the Commission was not made part of the oversight committee which formulates programmes with the same framework of support for victims in the anti-VAW legislation, it is nonetheless delegated the similar duty to provide legal aid to trafficked individuals. Its other duties include the conduct of advocacy and training programmes relating to trafficking, investigation and indorsement for prosecution, acts found qualified as trafficking, integrate anti-trafficking measures in the CHRP's *Barangay* Human Rights Action programme, and treaty compliance monitoring. Nevertheless, while these functions may seem less compelling compared to its role as Gender Ombud or as Ombudsman for Children, in the wider breadth of its mandate as national human rights institution, CHRP spearheaded the joint project on the development of a document of cooperation against trafficking of women and children. This project concluded with the signing of the Southeast Asia National Human Rights Institutions Forum Memorandum of Understanding Against Trafficking of Women and Children that covers the areas of education, legal aid, and protection of trafficked victims.

## **2. PHILIPPINE DOMESTIC IMPLEMENTATION OF INTERNATIONAL STANDARDS TO COMBAT TRAFFICKING**

### **2.1 Treaty Ratification Practice**

The Philippines became a signatory to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others on 20 December 1950, and ratifying it on 19 September 1952. It likewise signed and ratified the Final Protocol to the Convention on the same dates it bound itself to the Convention. The Philippines too is the only state in Southeast Asia which made a ratification of both instruments, with Cambodia, Indonesia, and Myanmar being only signatories.

Following this ratification, the Philippines also became a state party to various human rights treaties namely, the Covenant on Civil and Political Rights, the Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Child Rights Convention, and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Philippines is also state party to the Forced Labour Convention and Worst Forms of Labour Convention of the International Labor Organisation.

If this treaty practice would be evaluated using the principle of *pacta sunt servanda* in the Vienna Convention on the Law of Treaties, where too, the Philippines is a contracting party, the expectation would be for its government to ascertain national translation of treaty commitment through domestic legislations, which in turn would stipulate for the protection of, or exercise of rights. On this score, suffice it to say that Trafficking Convention which it ratified in 1952, the Anti-trafficking in Persons Act entered into force in 2003. This gap in domestic implementation of treaty commitment did not escape attention in treaty body reporting. For example, the combined fifth and sixth country report of the Philippines to the CEDAW in 2004 enumerated, as part of the actions on the trafficking of women, the enactment of the Anti-Trafficking in Persons Act of 2003, its Senate ratification of relevant multi-lateral agreements on trafficking, and a number of measures organised by various departments for the prevention of trafficking and related strategies. Thus, while the Committee commended the initiatives of the government, it was specifically requested in the Concluding Comments that comprehensive information on the crime be submitted, and measures



taken in response thereto. This lack of information on conviction of traffickers, it may be argued, may be due to factors as the relative newness of the law at the time the report was made. However, it is interesting to note that in the 2007 State Department Report on Trafficking by the United States government, the Philippines, was downgraded to Tier 2 Watch List, an alarming indication of that there is no proof that efforts to handle the rise of criminality are sufficient.

In addition to the example of the country report to the CEDAW, the Committee on the Convention for the Protection of Migrant Workers and Their Families, in the consideration of the initial report of the Philippines, requested for information on measures undertaken to protect trafficking victims or what form of aid were obtained by these individuals. In response, the government only quoted several provisions in the Anti-trafficking law.

In the 2005 review of the second periodic report of the Philippines to the UN Committee on the Rights of the Child, the latter expressed its concern over the weak law enforcement on trafficking or its prevention, despite the various legislations addressing it. In its Concluding Observations, the Committee echoed the Concluding Observations of the Human Rights Committee in the consideration of the consolidated second and third periodic report of the Philippines, which stated that it is imperative to ensure effective enforcement. Again in 2009, the Committee reiterated the same view and in its Concluding Observations for the third and fourth combined report, and noted the low number of convictions, as well as the gaping inadequacy of implementation.

## **2.2 National Laws Addressing Trafficking in Persons**

The Anti-trafficking in Persons Act is the principal source of redress by victims. Like most Anti-trafficking laws, the Philippine version features a committee consists of representatives from offices in the executive department for example, on Social Welfare, Foreign Affairs, Labor, including the National Police, and which committee functions as policy developing and monitoring body. To date, the notable accomplishments of this group of bureaucrats include the Implementing Rules to the law, and the Philippine Guidelines for the Protection of Trafficked Women, and it may come as no surprise that while this effort to give particular focus to female victims is commendable, the fourteen (14) convictions meted out since 2003, were all for sex trafficking which may indicate that other forms of trafficking, forced labor or services, servitude, removal or sale of organs are sidelined. Other significant components of the law include the creation of a trust fund drawn from ‘proceeds and properties’ earned by the perpetrator from his enterprise. The trust fund is used to put up halfway houses, and provide services in the form of counseling, legal aid, including skills training in rehabilitation. The law likewise instituted the strategy referred to as the ‘Country Team Approach’. Under this arrangement, all civil servants of the Philippines abroad shall work as one team under the leadership of an Ambassador, and shall provide protection to trafficked victims regardless of immigration status.

Apart from the aforementioned, a number of local statutes also relate to trafficking, and the two most relevant to this discussion are, the Migrant Workers Act, and the Anti-Mail Order Bride law. The ‘Mail Order Bride Law’ is an earlier legislation that sought to curb the practice of matching a Filipina to a foreign national by an agent, as this places the woman under the risk of getting trafficked for sexual exploitation once married and abroad, or prostitution once abroad without however being married to the promised spouse. Under the Migrants’ Act, deployment is allowed only for states which are ‘signatories’ to multi-lateral conventions protecting migrant workers or have concluded bilateral agreements or arrangement with the Philippine government protecting the rights of overseas

Filipinos. While on one hand, this requirement may provide for individuals who seek employment elsewhere in the world without however being certain of the work environment, a measure of guaranty that they will enjoy acceptable treatment before the law, on the other hand, it creates a caveat to these prospective migrant workers that they may find themselves in a country where the word ‘signed treaty’ on the Trafficking Convention or its Protocol, or related human rights convention, the Convention on Economic Rights for example, becomes a ‘clawback clause’ for the marginalisation of the rights of non-nationals.

### **2.3 REDRESS MECHANISMS**

It will be recalled that in the ICCPR, in the CEDAW, and in the CRC, are provisions that stipulate for the right to a remedy. Specifically, this right requires that state parties enable access to judicial, quasi-judicial, administrative, or competent authority established by law to make a determination of what rights are violated, and make the necessary reparation. The ILO Conventions earlier referred to also obligate each Member State to carry out imposition of appropriate penalties for acts that for instance constitute forced labor.

In the aforementioned national laws, the ATIP for example, the rules on prosecution and liability are stringent, with prescriptive period extending from ten to twenty years, imprisonment ranging from one year to twenty years, fine of one thousand to forty thousand in US dollars, with confiscation of properties or proceeds obtained from the commission of the offense. Permanent sanctions by means of cancellation of license to maintain business for juridical entities as corporations, partnerships, or organizations which undertake recruitment that result in the trafficking. Hence, at least in terms of access to justice and reparation, in principle, the right to an effective remedy is sufficiently complied with. However, and more importantly, as repeatedly articulated in treaty reporting, there is need to constantly strengthen or improve law enforcement, and crime prevention.

## **3. OTHER HR WORKERS ON TRAFFICKING AND AREAS OF COOPERATION**

### **3.1 PHILIPPINE NGOS AND NATIONAL HUMAN RIGHTS INSTITUTIONS**

The challenge to bring to justice traffickers is a pursuit that is not exclusive to the Philippine government, or more specifically to the Inter-Agency Council Against Trafficking earlier discussed. Like many countries, the Philippines has its Commission on Human Rights, and a number of legally instituted and proactive non-governmental organizations which work on cases of trafficking of women or children or both. For NGOs, the common thrust may include, education, investigation, rescue, rehabilitation, reintegration in communities, and under the supervision of state counsel, prosecution of perpetrators. Some of these NGOs include the Asia Acts, ECPAT (End Child Prostitution And Trafficking), Coalition Against Trafficking of Women (CATW), Global Alliance Against Trafficking of Women, International Justice Mission (IJM) and the Visayan Forum Foundation Incorporated. For the Commission on Human Rights, its work draws guidance from its mandate, and underscored in the Anti-trafficking law, which is advocacy for the protection of human rights, education or awareness raising for potential victims, and legal aid for the trafficked. To date, the CHRP’s marked contribution in the global initiative to end trafficking, is the completion of the project that sought to develop a binding document of cooperation with other national institutions

forming part of the Southeast Asia National Human Rights Institutions Forum. In the plan of action, currently being developed also by the CHRP as the lead organization, the Memorandum of Understanding Against Trafficking of Women and Children, is intended as a tool for engagement with the ASEAN Commission on Women and Children, whereby especially in the area of prevention, the Commission may consider a cooperation with the four national institutions through advocacy projects.

### **3.2 INVITATION FOR JOINT UNDERTAKING**

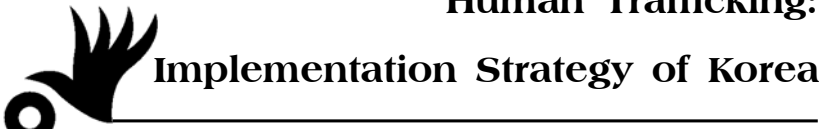
With the brief discourse on the legal framework of anti-trafficking in the national level, in the Philippines in particular, and the status of efforts to end impunity of perpetrators, it needs to further emphasize that there is an opportunity for the Commission on Human Rights of the Philippines, as well as other national institutions in states with similar challenges, to involve itself in the work of the state. The unique composition of a national human rights institution, can enable it to take part in the initiatives to address the crime by through partnerships with government committees, even with NGOs, or to link its advocacy to intergovernmental organizations like the ASEAN. However, the challenge is for any human rights commission to harness this particular feature to advance an agenda as complex as to investigate, punish, and prosecute traffickers.

In accepting this call to action, the following are important to consider. First, human rights violations are best remedied in the national level, and the work must necessarily begin within every institution. On this score, it is important that it has adequate information on the risks and causes of trafficking, profile of potential victims as well as perpetrators, the elements of the crime, including methodologies for rescue, rehabilitation and reintegration of the person trafficked. Second, it is helpful for an institution to evaluate its capability to take on the issue of trafficking, by identifying the area where it can best contribute its resources. On this issue, the possibility of working with similar organizations may be included in the agenda. Third, collaboration with one's government and whenever feasible, with regional inter-state bodies for the protection of victims within and across national borders.

In conclusion, the CHRP invites other national human rights institutions to consider the possibility of joining the Southeast Asia National Human Rights Institution Forum in the implementation of the programmes outlined in its Memorandum of Understanding Against Trafficking of Women and Children, or amongst themselves in their region, consider a similar undertaking with the thrust that the work of a human rights commission especially in the area of human rights education can strongly influence the success of crime prevention.



**International Standards on  
Human Trafficking:  
Implementation Strategy of Korea**



Young-Nim YOU, Director  
(Durebang)



# International Standards on Human Trafficking: Implementation Strategy of Korea

Young–Nim YOU, Director  
(Durebang)

## Introduction

I would like to thank members of the National Human Rights Commission of Korea for selecting me as one of the presenters.

Working as an activist for a group dealing with victims on a daily basis, I work with them, listen to them and think of ways to give them support in a smarter way. This is a blessing as I get to meet them in person not indirectly from writing but at the same time it brings pain. As it is highly evident that a wrong or inappropriate policy could have a serious affect on their lives and that such experience could put their lives in peril and have continuously adverse effect.

The United Nations has had interest on the issue of human trafficking and is active around the globe. I do not have any shred of doubt that such efforts give comfort to many women, children, and the poor people in the less developed countries who could potentially be victims of the hideous crime.

I sincerely hope today's Conference can be an opportunity to gather collective wisdom to minimize the victims, and to provide at least a minimum safety net to those who have already fallen victim to.

Because of physical limitations that I have to work under, I regret that I cannot represent the overall picture of human trafficking in Korea. I will focus on victims of human trafficking and of sexual exploitation.

For your reference, the Republic of Korea became a signatory to the UN Protocol on December 13, 2000 but is yet to ratify it. The Protocol to Prevent, Suppress and Punish Human Trafficking in especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime which was adopted in the UN General Assembly in November 2000 provide such broad definition of the human trafficking 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’.

## **1. Unique features of human trafficking for sexual exploitation in the Korean society**

There are distinctive features of human trafficking. Most prominent in the Korean society includes female victims of human trafficking for sexual exploitation and migrant women from Southeast Asian countries who entered the country through international marriages suspected to be transactional marriages.

There is a long history of prostitution in Korea. A combination of multiple reasons contributed to its development. They include: advanced internet infrastructure, deep-rooted entertainment culture, alliance between businesses and political powers and the endowment of rights and interests, patriarch and dualistic moral system, vertical and military-oriented culture throughout the society, US military stationed in Korea and ensuing development of sex industry and poor social status of women. Women’s movement in Korea started in full swing from the 1970s and it led to legislation against three major types of violence against women - domestic violence, sexual violence and prostitution. Majority of the legislations on violence against women is the result of higher education level and active women’s movement since 1990s.

With the establishment of the Act on the Prevention of Sexual Traffic and Protection, Etc. of Victims Thereof in 2004, efforts have been made by both civil and public agencies to bring the victims of sexual exploitation who have Korean nationality and have been put into the domestic sex industry out of their exploitive situation and assist their social integration through about 100 counseling centers, shelters, and rehabilitation centers. However migrant women who recently came to the Korean society, namely those from China, the Philippines



and the former Soviet countries pose challenges for both the civil and public agencies.

The victims of human trafficking that receive the least attention from the Korean society are: Korean women who are sent overseas; foreign women who flow into red-light districts near us military bases; foreign women who entered in the country under entertainer's visa but who later are put to prostitution in rural cities; and foreign women who enters the country through international marriage. They are still outside of the safety net provided by the society. As there hasn't been any research on their status, I will focus on the cases of the women that I meet on the field.

## **2. Reality of victims of human trafficking for sexual exploitation**

### **2.1 Migrant women in Korea**

The area where the largest number of migrant women flows into in a systematic and legal manner is the red-light districts near us military bases. Since mid 1990, about 3,000 to 4,000 women came to Korea under entertainment visa in a year and the country of origin of the majority of the migrant women is the Philippines. It is presumed to be because there was prior existence of prostitution near us military bases in the Philippines as is the case in Korea and because there is little language barrier as they speak English. The Philippine government's migrant labor policy and feminization of migration must have also contributed to the trend. From the early 2000, large number of migrant women came from former Soviet countries of Uzbekistan, Kazakhstan, Kirgizstan, and Far East Russia. (2,022 people in 2008, 2,095 in 2009, 447 in the first quarter of 2010 as a E-6 visa)

According to the Enforcement Decree of the Immigration Control Act, sojourn status No. 24 refers to 'Arts and Entertainment' status and covers those seeking to make a profit with performances related to music, fine arts, literature, or others of the like and those that are seeking to make profit through performing arts such as entertainment, music, play, sports, advertisement, fashion model, and others of the like

They are basically and systematically exposed to forced prostitution, commission on drinks (juice quator) and delayed payment of wages. They work more as entertainers for the US soldiers, their major client rather than working as singers.

Excluding those who work in the Korean local sex industry, I believe the largest number of victims of sexual exploitation in the country is in the us military camp town.

Witnessing the transition of employees of clubs exclusively for US soldiers from Korean women to foreign women since 1998, Durebang has proposed policies, conducted research, and provided support through victim counseling. Whenever possible, Durebang worked hard to raise awareness on the severity of the problem of foreign women working in the us military camp town.

As I share the types of exploitation they are put to and the lives that they lead many times already, I want to keep it brief today.

In 2006, the Ministry of Culture and Tourism jointly with the International Organization for Migration conducted an investigation on the status of foreign entertainers and policy comparison with other countries (Japan, US, Canada and the UK); and conducted a study on the process of sending and receiving foreign entertainers, its status and surrounding issues, especially around systems and policy. The outcome was identification of weaknesses in many aspects of the policy on receiving foreign entertainers and improvement measures. It is unclear, however, how the result was reflected in the national policy (reference: '2006 research on the status of receiving foreign entertainers and comparative policy study' Ministry of Culture and Tourism, International Organization for Migration, 2006).

In 2007, Durebang conducted a status survey on the Philippine women hired at the US military bases in the Gyeonggi Province. About 60 women who stayed at the shelter participated in our interview. With financial assistance from the Gyeonggi Provincial Government and additional support from the Ministry of Gender Equality, Pyungtaek City and the Gyeonggi Province, a shelter for sex trafficking women was opened in Pyungtaek in 2009. The ladies who all worked at a usmilitary camp town in Pyungtaek answered that prostitution is prevalent in all 100 or so clubs excluding one place. They also answered that they are exposed to such inhumane conditions as delayed payment of salary, confiscation of passport or forced prostitution. One or two cases may represent overall employment condition of other women working at the same club, which represent general problem of large number of women.

They are eligible for legal aid, medical assistance and return assistance under the special clause of the Act on the Prevention of Sexual Trafficking and Protection, Etc. of Victims Thereof not a law against human trafficking. Without a proper channel for assistance from civil organizations, many victims are expected to return home without knowing their rights. Even when they are connected to support groups like Durebang, the special clause for foreigners under the Act does not provide any substantial support system to guarantee any effective assistance and protection of victims. Here are some cases.

- Case 1: This person is a victim of forced prostitution. After escaping from the location of employment, she became an illegal immigrant. On behalf of her, Durebang filed a lawsuit against the employer. In order to get a visa for other status(G-1 visa), she had to pay the fines for the period of illegal stay. As she did not have any means to earn money, she decided to file the lawsuit as an illegal immigrant. A foreigner cannot engage in legal employment when there is a pending lawsuit. She had to work at a factory for a small wage during the lawsuit period. During a police interview, the policeman handling the case asked whether she filed the lawsuit to prolong the stay in the country and the question hurt her a lot. At the factory she was working, the employer capitalized on the illegal status of her and did not pay her wage. She moved to a different factory where they didn't pay her wage either. She decided to return home as she could not take it anymore. The lawsuit was prolonged for over one year. The delayed payment of wage is not under the jurisdiction of the police or the immigration office, but should be reported to the district labor office. When the overdue amount is small, the labor office cannot force a compulsory execution.
  
