
REPORTS OF THE COURSE

GROUP 1

TRAFFICKING IN HUMAN BEINGS, ESPECIALLY WOMEN AND CHILDREN

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I. INTRODUCTION

One of the most difficult realities facing persons trafficked into forced labor, slavery, or servitude is the propensity of governments worldwide to treat trafficked persons as criminals or unwanted undocumented workers rather than as rights-bearing human beings. Appropriate responses respectful of human rights in law, policy, and practice are inadequate worldwide. Once victims manage to free themselves, or are freed by others from their captors, they are often re-victimized by governments in destination countries. Many countries do not have effective policies designed to combat trafficking in human beings. They concede that their legislation does not provide up-to-date regulations to deal with such trafficking, particularly activities carried out by transnational criminal organization.

National policies do not provide the effective tools with which to dismantle organized crime structures and their transnational alliances, to cut their profit margins and to counteract attempts to diversify supply. Investigators of the higher levels of management of organized criminal groups involved in trafficking in human beings often lack the necessary linkages to strategies against corruption and bribery. Legal provisions, including procedural laws, penal codes and regulations for police vary greatly among jurisdictions, thereby allowing the creation of a safe haven for traffickers.

This paper was made with a vision to prevent and combat trafficking in human beings, especially women and children. To realize this vision was the concomitant mission to present, identify, analyze and examine the following areas of trafficking:

1. World situation
2. Root causes
3. Modus Operandi
4. Forms of exploitation
5. Problems and solutions in detection, investigation, prosecution, trial and punishment
6. Legislation issues
7. Cooperation among domestic agencies
8. Conclusion

The information and data in this paper were mostly taken from the individual presentation papers of the 122nd international training course participants, the lectures of the visiting experts and the ad hoc lectures.

II. DEFINITION OF TERMS

1. Trafficking in Persons

“Trafficking in Persons” shall mean the recruitment, transportation, transfer, harboring or receipt, of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. (Art.3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children).

2. Organized Criminal Group

“Organized Criminal Group” shall mean a structure group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the convention, in order to obtain, directly or indirectly, a financial or other material benefit. (Art.2 (a) U.N. Convention against Transnational Organized Crime 2000).

3. Structured Group

“Structured Group” shall mean a group that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure. (Art.2 (c) U.N. Convention against Transnational Organized Crime 2000)

III. WORLD SITUATION

According to the International Organization of Migration (IOM) there are currently 20 to 40 million irregular migrants in the world of a stock of 130 million international migrants¹. At any one time 4 million illegal migrants are on the move. According to the U.S. Department of State, over the past year, at least 700,000, and possibly as many as four million men, women and children worldwide were bought, sold, transported and held against their will in slave-like conditions². The traditional trafficking source regions are: Asia, Africa and the Caribbean. South East Asia constitutes one third of the global trafficking trade with about 200,000-225,000 women and children trafficked annually. The 1999 IOM report identified the top three source countries of irregular migration worldwide namely: the People’s Republic of China, Philippines and Myanmar³.

On the other hand, millions of youth are victims of child trafficking in South Asia (Mekong Area) and West Africa where trafficking networks are secret and informal in nature and detection is extremely difficult. In the ECOWAS (Economic Community of West African States) region, open borders promote free trade and it is difficult to distinguish whether migration is illegal, criminal, or legitimate family cross-border migration⁴.

In the European Union, the Central and Eastern European countries represent a rapid increase of trafficking in women and children with Eastern Europe comprising two thirds of the half a million illegal sex workers. It also constituted the largest proportion of the 300,000 trafficked women promised with jobs as waitresses, etc. but are currently working as prostitutes in Western Europe. The United Kingdom reported an increase of Chinese illegal entrant to over 600 per month. Vienna in 1995 likewise registered an increase in trafficking to six times more than in 1990⁵.

The United States, which is also used as a transit country by traffickers estimated that of about 50,000 women and children who are trafficked annually, 60% originate from South-East Asia. In Latin

¹ International Organization For Migration(IOM) 1998 “Trafficking Get High Level Attention” #18:<http://www.iom.in/January> 1999

² The trafficking in persons report (TIP report) released by the United States government in June 2002

³ IOM op.cit.

⁴ The Immigration and Naturalization Service (INS) FY 2002 Monthly Statistical Report, June,2002

⁵ Mr.Hamish McCulloch (Visiting Expert)

America, the countries of Brazil, Colombia, the Dominican Republic, and Ecuador are mostly affected by trafficking in women for sexual exploitation and potentially women from Argentina, Peru and Venezuela. Colombia and Spain are the most frequent destination countries of the victims⁶.

