

GROUP 2

TRAFFICKING IN PERSONS: FOCUS ON SEX TRAFFICKING

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I. INTRODUCTION

The theme of the 166th International Training course was “Criminal Justice Procedures and Practices to Disrupt Criminal Organizations”. The course was held at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) from May 10, 2017 to June 15, 2017.

During the training course, 30 participants from 20 countries enjoyed the opportunity to attend the lectures by the UNAFEI professors and visiting experts. UNAFEI arranged several short trips to shrines and historical places that enabled the participants to learn about ancient Japan. UNAFEI also arranged a four-day study tour to Hiroshima, Kobe and Kyoto where participants learned about various subjects. The study tour included visits to the Public Prosecutors Office, Customs Office, and Regional Coast Guard Headquarters, where participants gathered relevant knowledge on the respective subjects. Visits to Fuchu Prison and the Yokohama District Court provided practical details on offender management, prosecution, and the trial system. All the participants prepared Individual Presentations (IP) with relevant information from each country on the above theme and presented it before all the participants.

All participants were divided into three groups and each group was tasked to engage in 14 group discussions and one individual report. For formulating the report, a Chairman, Co-chairman, Rapporteur and Co-Rapporteur were selected upon the vote of the group members. Here, the Chairman conducted the session and the Rapporteur took notes from the discussion and drafted the report. This report is the outcome of Group 2, which consisted of participants from Bangladesh, Cote d'Ivoire, Japan, Maldives, Myanmar, Nepal, Thailand, and Viet Nam. The purpose of this report is to: a) share knowledge on the unique investigation systems of each country; b) to look for a better prosecution system; c) to explain the adjudication system, and d) to mention the countermeasures for combating human trafficking cases focused on sex trafficking among the participating countries.

Group members were specifically devoted to understanding the common and different legal systems of each country. All participants of this group expressed their opinions on their criminal laws, including whether their legal systems are either adversarial or inquisitorial. These recommendations are divided into four main topics composed of investigation, prosecution, adjudication and countermeasures.

This group concentrated on the importance of the rights of sex trafficking victims, laws to protect them from being trafficked, a fair investigation system for bringing the perpetrators to justice, an unbiased prosecution system and reasonable adjudication system where victims will find justice. This group also suggested countermeasures to tackle sex trafficking, which should be similar in all participating countries. The main mission of this group was to look for an effective Criminal Justice System where victims have easy access to file a case and ultimately obtain justice. Through enforcement of the law, such crime should no

longer remain in society.

II. CURRENT SCENARIO OF SEX TRAFFICKING AROUND THE WORLD

Human trafficking is one of those issues that makes people troubled even if they do not understand its actual nature and its aftermath. Over the past few decades it has been producing the horrors of sex trafficking, a gruesome practice of enslavement and perversion affecting millions of girls over the world. Human trafficking includes global trafficking of all of kinds. Sometimes it becomes forced-labour trafficking as victims are taken abroad after being promised legitimate work. There are five kinds of trafficking that have been seen so far. These are trafficking of children, sex trafficking, forced marriage, labour trafficking, and trafficking for organ trade. Of them, sex trafficking is now the hottest issue. Most of the victims are women, especially girls. They are promised work as domestic help, but the victims are forced to work in brothels or are sexually abused in private homes. Many people are affected by sex trafficking around the world. Though girls and women are employed in sex work, they do not find their way home when they escape from that vicious trap. They are ultimately neglected by their relatives as well as society. Once they step into the profession against their will in the name of employment abroad, they lose their dignity and honour in society.

The scale of sex trafficking is increasing in those areas where tourists frequently visit. As girl victims are used for sex workers and sometimes their organs are sold after they are no longer marketable in the sex industry. Nowadays victims are recruited with promises of jobs abroad or within their own countries but once in the grip of the traffickers they are essentially slaves and trafficked out of their countries. Many causes behind the various forms of subjugation are involved, such as debt bondage resulting from poverty. Globalization and political turmoil are also responsible for such inhuman business. Among the 10 top destinations, Thailand and Dubai are in the queue. Mostly developing countries are victimized by such crime. People from developing countries try to change their fate and eventually fall victim to sex trafficking. They have no way to get back once they depart from their homes. As of today, the common perception of trafficking tends to focus on sexual exploitation. Girl victims are used mainly for household labour, agriculture, food and care services, and in the garment industry. They are housed in substandard quarters. They even are not paid as promised as they remain detained by traffickers. The social and financial status of the victims compels them to be victims.