- Case 2: Problem from report on escape from the employment location This entails a serious problem as forced prostitution and delayed payment of wages drive many women to seek extreme choice of escaping the club. After their escape, their actual employer, the entertainment management agency, reports to the authority of their escape from the employment location which makes the status of these women as illegal. When they are captured from an immigration official's raid, they are put to compulsory expulsion without any chance of vindication. As many women we interviewed were suffering from the problem, Durebang filed a petition to the NHRCK (Dongduchon, December 2008, recommendation from the Discrimination Remedy Committee). To put an end to the situation, Durebang felt that it is necessary to give a chance for vindication to such women as to what led to their escape from their employment location and submitted a petition to the NHRCK. The Discrimination Remedy Committee ruled that 'the Committee recommends the Minister of Justice to revise the Hotel Entertainment Management Guidelines including a guarantee of vindication process when a person with hotel entertainment visa is reported to have escaped from the employment location', but the Ministry of Justice has not responded to the recommendation. The Ministry should establish an enforcement rule within two months from receiving such recommendation. I would like to make a desperate plea to the Ministry to take time to think about what the prolonged review on the recommendation means to many victims of sexual exploitation.

After recognizing that the Filipino women hired by clubs nearby US military bases are

exposed to sexual exploitation, the Philippine Embassy from 2009 is said to have started to impose restrictions on issuing employment permit to clubs exclusively for US soldiers. According to a report by the Stars and Stripes, US military news, the Philippine Embassy has suspended issuing employment approval from the second half of 2009 to prevent prostitution of Filipinas at clubs around US military bases.

Other: Issues around women from former Soviet countries flowing into sex industry with tourist visas. The Office for Government Coordination announced the 'Plan on foreign female dancers working at entertainment establishments' in June 2003.

- About 6,000 people enter into the country under entertainer's visa under the pretext of engaging in performing arts but in reality to work at the entertainment establishments (6,523 people in 2002). The countries that send the largest number include Russia, the Philippines, Uzbekistan and Kirgizstan. Instead of performing arts, they work at dinner theatres, foreigners only entertainment restaurants, and clubs within US military bases
- Most of them (83%) are female dancers and there are numerous cases of human rights violations including violence, confinement and human trafficking. Such violations were covered not only by domestic media but also by the US Congress and foreign press, undermining the image of the country as the human rights model country. Therefore official request has been sent to the governments of the Philippines, Uzbekistan and Russia to control visa issuance on female dancers.

As responses to the problem (by the Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Culture and Tourism, Ministry of Labor and Korea Media Rating Board):

- Suspended issuance of visas for foreign female dancers (from June 1)
- Improved foreign performance recommendation system (MoJ and MoL to actively cooperate with the MoCT's initiative to improve the system), and
- Conduct joint raids on human rights violation of foreign female dancers (with the leadership of MoJ with help from MoCT, MoL and the National Police Agency. Any violation will be heavily punished).

Even after the efforts, we have noticed continuous flow of migrant women from former Russian countries into sex industry of rural areas after coming in with tourist visas.

They are constantly monitored and being outreached by local civil organizations. We were recently told by local activists that there are about two hundreds Chinese women working at ticket coffee shops in Gyeongsang Provinces (Sangju, Pohang etc.). There is another instance where a foreign woman requested assistance after being discovered at a port city (Okpo Shipyard).

Considering all the circumstances, it is believed that migrant women have spread out from the existing locations of usmilitary camp towns, tourist clubs to various areas of sex industry of Korea and that the Korean government does not recognized the problem even less is ready for the situation.

What we want to stress is though it is unclear how many of the migrant women who entered in with entertainer's visa for the past 15 years and who flew into us military camp town returned to their home countries after being exploited sexually and financially, considering the past practices at such usmilitary camp town, it is clear that there have been generalized infliction on them from sexual exploitation and wage exploitation and they could not receive any proper assistance from the Korean government or from any civil organizations. We would like to call for an urgent policy shift of the Korean government.

## 2.2 Korea women in the US sex industry

Korea is also a country of origin for many victims of sexual exploitation. It is believed that Korean women are sent to the US, Japan, Australia and Hawaii, as these countries and region have historically close ties with Korea.

Since 2005 Bom-bit Women's Foundation, International Organization for Migration and Asia Foundation have raised issue of Korean women sent overseas; and a number of international conferences on human trafficking prevention were held to raise social awareness and ultimate to establish relevant legislation. Such efforts, however, lacked consistency and continuity and the absence of a single government agency to serve as a single point of contact and to develop relevant policy prevented valuable experiences from being shared property to form basis of policy recommendation.

The following was discussed during an international symposium on the status of Korean women as victims of international human trafficking (Bom-bit Women's Foundation, International Organization for Migration, July 2007).

Though the reference information is from years ago, it is hard to presume that the situation has been improved as there has beenno effort made on the issue. We urge the efforts of the Korean government to provide support for Korean women sent overseas and to prevent occurrence of any further potential victims.

Timothy Lim, the presenter from Bom-Bit Women's Foundation in 2006 stated that there is something different about Korean women working in the US sex industry as most foreign

women in the industry came from Latin America, Eastern Europe and Russia, Southeast Asia and other countries with economic difficulties; and he cited military relationship between the two countries.

He said in the 1980s there were about 25,000 marriages between US soldiers and Korean women, 80% of which ended in divorce. The owners of massage parlors and other sex establishments operating in the US can lure Korean women without fluent language skills and no connection to ask for help into the sex industry.

In this article, I will look at the situation in the US. Due to the US military stationing in Korea, an estimated 150,000 Korean women working at US military camp towns marry US soldiers and moved to the US. It is presumed to have caused development of entertainment establishments operated by Koreans within the US. With the establishment of Act on the Prevention of Sexual Traffic and Protection, Etc. of Victims Thereof in 2004, brokers who find it harder to make profits are more likely to turn their eyes overseas.

The August 2005 raid by the federal police on the Korean brothel around Dallas to arrest dozens of Korean brokers is well-known within the Korean society. 42 Korean women working as prostitution were arrested as well. ‘Operation Gilded Cage’ of San Francisco led to arrest of 104 Korean women along with 11 owners and 27 suspects. The women are said to have testified that they entered the US with fraudulent advertisement and forced into prostitution because of physical threats.

Civil organizations have continuously pointed out the need for policy protection for Korean women sent to the US, Japan, Australia and Hawaii area. We strongly call for policy on Korean women sent overseas and victim support system.

### **3. Korean government’s effort to eradicate human trafficking**

I have briefly looked at the status of victims and protection. To resolve the problem of human trafficking we need 4Ps: Prevention, Protection, Punishment and Partnership. As prevention and punishment are in the domain of the government, I want to look at some of the implementation strategies taken by the Korean government to eradicate human trafficking.

#### **3.1 Ministry of Justice and Ministry of Gender Equality**

Anti-human trafficking activities were weak for the past several years. From early 2000s

to 2004 when the Act on the Prevention of Prostitution Crimes and Protection of Victims thereof and the Act on the Punishment of Procuring Prostitution and Associated Acts was established and also to 2005, the MoJ implemented a number of encouraging initiatives. International conferences named Expert Group Meeting on Prosecution of International Trafficking in order to prevent inter-country human trafficking were held several times jointly organized by the MoJ and the MoGE to prevent prostitution within the Korean society and to promote and educate the public on the issue. Local governments also laid the foundation for anti-prostitution efforts by providing trainings for public officials and by establishing committees to prevent prostitution.

There were many encouraging signs in the activities of the police in the fields: establishment/ operation of interview rooms for children/women to protect human rights of victims of prostitution; emergency hotline for prostitution victims; arrests of owners/operators of prostitution establishments; and confiscation of profits from crime.

"Jone School" system for the buyers of prostitution was established and operated at each probation offices. Such various efforts provided an important turning point in the deep-rooted male culture of purchasing sex, corporate practices of providing sex as entertainment which was previously ignored. The result is the general social conception that buying sex is illegal and crime.

But the Korean government, especially the MoJ does not introduce enough protection system for female victims of prostitution and sex trafficking who came from other countries. The MoJ attempted the following changes with the introduction of the Act on the Prevention of Sexual Trafficking.

The MOJ strengthened immigration inspection at entry ports and visa issuance review, and executed 'Guidelines on visas and certificate of visa issuance for foreign entertainers in the entertainment and service sectors' in June 2003 to suspend issuance of Korean visas to dancers. Such efforts put an end to legal entry of migrant women from former Soviet countries.

Supervision on companies dispatching foreign entertainers was strengthened to prevent prostitution, sexual exploitation and to protect foreign migrants. Following initiatives were taken as well:

- Prohibition of receiving or force submission of passport or foreigner registration certificate of a foreign national as a means to guarantee performance under employment agreement or debt (Article 33 of Immigration Control Act)

- Granting permission to stay temporarily under legitimate G-1 status including suspension of eviction for foreign victims of prostitution or sexual exploitation with pending eviction order until the relevant disputes including lawsuits to claim damages

Quotes from an article at June 16 the Hankyoreh daily:

“The State Department of the US criticized on human trafficking and overseas prostitution by Koreans. Korean men have created an important demand for child (under-aged) sex trips to Southeast Asia and Pacific islands, but the Korean government has not punished any Korean who went out to overseas child sex trip, even less making any efforts to diminish such demand.” (Reporter Kwon Tae-Ho in Washington, US)

Even before the criticism, Korean civil organizations have raised concerns that a large number of Koreans traveling to Southeastern Asian countries for golf have engaged in prostitution as if it is a custom. We strongly call for enforcement of law and their punishment.

The Ministry of Gender Equality which is in charge of prevention of human trafficking and protection of the victims has worked to provide assistance to victims through active communications with civil organizations concerning sex trafficking. This helped civil organizations to gain momentum to be even more active. We expect the MoGE to engage in even more active communication and cooperation with civil organizations.

### 3.2 Seoul Metropolitan City

As a part of the plan to improve 5 prostitution blocks in Seoul, the Seoul Metropolitan Government established the Dasi Hamkke Center to provide comprehensive support for women working in those blocks. The Center provides counseling, legal and medical assistance and referral to shelters.

The City Government has commissioned the operation of the association of grassroots NGO's called Hansori the United Voice for Eradication of Prostitution.

The Women & Family policy Affairs Team of the City Government created a task force team to prevent violence against women in May 2009 and developed many projects that the City Government alone can implement. They include prevention measures, training and awareness raising efforts, support for victims of violence to provide general assistance to victims of domestic violence, sexual violence and prostitution.



Most notable among the efforts is customized training for migrant women who are victims of violence, improved dual language service support, and creation of dedicated team for migrant women in the Dasi Hamkke Center. The City Government has already secured a land of 33,000m<sup>2</sup> in Seoul to establish a building dedicated to provide comprehensive services for migrant women from 2010.

The project represents clear understanding of the new social reality that migrant women account for a large portion of female victims of violence and that proper infrastructure and support system need to be established.

### 3.3 National Assembly

Efforts by the Office of Lawmaker Kim Chun-Jin to establish the ‘Act to Prevent Human Trafficking’: measures to implement domestic legislation in order to ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Only in the second half of 2009, a Lawmaker started preparing the legislation against human trafficking. In October 2009, the Office of Lawmaker Kim Chun-Jin published a reference document, ‘Legislative guidelines for the Korean National Assembly to Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: overseas cases of legislation to prevent human trafficking’.

The Office in November 2009 also launched a motion calling for submission of ratification of ‘the United Nations Convention against Transnational Organized Crime’ and ‘the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children’ which was passed at the National Assembly on February 25, 2010.

- Key outstanding issues: simultaneous motion of the Criminal Act and the Act to Prevent Human Trafficking (National Coalition)
- A policy discussion was held on May 4, 2010 on legislation of sexual exploitation and human trafficking, which was organized by the Office of Lawmaker Kim Chun-Jin. The topics of the discussion included: efficacy of the proposed legislation; the need to synchronize the definition of human trafficking in the proposed Act to Prevent Human Trafficking with that of the UN Protocol so that the cases left out in the blind spot could be defined as human trafficking and be handled as such; preparation of measures to support practical investigation, punishment of crime as well as support for the victims; and the need to display the resolve for enforcement with consistent raids.

## 4. Cooperation to protect victims (Partnership)

### 4.1 Policy proposal to the Korean Government

The most urgent task of the Korean government is the analysis and self-reflection on the Korean society as to what led to import of foreign women into the local sex industry. The same goes for the issue of international marriages which are prevalent in the country. We call for the government to carry out another round of policy analysis to make sure the current policy is optimal. With that as a backdrop, we would like to make some suggestions under the current system.

As human trafficking is a most representative form of an organized crime both domestically and globally, therefore it requires a comprehensive and long-term policy on the national level especially initiated by the Ministry of Justice. And the precondition for victim protection is that the crime of human trafficking could be punishable by the law.

- ① Passing the law within this year and allocation of required budget. Human trafficking monitoring team and special investigative team established reporting to the President, Ministry of Justice or Ministry of Gender Equality.
- ② Identification of human trafficking victims: classification at the immigration office whether the person concerned is illegal immigrant or legal laborer. Before executing forced eviction order, treat the victims of human trafficking based on the situation they were put into in Korea, especially the type of working condition and whether they were put to continuous exploitative state.
- ③ Cooperation with law enforcement agencies of other countries
- ④ Cooperation between support groups and government agencies in charge of human trafficking issues
  - Legal aid: choice of the victim and the consequences
  - Physical and legal protection of the victim
  - Witness protection, safety of the support group
  - Training: training for victim identification, victim support, and social integration

### 4.2 Cooperation with civil organizations

Civil organizations concerning sex trafficking are small in sizes and because of that reasons civil organizations have worked together for 4~5 years now. They have waited for

the government to take responsibility and develop and implement relevant policy.

Civil and private efforts are imperative in identification of the human trafficking victims and their protection.

Civil organizations of the same purpose, of the countries of origin and of destination should create a joint network. Capabilities of the activists should be strengthened.

- The Asia Foundation or Bom-Bit Women's Foundation are the most active in creating consensus, monitoring and policy recommendation through international conferences and reports

## **5. Cooperation with Asian countries: joint network among civil organizations**

The practice of many Southeast Asian countries sending their nationals overseas as migrant workers has a long history. Also, it has been a widespread situation where women from East Asian countries are the providers of prostitution. Some countries promote migrant labor as a national development strategy, and feminization of migrant labor stands out especially in the areas of entertainment industry and household labor. Under such structural limitations, it is only natural that majority of the victims of human trafficking are women. Therefore the question of whether the victim participated in human trafficking voluntarily, which has been asked for a long time as if it is a general practice is irrelevant. When the national policy legalize prostitution, implement national policy for labor migration and promote sex tourism as a party of its national tourism industry, the choices for women living in impoverished regions get even more limited.

I have witnessed such uncomfortable truth in many countries and realized how heavy the burden of life is on the women and children of poor family in impoverished country. To improve the situation, there should be an active cooperation between civil activists, assistance to the victims, awareness improvement for politicians, support for the nationals by promoting productive industry, pressure from international organization such as the UN and change in the recognition on women and social norm.

Many countries in Asia have established laws against human trafficking over the past several years (Malaysia in July 2007, Thailand in January 2008, Cambodia in February 2008). This is highly motivating as the legal foundation has started to be established.

The most important and urgent, however, is punishment and prevention of human

trafficking through signing of inter-country MOU etc. Fight against human traffickers only with the efforts of the civil organization is nothing but futile and there are clear limitation in providing support for the victims.

Civil organizations in Korea have felt the need to establish collaborative ties with other Asian countries for the past few years and acted upon it. Organizations on prostitution and human trafficking have witnessed growth in various types of exchanges. There are countries where there is a strong collaboration network among civil organizations. The followings are some examples.

Case examples of cooperation among civil organization (Hansori and Durebang)

- Vietnam: exchange information through meeting between Vietnam Women's Union and Hansori, Asia Foundation in Vietnam(2006)

Hansori visited the Asia Foundation's Vietnam office and the head office of the Vietnam Women's Union in 2006. The visiting group took note of the exposure of many Vietnamese women who came to Korea through international marriage to transactional marriage, and called for fellow civil organization to work on the issue. In 2006, an estimated 10,000 Vietnamese women came to Korea through international marriage with Korean men. With the dialogue with Hansori the headquarter of Vietnam Women's Union to get information that there are so many Vietnamese bride were facing difficulties with Korean husbands. they already knew about international marriage to Taiwan where about 55,000 Vietnamese women are involved in and that they failed to work on marriage to Korean. They promised to work harder on the issues. The issue of Vietnamese bride has become publicized in both Korea and Vietnam.

- Philippines: It is inevitable situation that Filipino women have to work overseas and they come here as migrant workers, brides to Korean men or entertainers working in us military camp towns. Efforts from the Philippine civil society are active and they have established collaborative relationship with Korean civil organization on various fronts.

A good example is the 2005 internship program for the prevention of international trafficking and the protection of the rights of Filipina migrants at Durebang and Kanlungan Center in Philippines promoted by Asia Foundations of the Philippines and Korea to prevent human trafficking and the ensuing cooperation between the two organizations. Airport pickup service for Filipino women returning home due to security reasons, shelter for women who cannot return home immediately due to childbirth or illness, assistance in child support lawsuit are some of the examples of cooperation with Durebang to support victims.

CATW-AP(Coalition against Trafficking in Women - Asia Pacific)'s information,

technique sharing and capacity building through cooperation network among Asia and Oceania countries by sharing cases (June 7~9, 2010): victim case sharing network, the first of its kind, may present meaningful opportunity for further collaboration.

Though a small start, we hope the collaborative efforts of Durebang to grow further and stronger to give activists more strength and promote information sharing.

Further, I hope that cooperation and collaboration is extended to inter governmentlevel to reduce any further victims.





**Domestic Implementation of  
International Standards  
Combating Human Trafficking**

---

Jean Enriquez, Executive Director  
(Coalition Against Trafficking in Women–Asia Pacific)





# Domestic Implementation of International Standards Combating Human Trafficking

Jean Enriquez, Executive Director  
(Coalition Against Trafficking in Women–Asia Pacific)

First, let me say that in behalf of trafficking survivors, especially those from prostitution, and advocates in the region, I am very happy that the National Human Rights Commission of Korea is focusing on trafficking in persons as a major human rights issue, meriting coordinated responses from the governments, human rights institutions and civil society organizations.

It is indeed important to review the international standards – the established universal frameworks in viewing the global problem, the nuances of such a human rights perspective, the commitments made by states and what is happening in reality. I will also attempt to analyze the roots of challenges in domestic application, as well as facilitating factors therein. My paper will primarily cover the realities in the Philippines, but will also look later at other Asian examples or cases.