IV. ROOT CAUSES OF TRAFFICKING IN HUMAN BEINGS

Trafficking in human beings is not drawn by only one source but various factors cause the tragic trafficking chain. Trafficking in persons is not a new phenomenon but the recent growth seems to be facilitated by increased globalization and modern communication techniques. Liberalization of trade, progress of transportation, opening up of borders and improvement of communication infrastructure, such as the Internet and mobile phones have enabled trafficking to be executed easily. Moreover, global economic disparity, disruption of traditional livelihoods and the expansion of the sex industry has contributed to the growing trafficking in persons.

A. Push Factors and Pull Factors

Except for poverty, the root causes of trafficking vary from country to country and it can be classified as: the push factor (that which drives a resident of one country to go to another country) and the pull factor (that which draws one country to invite or accept migrants from another country).

1. Push Factors

Common push factors are as follows:

- poverty
- lack of education prospects
- chronic unemployment
- the low status of women and girls in society and in the economy
- lack of economic opportunities
- political instability
- traditional social and cultural practices
- corruption
- others (militarism, civil unrest, internal armed conflict and natural disasters)

The above circumstances are brought about when victims seek a better life or enhanced economic opportunities for themselves and their family, but as a result, they make themselves victims of trafficking. In many cases of human trafficking, victims have little knowledge about the tragedy of trafficking because they are from poor villages, from minority races or some remote places. In such regions, we may see examples of some parents entrusting their children to more affluent friends or relatives, other parents sell their children not only for the money but also in the hope that their children will escape a situation of poverty. In areas where culture and social values have strong influence, people naturally think it is the duty of daughters to sacrifice themselves for the well being of the family.

2. Pull Factors

Common pull factors are as follows:

- high demand from the sex industry
- high profit for traffickers
- lenient punishment
- inefficient law enforcement
- deficient laws
- corruption
- value of customers

The expansion of the sex industry is the biggest pull factor of trafficking in human beings especially women and children. Profit in trafficking of human beings tend to be bigger and penalties have also

⁶ Mr.Hamish McCulloch op.cit.

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been relatively lenient with lower risks, so that many transnational organized crime groups have viewed these acts as attractive business ventures. In addition, people can be used repeatedly like commodities, and the victims may be re-sold by traffickers. In other words, trafficking in persons does not require a large capital investment but traffickers get a high profit.

Trafficking in children is increasing because of the fear of HIV/AIDS. There is the general belief that children are free from such disease.

B. Opportunities for Corruption in the Trafficking Chain

In some countries, corruption contributes to the problem of trafficking. Corruption is generally described as the misuse of a public or private position for private benefit. Corruption may be both a push factor and a pull factor.

Corruption practices may involve the police, customs officers, visa officers or embassy staff, border control, immigration services, local officials, intelligence and security services, armed forces and the influence of the private sector (travel agencies, airlines, transportation sector, financial institutions, banks).

Their acts may range from passivity like ignoring, turning a blind eye to trafficking, or actively participating in or even organizing trafficking in person, that is, from a violation of duty, to corruption or organized crime. For example, officers or leaders of districts are complicit in looking for likely women and children; or they forge necessary documents to receive pecuniary benefits and undue advantage.

V. MODUS OPERANDI

“Modus Operandi” means the method of operating trafficking in human beings. The modus operandi employed by the traffickers is divided into 4 stages: Recruitment, Transportation, Use of force, and Exploitation.

A. Recruitment

As regards the sending countries, the following modus operandi are employed by the traffickers.

1. Tricked to go

- False promises of work abroad

In the majority of the cases, false promises of work abroad involve work in childcare, housekeeping, waitress and the hotel or entertainment industries. On rare occasions the women know or suspect that they will be involved in prostitution but are not aware of the slave-like conditions in which they will find themselves.

- False marriage

In the case of false-marriage, the trafficker wins the victims affections first. Then he makes a marriage proposal that is very easily accepted. After marriage the husband gets the right to take his spouse anywhere. In Nepal, 25% of cases have been trafficked in this method.

2. Forced to Go

- Kidnapping/Abduction

In some countries, kidnapping and abduction have been employed although in a small number of cases only.

3. Consented to Go

In some countries such as Thailand, victims from rural areas give their consent to be trafficked to get better pay in other countries despite their knowledge of the kind of work they have to do and most of them agree to pay back the inflated cost fixed by the traffickers. What they do not know is that they will be detained in brothels until their debt has been fully paid.