For instance, Bangladesh experienced 677 cases concerning human trafficking in 2016. A total of 770 victims were trafficked and 523 victims were recovered, and 1361 traffickers were arrested. A total number of 4221 cases were recorded, 9204 victims were trafficked, and 7387 victims were recovered from 15 June 2004 to 15 April 2017. Out of 9204 trafficked victims, 2333 were women and 1459 were child victims over the course of 13 years. By this time Bangladesh has tried few perpetrators, sentencing them to the death sentence, life imprisonment and corporal punishment for human trafficking. In Viet Nam, according to reports of local authorities, from 2011 to 2014 there were 1917 cases of humans trading, with 2861 subjects and 3717 victims. Regarding Cote d'Ivoire, from 24 to 26 April 2017 in Vienna, Austria, at the headquarters of the United Nations Office on Drugs and Crime (UNODC), the Ivorian Minister for Women, Child Welfare and Solidarity said that between 2015 and 2016, 895 nationals from Côte d'Ivoire have been repatriated often by special flight from Saudi Arabia, Burkina Faso, Ghana, Libya, Gabon and Angola. In the same period, a total of 204 persons from Burkina Faso, Mali, Ghana, Togo, Benin, Nigeria, Niger, Sierra Leone, and Guinea, aged between 12 and 30 years, who were victims of trafficking in persons and other abuses, have been returned to their countries.

Most of the developing countries are suffering from human trafficking in various ways. Most of the countries bordering the ocean are facing trafficking either as victim or destination countries. Recently, a mass graveyard found in Thailand has shown the gruesome tragedy of illegal human trafficking. Thailand is facing a crucial situation sometimes as destination of sex trafficking victims but also as a transit point.

III. INVESTIGATION

Participants of this group agreed that investigation of human trafficking as well as sex trafficking cases must be recorded and investigated in a just manner. In the developing countries, investigating officers and prosecutors are not sensitized in such manner as they do not know the ultimate consequences of sex trafficking. Their response might endanger the victim's right to justice in time. A proper response to

incidents and victims will help reducing such crime. All participants also agreed that investigations of criminal cases have become relatively complicated compared to the way they were in the past as criminals are using the latest technology now to commit crimes. New challenges are seen every day in investigating criminal cases. Some new challenges are even out of reach for some law enforcement agencies.

In a criminal investigation, there are two important things to be considered. These are the investigation and investigator. Both play an equal role in proving a case. A bad investigation will result in negative consequences in the respective society. The prime function of the criminal investigation is to unearth the facts through collection of legally obtained evidence. For a credible investigation, information regarding the facts is very important for the fate of the investigation. Any concocted information may lead the investigation on a path to injustice. As sex trafficking is a transnational crime, it must be investigated in a holistic way so that the transnational traffickers may be brought to justice. Below, the group suggests some efficient tools for collecting information on sex trafficking.

A. Collection of Information

- a) News from electronic and print media can be good sources of information.
- b) News feeds in Social Networks such as Facebook, Twitter, etc., advertisements and news from linked media may be major sources.
- c) Collection of dailies, effective monitoring of the TV and radio bulletins by law enforcement agencies and other related organs of the Government.
- d) Phone calls from victims or victims' relatives or well-wishers, open letters and mail from the victims can be considered authentic information.
- e) Establishment of call centers for 24X7, toll free hotline numbers, or even fixed numbers displayed in a public place and information collected from such sources can be utilized after verification.
- f) Complainant box in a police station, police box or police outpost can be arranged, and such information can be verified promptly. Upon satisfactory response the police will respond accordingly.
- g) INGOs, NGOs and Government social service offices can play vital roles. Written or verbal complaints by such organizations can be recorded upon any recovery of victims.
- h) Direct complaint by victims to the police, prosecutor or any other law enforcement agencies can be termed as primary information.
- i) Frequent overseeing of manpower recruiting agencies and their activities. Monitoring their registers for manpower sent abroad can be a good source of information.
- j) Engaging ordinary citizens of the community results in public awareness in the society and their specific information should be brought into consideration.
- k) Engaging paid or volunteer public informants to counter check the status.
- l) Other government agencies such as coast guard, customs, border guards, immigration, forest guards and embassies deputed in the foreign countries can inform the Government.
- m) Information collected through interrogation of suspects.
- n) Information from brothels.
- o) Information from refugee camps (victims may remain at home or go abroad).
- p) Information gathered through interrogation of the primary witness.