To review thus, the relevant international standards which have explicit mention of human trafficking or closely related issues are:

1. the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), putting particular attention to Article 6 on Trafficking;
2. the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; and
3. the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

But fundamental human rights instruments such as the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESR), the International Convention for the Elimination of all Forms of Racial Discrimination (ICERD), and the

International Convention on the Protection of the Rights of All Migrant Workers and their Families can similarly be referred to as containing lists of rights violated in trafficking cases. These instruments contain, among several others, the rights to:

1. life, liberty, security of person (Art. 3, UDHR),
2. freedom from slavery, servitude and all forms of slave trade (Art. 4, UDHR; Art. 8, ICCPR)
3. freedom from torture or cruel, inhuman or degrading treatment or punishment (Art. 5, UDHR; Art.7, ICCPR),
4. recognition everywhere as a person before the law (Art.16, ICCPR),
5. non-discrimination to the equal protection of the law (Art. 26, ICCPR),
6. highest attainable standard of physical and mental health (Art. 12, ICESR).

Through both sets of general instruments and those that make particular reference to trafficking, states parties are obliged to submit reports on how the rights are being implemented. National legislations are to be crafted in harmony with these international standards.

In the Philippines, the anti-trafficking law or Republic Act 9208 was passed as an almost exact copy of the Palermo Protocol or the UN Anti-Trafficking Protocol, attached to the Main Convention on Transnational Organized Crime. Its most salient points, such as the definition of trafficking as a crime where the “consent” of the victim is rendered irrelevant, are adopted. Let me just reiterate how significant it is to remove from the victim the burden of proof that she was forced. The important point is the presence of exploitation. That the definition includes all means of trafficking beyond the use of force allows the protection of more persons trafficked by those who take advantage of their vulnerability. Clearly, both the UN Anti-Trafficking Protocol and the Philippine law understand the presence of inequalities in society - may they be of sex, race, class and other categories - inequalities recognized also by the fundamental human rights standards. Thus, exploiters are not given mitigating excuses to say that victims “consent,” and the marginalized is protected domestically and internationally by these principles.

Moreover, the Philippine law discourages demand in trafficking by punishing the buyers of trafficked persons, in accordance with the UN Anti-Trafficking Protocol, which encourages states to legislate against demand.

However, implementers of the law still relegate women who have been in prostitution for a long time as “consenting victims” which is a contradiction in terms and concept. Does not the act of recruitment, or harboring or receipt of persons been applied to them by either procurers or buyers? Was their vulnerability not taken advantage of by pimps or buyers when they entered prostitution because they have been sexually abused as a child? Are they not, by UN Anti-Trafficking Protocol definition, trafficked, too? If so, why do we allow them to be victimized all over again by allowing them to be arrested, prosecuted and jailed?

Why do we allow the prostitution establishments that harbor and receive them to operate with impunity?

Even as RA 9208 was passed, the age-old Vagrancy Law, which punishes women in prostitution, was not automatically repealed. Women, and sometimes children, in prostitution are arrested, prosecuted as criminals, jailed and in many cases sexually abused by policemen and investigators in the process. Persons that are rescued are those who have been forced or deceived.

This is despite the fact that the CEDAW Committee recommended “educational and economic opportunities” for women in prostitution to provide them adequate options “thereby reducing and eliminating their vulnerability to exploitation and traffickers” and “reintegrat[ing them] into society and provid[ing] rehabilitation, social integration and economic empowerment programmes to women and girls who are victims of exploitation and trafficking.”

The CEDAW Committee also urged the Philippines to “prosecute and punish traffickers and those who exploit the prostitution of women, and provide protection to victims of trafficking.” Women’s groups invoke this even as the anti-prostitution bill being pushed for by survivors and advocates has been languishing in the Philippine parliament for almost a decade now. The said bill would have repealed the Vagrancy Act provision in the Revised Penal Code and increased the penalties against buyers of women and children in prostitution, thereby discouraging demand, in compliance also with the UN Anti-Trafficking Protocol.

The Philippine government similarly continues to promote labor export as an employment program. Under the administration of President Gloria Macapagal-Arroyo, a million migrant workers are targeted for overseas deployment every year, contradicting Republic Act 8042 which states that “...the State does not promote overseas employment as a means to sustain economic growth and achieve national development”. Moreover, whereas the law (RA 8042) allows the deployment of workers only in countries where the rights of Filipino Migrant Workers are protected based on existing labour and social laws, agreements, declarations and resolutions, and other protective measures, there are more than 2 million overseas Filipino workers in many of the Gulf countries where their rights are very difficult to protect.

To quote the reply of Philippine Migrants’ Rights Groups to the Philippine Report to the UN Migrant Workers Committee, “As part of its labor export policy, the Philippine government negotiates with labor receiving countries of Filipino workers, but at present has forged agreements with only 9% of the total 193 countries and territories.” The push for overseas employment, instead of creation of local jobs, puts a huge population of people desperate for jobs, majority of whom are women, in a position of lack of choice. Many trafficked women that we have helped lament that they are pushed to leave the country because the jobs they get locally last only for three to four months. Some end up in Taiwan with two employers, working for 18 hours, without decent food, then raped, too, by the

employer. Or they would end up marrying a Japanese man, through arrangements, similarly raped in the process by the pimp and the supposed “spouse”, then land in prostitution to pay off incurred debts.

Massive poverty, the sexualization by the environment of women’s bodies, and the unquestioned demand by men for commodified sex bring about new forms of trafficking. We have been recently rescuing women trafficked to cyber- or internet prostitution. Young women are made to perform sexual acts in front of a webcam, while a buyer from Australia or the US watches after sending money to the establishment owner via Western Union or by swiping a credit card. The profile of the buyers is the same as those of other sex trafficking cases. The young women, strikingly for us, also suffered from previous childhood sexual abuse experiences.

Challenges in faithfully implementing the international standards in local settings can be summarized into the following points:

1. Consciousness of policy-makers and implementers. As societies are steeped in old, patriarchal thinking that women who are sexually violated “invited” the violations that were done to them, we have to contend with the reality that numerous legislators, government officials and law enforcers maintain the thinking that women (and sometimes even children) are to be blamed for the sexual violence, such as trafficking into prostitution, that they have suffered. This reflects in the lack of prioritization for an anti-prostitution bill (or relevant laws for that matter) that will protect the victims and punish the perpetrators. This also manifests in the continuing abuse of women and children in prostitution even by government officials who buy them, own prostitution establishments or simply ignore the existence of the sex industry. There are also ethical issues when frontline government agencies blame victims even in the process of supposedly assisting them. Finally, this lack of in-depth awareness of the issue and special provisions of the anti-trafficking law shows in the low level of conviction of trafficking cases.
2. Political Will. This relates to the first challenge, but has to be mentioned, because some government leaders profess understanding of the dynamics of trafficking as well as involvement in the drafting of the international standards. However, the work of passing the necessary bill domestically takes a backseat compared to “politically expedient” agenda items. Thorough investigation and efficient prosecution of cases are wanting until funders make an extra push or the US Trafficking in Persons Report is due. By 2008, only 1% of cases were convicted, 21% were dismissed, dropped or withdrawn, while 35% are still waiting for resolution. Local government units are critical levels of governance whose political will to implement the law on the local level are challenged as they are known to be involved in protecting the local sex industry, if their leaders are not part-owners of establishments or buyers themselves.

3. Socio-economic and Cultural Structures. Education, the media and even families continue to reinforce the vulnerability of young women to sexual exploitation. Gender definitions of women as secondary human beings, passive sexual objects and homemakers on the one hand, and definitions of masculinity as aggressive, superior to women and sexually virile are at the base of gender-based violence that includes sex trafficking, where women and children become the majority of victims, and men become the perpetrators. These, combined with poverty, discrimination based on race/ethnicity and age, exacerbates the vulnerability of women and children to trafficking, especially those coming from the rural areas or indigenous groups.

“Marrying up” is being seen as a channel for women’s economic and social uplift. Meanwhile, men from the North are on the flipside of the coin and are attracted to the exoticized images and vulnerability of women in the South.

Between the vulnerable women and children on the one hand, and the men who are buying on the other, is the globalized business of trafficking where exploiters profit. Finding a huge market among men across societies socialized by their own families, even by schools and by the media to act out exploitative sexuality, more and more sectors of profiteers are drawn to trafficking - from the procurers, to the illegal recruiters, to travel agents, to shippers, airline personnel, immigration officials, pornographers, establishment owners and drug pushers. Those who profit from this huge business have become a politically potent sector as they overlap with those in power, even promoting the idea that prostitution is acceptable. They also push the idea that the sex industry should be tolerated as long as the women are free from HIV/AIDS.

This is the general context where challenges in the implementation of international standards reside.

In the region of Asia-Pacific, laws against trafficking may have been passed but a huge majority are protective of children but provides conditions or qualifies protection of adults trafficked, especially to prostitution. In India, the Immoral Trafficking in Persons Act is yet to be amended to remove penalties against women and to punish the buyers, as pushed by anti-trafficking advocates. The Anti-Trafficking Law in Nepal punishes both those who engage in prostitution (which can be the women), as well as the buyers. India, Nepal and Pakistan in South Asia have not ratified the UN Anti-Trafficking Protocol.

Countries receiving trafficked persons in Asia, such as Malaysia, Japan and Singapore address the supply side of trafficking but have yet to comprehensively address the local demand for trafficked women and children. Malaysia continues its raids targeting undocumented migrants, including trafficking victims. Japan has not yet ratified the UN Anti-Trafficking Protocol and has no comprehensive anti-trafficking law. Singapore denies human trafficking as a significant local problem and has no comprehensive anti-trafficking law as well.

We are optimistic that this coming together will seriously challenge duty-bearers to an in-depth look and analysis of the issue. To understand that at the core of the problem are inequalities - gender, socio-economic and political - will facilitate thorough and strategic responses to the issue. As some in the panel may be presenting good practices on integration of victims-survivors of trafficking, I would like to end by presenting how we contribute to the addressal of the demand side. Because as the UN Anti-Trafficking Protocol provides, “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.” CATW-AP has been educating young men, aged 16-21, in three-day education camps on gender issues, sexuality, trafficking and prostitution since 2004. In those camps, the boys’ socialization are revisited by them. They reflect on the impact of their learned concepts and behavior on masculinity to women around them, to themselves and to their environment. Finally, they are able to talk to a survivor of sex trafficking and erode their myths about prostitution. To date, we have more than 300 young male advocates who say no to buying women and children in prostitution. They have formed a national organization called Youth and Students Advancing Gender Equality. These camps have been replicated in Thailand, and will soon be brought to India and Indonesia. I wish to end by promoting a different notion of masculinity. (Show 29-second video.)



**HUMAN TRAFFICKING AND  
REFUGEE PROTECTION:  
UNHCR'S PERSPECTIVE**

---

Christian Baureder, Protection Officer  
(UNHCR Seoul)





# HUMAN TRAFFICKING AND REFUGEE PROTECTION: UNHCR'S PERSPECTIVE

Christian Baureder, Protection Officer  
(UNHCR Seoul)

1. The Office of the United Nations High Commissioner for Refugees (hereinafter “UNHCR” or “the Office”) values the efforts and shares the legitimate interest of States in combating trafficking in persons, a crime which may entail serious violations of the human rights of its victims. UNHCR specifically draws attention to the humanitarian consequences of this crime and calls for a human rights based approach to human trafficking which goes beyond identifying and prosecuting the perpetrators, and includes measures to address the protection needs of victims or individuals who have been or are at risk of being trafficked.
2. Further to the outline below of UNHCR’s interest and activities in the area of human trafficking, UNHCR highlights the following key issues in the prevention of human trafficking and protection of its victims.
  - The crime of trafficking in human beings may violate fundamental human rights of victims and sometimes the rights of their families. While UNHCR appreciates the importance placed by States on combating this crime, UNHCR urges that measures taken in this respect are implemented with due regard to victims’ potential needs for international protection, respect for the principle of non refoulement and for victims’ human rights.
  - Persons who have been or are at risk of being trafficked may have a well founded fear of persecution or be at risk of serious harm. States must ensure that appropriate and effective referral mechanisms are in place between authorities involved in anti trafficking activities and those responsible for granting of international protection. Such measures must ensure full compliance with the principle of non refoulement.
  - The potential need for international protection of persons who have been trafficked or are at risk of being trafficked must be taken into account. This includes assessing

protection needs under the 1951 Convention Relating to the Status of Refugees as well as complementary forms of protection, such as humanitarian status or other temporary protection mechanisms..

- Special measures are needed to ensure that the specific protection needs of child victims of trafficking are addressed. Such measures should include, but not be limited to, a formal determination of the best interest of the child and a systematic assessment of the child's international protection needs.

## **I. UNHCR'S INTEREST AND ACTIVITIES REGARDING HUMAN TRAFFICKING**

1. UNHCR has been entrusted by the United Nations General Assembly with responsibility for providing international protection to refugees, and for seeking permanent solutions for the problem of refugees. UNHCR's mandate *ratione personae* also includes asylum seekers, returnees, stateless persons and, under specific circumstances, internally displaced persons.
2. Neither the issue of human trafficking nor trafficking victims as such fall under UNHCR's mandate or the scope of application of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter "the 1951 Convention"). However, as part of a broader international response to human trafficking, UNHCR becomes involved where human trafficking impacts on persons of concern to the Office, in particular:
  - To prevent refugees and other persons of concern (asylum seekers, returnees, stateless and internally displaced persons) from becoming victims of human trafficking, and to address the needs of persons of concern who have fallen victim thereto;
  - To ensure that international protection needs of trafficking victims (or those at risk of being trafficked) which may arise as a result of their trafficking experience are properly identified, and
  - To assist States in ensuring that trafficking victims who are without identity documents are able to establish their identity and nationality status in order to prevent them from being rendered stateless, and to protect stateless victims of trafficking.
3. UNHCR's interventions and activities in the area of human trafficking are based on the premise that this specific crime may entail abuses or serious threats to the human rights of the victims and that an international protection response may be called for to

ensure the well being of the persons concerned. Protection measures provided to victims of trafficking in practice are often restricted to short term assistance and support offered within the criminal justice system to victims of crimes. This is not sufficient for trafficking victims who fear persecution or other serious human rights violations and cannot return home. Such persons need international protection as provided for in the 1951 Convention, in international human rights law or complementary forms of protection under national law. This entails most notably protection against refoulement and in many instances granting of asylum or another protection status.

4. UNHCR is involved in prevention through awareness raising activities to disseminate information among refugee populations and other persons of concern to alert them to the different modalities of human trafficking and the associated risks. UNHCR has also incorporated human trafficking as a variable when assessing and monitoring the situation of refugees and other persons of concern, with a view to early identification of risks for the population of concern and incorporation of preventive measures for particular vulnerable groups.
5. In relation to ensuring protection of victims of trafficking, the Office has been involved in advocacy efforts to promote asylum sensitive anti trafficking legislation and practice at the national level, including through participation in National Working Groups on Trafficking. Such activities have included contributions to establishing informal referral mechanisms between key actors to ensure the protection and assistance of trafficking victims or individuals at risk of being trafficked where required.
6. Similarly UNHCR undertakes training and capacity building and providing support to national asylum authorities on refugee status determination, including through training on the Guidelines on the “Application of Article 1A(2) of the 1951 Convention or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked”.<sup>1)</sup>
7. Furthermore the Office regularly visits holding and detention centers and conducts border-monitoring missions to evaluate the arrival of refugees within mixed migratory flows, and help ensure identification of trafficking victims or individuals at risk of being trafficked.
8. As to durable solutions, local integration of refugee victims of trafficking can be particularly challenging because of the traumatizing experiences people have had. Certain trafficking victims continue to be under threat in their first country of asylum. UNHCR has worked to find a resettlement solution in such situations to ensure that victims and their families obtain effective protection.

## II. COMMON CHALLENGES IN ESTABLISHING ADEQUATE PROTECTION MECHAISMS FOR TRAFFICKED PERSONS WITH INTERNATIONAL PROTECTION NEEDS

1. In a recent study commissioned by UNHCR entitled “The Identification and Referral of Victims of Trafficking to Procedures for Determining International Protection Needs” 2), a number of challenges in State practice have been highlighted in relation to ensuring complementarity between international protection systems and systems for the protection of victims of trafficking. The following areas of concern have been identified in the majority of countries:

### Conceptual obstacles:

- Protection v. enforcement : Most national anti trafficking legislations make the protection of trafficked persons dependent on cooperating with the authorities to prosecute traffickers. As a result, trafficked persons who decide not to testify against the traffickers (e.g. for fear of retaliation) are deprived of protection.
- Repatriation v. international protection : Most national anti trafficking systems still consider repatriation the preferred long term solution for all trafficked persons, despite reliable evidence of the risk of re trafficking that they face. National trafficking protection systems and international protection systems are therefore, misguidedly, understood as alternatives rather than as complimentary procedures.
- Trafficked persons v. illegal immigrants : In some countries, trafficked persons face immediate deportation once identified, because they are simply considered illegal immigrants with no international protection rights.
- Lack of political consensus and insufficient resource allocation : Vulnerable migrants are often affected by the negative political climate currently surrounding undocumented migration; this complicates the task of building political consensus regarding their protection needs.

### Organizational obstacles:

- Absence of an effective legal framework : A functional identification, referral and assessment system relies on the existence of a dual national legal framework setting out measures of identification and international protection. The lack of one system seriously hampers the protection of trafficked persons.

- Lack of competence of referral agency : Except for one country covered in the study, where the international protection needs of trafficked persons are routinely addressed, referrals to international protection procedures are ad hoc at best. The lack of adequate knowledge about the different protection systems, on the part of legal advisers working within the national anti trafficking system, has a seriously detrimental impact on the referral mechanism and therefore on the access to international protection for all trafficked persons.
- Separately operating anti trafficking and IP systems : Most national counter trafficking systems are headed by a lead agency which coordinates among the different government, IO and NGO partners. Yet, offices in charge of asylum procedures are rarely connected to those coordination bodies.
- Incomplete data collection : No country under review forwards data on trafficking to a central entity. Moreover, information gathering on the number of identified trafficked persons, the number of persons referred to international protection and the reasons for ultimately granting or denying international protection is unsystematic.
- Deficient training : While training workshops are organized continuously among the partners linked in the national anti trafficking framework, those trainings omit trafficked persons' potential need for international protection and thus the importance of legal aid and systematic referral measures.

### **III. CONCRETE RECOMMENDATIONS TO STATES TO STRENGTHEN THE PROTECTION AND ASSISTANCE OF TRAFFICKING VICTIMS**

1. UNHCR reiterates the importance of ensuring that international protection needs are fully assessed, in accordance with the 1951 Convention, for persons identified as victims of trafficking.
2. The following recommendations to States reflect some of the findings of the above mentioned study, as well as findings derived from UNHCR's work to ensure international protection for victims of trafficking at national level. Based on UNHCR's refugee protection mandate, they aim to help countries consider and develop ways to strengthen the protection of and assistance to trafficking victims and support prevention efforts in countries of origin and transit:
  - Legal and institutional frameworks for combating human trafficking and to protect and assist victims of this crime should be strengthened. This includes high level

inter departmental integration of the issue, implementation of National Action Plans and working groups with broad representation of relevant government agencies, and international and national organizations.