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- q) Victim can complain to the District Administrative Officer if the police refuses to register the case, and the police are directed by the District Administrative Officer in Nepal to record the case.

This information should be handled with care as it contains the secret information of a victim and any premature disclosure of information may amount to interfering with the victim's privacy. For such information, the victim's right to secrecy should come ahead of other legal priorities.

B. Sharing of Information

Information derived from investigation is a vital tool for detecting a case and needs to be shared with relevant authorities. Few standards must be maintained during sharing of investigated information. Only examined and determined information can be shared which has specific objectivity, impartiality and fairness throughout the investigative process. The result of investigation must be based on facts and related analysis which includes reasonable inferences. This group agreed that the following information can be shared with relevant authorities.

- a) Appointment of a focal point that will receive and distribute information from all relevant sources.
- b) This information sharing shall be disclosed in the legal treaties, agreements, or Mutual Legal Assistance.
- c) Sharing of information may be discussed on an ad hoc basis. It shall be an informal network.
- d) Sometimes information may be shared informally with other authorities despite the lack of official agreements. It should be based on the principle of reciprocity.
- e) Information may be shared with NGOs and INGOs that exclusively work on such matters. Only effective organizations can receive the information.
- f) Few countries of this group have special divisions. Information can be shared when such divisions work in the same area. Cote d'Ivoire has a specific division for combating Transnational Organized Crime such as Human Trafficking, namely the UCT (Unit for Combating Transnational Organized Crime). Any state organization working on human trafficking crimes can receive assistance from the UCT to get information. Usually Law Enforcement Agencies like the police and gendarmerie seek assistance from such division for combating organized crime.
- g) Interpol can be an effective information host for all member states.
- h) Extradition treaties are the major tools for sharing information though it is a time consuming process.
- i) Countries like Japan share the primary information of such crime with the police, immigration department, coast guard, etc. The Japan Coast Guard has an International Criminal Investigation Division that conducts criminal investigations into transnational crimes. This is an ideal example for sharing information for collection and dissemination of information.
- j) There are Parliamentary Standing Committees in a few countries like Bangladesh and Viet Nam. Nepal has National and District committees for this job. This information can be shared with such committees as those which arrange monthly or quarterly meetings with other ministries, like the Ministry of Justice, the Ministry of Labour, the Ministry of Social Welfare, the Department of Passports and Immigration, and the Ministry of Home Affairs.
- k) Information can be shared with the embassies or High Commissions deputed in respective foreign countries.
- l) If sex trafficking offences are not covered under any treaties, both parties need to come up with separate agreements with the countries for the purpose of sharing information.

C. Issues in Using Information in the Criminal Justice System

The criminal justice system deals with disputes involving criminal activities. It involves activities relating to the detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage and dissemination of criminal history records. Information used in the criminal justice system must cope with legal instruments. The group identified a few inputs for use in the criminal justice system.

- a) Issues to be placed before the legal authorities must be through legal procedures.
- b) All the information cannot be used as evidence. Some information is used as a policy. Policy and evidence have a sharp distinction. Evidence has judicial value.
- c) The information must be supported by the local laws. Even if the information is not supported by the local law, it must be supported by international law.
- d) The statement of the victim is one of the primary documents if such statement is certified by the competent court. Such information can be used as a judicial document.
- e) Interview reports of the victims or witnesses by the police or prosecutor can be used as evidence. If the victim is not present for due causes, the statement will be used as his/her testimony during trial. The Evidence Act of few countries allows the dying declaration of the victim as a conclusive proof. Such statement can also be used during trial.
- f) Some countries may arrange visas and other facilities for the victim if the victim's presence in the court during trial is mandatory.

D. Traditional and Special Investigative Measures

Investigation is the main tool for entering the criminal justice system. Many developing countries still use the traditional method of investigation and few use the latest developments of technology. Traditional investigative measures have to be done by hand or manually. It takes long hours to compile a document and has the potential risk of spoiling the evidence. On the other hand, investigation using modern technology consumes less time and bears potential evidence. Here, the group analyzed a few traditional and special investigative measures in the following discussion.

E. Traditional Investigative Methods

- a) Interviewing witnesses and victims by the police or prosecutors.
- b) Interrogation of the accused or suspect by the police or prosecutors.
- c) Statement by the victim before the judge or statement given before the police needs to be certified by the judge.
- d) Statement by accused before the judge.
- e) Collection of fingerprints and footprints.
- f) Collection of video footage and audio records.
- g) Collection of exhibits such as various stains, clothes, passports, tickets and immigration registers.
- h) Physical surveillance.
- i) Collection of arms and ammunition used in the incident.
- j) Face-to-face interviews with witnesses, victims, and suspects.

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- k) Test Identification Parade of a suspect or Physical Identification of a suspect by a witness or victim.
- l) Search and seizure.
- m) Bank statements.
- n) Laboratory reports.
- o) Inquest Report, Post Mortem Report and Viscera Report.
- p) Report from the Narcotics Control Department.
- q) Any other expert opinion on forged documents.
- r) Engaging informants for the identification of witnesses or collection of evidence.

F. Special Investigative Methods

- a) Wiretapping.
- b) Video surveillance.
- c) Mobile phone tracking.
- d) Data from computer, laptops, mobile or any electronic devices that store data.
- e) Internet based tools like Facebook, Twitter, Email and others.
- f) DNA profiling.
- g) Digital face recognition of the suspect.
- h) Undercover operations.
- i) Suspicious Transaction Reports (STR).
- j) Cash Transaction Reports (CTR).
- k) Specific data from relevant authorities.
- l) Using GPS to detect the suspect or suspect's movement.

IV. PROSECUTION

Prosecution has a great role in proving the case against the accused. A prosecution with insufficient evidence may result in acquittal of the accused and victims will suffer. Prosecution requires highly developed professional skills. In order to achieve the objective of perfect prosecution, investigators and prosecutors need to work together. A concentrated prosecution is required for a sex trafficking case as it is a heinous crime. The group suggested the following techniques for a successful prosecution.

A. Measures to Be Fully Used Including Administrative Law

- a) Police investigation report or police report.
- b) Public prosecutor investigation report.
- c) Investigation by investigating judge.
- d) Victim can apply to the court directly by his/her appointed private prosecutors.

- e) Non-prosecution report by the police.
- f) Non-prosecution by the prosecutor.
- g) Recommendations for perfect police report for prosecution.
- h) In some countries, the government can withdraw the case from the court before a verdict.

B. Plea Agreements

In criminal prosecutions in many countries, plea agreements between defendants and prosecutors end the case without trial. The defendants agree to plead guilty to some or all of the charges against the accused in exchange for the confession of the accused in the relevant case. Such plea agreements allow prosecutors to detect the case with detailed information. There judges need to check the status of the agreement according to the existing law.

In order to detect the case, prosecutors use the plea agreement to reduce defendants' punishment. In some countries judges allow the testimony of the accused to help arrest more accused and recover contraband items. In some countries prosecutors and defendants work together while detecting a case and the judge is informed after the detection of the case. Here group members agreed on some points of plea agreements though they have different systems in plea agreement in their respective countries.

- a) The accused is exempted from penalty with a condition to disclose the important information relating to the case during the investigation. In the United States of America, only prosecutors and defendants are involved in the plea agreement or plea bargain on detection of the case followed by reduction of sentence or exemption from sentencing.
- b) In some systems, the court must evaluate the agreement between prosecutor and the defendant. In Japan, the prosecutor negotiates with the defence counsel while the accused provides authentic information about the crimes though prosecutors have no authority to render the sentence. The prosecutor recommends immunity, rescinding prosecution, instituting prosecution on a specific lighter charge, or stating an opinion that a specific punishment is imposed on the accused. Such agreement should be examined by the court and such statement may not be used as evidence disadvantageous to the witness in the witness's criminal case. This new tool of immunity will come into force on 3 June 2018 in Japan.
- c) The plea bargaining must abide by the law.
- d) In Bangladesh, Thailand, Myanmar and Nepal, a provision for approval is established by the law. If any accused other than the principal accused provides any authentic information about the crime and upon the information provided by the accused, police or prosecutors can detect the case, such accused person is recommended for reduction of sentence or exemption from sentencing. The trial court consents to such agreement if it is conducted according to law. In Thailand, the accused is given reduction of sentence if the accused helps the law enforcement authorities to identify the other accused of the case. Human Trafficking Procedure Law of Thailand approves such provision.