- Training programs should be strengthened for national asylum authorities and organizations working with victims of trafficking, including in regard to interpreting the refugee definition in an age and gender sensitive manner, and the criteria that give rise to the recognition of refugee or other protection status to trafficking victims (or needs of individuals at risk of being trafficked). Indicators of international protection for victims of trafficking should also be included.
- All necessary measures should be adopted to ensure participation of governmental institutions, including national asylum authorities, international organizations and civil society organizations where appropriate, in the general assessment of protection needs of trafficking victims. This can help determine, from a technical and humanitarian perspective, which protection measure is most suitable for each individual case and ensure appropriate referral mechanisms are in place where parallel protection regimes exist.
- Modules on International Refugee Law should be included in national professional training programs on human trafficking for relevant national authorities (migration, police, prosecutors, judges, etc.) to ensure that international protection needs are identified and addressed appropriately, including the principle of non refoulement and non penalization of refugees.
- Specific safeguards for the protection of boy and girl victims of trafficking should be established including: (a) a formal determination of the best interest of the child; (b) the adoption of child specific protection measures, such as the appointment of guardians; (c) the gathering of information on the role parents might have played in the trafficking situation of their children; (d) issues of tracing and family reunification, and (e) the observance of specific safeguards in cases of the repatriation of unaccompanied or separated children.
- Questions on pre trafficking displacement patterns should be included in data collection and research initiatives in order to identify priority interventions in countries of displacement. Such interventions could include information campaigns, legal migration counseling and return assistance.
- Protection should be available for persons displaced, including in countries of origin and transit, through projects to build protection capacities and the strategic use of resettlement. This is important, considering that persons already displaced may be at increased risk of becoming victims of trafficking when, for instance, livelihoods are disrupted, or if basic needs and human rights are unmet.
- The number of refugee resettlement places available for victims of trafficking should

be increased, and selection criteria consider the particular protection needs of victims or individuals who have been or are at risk of being trafficked.

#### **IV. REGIONAL INITIATIVES AND COOPERATION**

1. In February 2002 the First Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime initiated the Bali Process, which since then was followed up by two subsequent Ministerial Meetings in 2003 and 2009 and a number of Ad Hoc Experts' Groups meetings, workshops and Senior Officials' Meetings. UNHCR and IOM are partner organizations to the Bali Process.
2. UNHCR is convinced that the Bali Process is a useful vehicle to take the question of regional cooperation forward. In support of the development of useful 'building blocks' for collaboration at the practical level, UNHCR recently proposed to co host an Expert Workshop on Regional Cooperation on Refugees and Irregular Movement.<sup>3)</sup>
3. Regional developments in other parts of the world have also supported national efforts to ensure inter alia the protection of victims of trafficking in human beings, some of whom fall under UNHCR's mandate, and may also serve as an inspiration for further actions in this region.<sup>4)</sup>

UNHCR  
June 2010

- 1) Guidelines on the "Application of Article 1A(2) of the 1951 Convention or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked" Document available at: <http://www.unhcr.org/publ/PUBL/443b626b2.pdf>
- 2) UN High Commissioner for Refugees, The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs, October 2009, PPLAS/2009/03, available at: <http://www.unhcr.org/refworld/docid/4ad317bc2.html> [accessed 22 June 2010]
- 3) UNHCR proposal tabled at the Workshop on Regional Protection, Resettlement and Repatriation, Bali, 7-9 June 2010.
- 4) See also UN High Commissioner for Refugees, Human Trafficking and Refugee Protection: UNHCR's Perspective, September 2009, available at: <http://www.unhcr.org/refworld/docid/4ae17da12.html> [accessed 23 June 2010] and UN High Commissioner for Refugees, Protecting Trafficked Persons in the Americas: A Refugee Law Perspective, May 2010, available at: <http://www.unhcr.org/refworld/docid/4bf0f11e2.html> [accessed 23 June 2010]







**Session 2**

**Development of rehabilitation  
and social integration programs  
for the victims of human  
trafficking**

○





**Human rights protections and  
victim support for trafficked  
women in Australia**

---

Jennifer Burn, Associate Professor  
(University of Technology Sydney)



# Human rights protections and victim support for trafficked women in Australia

Jennifer Burn, Associate Professor  
(University of Technology Sydney)

## I. Introduction

I would like to begin by thanking Professor Hyun Byung Chul, Chairperson of the National Human Rights Commission of Korea, for the honour of the invitation to speak at this important conference.

Over the last 7 years, there have been remarkable achievements in anti trafficking initiatives in Australia characterised by alliances between people working in civil society and government to achieve better human rights protections for migrant workers who have experienced trafficking, slavery and extreme labour exploitation.

## II. The Anti-Slavery Project: international and Australian domestic contexts

The Anti Slavery Project in the Faculty of Law at the University of Technology Sydney is an academic and non government organisation and the only specialist legal service in Australia for women and men who have experienced trafficking, slavery and extreme labour exploitation. We conduct research and advocate to government for improvements to Australia's response to trafficking so as to better protect and promote the human rights of our clients. Australia is a destination country for people trafficked from the Asia Pacific region.

In 2009, the International Labour Organization estimated that around the world there are at least 12.3 million people in forced labour, more than 2.4 million have been trafficked across borders and 9.8 million are exploited by private agents. More people are in forced

labour in the Asia Pacific region than in any other part of the world with the ILO estimating that 9.5 million people in our region experience this kind of human rights abuse. While statistics are truly unknowable, we can rely on official government statistics to explain the dimension of trafficking in Australia. The Australian Government reports that for the period January 2004 to April 2009, 131 people accessed the support for victims of people trafficking program, the Department of Immigration and Citizenship referred 287 suspected victims of trafficking to the Australian Federal Police for assessment and the Australian Federal Police investigated over 270 allegations of trafficking. The 2010 Trafficking in Persons Report (US Department of State) says that men and women from the Asia Pacific region, including India, China South Korea and the Philippines are recruited by unscrupulous employers and labour contractors to work in forced labour in agriculture, viticulture, construction, and other sectors.

Currently at the Anti Slavery Project, we have 80 clients and the profile of our clients is consistent with what is known about the overall pattern of trafficking in Australia. Most of our clients are women from the Asia Pacific region. The majority were trafficked into Australia from Thailand, the Republic of Korea and Malaysia. Others are from China, India, Indonesia, and the Philippines. Most were trafficked into sexual servitude, and some were subject to manifestly unreasonable debts, others were trafficked into forced labour in the commercial hospitality industry, or domestic servitude, either through a relationship or through another visa type. In Australia, most media and community focus on trafficking is on trafficking for sexual servitude, rather than other forms of trafficking and exploitation. As a result, identifying and protecting all victims of trafficking, regardless of the form of the exploitation, is an ongoing challenge. This is especially difficult as most trafficked people in Australia are migrant workers, holding genuine travel documents, and appropriate visas with permission to work.

### **III. Human rights protection and victim support in Australia**

#### **Australian Government Action Plan 2004**

After considerable agitation from community, media and the establishment of a Parliamentary Inquiry into Trafficking in Australia, the Australian Government implemented the Action Plan to Eradicate Trafficking in Persons in 2004. Prior to the implementation of the Action Plan, the focus was on identifying unlawful non citizens for immigration compliance purposes, while traffickers had effective immunity from Australian laws.

The Government's Action Plan was said to have four central pillars - prevention, detection and investigation, criminal prosecution, and victim support and rehabilitation.

In reality, however, investigation and criminal prosecution took precedence over the other pillars. The Government's primary focus was on achieving successful prosecutions, and to that end, it had introduced the Criminal Code Amendment (Trafficking in Persons Offences) Act 2005. By expanding the range and scope of trafficking related offences in the Criminal Code, the Act fulfilled Australia's legislative obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (which Australia ratified in September 2005). This was, of course, a very positive step forward because it enabled the effective prosecution of traffickers. However, the Act could only do so much - it dealt with trafficking within a criminal justice framework, which meant that the focus was on investigating and prosecuting the perpetrator, rather than on the needs of the victim.

Under the Government's Action Plan, prevention and victim support was secondary to the prosecution process. This was particularly evident in the trafficking visa framework, where the provision of victim support was made contingent on the victim's ability to assist a criminal investigation. In short, the Government's Action Plan characterised trafficking as a law enforcement problem, failing to recognise that it is fundamentally a human rights violation. In 2009 the victim support program in the Action Plan was revitalised with greater recognition of human rights, particularly in the area of visa and victim support. Since 2004, the Australian Government has provided \$AUD58.3 million to anti trafficking initiatives in Australia and the Asia Pacific region.

#### **IV. Further developments in Australia**

The Anti Slavery Project, along with many of its campaign partners, has always maintained that it is the trafficked person, not the perpetrator, who should be at the centre of strategies to eliminate trafficking. This conceptualisation of the primacy of the victim is consistent with the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking and is why we advocate for responses to trafficking to be situated within a human rights framework.

Through the ongoing, collaborative efforts of many Australian NGOs, we have taken our advocacy for victim centred strategies to a number of forums, both international and domestic. In 2006, the Anti Slavery Project was the primary author of the Australian NGO Shadow Report on Trafficked Women submitted to the 34th session of the Committee for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Report contained recommendations for reforms addressing the identification, investigation and prosecution of trafficking offences, victim support, repatriation and

reintegration programs, and prevention strategies. There was a particular focus on the visa framework, the much needed development of community awareness raising strategies, and the need for more research to better understand patterns of human trafficking and slavery, the creation of a national roundtable, education of the legal profession and the importance of amending the law to provide for victim impact statements at the time of sentencing for federal crimes.

Two of recommendations for reform in particular are worth mentioning. The first relates to the recommendation to create a national taskforce to coordinate responses to trafficking in Australia, and the second called for a review of the trafficking visa framework to prioritise the needs of people who have experienced trafficking above the needs of law enforcement.

## **V. The National Roundtable on People Trafficking**

The centrepiece of collaboration in Australia has been the National Roundtable on People Trafficking, held for the first time in June 2008 and again in June in 2009. At the first National Roundtable on People Trafficking, NGOs and the Australian Human Rights Commission expressed concerns about the then trafficking visa framework and the need to provide trafficked people with culturally appropriate information about their legal entitlements and access to support services.

The National Roundtable also established a working group of NGOs and government agencies to produce NGO Guidelines for Working with Trafficked People and the first multi lingual fact sheets for trafficked people. The fact sheets for trafficked people were translated into Chinese, Korean, Tagalog, Thai and Vietnamese. These guidelines were jointly launched by Minister Bob Debus, the Australian Human Rights Commission and the Anti Slavery Project in March 2009.

## **VI. Australian Human Rights Commission**

The Australian Human Rights Commission has had a leading role in the development of effective anti trafficking strategies in Australia and the Commission has partnered with the Anti Slavery Project to lend its support and advocacy. In particular, the current Sex Discrimination Commissioner Elizabeth Broderick and her predecessor before her did much to raise the profile of the issue of trafficking and slavery. Commissioner Broderick also chaired the Working Group which was established to develop national Guidelines for NGOs working with trafficked persons.



## VII. Support for victims of trafficking

### 1. The Government Funded Support Program for Victims of Trafficking

The Australian government funded and administers a Support Program for Victims of Trafficking as part of the Australian Government's AntiTrafficking Strategy. This support includes accommodation, financial assistance and access to legal advice.

The Australian Government Office of Women designed a victim support program and administers the victim support program. The Australian Red Cross is contracted to manage the Support for trafficked People Program. The Program assists trafficked people who are referred to the Red Cross by the Australian Federal Police or state and territory police. Each person on the program has his or her own individual case manager.

Since July 2009 changes to the Australia's anti trafficking strategy mean that access to the Support Program for Victims of Trafficking is no longer conditional on holding a valid visa under the People Trafficking Visa Framework.

The Support Program for victims of trafficking has three different streams: the assessment stream, the justice stream and the trial support stream.

- **Government victim support program - the Assessment Stream** : provides intensive support to all people who have recently been identified as victims of trafficking for a period of 45 days (extendable by a further 45 days), regardless of whether they are willing or able to assist law enforcement. Support includes secure accommodation, a living allowance, and a food allowance, access to health care, including counseling, access to interpreters and access to legal services. A dedicated case manager coordinates these services, and interpreters are engaged if necessary.
- **Government victim support program - the Justice Support Stream** : offers support to people who are assisting police with an ongoing investigation or prosecution up until the end of the criminal justice process. Support includes access to Social Security, Medicare and Pharmaceutical benefits and possibly assistance in securing accommodation and purchasing furniture.
- **Trial Support stream** : provides support and assistance to trafficked people who decided to leave Australia but return to Australia to assist with a police investigation or prosecution. Trial Support includes secure accommodation, a living allowance and a food allowance, as well as case managed compassionate support.
- **Transition from the Victim Support Program** : victims of trafficking who leave the victim support program will be provided with formal transitional assistance for a period of 20 days.

- **Support in Court proceedings** : Victims of the crimes are assisted throughout the court process by witness support officers.

## 2. NGO victim support programs

NGOs play a critical role in providing legal and material support to trafficked people and by raising community awareness of all forms of trafficking in Australia. In October 2008 the Minister for Home Affairs announced the Anti Slavery Project, Scarlet Alliance, Australian Religious Against Trafficking and Project Respect would each be funded \$250 000 for anti trafficking work. (This funding was sourced from assets confiscated under the Proceeds of Crimes Act). NGOs providing services to trafficked people complement the support provided under the Support for Victims of Trafficking Program or support trafficked people who are not eligible for the Program or who are no longer receiving support through the program.

## 3. Our current focus - enhancing human rights protections and support

Current priorities include recommendation to government of a review the government funded, victim of trafficking funded support program, to improve access of trafficked people to obtain financial compensation, to develop an enhanced community awareness program focusing on all forms of labour trafficking and exploitation of migrant workers and to provide trafficked people and the people who are vulnerable to trafficking with information about their legal rights and entitlements under Australian law.

## VIII. Conclusion

Victim support is critical to protect the human rights of people who have experienced trafficking. The lives of people who have experienced trafficking and slavery have been changed by the work of communities and government in Australia and the partnerships between the two groups, but more needs to be done. Thank you for your attention today.

## Know your rights: Information for people who have been trafficked to Australia

### Have you been trafficked?

A simple definition of people trafficking is when a person has been brought to Australia and is in a situation of exploitation. People traffickers bring people to Australia to work in many different kinds of jobs. Traffickers might threaten or hurt you, force you to repay money that they say you owe them or take away your travel documents. Under Australian law, people trafficking is a crime.

### What should I do?

If you think you have been trafficked you can call the Australian Federal Police on 1800 813 784 (free call 24 hours) from anywhere in Australia. If you are in danger and need help straight away call 000. You can also call the Australian Government Workplace Ombudsman on 1300 724 200 (8:30am-5pm) if you think that you are not being treated fairly at work. If you do not feel comfortable talking to the police, there are other organisations that may be able to help you. Information on other organisations is available below.

### What support is available?

The Australian Government has a Support for Victims of People Trafficking Program which is for trafficked people from all over Australia. The Australian Federal Police will refer people onto the Program. If you are able to assist in an investigation and criminal trial you may be eligible to receive support under the Program. This can include income assistance, access to accommodation, medical treatment, basic legal advice, counselling, training and social support. If you are receiving assistance under the Support for Victims of People Trafficking Program, your case manager is there to help you.

### How can other organisations help me?

If you are not eligible for the Support for Victims of People Trafficking Program, there are many organisations that can help you with:

- Seeing a doctor
- Finding accommodation
- Finding an interpreter
- Immigration advice
- Reporting your experience
- Getting financial help
- Getting legal advice

Non-government organisations which specialise in working with trafficked people are:

- Anti-Slavery Project, in Sydney: (02) 9514 9662 (9am-5pm)
- Project Respect, in Melbourne: (03) 9416 3401 (9am-4pm)
- Samaritan Accommodation, in Sydney: (02) 9211 5794 (24 hours)
- Scarlet Alliance, Australian Sex Workers Association, in Sydney: (02) 9326 9455 (9am-5pm)

### What can I expect from the organisations helping me?

Organisations that offer you assistance should only act on your behalf if you want them to. You can always refuse assistance if you are not happy with the service or ask for information about other service providers. Organisations should respect your privacy and confidentiality and you can tell organisations not to record any information about you.

### How can a lawyer help me?

A lawyer can tell you about your legal rights. There are also migration agents who can tell you about your visa and whether you are entitled to work. If you don't have a visa, a migration agent can help you to apply for one. If you are on the Australian Government Support for Victims of People Trafficking Program, you are entitled to see a lawyer. The Anti-Slavery Project also offers specialist legal services for trafficked people.

Each state and territory of Australia has a legal aid commission to assist people requiring legal advice. The contact details of the legal aid commission in your state or territory are:

- Legal Aid NSW: 1300 888 529 (9am-5pm)
- Victoria Legal Aid: 1800 677 402 (free call 8:45am-5:15pm)
- Legal Aid ACT: 1300 654 314 (9am-4pm)
- Legal Aid Queensland: 1300 65 11 88 (9am-5pm)
- Legal Aid Commission of Tasmania: 1300 366 611 (9am-5pm)
- Legal Aid Commission of Western Australia: 1300 650 579 (8:30am-4:30pm)
- Northern Territory Legal Aid Commission: 1800 019 343 (free call 9am-4pm)
- Legal Services Commission of South Australia: 1300 366 424 (9am-4:30pm)

### What about my visa?

If you are able to assist in an investigation and criminal trial you may be eligible for a special people trafficking visa, or another kind of visa depending on your circumstances. As with all decisions about visas, the Australian Government Department of Immigration and Citizenship assesses each visa application on a case-by-case basis.

### What if I need an interpreter?

You have a right to ask for an interpreter. You can also ask to be given information in your preferred language. If the organisation who is helping you cannot find an interpreter you can ask to be referred to an organisation that can.

### What happens if I have to go to Court?

If you decide to give evidence about what has happened to you, you may have to go to Court. There is additional support for victims of trafficking who give evidence in court and the organisation assisting you can provide advice.

### What if I want to work?

Some visas will allow you to work in Australia. If you are unsure about whether your visa allows you to work, check with your migration agent, lawyer or the Department of Immigration and Citizenship, or ask the organisation helping you. You can call the Department of Immigration and Citizenship on 131 881 (9am-4pm).