V. ADJUDICATION

Adjudication is the legal process of resolving a dispute through hearing by a court, after notice, of legal evidence on the factual issues involved. The requirements of full adjudication include notice to the defendant and accused. It allows an equal opportunity for both parties to present evidence and arguments. The adjudicative process is governed by rules of evidence and procedure. After a reasonable hearing and arguments, a verdict is rendered by an impartial judge, jury, or administrative tribunal. During fair adjudication, administrative acts need to be ensured for the witnesses and victims. Article 24 of UNTOC speaks about the protection of witnesses. This includes the physical protection, relocation, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the witness. It is suggested that witness testimony be allowed using communications technology such as video link or other adequate means. In the group discussion, many ways of giving protection to the witness and victim were

revealed. Irrespective of system, witnesses and victims are being given protection in all cases or at least in sensational cases like sex trafficking, human trafficking, and drug trafficking. In some countries, protection of witnesses is not generally provided for according to the existing law. All information is to be disclosed in the case docket and before the court during the trial in open court. Such a trial system may endanger the witness and victim. Bangladesh has special provisions to provide victim and witness protection in human trafficking cases. Most of the countries now have the provision of protection of witnesses in general cases, like Japan. Maldives has a practice of protection of witnesses at the discretion of court. In Nepal, protection for the witness is rendered in human trafficking cases, terrorism cases, corruption cases and money laundering cases. In Viet Nam, if a witness feels insecure, he/she is to ask the police for protection. At trial, the police provide protection for the whole court premises. The group members shared a few tools for the protection of witnesses and victims.

A. Protection of Witnesses and Victims

- a) Use of a screen between the witness and observer as well as between witness and accused in the courtroom.
- b) Witness statements through video conference.
- c) Obscured voice of the witness or victim.
- d) Conceal the name, identity, and character of the witness or victim.
- e) Using nicknames or symbolic name in the First Information Report, which defendant can get. The original name, address and other issues are written in the original copy of the First Information Report which is given to the trial judges.
- f) Providing physical protection to important witnesses and victims.
- g) Active police inside the courtroom during organized crime trials.
- h) Prohibition of witness in the courtroom while the trial goes on. This only happens when there is a possibility of harm to the witness.
- i) Punishment for the publication of any information relating to the name, character, or identity of the victim by the media.
- j) Keeping the witness or victim under police protection for a certain period.
- k) Rehabilitation for the witness.
- l) In camera court proceedings. Only defence counsel, court personal and prosecutors can be present at such trials. The victim is not allowed to be present before the court during such trials as a protection measure. In such cases, the defence counsel must take an oath not to reveal any information relating to the witness.
- m) In any crime committed by an organized crime group, the accused has no right to directly question the witness or victim.

B. Issues in Disclosure

In Commonwealth tradition countries, there is the practice of the First Information Report (FIR). It is the first public document relating to the case. In other countries, it is the victim's complaint or any complaint by an informant. Bangladesh, Myanmar, Nepal and Sri Lanka utilize the First Information Report. An FIR is the first document to open a case. In Japan, there is no such FIR system; rather a complaint by the victim is made to the police. In Thailand, the complaint statement of the victim or witness is not disclosed to the defence counsel. It is disclosed after testimony of the witness or victim before the court to avoid any contradiction with the initial statement, which would result in a charge for perjury. Almost all countries submit all documents relating to the case before the court. The judge or public prosecutor decides on the disclosure of

the documents. In Bangladesh, Myanmar and Nepal, it is mandatory to disclose the all documents before the court. In Cote d'Ivoire, all documents are sent to the court by the Public Prosecutor. Only the judge can disclose all the documents to the defence. The defence counsel gets the notes of the investigator's report. Usually no copy of other documents is provided. Instead, the defence lawyer can review the file (such as medical reports and bank reports) in court during the trial. In Japan, the victim first goes to the police and gives a primary statement. The police write a report on this statement. The police and prosecutor interview the victim. The prosecutor chooses the documents to be disclosed. If the prosecutor allows, the documents such as the statement recorded by the police and prosecutor can be disclosed. There are cautious measures taken with respect to mentioning the witness's information in such reports. Any unnecessary information about the witness and victim that may reveal the identity of the witness is avoided. Documents like seizure lists, photos and material documents, medical reports and charge sheets are always disclosed. The investigator's report is not disclosed because it is an opinion. In Viet Nam, all documents of a case are submitted to the court by the prosecutor. The report includes all the witness and victim statements but during hearing of the case, all documents are not required to be disclosed. The statement of witnesses and victims must be disclosed to the court if they are absent during trial, but it is not mandatory to disclose the statement if the witness/victim is present in the court. Group members found that the following should be disclosed:

- a) First Information Report or first complaint to police by victim or any informant, or primary report of the investigator.
- b) Seizure list and search form.
- c) Medical report of the victim.
- d) Expert opinion.
- e) Photos and material documents.
- f) Any information revealed from the accused.
- g) Statement of the accused.
- h) Any recovery from the accused relating to the case.
- i) Statement of the witness recorded by the police or prosecutors.
- j) Charge sheet or police report or indictment of the accused.
- k) Any documents seized relating to the case.
- l) Statement of witness or victim if absence from trial is mandatory.
- m) Forensic report.
- n) Criminal record of the accused.

C. Special Jurisdiction Measures

For heinous crimes like sex trafficking under the cover of human trafficking, most of the countries conduct special measures to curb such crimes. Without special measures it can take extra time to dispose of the case. Thailand practices the inquisitorial system for human trafficking cases, but in general cases it practices the adversarial system. For the inquisitorial system, the adjudication process consumes a shorter time than the adversarial system, and the inquisitorial system applies to corruption and consumer protection cases as well. From the prosecution to the final verdict of the case, it takes around 6 months to a maximum of 1 year. For investigation, the timeline is fixed at 84 days if the suspect is arrested and it might take more time if the suspect is not arrested in Thailand. Regarding compensation measures for the victim, there is no requirement to submit a separate application to the civil court. The prosecutor can ask the court to provide compensation for the victim. Punitive damages are also awarded to the victims of human trafficking cases.

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The witness does not need to be present in court to testify during trial. This is done through video link. In Nepal, a new law was enacted in 2007 to combat human trafficking. General district courts have jurisdiction to try such cases. There is no special court for human trafficking, but for adjudication of corruption, money laundering, terrorism and economic crime, there are special courts. For human trafficking cases, few special measures are taken into account. In human trafficking cases, the accused has no right to see the victim and witness during trial if there is involvement of an organized criminal group. There are in camera trials and a continuous hearing system for human and sex trafficking cases. Protection of witnesses is provided during the whole administration of the trial. The identity, name and character are concealed so as not to identify the true victim. Nepal provides a rehabilitation process for the victims. A special measure for such cases is that the burden of proof lies on the defendant. The police have the authority to rescue the victims under certain agreements with the respective country if the victim stays in a foreign territory. The relevant court has jurisdiction to serve the order to the police to recover the victim. The compensation is taken from the convict, and if the convict cannot afford to pay the compensation, the state provides compensation for the victim. In Viet Nam, the total juvenile trial process may be conducted in an in camera trial process though there is no special court for human trafficking cases. The defence lawyer must be present during trial. If the defence lawyer wants to be absent during trial, he/she is to write a full statement of his/her client and submit it to the judge. The accused's parents need to be present in the court. In Bangladesh, the human trafficking prevention law was enacted in 2012 and relevant rules were enacted in 2017 to meet the requirement. There is a provision for a special tribunal to conduct human trafficking cases. The investigation time is limited to 90 days; if the investigation by the police is not completed within the said period, the court may approve 30 more days to complete the investigation. Adjudication takes 180 days and more 10 days may be taken for trial followed by a written application showing the causes of delay to the High Court Division of the Supreme Court. The human trafficking tribunal has extraterritorial jurisdiction to bring the culprits to justice. The tribunal may issue a proactive order for such case. The Bangladeshi government has a state fund to mitigate the victim's needs and expenses. It has a national organization on prevention of human trafficking to oversee the matters relating to human trafficking. There is an option to file a civil suit against the accused if the victim thinks that he/she had more damages or legal injuries. The tribunal has jurisdiction to fine the accused and compensate the victim separately up to a reasonable amount. In Myanmar, there is no special court for human trafficking, but if any predicate offence (such as money laundering) is found during the investigation, the chairman of the Central Control Board under the AMLL may freeze all properties of the accused during the investigation. The investigating authority later informs the court of such action. The primary offence and predicate offence are sometimes investigated together. In Cote d'Ivoire, there is no special court for human trafficking. During the trial, the judge can prohibit the appearance of the witness and victim and also can conceal the identity of the witness and victim. In Maldives, there is no special court for human trafficking cases, but witness protection is preserved at the request of the prosecutor. In Japan, the protection of witnesses and victims is provided through using screens and video link. The court allows concealment of the identity of the witness and victim, but there is no special court in this regard. General courts try such cases. There is no system for punitive damages in Japan. Group members suggested the following special jurisdiction measures to combat sex trafficking as well as human trafficking cases.