### What if I have children?

If your child is in your country of origin you will need to talk to your migration agent or lawyer about whether your child is eligible for a visa. Obtaining a visa for your child is not always possible and it may take a long time. If your child is in Australia, you should speak to the organisation assisting you about how they can help support your child as well.

### What if I want to go home?

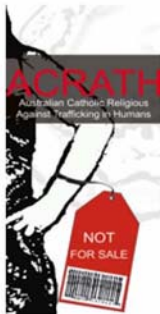
The Australian Government offers some assistance for people who have been trafficked and who want to return to their country of origin. If you think you might want to go home you should seek advice from your lawyer or migration agent, or your consulate in Australia.



Australian Government



Anti-Slavery project



# **Return and Reintegration of Trafficked Persons - Guidelines for IOM Practices**



June J. H. LEE, Chief of Mission, IOM Seoul

Upon the request of the person who owns the copyright, National Human Rights Commission of Korea does not provide the original text.



**Status and Tasks of Human  
Trafficking Victim support**

**Programs:**

**Cases in Korea**

---



Hye-Ryeong CHA, Lawyer  
(Korean Public Interest Lawyer's Group, 'GONGGAM')





# Status and Tasks of Human Trafficking Victim support Programs: Cases in Korea

Hye-Ryeong CHA, Lawyer  
(Korean Public Interest Lawyer's Group, 'GONGGAM')

## 1. Introduction

- The presenter was encountered with the issue of human trafficking victims especially migrant women while working on the 'Legal manual to support human trafficking victim, preparing for NGO review of 'Draft legislation on punishment on human trafficking etc.' and 'Draft legislation on prevention of human trafficking and protection of victim under preparation at the Office of Lawmaker Kim Chun-Jin as a follow-up legislation of the 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime(hereinafter 'UN Human Trafficking Protocol') and status survey on sending/receiving of Philippine entertainers into Korean sex industry.
- The presentation will cover the followings: existing legal framework of Korea on punishment of human trafficker and support for the victims; identifying implications from actual trafficking cases as to the kind of support programs in need; and several pillars of victim support programs by referencing some legislative and other examples of other countries. The presenter hopes any potential error or limitation that may come from lack of experience on the issue could be supplemented with presentations and discussions by other more experienced presenters and panelists.

## **2. Legislation on human trafficking**

### **a. Basis for criminal punishment on human trafficking**

<Criminal Act>

Article 288 Kidnapping and Trading for Gain

Article 292 Receiving or Concealing Kidnapped or Purchased etc.

<Act on the Aggravated Punishment, Etc. of Specific Crimes>

Article 5-2 Aggravated Punishment of Kidnapping and Inducement

<Act on the Punishment of Acts of Arranging Sexual Traffic>

Article 2 (Definition) (1).3 Human traffic aimed for sexual traffic

Article 18 (Penal Provisions) (3).3

### **b. Special clauses on support for victims of human trafficking**

<Act on the Punishment of Acts of Arranging Sexual Traffic>

Article 11 (Special Case for Foreign Women)

- Use of support facility during suspension of compulsory departure order or temporary release from detention
- Notification on the possibility of filing an application for compensation (possibility of mutatis mutandis application of Act on Special Cases concerning Expedition, etc. Of Legal Proceedings.)

<Act on the Prevention of Sexual Traffic and Protection, etc. of Victims Thereof>

Article 3 (Responsibilities of State, etc.)

Article 5 (Kinds of Supporting Institutions)

Article 7 (Affairs of Supporting Institutions)

## **3. Case review on migrant women who have fallen victims to human trafficking**

- a. Types of human trafficking for sexual exploitation
- b. Types of human trafficking for labor exploitation
- c. Types of human trafficking for forced marriage

#### **4. Advanced legislation and support programs for human trafficking victims**

#### **5. Several pillars of support programs for human trafficking victims**

- a. Sojourn
- b. Social welfare
- c. Sufficient legal remedy
- d. Support for return

#### **6. Proposals (instead of conclusion)**

- In Korea, excluding the special case for foreign women in Article 11 of the Act on the Punishment of Acts of Arranging Sexual Traffic and the provisions on support facility for foreign women in Article 5 of the Act on the Prevention of Sexual Traffic and Protection, etc. of Victims Thereof, there is practically no support programs for human trafficking victims. It is critical to establish a systematic victim support program of legislative remedy for trafficking victims and practical assistance for social integration. Revision of existing laws or establishment of new law including the important pillars of support programs for human trafficking victims as discussed earlier should be implemented along with supplementing policies. This is not only true in Korea but also in other countries of similar human trafficking victim support programs.
- Certainty in criminal punishment on human traffickers does not constitute a precondition for victim support program. There is a need for victim support provided unconditional to victim's assistance to criminal procedures to punish traffickers. Certainty in prosecution on traffickers, however, can contribute in raising awareness that human trafficking is a crime that should be expelled and that support is necessary for the victims to return to the society from the human rights and humanitarian perspectives. Therefore in countries with little consideration on human trafficking as a crime, measures to increase the possibility of investigation, prosecution and criminal punishment of human trafficking (especially new types of trafficking) are important to be developed along with or even before a separate promotion or training on prevention

of human trafficking. For that purpose, it is desirable for the Korean law enforcement authorizes and the court to actively interpret and apply the existing laws. When necessary, the laws should be revised to include the same level of human trafficking definition specified in the UN Human Trafficking Protocol. Also, this can be applied to other countries of similar human trafficking legislation system as well.

- Considering that human trafficking is a crime that involves transferring people through a number of countries - country of origin, transit country, country of destination etc., consideration on international cooperation for efficient support programs for migrant women/human trafficking victims should be made.
- Close cooperation with NGO is required when the government is establishing support programs for migrant women/human trafficking victims.



**Session 3**



**Regional cooperation to prevent  
human trafficking in Asia**

○



**Regional Cooperation to Prevent  
Human Trafficking in Asia: The  
Case of Thailand**

---



Amara Pongsapich, Chairperson  
(National Human Rights Commission of Thailand)





# Regional Cooperation to Prevent Human Trafficking in Asia: The Case of Thailand

Amara Pongsapich, Chairperson

(National Human Rights Commission of Thailand)

## I . Preamble

Human trafficking is a well known phenomenon in Asia. Many countries are country of origin, others are country of destination; while others are origin, destination and transit countries. Over the past years, the human trafficking has become transnational organized crimes involving international and local criminal networks. Individuals being trafficked include children and women as well as migrant workers. Some joined the criminal organizations voluntarily and others are forced into the system for the benefit of the agencies.

There are many international instruments available to deal with the cross border international crimes which exploit human beings and violate human rights. In addition to the Universal Declaration of Human Rights, the most important instruments are: (1) International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and International Convention on the Protection of All Migrant Workers and Members of Their Families.

## II . International Mechanism

- 1. The Universal Declaration of Human Rights, Article 13 states :** (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Every one has the right to leave any country, including his own, and to return to his

country.

2. **The International Covenant on Civil and Political Rights, Article 12 states :** (1) Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence. (2) Everyone shall be free to leave any country, including his own. (3) The above mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. (4) No one shall be arbitrarily deprived of the right to enter his own country.
3. **Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organized Crime, Article 5 Criminalization states :** (1) Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses the conduct set forth in article 3 of this Protocol,[ human trafficking-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....] when committed intentionally.
4. **ILO Convention on the Worst Forms of Child Labour (No. 182), Article 3, states that the Worst Forms of Child Labor shall include :** All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced compulsory recruitment of children for use in armed conflict; the use, procurement or offering of a child for prostitution, production of pornography or pornographic performances; the use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs; work which , by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

### III. Other Mechanism

#### 1. National legislation

National legislation and other measures are essential tools to equip both government and non-government organizations to carry out their work in preventing and controlling human

trafficking both at the countries of origin and destination. Thailand legislated 3 laws: (1) Prevention and Suppression of Prostitution Act, 1996; (2) Measures in Prevention and Suppression of Trafficking in Women and Children Act, 1997; and (3) Prevention and Protection of Human Trafficking Act, 2008. After 2008, special funds are allocated for the purpose of prevention and protection of trafficking victims.

## 2. Collaborative Action Research

- ILO International Programme on the Elimination of Child Labour (ILO IPEC) Action Research
- Collaboration of ILO Mekong Subregional Project to Combat Trafficking in Children and Women and UN Inter agency project to combat trafficking in children and Women on project titled “Labour migration and trafficking within the Greater Mekong Subregion” (2001)
- ILO Mekong Sub regional Project to Combat Trafficking in Children and Women (2003 2008). There are many sub projects to investigate trafficked cases in different parts of the countries in the Mekong Sub region.

This project is essential in bringing about bilateral Memorandum of Understanding on Trafficking of Children and Women between partner countries within the Mekong Sub-region.

## 3. Memorandum of Understandings

Memorandum of Understandings are tools to adopt at national, bilateral and multi lateral or regional levels.

## IV. National level

To combat human trafficking problem, it was found that, in addition to government agencies, non government organizations have been playing vital roles in dealing with the issue. However, implementing agencies need to collaborate more systematically. In 2003, two MOUs were signed, i.e., MOU on GO/NGO collaboration, and MOU to support collaboration among NGOs.

## V. Bilateral level,

MOUs signed bilaterally focused on two issues, i.e., migrant labor and children and women.

- **Migrant Labor** : Three MOUs between Thailand and its neighboring countries have been signed. (1) Thailand and Lao PDR on Employment Cooperation signed on 18 October 2002 in Vientiane, (2) Thailand and Cambodia on Employment Cooperation signed on 31 May 2003 in Ubon Ratchatani, and, (3) Thailand and Myanmar on Employment Cooperation signed on 21 June 2003.
- **Children and Women** : MOUs between Thailand and Lao PDR and Thailand and Cambodia on Trafficking of Children and Women were signed in 2003. However, MOU between Thailand and Myanmar was signed more recently in May 2009. The objectives are to identify collaboration efforts between policy and implementing agencies in each country. The efforts to rescue, repatriate, and re-integrate returning individuals back to society. However, research reports indicate that despite the MOU, the process has not been very successful. The re-integration process turned out to be the most complicated process.  
These two MOUs are signed bilaterally after attempts to develop an MOU for the Mekong Sub-regional level failed.

In addition, Thailand is country of origin for trafficking of women and children into countries in the North which are destinations of the women. At present, Thailand has signed MOUs with Japan, Germany, and the United Kingdom.

## VI. Multi-country or regional level,

There are different forms of agreements initiated at multi-country level. Here are some examples:

- **Migrant Labor** : Thailand Nationality Verification Project: In order to solve the issue of undocumented migrant workers from the neighboring countries, Thailand required migrant workers to register which means that they need to have a clear nationality. Since many migrant workers who have been trafficked and are involved with criminal organizations and corrupt officers, the process met with resistance. The Lao PDR and Cambodian governments collaborated with the Thai Government to assist their migrant workers and agreed to establish registration offices at the border towns. The Myanmar government did not provide such service in the beginning; but after some negotiations,

the Myanmar registration offices are now established along the Thai Myanmar border. The process is on going and the deadline is in 2012.

- **Children and Women :** The Southeast Asia National Human Rights Institutions Forum signed Memorandum of Understanding Against Trafficking of Women and Children on March 30, 2010. The four countries in Southeast Asia with National Human Rights Commission are Indonesia, Malaysia, Philippines, and Thailand. The objectives are: (1) To prevent and combat trafficking of women and children in Southeast Asia and in other regions in the world; (2) To strengthen cooperation amongst the member institutions in the area of trafficking of women and children; and (3) To foster cooperation amongst national human rights institutions in the world to address trafficking.

The MOU is applied to support the process of monitoring or strengthening the efforts, where appropriate, of the States of Member Institutions, to enable trafficked women and children to get access to legal remedies, and other forms of intervention.

- Other : In addition to migrant labor and children and women issues, there are many collaborations carried out at the regional and inter regional levels. The ones that Thailand is involved in include:
  - (1) Core group under the Asia Europe Framework - ASEM Plan of Action on Trafficking in Human.
  - (2) Consultative member of Asia Pacific Cooperation - Inter Government Asia Pacific Informal Consultations on Refugees, Displaced Persons and Migrants.
  - (3) Member of ASEAN Ministerial Meeting on Transnational Crime—AMMTC to carry out the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime.

## VII. Conclusion

This paper attempts to discuss regional cooperation on the issue of trafficking of children and women in Asia. The case of Thailand is used to demonstrate the different levels of cooperation which took place. Other countries should have similar experience. We should try to assess the success or failure of the different mechanism deployed to date.



**Cooperation Measures to  
Prevent Human Trafficking:  
Demand Oriented Approach**

---



Young-Sook CHO, Chief  
(International Coalition, Korean Women's Association United)





# Cooperation Measures to Prevent Human Trafficking: Demand Oriented Approach

Young–Sook CHO, Chief  
(International Coalition, Korean Women’s Association United)

## 1. Comprehensive policy for freedom of movement and for prevention of human trafficking and modern-day slavery

Increasing number of people migrate over the national border looking for a better life and a better job away from regional conflict, natural disaster, systematic economic crisis and poverty. The scale of the migration exceeds that of the capital and labor movement of the 90s, and it has become a social phenomenon of the 21st century where people of hybrid race and culture express themselves not with homeland but with ‘homepage’.

As the experiences of the past decades tell us, migration occurred along with the issue of human trafficking and modern-day slavery. With the introduction of 2000 Palermo Protocol, the international society along with the UN has called for ‘3P’ - prosecution of crimes of human trafficking, protection of victims and prevention of human trafficking. Therefore, many countries in Asia including Korea introduced anti-human trafficking legislation, policies and other measures to protect the victims and prevent the crime.

However, human trafficking is not a simple problem to be solved or prevented. Even worse, many policies introduced to prevent harm from human trafficking backfired to violate human rights and free will of migrants. For example, the visa control policy adopted by the Korean government to prevent human trafficking led to restriction on legal migration. This caused human traffickers to become more clandestine and operate underground, making identification and protection of victims even more difficult.

While the trend for freedom of migration and the trend requesting punishment on human

trafficking seem to create a tension, there exists the need for international marriage and forced labor as modern-day slavery in the country of destination and when the need is based on gender discriminatory patriarch marriage system and sexuality, the search of the migrants for a 'better life' results in human trafficking which ends in modern-day sex slavery or forced labor. Therefore it is hard to deny that migration itself is exposed to the risk of human trafficking.

International policy on human trafficking that demands punishment on organized crime that causes massive human trafficking and protection on the victims at the same time cannot bear fruits unless it is analyzed and developed in conjunction with the migration policy. Also, recent international efforts to prevent human trafficking show that the national policies on migration, human trafficking prevention and gender equality should go hand in hand in order for them to be effective.

## **2. Anti-human trafficking efforts focused on demand for sex and labor**

According to an ILO statistics, 12.3 people around the world have fallen victim to human trafficking for forced labor and sexual exploitation, 56% which are women, even young girls. An estimated 1.39 children and adults are in the state of commercial sex slavery. As the number suggests, the problem of human trafficking and the harm it causes has been aggravated with the failed policy to correlate overflowing demand and supply at respective countries of origin, destination and transit of human trafficking victims and the failed international cooperation to prevent organized crime of human trafficking. It has even caused human trafficking one of the natural trends of the time, making the problem more permanent.

Recent statistics suggest that international marriage, which is a cause for grave concern as it often leads to modern-day slavery, accounts for about 10% of overall marriages in Korea. As was evident in the cases that the author has encountered in the field, a significant number of international marriages have the characteristics of human trafficking. International marriage in the midst of economic imbalances between other countries and Korea, existence of patriarch marriage system and widespread gender inequality has the vulnerability of becoming a marriage with modern day slavery as its nature. Without fully recognizing such vulnerability, international marriage between the demand side - Korean men and their families - and on the supply side - namely women from Asian countries and their

families who chose marriage to pursue a better life - unintentionally leads to human trafficking and modern-day slavery.

The supply process of migrants to satisfy the needs in the country of destination which are based on the patriarch and sexist demand for female sex and labor, causes initial damage from human trafficking in the process of moving from the country of origin to the country of destination, and at the same time contributes to the secondary damage from human trafficking caused by the demand side of the country of destination. Even worse some experience another round of damage in the process of pleading the earlier damages from trafficking. The damages from human trafficking occur in many folds. Therefore, to address the demand for feminized sector among various types of human trafficking, namely commercial sex servitude, modern day slavery forms of bride trade and involuntary domestic work, various measures should be implemented in a comprehensive manner: initially prosecution on organized crime of intermediation that happens at 'the job placement centers' and 'marriage agencies' in the migration process; and secondarily punishment of the demand side (called as the consumers, buyers, owners etc.). Another social task of a larger scale remains of improved social awareness of migrants and legal protection in the country of destination.

In many Asian countries, when establishing policies to prevent human trafficking especially trafficking aiming at exploiting sex of children and female and modern day slavery forms of international marriage, demand side has never been analyzed as an important aspect of prevention. Therefore, there is a strong and urgent need to establish a new preventative measure focusing on preventing demand of human trafficking and slavery nature by concentrating on the issue of the country where there is a need for migrants and the issue of the individual demand.

Take sexual human trafficking for example. Human trafficking in Asia has developed in such different forms as commercial prostitution where children and women are sexually exploited, as international marriage, and as sex tour. Especially, as the sex industry account for an important portion in many Asian countries' GDP, and as the society in general has tolerated prostitution for men, both international and domestic human trafficking occurred very often. Therefore as prostitution, which was considered illegal by the law without any practical punishment domestically, becomes human trafficking when the act happens over the national borders, confusion ensued where prostitution within the country is allowed, and prostitution overseas is punished. The policy to prevent and reduce international human trafficking without addressing the demand for prostitution domestically is doomed for a failure as it will not achieve the desired outcome but only prolong the status quo. In the

development process of anti-human trafficking policies of many countries, dual enforcement of law where domestic prostitution is practically tolerated but overseas prostitution is punished as human trafficking has exposed a number of confusion and limitations in the issue of prostitution and human trafficking as the policy fails to note the correlation between prostitution and human trafficking.

In other words, any attempt to solve human trafficking overseas without full recognition of the role of domestic prostitution as the cause for human trafficking, is intrinsically limited.

More fundamental approach to human trafficking is to establish anti-human trafficking policies that recognize the demand for forced labor, bonded labor, forced house labor and commercial sexual exploitation that has the characteristics of sexual exploitation and slavery within the country, which creates the demand for human trafficking, and policies that also understand the nature of human trafficking caused by such biased and exploitive demand.