- a) Special courts and tribunal in some countries.
- b) General courts with special jurisdiction.
- c) Compensation system for the victim either provided by the state or by the accused.
- d) Punitive damages.
- e) Shorten time-consuming trials such as by implementing a continuous hearing system.
- f) Special laws and rules on human trafficking.
- g) Special trial system.
- h) Trial in camera.
- i) Secure testimony system through video link or use of screen around the victim or witness.

- j) Protection of witnesses and victims in order to conceal identity.
- k) Burden of proof lies on the defendant.
- l) Rehabilitation fund from the state.
- m) Extraterritorial jurisdiction of the court for human trafficking.
- n) National Monitoring Committee.
- o) Penalties for threatening a witness or victim.

VI. COUNTERMEASURES

Countermeasures include judicial measures to weaken the criminal and criminal groups. Sometimes they cover identification of financial links, tracing the roots of the crime and criminal group, freezing the assets gained from the criminal activities, and confiscation is ordered followed by the verdict of the case. Most of the countries practice the investigation process through identification and freezing of assets. In Japan, preservation of assets can be requested by the police or the prosecutor to the judge before prosecution. In Viet Nam, confiscation of assets is only allowed by the decision of the judge followed by the court verdict. The request is made from the police to the prosecutor, and the warrant is issued by the prosecutor. During investigation and trial, the accused cannot operate his/her bank account and transfer his/her property. In Cote d'Ivoire, if the offender is guilty the court orders confiscation of the proceeds of crime and also confiscates all property of the offender. The court orders the destruction of travel documents such as passport, tickets etc. if they were used by the offender to commit the crime. In Thailand, frozen, seized and confiscated assets are vested to the Anti-Human-Trafficking Fund. In Bangladesh, the Human Trafficking Tribunal can order confiscation of assets and proceeds of crime of the offender gained by criminal activities. Anybody associated with such crime or who rents any house or apartment for committing such crime will be seized. If any accused owns any property outside the country the court can order to freeze and attach it through diplomatic channels. If the accused denies complying with such order, he/she will be imprisoned for a period of 5 years with a certain financial penalty. For human trafficking cases, there is a provision for preventive search and arrest to be conducted by the police even without a warrant if the crime seems to be imminent. A national organization on prevention of human trafficking works to oversee the human trafficking matters. In absentia trial is also present in Bangladesh according to the Code of Criminal Procedure. In Myanmar, money laundering cases related to human trafficking, drug trafficking, and corruption, the chairman of the Central Control Board under the Anti-Money Laundering Law (AMLL) can order freezing of such property and the investigator later informs the court. The Minister of Home Affairs, who is also the chairman of the Central Control Board can order the FIU to freeze or control almost all of the suspect's possessions depending on his crime and assets gained, which are considered as illegal property. The burden of proof lies on the accused person to establish that the money and property were not obtained by illegal means. In Nepal, the national committee and district committees work to coordinate the activities of rehabilitation and control of the offence. Confiscation is ordered for any movable and immovable property (such as houses, land or vehicles) acquired as a result of the offence after the final verdict of the court. The burden of proof lies on the defendant. Group members raised a few points on countermeasures as described below.

A. Identifying, Tracing, Freezing or Seizing Assets and Confiscation of Proceeds of Crime

- a) Freezing, seizing assets and confiscation of proceeds of crime.
- b) Tracing the crime roots and criminal organizations.
- c) Confiscation only applies to assets obtained from crime and proceeds of crime.
- d) All proceeds of crime are to be confiscated except those which are gained or inherited from a legitimate source.
- e) The burden of proof lies on the defendant.