### **3. Attempt at Asian regional cooperative body to prevent human trafficking**

Establishment of more fundamental solution for human trafficking that focuses on the demand in the country of destination should go hand in hand with on-going implementation of the '3P (prosecution, protection, prevention)' policies. The main issue has inherent restrictions that cannot be tackled by a single country but require joint efforts in the region. Therefore, combined efforts in countries in the Asian region are highly necessary. In this regard, the Council of Europe Convention on Action against Trafficking in Human Beings adopted in 2005 and the ensuing efforts for the implementation of the Convention present a good example to spread Asia-wide cooperation.

The Council of Europe in 2005 adopted the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) which defines human trafficking as infringement on human dignity and human rights and as modern form of slavery, and addresses prevention, punishment of human trafficking and protection of human rights of the victims. "The Council of Europe Convention is the first international legally binding instrument which affirms that trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and integrity of the human being. It applies to all victims of trafficking: women, men and children. No other international text defines victims,

leaving it to each State to define who is a victim and therefore deserves the measures of protection and assistance. In the Convention a victim is any person who is subject to trafficking as defined in the Convention. The consent of a victim to the exploitation is irrelevant. The Convention applies to all forms of exploitation: sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and removal of organs; and it covers all forms of trafficking: national and transnational, related or not to organised crime." <http://www.coe.int/cm>

The Convention is unique as it emphasizes awareness improvement on the population vulnerable to the threat of human trafficking and on the 'buyer' that causes human trafficking victims. One of the preconditions for the Convention is law enforcement officials' improved recognition of the victims to treat them not as criminals. Also, according to the Convention, the civil society should play an important role in preventing human trafficking and in protecting the victims and therefore should work in close coordination with the government agencies and other private organizations.

For monitoring implementation of the Convention to make it more than a simple declaration, two mechanisms were developed for monitoring. One is the Group of Experts against Trafficking in Human Beings (GRETA). The other is the Committee of the Parties which is composed of representatives on the Committee of Ministers of the Council of Europe of the member state parties to the Convention and representatives of the parties to the Convention which are not members of the Council of Europe. The Committee adopts a recommendation to a member country based on a GRETA report. The recommendation is legally binding and has practical effect as it is related to the parliament, government agency, human rights council and the office in charge of statistics under the Council of Europe. Adoption of Convention on Action against Trafficking in Human Being through binding organization of the Council of Europe and establishment of implementation mechanisms, information system and inter agency cooperation system make the CETS as one of the most efficient regional implementation system in establishing '3P' policy.

It is highly encouraging that an international cooperation mechanism to prevent human trafficking with increased efficiency becomes a possibility in Asia. The composition of the Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) <http://www.aseanhrmech.org/news/ASEAN-commission-inaugurated.htm> under ASEAN is expected to contribute to victim protection and prevention of human trafficking and moreover may herald the beginning of trans-regional cooperation among ASEAN Plus countries (especially Korea, Japan and Taiwan, countries of destinations of human trafficking victims who are mostly from ASEAN countries).

In regional discussion of policies to prevent human trafficking, analysis focused on demand side requires resolution of the root causes of human trafficking in the countries of origin, destination and transit, which include poverty in female population, prostitution, sex tourism, gender inequality and gender-related violence and also calls for more fundamental anti-human trafficking policy which is closely related to policies for gender equality covering both public and private aspects.

UN Global Initiative to Fight Human Trafficking (GIFT) focuses on three dimensions of the demand. The first dimension is the demand for hire that is called under various names of employer, owner, manager, sub-contractor etc. The second is the group called as client, consumer and prostitute-user in the sex industry. The third is the group with the need for household worker in domestic work. Additionally, men and their families in Korea, Japan, Taiwan and other Northeast Asian countries sharing Confucius culture who want international marriage (bride trade) should compose another dimension of the demand side as they may generate the demand for human trafficking and harm of modern day slavery.

Prevention of human trafficking should gain additional effectiveness with ‘5P Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 2009’ of the existing ‘3P (prosecution, protection, prevention)’ with additional ‘2P (punishment, promotion)’. They are: punishment on the demand for human trafficking as a preventative measure; and promotion of international cooperation to seek fundamental solution to economic imbalances and exploitative structures among countries that generate modern-day slavery, human trafficking, forced labor and sexual exploitation.

#### **4. Korea’s role in international cooperation to prevent human trafficking**

2010 marks 10 year anniversary of the announcement of the Millennium Development Goal (MDG) and of ratification of Palermo Protocol. The international community should take stock of the efforts to fight poverty and evaluate the efforts to prevent human trafficking. Coincidentally, the Korean government is preparing to host the ‘G20’ summit in Seoul this November. The government also announced increased contribution to ODA when it became the 24th country to provide international assistance among OECD member countries in late November of 2009, Korea started to be included in the official DAC statistics from 2010. The Korean government plans to increase the size of ODA vs. GNI

by 2012 to increase the share to 0.15% in 2010 to 0.25% in 2015. , honoring the 10 year anniversary of MDG and the Palermo Protocol as a member country to G20 and the OECD Development Assistance Committee. This represents the Korean government's commitment to play an important role in the area of development and human rights to fight poverty and to prevent human trafficking. Therefore, the Korean government now bears increased international financial responsibility along with responsibility to improve international cooperation and partnerships with civil society.

In this regard, the Korean government should explore the following initiatives for international cooperation to prevent human trafficking in Asia.

- (1) Media advertisement and ODA funding for campaign to prevent sexual exploitation, labor exploitation and international marriage of modern-day slavery through cooperative system with Asian countries and their civil society: to create synergy in anti-human trafficking efforts in Asia utilizing Halryu (Korean wave) stars and broadcasting media.
- (2) Project to expel poverty in women in Asia and ODA funding for the project to improve financial capability among women in poverty to focus on the issue of poverty and prostitution that fundamentally cause human trafficking: vocational training and small business startup support programs to prevent human trafficking by providing potential victims and vulnerable groups with economic capability
- (3) Increased training and promotion to reduce demand for human trafficking such as sexual and labor exploitation, and international marriage with features of modern day slavery by improving awareness both in Korea and in other countries, and provision of ODA funding: campaigns targeting the demand side such as campaigns against sex tourism, against modern-day slavery form of international marriage; and establishment of cooperative system with the tourism industry
- (4) Introduction of alarm system to prevent human trafficking that takes place for a particular time or for a prolonged timeframe in the areas near US military base, ports for deep-sea fishing vessels, cities hosting large-scale international sporting events such as the World Cup or the Olympics; implementation of a system of experts for monitoring; and ODA funding
- (5) Cooperation network of technology and resources to build a mechanism for statistical information hub to assist human trafficking policy of the Asian region and ODA funding
- (6) Efforts to ratify related human rights conventions including the Palermo Protocol, the International Convention on the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention on the rights of domestic workers which is under discussion; and efforts to establish bilateral and multilateral agreement for their domestic and regional implementation





**Importance of a transnational  
network in Asia to prevent marriage  
migration of human trafficking  
nature: based on marriage  
migration cases of Korea**

---



Kuk-Yum HAN, Representative  
(Women Migrants Human Rights Center of Korea)



# Importance of a transnational network in Asia to prevent marriage migration of human trafficking nature: based on marriage migration cases of Korea

Kuk-Yum HAN, Representative  
(Women Migrants Human Rights Center of Korea)

## 1. Feminization of migration - at borderline with human trafficking

While migration has become a global phenomenon, ‘feminization of migration According to the 2003 Asian Migrant Yearbook and the UNIFEM report, about 20 million Asian women work overseas. Asian Migrant year Book 2002-2003, Asian Migrant Center, Migrant Forum in Asia, UNIFEM, EMPOWERING-Women Migrant Workers in Asia; A Briefing Kit’trend is ever accelerating with over 70% of total migrants population is female. The cause for increasing feminization of migration can be traced back to the globalization of poverty due to unequal structure of the neo-liberal global economy and chronic feminization of poverty. While migration of Asian women may present an opportunity to alleviate poverty and improve the quality of life of the migrant women themselves, their family and ultimately their country of origin, migration of women takes on the characteristics of human trafficking with commoditization of migrants, jobs predefined according to gender, and exploitation of brokers. One of the most pressing problems in the feminization of migration is ‘blurred line Rex Varona, "Migration and Trafficking", 「Migration for Development and its Feminization Process」 between female migration and human trafficking’: because in many cases brokering is done illegally, and in clandestine manner; and the broker agency profits from coercion, extortion and others. Many migrant workers pay an exorbitant fee to the broker agency that is only after their profit to enter into a country of their desire

illegally. As the entry is illegal, the employer may engage in another round of coercion and extortion that go against the will of the migrant workers. In case of Korea, as the channel for labor migration has been centralized to employment approval system based on inter-government agreement, the risk of labor migration turning into human trafficking was relatively reduced. However, for female migration, employment fraud or sexual exploitation on women who entered into the country under entertainer visa represent practical inexistence of distinction between migration and human trafficking.

Increase in marriage migration is something that cannot be ignored regarding migration of Asian women in the Korean context. There are around 300,000 female migrant women from Asian countries, which include 140,000 migrant laborers, around 6,000 women in the adult entertainment business who entered in the country under the entertainer visa and 160,000 women who migrated through marriage. The problem in this picture is that most of the marriage migrants were or still are the victims of human trafficking of some kind due to fraud and deception of international marriage brokers in pursuit of their profit (and thereby exploitation). Especially the marriage migration of women from developing countries through international marriage brokers has the characteristics of human trafficking especially viewed from the Protocol to Prevent, Suppress and Punish Human Trafficking in especially Women and Children which was adopted in the 15th UNGA in November 2000, which defines the human trafficking 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." Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against, Transnational Organized Crime; the UN Convention against Transnational Organized Crime and the Protocol became effective in September and December of 2003 respectively. Korea only signed the Convention for subscription and finally ratified in 2010. Many governments share the same understanding on the female migration into adult entertainment business that has human trafficking nature. When it comes to international marriage of human trafficking nature through commercialized international marriage market, they make a cautious approach, as it may falsely represent all international marriage as 'human trafficking'. In order to prevent marriage migrant females from being fallen victims to international marriage of human trafficking nature, despite such risks however, there is a strong need to identify problems around international marriage of human trafficking nature and to develop preventative measures. The Framework Decision on preventing and combating trafficking in human beings, and protecting victims adopted by the EU in 2009 defines human trafficking as "the recruitment, transportation, transfer,

harbouring, subsequent reception of a person where use is made of coercion, force or threat, including abduction, or use is made of deceit or fraud, or there is an abuse of authority or of a position of vulnerability, or payments or benefits are given or received to achieve the consent of a person having control over another person or the purpose of exploitation of that person's labour or services." And it stipulates it as criminal act punishable by the law. Therefore, this article tries to seek cooperation measures to prevent migration of human trafficking nature that takes place in Asia especially based on the reality of the marriage migration of human trafficking nature by international marriage brokers.

## **2. Marriage as transaction and commoditization of female through commercialized international marriage market in Korea**

Human trafficking nature of many marriages arranged by international marriage brokers in Korea is evident in the procedures and the result of marriage. Marriage brokerage is initiated by video/photos prepared by the marriage brokers and package-type arranged marriage. Problems in marriages through marriage brokers include: recruitment process that commoditizes and beautifies women to suit patriarchic view of Korean men; meeting with prospective wives overseas arranged like a bride shopping; and pursuit for commission profit by successfully arranging marriages by providing false information.

### **1) Commoditization of Women of Racist and Human Trafficking Nature During the Recruitment Process**

#### **(1) Promotional banners of international marriage brokers containing phrases with human trafficking nature**

A clear example of human trafficking nature of arranged international marriage is the websites and/or banners put up by international marriage brokers. Until about two years ago the messages on banners of websites blatantly included phrases commoditizing women of a certain country and also containing racist comments such as 'Number of previous marriages irrelevant', 'Age irrelevant', 'Even disabled men can find wives', 'Pay after you are married', 'Wives provided at a discount', 'We will take care of you even if your wife runs away', 'We arrange another marriage if your wife runs way', 'Marry a virgin' etc.

Migrant women's organizations and women's organizations in Korea who grew extremely tired of such advertisement practices of international marriage agencies organized 'a joint action to remove advertisement banners for international marriage containing sexist/racist phrases' and filed a complaint against the NHRCK of some local governments that approved such banners. But the efforts bore no effect. The banners started to get removed in 2007 when the human trafficking investigator of the US State Department pointed out international marriage advertisement in Korea containing messages insinuating human trafficking, with the banner 'Vietnamese women that never run away' as the main title of the investigation report. The Korean government was embarrassed about the criticism and announced that whoever hung such banner should be punished. The Act on management of international marriage brokerage was established in Korea in 2008 to put a break on advertisement of human trafficking nature. But the Act fails to regulate on commercialization of Asian female based on patriarch view on the website of marriage brokers.

## (2) Commercialization of images of women in the patriarch culture

Human trafficking nature of international marriage is not only apparent in the banners but also on the web. International marriage agencies commercialize Asian women in a patriarch manner to encourage international marriages among Korean men. Their message is that Vietnamese women are 'submissive, have strong maternal love, do not care about huge age difference, are few of the only remaining pure women' Mongolian women love to live with and respect parents; Philippine women are 'submissive as old-time Korean bride, serve only one husband, and never get divorced.' These messages are made to fit the taste of patriarch Korean men.

## 2) Marriage brokerage of human trafficking nature in the country of brides

The process of international marriages through international marriage brokers represents transactional nature.

### (1) Illegal marriage brokerage in the country of brides

While some countries prohibit marriage through brokerage by the law, it is a practice that takes place illicitly. Local marriage brokers in partnership with Korean marriage agency recruit potential brides and have them live in the same space in a large city. During the recruitment process, they pay a certain amount in deposit to the family or promise to pay a sum when the marriage is finalized.

CASE 1 All cases here is from the 'Encyclopedia of human rights of marriage migrant women: between adaptation and violence' published by the Women Migrants Human Rights Center of Korea.

Mong, an 18-year-old Vietnamese woman, married to a 35-year-old Korean man and came to Korea, but got divorced in a month. She inflicted wounds on herself with a knife demanding she would end the marriage, and this freaked the in-laws and they finally agreed to give her the divorce. She stayed at the shelter that the Women Migrants Human Rights Center operated. Here is her story. Her close neighbor proposed to her parents to marry her to a Korean man. They decided to have her married to a Korean man, as they were told that she would lead a comfortable life living in Korea and they would be paid a lot of money. Though she refused as she already had a boyfriend to whom she promised to get married, the parents pushed ahead with saying that they already received the down payment and to cancel the arrangement, they would have pay the penalty which is three times the down payment. She reluctantly followed the neighbor to Ho Chi Min City. She was put to a house where there already were many Vietnamese women. One day, Korean men came to the house to take a look at the women and to choose whoever they like to be their bride. Mong was chosen by a Korean man that way, got married to him the next day and came to Korea in a month. Mong went back to Vietnam but to Ho Chi Min City where her brother lives, saying that she was afraid to be persecuted for becoming a divorcee if she went back to her home village.

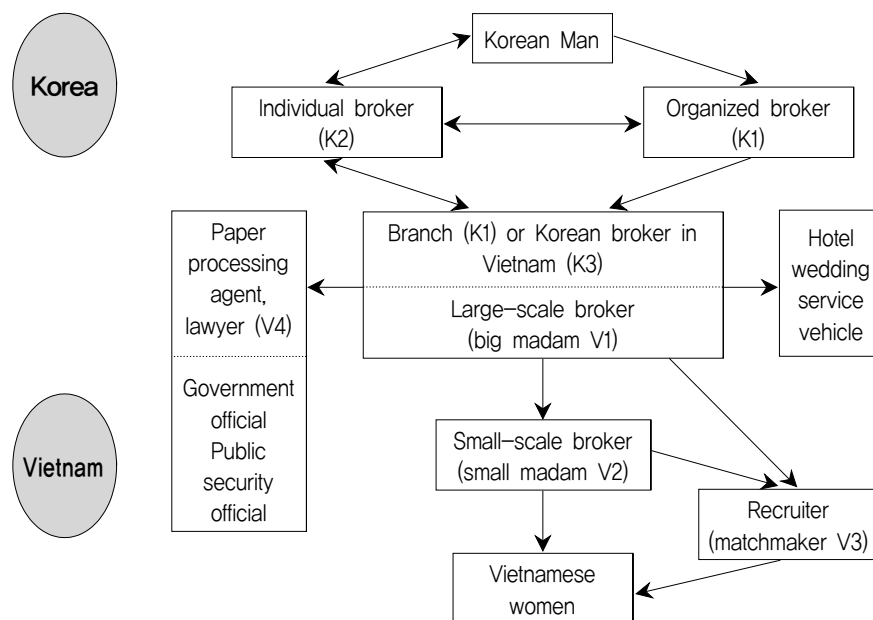
As was evident in Mong's case, the international marriage by brokers take the following steps. ① Despite slight differences country by country, marriage agency takes care of all preparation. Korean agencies arrange the joint visit schedule of Korean men applied to their service. ② Once in the country of bride, they have a group meeting. Local brokers in partnership with Korean agencies already have potential brides ready. The Korean men meet with potential bride in the afternoon of the day that they arrived or in the following day. (Sometimes they have a preview through a video or group display and may choose several candidates to have face-to-face meeting.) As the international marriage brokers want to maximize their profit, they don't have a customized one-on-one meeting with the potential brides but instead have a group meeting during a packaged tour. That is why it is sometimes called 'bride shopping'. ③ Once a choice is made, the paperwork is processed at the local Korean embassy/consular office followed by the wedding. ④ Under the name of the honeymoon, they spend the first night together. The Korean husband leaves the country and sends invitation to the spouse. ⑤ About 45 days afterwards, the bride goes to Korea after receiving spouse invitation from the Korean husband to start a family. Marriage with a Vietnamese woman through an international marriage broker explains the general procedures of international marriage. So Rami, <Training guide for counselors of migrant

women>, 2009. Training material for counselors at Women Migrants Human Rights Center

## (2) Autonomous selection of marriage

As was evident in CASE 1, marriage through international marriage broker takes place through cooperation between Korean marriage agency and local broker organization. Local broker organization recruits women who want to have an international marriage from a small village and bring them to a big city where they live together under managed environment. The organization arranges meeting with Korean men and manages the selected women until they go to Korea. The decision for a spouse in an international marriage is completely with Korean men. There is no autonomy given to women at the joint living space. The longer they wait in the joint living space, the more cost they incur. So there are forced to accept any offer they receive from any Korean man.

<Table> Marriage brokerage system between Korean men and Vietnamese women



## (3) Management and control until entry into Korea

To prevent them from running away after the marriage until their departure to Korea, Vietnamese brides are forced to live together under the pretext of education on Korean language and culture. While they are waiting for the invitation from their husbands, they



sometimes are raped by the local brokers and even get pregnant. Sometimes they come to Korea hiding the fact, but later sent away because of it.

#### CASE 2

'A', a 21-year-old Vietnamese woman, came to Korea immediately after getting married in Vietnam. She became pregnant right after she came to Korea. Her husband got suspicious and asked her what happened. She confessed that she was sexually assaulted by a broker while she was at the joint living space before the marriage. After finding out what happened, the husband filed for a consensual divorce from A claiming that the child was not his and sent her away from his house. She went to the marriage agency, but they rejected her saying that they do not know what happened in Vietnam and that they are not responsible for it. The agency instead claimed that the marriage was a loss for them as the husband wants his money back.

#### (4) False information and deceit

As marriage agencies make profit from successful marriage, they sometimes provide false information about the grooms-to-be to the potential brides to make them more attractive, such as their occupation, financial status, family status, drinking problem, mental disability, criminal records etc. According to the 'Status survey on female migrants of international marriage' carried out by the Ministry of Health and Welfare in 2005 and the status survey on marriage migrants by the Ministry of Gender Equality and Family in 2007, 44% and 40% of all respondents respectively answered that information they were given was different from the actual fact. Meanwhile, Korean men who want to get married can save expenses if they get married as early as they can, they spend a lot of money on the families of the bride-to-be and buy them gifts. They sometimes promise to send money to the family every month. But once brides come to Korea to reunite with the Korean husbands, they often find their Korean husbands are poor and in no position to support their family back home. Some Korean men even incurred debts to spend money in the country of the brides to impress potential wives and their family. As a result, migrant women feel that they were fooled or deceived.

Recently, there is increasing number of cases where false information on the family or health status of brides-to-be is provided to Korean men.

#### CASE 3

'H' came to the center to ask for an advice as all the information that she got from the marriage agency was false. She found that out after she got married and came to Korea. When she was introduced to her current husband back home, she was told that he was an

office worker, lived in an apartment on a lease and could support her family as he was financially comfortable. But she found out that he actually lives at a shabby row house on a monthly rent and all the household goods were old and worn out. He makes little money that she could not support her family back home. H already got debt to marry her husband, believing everything that the marriage agency told her.

### 3) Commoditization and suppression of women after marriage

#### (1) Fixated image as a purchased product and the result

Promotional banners of international marriagebrokers containing messages insinuating human trafficking, the process of marriage brokerage and the fee that Korean men pay for the arrangement imprint the image of marriage migrants as 'purchased brides', and Korean men who are married to marriage migrants often think that 'as I paid a lot of money to get her over, my wife is at my complete disposal' and consider their wives as not equal partners but someone whom they can do anything according to their whim. Such thinking may lead to human rights oppression where the wives often suffer domestic violence, insult on character, forced labor, extortion of salary and other human rights issues. It often leads to failed marriages. According to the international marriage status published on April 15, 2005by the Supreme Court according to the registered country of origin, international marriages accounted for 11.6% of total marriages in 2006. Divorce ratio from international marriages also rises steadily to 4.9% in 2006, which is almost three times higher than 1.6% in 2003. Especially divorce ratio was higher in the rural area than in the cities, as marriages in the rural area often have transaction nature where grooms pay for all the expenses of the marriage and often bring the brides from countries less well-off from Korea, and also due to cultural differences and lack of communication from language differences.

#### (2) Interference and suppression from international marriage brokers and family that infringe upon the autonomy of women

Human trafficking nature of marriages through international marriage brokers occurs not only in the process of marriage itself. The brokers interfere with the lives of marriage migrants under the pretext of post-marital care. Korean men, who got married to foreign women for the first time, often seek advice from the brokers who arranged their marriage. Some brokers, however, give advices that go against human rights of the wives, saying that "Prevent the wives from going anywhere where people from the same country gather, and restrict them from going out often until they have a child to prevent them from running

away. They find information from the Web, so don't allow them to use the computer. Do not give the identification such as passport, foreigner registration certificate etc. to the wives." Such guidelines that go against basic human rights can be found easily in the websites of international marriage brokers, but since the implementation of the Act to manage international marriage brokerage disappeared from many websites. We found that when brokers talk with families of marriage migrants, they still give such guidelines.

Another problem caused by international marriage brokers happens when the wife wants to terminate the marriage and return to her home country. Then the broker or the husband's family demands that she reimburses all the expenses for the marriage, and the wife has to live with the husband against her will or remain in the country as an illegal alien. When the marriage is terminated soon after a marriage migrant comes to Korea, she often receives threat that she has to pay the termination penalty or that harm will be inflicted upon her parents, etc. In such case, termination penalty is based on the marriage contract signed by the wife herself containing such phrases as "when the marriage is terminated within one or two years, the wife shall pay the penalty" or even from a verbal consent given by the parents alone. Before marriage migrants come to Korea, they often pay some money or put up some land as collateral or guarantee, the brokers use it as a means to force them to stay married.

The party requesting financial reimbursement is not only the brokers, but sometimes Korean spouse and/or his family. They sometimes request compensation when the wives do not live with them for a certain period of time, demanding that the wife should repay the expenses for the marriage, unless he would not consent to a divorce.

#### CASE 4

When she got married, her parents provided their house deed as a guarantee to the local broker for her to stay married with the Korean husband for over two years. When their daughter said she cannot live with the husband any more, the local broker threatened that they will not return the deed to the parents.

#### CASE 5

'A', who was married for over seven months, could not sustain the marriage with her Korean husband due to irreconcilable differences. She decided to get a divorce and wanted to return home. When she shared her decision with her husband and the broker, the broker demanded A to repay 15 million won, the full expenses for the marriage. They threatened that if she failed, they would send someone to her family in the home country to have the amount recovered. The broker kept her passport.

### (3) Commoditization after termination of marriage

When the marriages of marriage migrants get terminated, there are other brokers who are after them. Broker agencies or individuals arrange marriages of these women to different Korean men for a fee. Others abuse the vulnerable situation where these women are in, especially those who have difficulty in returning home, and sell them to adult entertainment establishment after telling them they would find a nice job. In this case, local brokers connected with other Korean human trafficking rings play a role.

#### CASE 6

'Y', a 20-year-old woman from Cambodia, married to a Korean man who lives in the country. She was then living at some other place as she could not live with him because the house her husband lived in was so shabby and he had some mental problems. He was a 50-year-old farmer and lived with his parents in their 90s. His father who had always wanted his son married was persuaded by the marriage broker to borrow 15 million won from Nonghyup Bank to pay the fee to have a daughter-in-law from Cambodia. Y, who came to Korea from a rural area in Cambodia with the hope of living a comfortable life, was faced with a similar living condition that she had in Cambodia. To make things worse, her husband suffered from epilepsy. She broke down in tears when she first witnessed his epileptic episode. Pitying the situation, some neighbors suggested Y's father-in-law to marry Y to other single man in town and recover at least some of the expenses. He accepted the suggestion and tried to marry Y to other single man in town. As it didn't work out smoothly, however, he tried to bring her back home. She strongly refused even in front of the house and cried. She ended up at a shelter.

### 3. Marriage migration from phony marriage for exploitation

Recently increasing number of women from developing countries migrates to Korea through phony marriage. The phony marriages take on two different forms: one is that marriage brokers fool women who want to move to Korea that they can come to Korea and work while being married only on paper. In such case, the women do not necessarily know that the marriage is phony. The harm from this type of phony marriage is onto women who were deceived but mostly it is on Korean men.

Other kind is where women pay the brokerage fee and Korean husbands receive some payment to establish phony marriages. In this case, when the women pays 10 million won, their husbands on paper receive somewhere around 3 to 5 million won, local brokers receive

2 million won and Korean brokers receive 3 million won. Husbands on paper are mostly street bums without any place of work or residence, and they ask for more money when the wives have to extend their visa every year.

Sometimes phony marriage is not arranged by brokers but childless Korean couple. The childless couple gets divorced only on paper, and the husband marries a young woman from Asia to have a baby. After the baby is born, the husband tricks and forces the young wife to have a divorce. The husband keeps the baby and then reunites with his Korean wife. In this case the harm is completely upon the marriage migrant. In the said case, the victim of the phony marriage secured the right to stay in Korea through a lawsuit but could not get the custody of the child.

We have looked at international marriage of human trafficking nature arranged through international marriage brokers. While some marriage migrants who come to Korea through arrangement from the brokers have achieved their Korean dreams, the existing practice of international marriage brokers in highly commercialized international marriage market definitely carries some features of human trafficking. Corrective measures should be implemented.

As international marriage, however, is already transnational in its nature, efforts of one country cannot solve the problem. Therefore prevention of female migration of human trafficking nature requires transnational cooperation and coalition among Asian countries.

#### **4. Cooperative measures to prevent human trafficking in Asia**

##### **1) Responses of Asian countries to human trafficking nature of international marriage through brokers**

###### **(1) Cambodian government's denouncement of international marriage of human trafficking nature**

In March 5, 2010, the Cambodian government denounced international marriage between Cambodian women and Korean men as 'human trafficking' and notified the Korean embassy in Cambodia that it will temporarily suspend reception of application for international marriage until the Korean government implement measures to prevent human trafficking in

international marriages. The reason for suspension is that while the Cambodian laws strictly prevent marriage through marriage agency, broker or a specialized marriage broker company, the authorities have identified cases of marriage through brokerage. While the reception was resumed in two months, the Cambodian government's measure has great significance on human trafficking nature of international marriage.

The suspension was initiated from a raid by the Cambodian police against human trafficking on the group meeting between 25 Cambodian women and Korean men arranged by international marriage brokers. Even worse, there were a 16-year-old minor among the women. The local broker was sentenced to 10 years in prison while the Korean broker was released on fine.

This was not the first move by the Cambodian government to stop international marriage. Two years ago in 2008, similar measure was already announced. Sar Keng, Deputy Prime Minister and Minister of Interior said on March 27, 2008 that international marriage has become human trafficking, or transaction arranged by brokers instead of being a union of two people in love and notified that unless there is a regulation to promote ordinary international marriage, the existing form of international marriages would be suspended. The reason behind suspension of marriage between Cambodian women and Korean men can be found in the interview with the then Cambodian Ambassador to Korea Lim Samkol. *Kyunghyang Daily*, June 23, 2008 Ambassador Lim said "Korean men pay a lot of money but it mostly goes to brokers. Families of the bride seldom receive anything. Most international marriages take place in a hurry lacking the efforts to love and care the bride even less to understand her and her family. We do not want marriage with Cambodian women to be treated as a product." He expressed his indignation saying that "Cambodian women are not a commodity."

## (2) Anti-human trafficking legislation in Southeast Asia including the Philippines

The Philippines is the first country in Southeast Asia to establish anti-human trafficking legislation (in 2003) making it illegal to place, transport, move, conceal and receive a person in and out of the national border with or without the consent from the person concerned for the purpose of sexual exploitation forced labor, slavery, or quasi-slavery, organ extraction and sales and other related activities. Especially, the act of arrangement at a fee or other compensation of Filipino women to foreign men to be their spouse or for prostitution is also considered as human trafficking and the person who was sold / bought in the process is defined as a victim and free from any punishment. Thailand, Cambodia, Malaysia and other Southeast Asian countries define human trafficking in a broader context.

Kwon, Mi-joo, 'Issue with international marriage of human trafficking nature and legal tasks for its resolution', materials for Discussion for establishment of anti-human trafficking legislation. April 2010.

## 2) Transnational cooperation in Asian countries of origin and destination

### (1) Tasks of countries of origin

- ① Correct information on migration, possibility and dilemma of migration should be provided to potential migrants. Especially, they should receive orientation on the country that they are migrating to before their departure. Korea provides pre-departure training in Vietnam, Mongolia, Philippines to provide basic information of the country and contact information on organization to contact in case of problem. When the program is operated well, it can produce positive outcome.
- ② Local brokers in partnerships with Korean marriage brokers should be regulated, managed and supervised. Marriage migration of human trafficking nature takes place not only by Korean brokers. In many parts, local brokers play an important role. For financial benefits, they provide incorrect information on their Korean spouse, give biased translation, intercept dowry from the family of the bride, and threaten the brides and their family. The local brokers should be regulated as well.
- ③ Embassies in Korea should implement policies to protect their nationals. Active support should be provided to women who are harmed or in need of assistance. When these women need to have their passport reissued, some go through difficulties due to lack of assistance from the embassy of the country of origin. Strong support should be provided to the nationals suffering overseas.
- ④ Training and supervision mechanisms should be in place to prevent migrant men in the country of destination from enticing women from the same country to become victim of human trafficking.
- ⑤ For safe migration of people, countries of origin and destination should explore mutual cooperation.
- ⑥ Non-government organization should supervise agencies related to outward delivery of people are not engaged in any corruption. Also, in conjunction with NGOs of countries of destination, they should notify any migration of human trafficking nature and provide necessary support including legal aide to women coming to the country of origin to lead lives back home without any difficulties.

## (2) Tasks of countries of destination

- ① Verification procedures should be established to reduce any possibility of human trafficking in international marriage, for example by verifying the authenticity of the desire of men who want to marry women from other countries, their ability to lead a family, the meeting process and by having interviews on the couples at marriage registration.

Also, when the marriage is registered with local embassy or consulate and when the visa is issued, the above information should be captured correctly through capable translators to prevent any innocent victim. The Korean family registration system where the husband can include the wife into his family relationship registry without any consent from the wife should be revised to require signature from both spouse. In cases of overseas education or migrant women for labor, these women are registered as wives of some local men without their knowledge. That is because of the system loophole where registration only by the husband is allowed.

- ② Preparation for international marriage and awareness improvement to respect one's spouse should be provided through trainings provided to those who want international marriage. In Korea, trainings are provided for those who desire international marriage. As it is not mandatory, however, participation rate is very low. Participation could be made a necessary precondition for a marriage visa.
- ③ A system should be developed to punish and regulate international marriage brokerage of human trafficking nature and to hold those responsible liable for any harm from racist or human rights violation or from provision of incorrect information on spouse. In Taiwan, the system prevented brokers from making high profit from brokerage, and resulted harm from marriage brokers is said to have reduced. A structure should be devised to not allow brokers from making excessive profit and therefore prevent them from arranging international marriage of human trafficking nature.
- ④ 'Project to help single men in rural area to get married' where financial support is provided for marriage broker fee for single men living in rural area should be suspended. The project led to increase number of single men who are in no position to have international marriage proceed with it from encouragement from brokers. Another ground for suspension is the criticism that the government is encouraging marriage of human trafficking nature with the project.
- ⑤ When migrant women for labor or marriage migrants overstay their visa or when their marriage is terminated, measures should be developed to provide them the right to legally stay within the country to prevent them from becoming victims of prostitution.
- ⑥ Anti-human trafficking legislation should be established to help women whose human rights are exploited in the process of migration or in the country of destination to be



recognized as victims of human trafficking and to find ways to sustain themselves.

- ⑦ Remedy to victims of traditional human trafficking is restitution to original condition. When migrant women are victims of human trafficking, the safe remedy may not necessarily be return home. A decision on return home, stay in the country of destination and others should be made in respect of the opinion of migrant women concerned.
- ⑧ The government should develop migrant human rights guidelines in line with international convention to protect human rights of the migrant women who are human trafficking victims. Additionally, there is a need to activate governance through close cooperation among the government, the National Human Rights Counsel of Korea, and civil organizations specialized in migration to prevent migration of human trafficking nature. Public investment is also required on civil activists to share information on domestic and international migration and to provide mutual training.
- ⑨ As a way to reduce marriage migration of human trafficking nature, the country should actively open the door for labor migration. Fundamental hope for migrant women is labor migration. Since the introduction of H2(working visit) for ethnic Koreans, the number of international marriages between Koreans and ethnic Koreans in China was reduced. This represents a close correlation between labor migration and marriage migration. Most marriages between labor migrant women and Korean men turn out to be normal and steady. As a solution for the society of low birth rate and high speed of aging, activation of labor migration of women should be explored instead of promoting marriage migration.

### (3) Task of transnational cooperation in Asia to prevent migration of human trafficking nature

- ① A transnational civil organization network between countries of origin and destination should be established to share information and coordinate measures. For effective legal aide to migrant women, cooperative network between group of lawyers and civil organization is highly required.
- ② Anti-human trafficking legislation should be introduced as part of the domestic law to include the category of marriage migration. International cooperation should be further promoted through MOUs.
- ③ Campaigns should be implemented to prevent human trafficking occurring in the process of various types of migration including marriage migration.
- ④ International cooperation should be strengthened to punish human traffickers.
- ⑤ Exchange of activists for migrant women and other mutual education programs to improve understanding on the laws and other systems of other countries should further

promoted to advance human rights development for migrants and migration support activities.

To prevent migration of women that has the characteristics of human trafficking, issues from feminization of migration should be analyzed and answers to feminization of migration with gender perspective should be strengthened. For many Asian women, migration not only represents escape from poverty but opportunity to lead a new life. The opportunity should be developed in a more positive way to help migrant women lead a life deserving human being. For that purpose, alternative should be sought for free migration instead of migration with human trafficking features. As migration itself is transnational in nature, both countries of origin and destination should make stronger efforts for the purpose as well as establish transnational cooperation and coalition.



## **Cooperation Measures to Prevent Human Trafficking in Asia**

---

Anselmo LEE, Executive Director  
(Korea Human Rights Foundation)



# Cooperation Measures to Prevent Human Trafficking in Asia

Anselmo LEE, Executive Director  
(Korea Human Rights Foundation)

Analyzing presentations from the three speakers in the session, the human rights theme or phenomenon of human trafficking is closely related to its components of poverty, migration, slavery and sexual exploitation. Human trafficking itself is a phenomenon itself, and at the same time is a phenomenon of human rights infringement resulting from mixed action of its components in the context of Asian and Korean politics, economy and culture. This means that a structural and fundamental approach to human trafficking requires comprehensive approach including all components.

As was explained in previous presentations, international efforts, especially that of the UN, made significant progress in developing agenda and in establishing universal international human rights norm on the issue of human trafficking and the ensuing phenomenon. However there is more to be desired in the area of policy and system to domestically and internationally implement the norm. Human rights should be realized in multiple dimensions of laws, system, policy and practices.

From the experience of Korea and those of many Asian countries, before the democratization of the society, the law lacking legitimacy works as a main obstacle in realization of human rights. However, the level of democratization progresses, system and policy of the government agency that implements the spirit of law and discriminatory culture and practices of the general society and the daily lives become obstacles. Therefore, respective role and cooperation of administrative agencies, civil society and the media becomes even more important. Considering commercial nature of human nature, especially surrounding both aspects of demand and supply, such cooperation is integral in diagnosis and resolution of the problem.