- f) All properties or the proceeds of crime are to be confiscated if there is no legal source to be disclosed.
- g) Any house, apartment or any place or any vehicle that is given rent for prostitution or human trafficking purpose is to be confiscated.
- h) Confiscated property must be deposited to the human trafficking fund.
- i) Non-conviction-based confiscation system.

B. Compensation for the Victims

In the group discussion, the experience of Thailand revealed that the Ministry of Social Development and Human Security (MSDHS) has the duty to provide assistance as appropriate to the victims. The assistance provided is food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the safe return to the country of origin or domicile, and assistance with legal proceedings to claim compensation according to regulations. In Myanmar, according to the trafficking in persons law, the judge may order to give compensation for victims from confiscated money and property. The Ministry of Social Welfare provides a daily allowance to victims of human trafficking and arranges for them to go back to their native homes. It also provides professional training to victims. In Nepal, there is a provision in the law for compensation for the victim. The compensation amount should not be less than half of the fine levied as punishment to the offender. In Bangladesh, if the accused is proved guilty, all of his property gained by criminal activities will be confiscated. From the confiscated property, a portion of the amount would be given to the victim. The Government provides funds for the victims of human trafficking. There are shelter homes for victims as a rehabilitation programme. The victim can sue the accused in a civil case if the sufferance and legal injuries are made by such crime. Human trafficking victims may also be given assistance from the Human Trafficking Fund. The amount of assistance to the victim depends on the Government's discretion. Any NGO can help the human trafficking victim under the Legal Assistance Providing Act, 2000. The Human Trafficking Fund is composed of Government funds, funds from local authority, funds from any individual or organization or funds revealed from any source of human trafficking. In recent human trafficking cases, the International Organization of Migration (IOM) helps to bring back Bangladeshi victims from foreign countries. In Viet Nam, victims can ask for compensation in the court though there is no special fund for victims, and they cannot be compensated from confiscated money. Many NGOs assist through the Women's Union, which provides shelter and rehabilitation for the victims. The Women's Union receives funds from foreign donors. In Japan, there is no special fund for victims of human trafficking. The confiscated property goes to the government fund. The police, the Immigration Office and NGOs cooperate to protect victims of human trafficking in shelters for women. An advantage of these shelters is that they provide assistance for all by NGOs, not only for the victims of human trafficking. For foreign victims, the police and IOM cooperate for the safe return to the victim's home country. In Cote d'Ivoire, during the criminal trial before the closing argument of the Public Prosecutor, the judge must ask the victim if he/she wants compensation. The victim must specify how much he/she wants. If the offender is guilty, the court must specify how much is payable to the victim as compensation as the court will confiscate all property of the offender. The victim can participate in the trial and waive the compensation.

The group mentioned the related articles of the Model Law against Trafficking in Persons and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Compensation for victims of trafficking in persons has a mandatory provision in the Model Law against Trafficking in Persons.

Article 29 of the Model Law against Trafficking in Persons states that *one way to ensure compensation to the victim for damages caused, independently of a criminal case and whether or not the offender can be identified, sentenced and punished, is the establishment of a victim fund, to which victims can apply for compensation for the damages suffered by them.* Paragraphs 12 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that *when compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.*

Paragraph 13 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

states that *the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.*

The group members agreed on the following recommendations for compensation for the victims.

- a) Compensation for the victims from the government.
- b) Compensation for the victims from the accused.
- c) Victims can be brought under the social safety net. This includes rehabilitation programmes through providing income generation where the victim will get preferences.
- d) A special fund can be raised where the government, and INGOs, NGOs and individual can participate.
- e) Interim compensation can be granted to victims after the first judgement by the court. This compensation will be collected from a government special fund.
- f) Extraordinary support for the victim such as shelter, vocational training and education can be provided.
- g) In human trafficking cases, the victim can be compensated from the established victim fund for damages suffered whether or not the offender can be identified, sentenced and punished.

VII. CONCLUSION

All participating countries of this group agreed that it is extremely important to curb human trafficking as well as sex trafficking in all parts of the world. Sex trafficking is a crime against humanity. This crime should not be spread out over the world regardless of region, sex, race, caste, colour, and character. Silence of any part of the world against this crime may endanger another part. All countries should take action to eliminate human trafficking, sex trafficking, body organ trade, etc. It must be stopped at any cost.