Especially, considering the trans-border nature of human trafficking, the role of national human rights commission that bridges and promotes cooperation between the government and the civil society becomes ever more important. The Seoul Declaration adopted in 2008 at the international conference on the human rights of migrants organized by the National Human Rights Council of Korea in commemoration of 60th anniversary of the Universal Declaration of Human Rights, the ensuing establishment with bilateral MOUs with national human rights councils of Mongolia and Indonesia as a part of Seoul Process, and other cooperative activities have significance as an important starting point in establishing more active and systematic cooperative system on migration and human trafficking in East Asia. (When the Working Group on Migration under the Asia Pacific Forum of National Human Rights Institutions [APF] is officially established, the tangible effect from the cooperation will be further evident.)

I would like to make several proposals to strengthen effective cooperation in East Asia to fight against human trafficking.

First, establish and strengthen foundation for regional cooperation. As was evident, Northeast Asia has structural difficulty in international cooperation due to such geopolitical sensitivity as national separation between China and Taiwan, North and South Korea. Excluding the Tripartite Environment Ministers Meeting among China, Japan and Korea (TEMM), to discuss serious environmental issues such as yellow dust, it is my understanding that there is no standing systematic cooperation mechanism in the region. Since 1997, the heads of state of Korea, China and Japan meet on a rather regular basis with ASEAN as a medium during the ASEAN+3 summit meeting, until recently the three heads of state started to have a regular annual summit meeting at each country. Due to political reasons, it would be difficult to include North Korea and Taiwan in the summit, it is necessary to make efforts among Korea, China, Japan and Mongolia to regularly discuss systematic and policy cooperation against human trafficking. Such complicated social phenomenon as human trafficking requires continuous efforts of various actors and related parties instead of one-time declaration and campaigns. In this aspect, the Northeast Asia Office of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) established in Incheon and the Migration Policy Institute under the International Organization for Migration (IOM) in Goyang City should play a more active and engaging role. When the national human right commission of Japan is established, hopefully in not a distant future, closer cooperation between Japan, Korea and Mongolia against human trafficking could become a reality.

Second, regional efforts in Northeast Asia and norms and systems on migrant workers and

women within the boundary of ASEAN should be expanded to overall East Asia. As the secretariat of the Global Alliance Against Traffic in Women (GAATW) is located in Bangkok, Thailand is one of the countries who suffer from human trafficking and at the same time one of the leading countries in the fight against human trafficking. While in the past Europe and the Middle Eastern countries were countries of destination for migration or human trafficking of Southeast Asians, over the past decades, inflow of migrant population has become especially evident in Northeast Asian countries, namely Korea and Taiwan. Therefore cooperation between Southeastern Asian countries and Northeastern Asian countries is highly necessary. The human rights activism should focus on expansion from ASEAN+3 in 1997 to the East Asian Summit in 2005. With qualitative and quantitative growth in political, economic and cultural exchanges in the East Asia, instances of related human rights violations including human trafficking demonstrate themselves in different variety.

As Han Kook-Yum stated in the conclusion of the presentation, local human rights activists working in East Asian countries and human rights councils in each East Asian countries should urgently establish organic cooperation mechanism. In the same vein, there is a strong need to build a systematic exchange and cooperation framework among national human rights councils of five Southeastern Asian countries - Thailand, Malaysia, Indonesia, Philippines and East Timor - and Korea and Mongolia. One of the ways to further promote it is to utilize the official development assistance (ODA) that the Korean government continues to increase.

As such, this conference has special historic significance as it discusses practical implementation measures of 2008 Seoul Declaration with the presence of the UN Special Rapporteur on Trafficking of Persons, the Chairperson of the National Human Rights Council of Thailand, and the secretariat of APF.





**Regional Cooperation to Prevent  
Human Trafficking in Asia : The  
role of National Human Rights  
Institutions**

---



Suraina Pasha Project Manager  
(Asia Pacific Forum of National Human Rights Institutions)



# Regional Cooperation to Prevent Human Trafficking in Asia : The role of National Human Rights Institutions

Suraina Pasha Project Manager

(Asia Pacific Forum of National Human Rights Institutions)

## **Introduction**

I am honoured to be able to address you today on behalf of Mr Kieren Fitzpatrick, Director of the Asia Pacific Forum of National Human Rights Institutions.

As many of you know, the Asia Pacific Forum of National Human Rights Institutions, also known by its acronym 'APF', is a regional, membership based organisation of National Human Rights Institutions (NHRIs) in the Asia Pacific region. We currently have 17 member NHRIs. Our member institutions come from across the geographic spectrum of the Asia Pacific region, all the way from Jordan and Palestine in West Asia, to Australia and New Zealand in the Pacific.

The National Human Rights Commission of Korea has been a full and active member of the APF since 2001. On behalf of the APF Director, may I take the opportunity to formally thank Chairperson Byung-Chul Hyun for the invitation to the APF Secretariat to participate in this very important Conference.

## **Trafficking of Women and Children in the Asia - Pacific region**

Trafficking is a pervasive problem in Asia and the Pacific. The '2010 US Department of State Report on Human Trafficking' notes that the prevalence of trafficking victims in this region is at the ratio of 3 for every 1,000 inhabitants.<sup>1</sup> The global ratio is 1.8 for every 1,000 inhabitants.<sup>2</sup> Therefore, the Asia - Pacific region is unfortunately ahead of the global average - every year, thousands of men, women and children in this region continue to suffer, toil and be exploited under this modern form of slavery. The same US Department of State Report observes an alarming trend towards increasing feminisation of labour trafficking particularly in Southeast Asia, where as many as 70% of victims are women. Therefore, in addition to being trafficked for labour purposes, women continue to be trafficked for the purposes of sexual exploitation. The end result is that women victims of trafficking are now victims of the dual demons of forced labour and sexual exploitation.

Over the last decade, governments in Asia and the Pacific region have been cooperating sub-regionally and regionally, to consolidate their efforts in the combat against human trafficking. For example, within Southeast Asia, member states of the Association of South East Asian Nations (ASEAN) adopted a 'Declaration Against Trafficking in Persons' in 2004, which was followed by an associated work plan for implementation of the Declaration.<sup>3</sup> In April this year, ASEAN also formally inaugurated the establishment of an 'ASEAN Commission on Women and Children's Rights' (ACWC), which is expected to include within its focus the rights of women and child victims of trafficking.<sup>4</sup> In South Asia, in 2004, members of the South Asian Association for Regional Cooperation (SAARC) adopted a 'Convention on Combating the Crime of Trafficking of Women and Children for Prostitution.' On the larger regional scale, states in Asia and the Pacific established a consultative mechanism in 2002, which is known as the 'Bali Process on People Smuggling,

<sup>1</sup> US Department of State, 10<sup>th</sup> Edition: *Trafficking in Persons Report, June 2010*, on pg 7. The report can be downloaded from: <http://www.state.gov/g/tip/rts/tiprpt/2010/>

<sup>2</sup> Ibid.

<sup>3</sup> A/HRC/14/32 of 4 May 2010, 'Report Submitted by the Special Rapporteur on Trafficking in Persons, especially Women and Children, Ms Joy Ngozi Ezeilo, at pg 9 para 23.

<sup>4</sup> ASEAN Secretariat Bulletin, 'Inaugurated: ASEAN Commission for the Promotion and Protection of Rights of Women and Children, Ha Noi, 7 April 2010'. Available at: <http://www.aseansec.org/24447.htm#Article-2>

Trafficking in Persons and Related Transnational Crime.’ Additionally, various governments in the region are known to have entered into bilateral and multilateral agreements or memorandums of understanding, focusing human trafficking in its various forms and manifestations.

There is growing recognition within the international community that any effective strategy to combating human trafficking needs to be rooted within a human rights based framework. In 2009, the UN Deputy High Commissioner for Human Rights noted that “States and the international community have come to recognize the strong connections between trafficking and violations of human rights, in particular those of vulnerable groups such as women, children and migrant workers.”<sup>5</sup> It can be said that a human rights based approach to combating trafficking makes operational sense. Victims of trafficking who are protected and supported are in a better position to cooperate in the prosecution of their exploiters. Protecting and supporting victims can therefore help to end the cycle of exploitation. Within such a right-based approach to combating human trafficking, National Human Rights Institutions (NHRIs) have clear roles which they can play in the promotion and protection of rights of victims.

### **Role of National Human Rights Institutions in the fight against human trafficking**

The former UN High Commissioner for Human Rights, Ms Mary Robinson, previously described NHRIs as an “under-utilised resource in the fight against trafficking.”<sup>6</sup> The UN Office of the High Commissioner for Human Rights ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ further recommends that States consult with NHRIs in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes.<sup>7</sup> As part of their mandates, NHRIs can undertake a range of educational, advisory, monitoring and investigative work at the national level to protect and promote the rights of victims of trafficking.<sup>8</sup>

Examples of **educational** activities which NHRIs can undertake at the national level include:

- Advocate for the inclusion of trafficking into National Human Rights Action Plans, and participate in the development of separate Trafficking National Action Plans.
- Provide human rights training to law enforcement officials and the judiciary.
- Advocate for and implement public education and awareness programmes, including by engaging with the mass media.
- Include trafficking as an issue in general awareness raising materials directed at groups vulnerable to trafficking.

---

<sup>5</sup> For further information see: <http://www.asiapacificforum.net/news/victims-must-be-at-the-centre-of-anti-trafficking-action.html/?searchterm=trafficking>

<sup>6</sup> Quoted in Anne Gallagher, *Background Paper: Consideration of the Issue of Trafficking*, available at: [www.asiapacificforum.net](http://www.asiapacificforum.net)

<sup>7</sup> Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1)

<sup>8</sup> Refer to APF Regional Plan of Action on Trafficking, available at: [www.asiapacificforum.net](http://www.asiapacificforum.net)

The following are examples of **monitoring** and **advocacy** activities which NHRIs can undertake to protect victims of human trafficking:

- Advocate for the incorporation of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking into national legislation;
- Monitor counter-trafficking work, activities and responses by the government and law enforcement officials;
- Recommend bilateral extradition arrangements for the prosecution of traffickers, and bilateral agreements for the protection of witnesses;
- NHRIs should be consulted on draft criminal laws relating to trafficking;
- Recommend and advocate for the development of procedural guidelines around raids and rescues;
- Advise governments to provide alternatives to immigration detention for victims of trafficking;
- Encourage States to implement comprehensive birth registration for all people in their jurisdiction;
- Advocate for the development of minimum human rights based standards for victim identification and assistance, in consultation with Victim Support Agencies (VSA);
- Advocate a human rights based approach to repatriation and reintegration of victims, including access to supportive reintegration programmes;
- Encourage governments to provide victims of trafficking with a minimum period of residency in the destination country;
- Advocate for victims to have the right to employment or government-funded education prior to repatriation;
- Remind States of the need for extra protection for child victims;
- Advocate for safe and voluntary repatriation;

All NHRIs in the Asia Pacific region are equipped with **quasi-judicial powers** which enable these institutions to investigate and inquire into complaints and allegations of human rights violations. Such quasi-judicial powers are potentially an immense weapon in the fight against trafficking. The following are examples of how NHRIs can use their quasi judicial powers to protect victims of trafficking:

- Conduct “suo moto” investigations into complaints or alleged violations of human rights;
- Maintain strong links with VSAs and consider the potential for VSAs to make complaints on behalf of people who have been trafficked;
- Develop follow-up mechanisms for tracking outcomes of investigations, and where possible, ensuring that complainants are updated on the status of complaints;
- Conducting national inquiries into the situation of victims of trafficking.

In addition to actions at the national level, NHRIs can also engage with **international human rights mechanisms** to protect the rights of victims of trafficking. The Paris Principles, which are the normative international standard for NHRIs, specifically require that NHRIs cooperate with the UN and other regional and international mechanisms. Here are examples on how NHRIs can engage with the international human rights system to protect victims of trafficking:

- Encourage governments to issue standing invitations to relevant UN Special Procedures, including the Special Rapporteur on Trafficking in Persons, the UN Special Rapporteur on the Human Rights of Migrants, and the UN Working Group on Arbitrary Detention.

- Make statements to the UN Human Rights Council, to highlight the plight of women and child victims of trafficking.
- Contribute to the Universal Periodic Review process by submitting information regarding the human rights situation of victims of human trafficking.
- Submit alternative reports to UN Treaty Bodies on the implementation of treaty obligations relating to the rights of victims of trafficking. Relevant treaty bodies include the Committee on the Elimination of Discrimination Against Women (CEDAW monitoring body), Human Rights Committee (ICCPR monitoring body), and Committee on the Rights of the Child (CRC monitoring body).
- Submit individual complaints on behalf of victims of trafficking to relevant UN Treaty Bodies, and where applicable, submit complaints on 'human rights situations' to the UN Human Rights Council's Complaints Procedure.
- Collectively advocate for independent participation rights within the UN Committee on the Status of Women, to enable NHRIs to have a separate voice to bring further international attention to the situation of women and child victims of trafficking.

### **Regional Cooperation Amongst NHRIs to Combat Trafficking in Women and Children**

Thus far I have been focusing on initiatives which NHRIs can take, and have been taking in their individual capacity. I will now address the collective initiatives that NHRIs in the Asia Pacific have thus far undertaken to help protect and promote the rights of victims of trafficking at the regional level.

Since the early years of establishment of the **APF**, the APF's members have affirmed the importance of protecting and promoting the rights of women and children victims of trafficking. The following are the core regional / collective initiatives undertaken within the APF framework:

- *APF4, Manila, 1999* – APF Forum Councillors collectively considered the role of NHRIs in addressing trafficking of women and children.
- *APF6 Colombo, 2001* - Forum Councillors decided to: (i) hold a Regional Workshop on human trafficking, (ii) develop practical projects to combat trans-border human trafficking (iii) request the APF's Advisory Council of Jurists to consider the issue of human trafficking.
- *APF7, New Delhi, 2002* – Forum Councillors: (i) Adopted the trafficking report and recommendations by Advisory Council of Jurists,<sup>9</sup> (ii) decided to strengthen regional cooperation on trafficking, (iii) recommended for the reinvigoration of the Trafficking Focal Point Network.
- *APF9, Seoul, 2004* – Forum Councillors agreed to the proposal by the Australian Human Rights Commission to host a regional APF Trafficking Conference in 2005.
- *2005 APF Regional Conference on Trafficking* – Representatives from the NHRIs of Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Korea, Sri Lanka and Thailand participated in the

---

<sup>9</sup> The APF's Advisory Council of Jurists Trafficking Report contains recommendations for implementation by governments and NHRIs in the Asia Pacific region. The full text of the ACJ report is available for download on the APF website at: [www.asiapacificforum.net](http://www.asiapacificforum.net)



conference. A detailed plan of action was adopted during the conference, which called for a multi-pronged approach of how NHRIs can contribute to the combat against trafficking at the national and regional levels.<sup>10</sup>

- *APF14, 2009* – Decision by APF Forum Councillors to accept in principle, the recommendation from the National Human Rights Commission of Korea, to establish an APF Working Group on Migration. The Terms of Reference, scope and role / activities of this WG will be discussed during the 15<sup>th</sup> APF Annual Meeting in August 2010.

In addition to activities within the broader APF framework, some APF members have undertaken other activities at the bilateral and subregional levels, to protect and promote the rights of victims of trafficking. The following are examples of such cooperation, and are not intended to be an exhaustive list:

- *Mongolian /Malaysian NHRI cooperation* – In 2003, the Mongolian National Human Rights Commission received a complaint regarding four women who had been trafficked into Malaysia and then detained by immigration authorities. The Mongolian Commission alerted the Malaysian Commission of the facts of the case. In response, the Malaysian Commission used its detention monitoring mandate to investigate the case. The Mongolian Commission used the findings of the Malaysian Commission to formulate its own national level recommendations and response.<sup>11</sup> This case is an example of how NHRIs can cooperate with other NHRIs to protect the rights of their nationals who have been trafficked overseas.
- *Southeast Asian NHRIs cooperation* – Since 2004, the NHRIs of Indonesia, Malaysia, Philippines and Thailand have been meeting periodically to strengthen their cooperation, particularly focusing on 5 areas of common concern. One of these areas of common concern is trafficking in women and children. In 2007, the four institutions signed a 'Declaration of Cooperation' which reaffirmed their cooperation on trafficking in women and children (in addition to other areas of cooperation).<sup>12</sup> Research papers have been produced on this topic.
- *Seoul Process* – In 2008, the NHRI of Korea took the initiative to organise a conference focusing on the rights of migrants in Asia. The outcome document of the conference is the 'Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia.' The extensive Seoul Guidelines covers all categories of migrants, including victims of trafficking.<sup>13</sup>

## **Conclusion**

By its very nature, trafficking is a cross-border problem which will require not only actions at the national level, but also cooperation at the regional and international levels. NHRIs have a clear role to play in protecting and promoting the rights of

---

<sup>10</sup> The recommendations for NHRIs in the previous section of this paper are extracted from this action plan, which can be downloaded from the APF website: [www.asiapacificforum.net](http://www.asiapacificforum.net)

<sup>11</sup> Oyunchimeg Purev, *The Situation of Human Trafficking in Mongolia and Cooperation of National Human Rights Institutions in the Asia Pacific region*, presented during the 2005 APF Regional Conference on Trafficking. This presentation is available from the APF website: [www.asiapacificforum.net](http://www.asiapacificforum.net)

<sup>12</sup> Further information available at the website of the ASEAN NHRI Forum: <http://www.aseannhriforum.org/>

<sup>13</sup> The Seoul Guidelines can be downloaded from: [www.asiapacificforum.net/services/international.../Seoul\\_Guidelines.pdf](http://www.asiapacificforum.net/services/international.../Seoul_Guidelines.pdf)

victims of trafficking. This paper has outlined examples of strategies that NHRIs have been undertaking, and can continue to undertake individually, and collectively, to help improve the lives of the many nameless and countless victims of trafficking in our region.



---

## Seoul International Conference Against Human Trafficking in Migrant Women

---

| 인 쇄 | 2010년 12월

| 발 행 | 2010년 12월

| 발행인 | **현 병 철**

| 발행처 | **국가인권위원회 침해조사과**

| 주 소 | (100-842) 서울특별시 중구 무교동길 41  
금세기B/D (을지로1가 16번지)

| 전 화 | (02) 2125-9661 | F A X | (02) 2125-9658

| Homepage | [www.humanrights.go.kr](http://www.humanrights.go.kr)

| 인쇄처 | 도서출판 **한학문화**

| 전 화 | (02) 313-7593 | F A X | (02) 393-3016

---

사전승인 없이 본 내용의 무단복제를 금함

발간등록번호 11-1620000-000283-01