In other instances however, consent is given due to the low level of education and poverty, but they do not fully understand the real intention of the traffickers. There are also cases where the parents themselves give their consent.

B. Transportation

1. Illegal at the Border

- Using forged passport

In cases of entry checks, forged passports are used and false representations as to purposes of stay are given in order to get landing permission.

Types of forged passports include: (a) false photographs; (b) the alteration of identity; (c) entering a false page of identity; and (d) substituting the inside pages. In addition, there are cases where a foreigner obtains landing permission by using the genuine passport of another and pretends to be that other person.

- False application for visa status

In many cases, traffickers make the victims state false information about their activities after landing into the receiving countries to enable them to get a visa, as follows:

(a) It is the tendency to use a promise for false-marriage. In this case, the trafficker mediates an offer of marriage with a foreigner and a partner who is a national of the receiving country, and makes him / her get a spouse visa status.

(b) Many foreigners who enter the destination countries with entertainment visas to supposedly perform at bars or cabarets, do not actually perform at all, but are unlawfully forced to directly entertain customers, prostitute or perform miscellaneous administrations.

- Sneaking at the border

Sneaking is a way to cross the border without an immigration check, and without notice by the immigration officer, such as migrants from Mexico to the U.S.A, from Lao to Thailand. In addition, some pass through the immigration booth at the airport by sinking down out of sight, and in the case of sneaking at sea, stowaways pass the immigration check at the seaport by hiding in the container of the ship.

2. Illegal After the Border

- Overstay

Many foreigners have entered the country on tourist, student, spouse and entertainment visas. Then they stay beyond the terms of their visas and their stay becomes illegal.

- Non-permitted labor

Many foreigners have entered the country on tourist visas and started working without permission from the authorities or changing their visa status as required.

3. Legal Entrance

Legal entrance can be done in many ways. In some countries, people can cross the border without being checked, like in Nepal and India. In this case, they can cross the border and are still considered to be legal.

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C. Use of Force / Coercion

1. Retention of Passports / Identity Documents

Retention of passports / identity documents, are often used to force the women into prostitution, controlling them and keeping them from fleeing or going to the police. This usually happens among women who enter the destination country as potential tourists.

2. Threats and the Use of Violence

Threats and the use of violence are mainly directed at the woman. Occasionally, it extends to her family abroad. The threats often involve physical violence when it concerns the family, or upon being turned over to the police, the women are told that they will be beaten and raped before they are repatriated to their country of origin.

3. Captivity

In the August 2002 issue of *Time* magazine, it was reported that in Tonduchan, South Korea, Filipino and Russian women were sold into sexual slavery in nightclubs after being tricked that they were going to be bartenders or waitresses. But once they got there, they were locked up and forced into prostitution, allowed only to go out for 3 minutes to make a phone call, otherwise they had to pay a penalty.

4. Deception

- False knowledge

Traffickers give false information to victims, such as “even if you escape, you will be apprehended by the police and you cannot return to your mother country” etc.

D. Exploitation

1. Debt Bondage

Upon arrival the women are told that they owe a certain amount of money for their entry, etc. and must work to reimburse the debt.

2. Extortion

Traffickers call the family of the victims in their home country and demand large sums of money as payment. If they will not give it, traffickers threaten to kill or rape the victims. The family can hear the victim’s screaming over the telephone.

3. Hard Working Conditions

Victims of trafficking work illegally in the “three D - jobs” - dirty, difficult, and dangerous.

4. Selling Victims to New Agent

Without their knowledge, victims of trafficking are sold twice or more times to several agents, hence, there seems to be no end in paying their debts.

VI. FORMS OF EXPLOITATION

Trafficking is one of the most profitable illegal businesses. It generates huge income for the traffickers / exploiters. The two most common forms of exploitation are:

A. Sexual Exploitation (prostitution, sex tourism, pornography, etc.)

Regardless of strict law enforcement, prostitution still exists in nightclubs, hotels, guesthouses and restaurants, which operate late until midnight or until dawn.

A lot of trafficked women are detained and forced to work as prostitutes in many countries without being paid. The worst situation is when the women have nearly paid all their debt for coming overseas to the trafficker, only to find out that they are sold again to another trafficker or brothel owner and the process of paying back the debt restarts again.

In Nepal, the process of trafficking of girls and women has been evolving since traditional times. Long ago, girls were brought from different parts of the country to serve as attendants and cooks in the palaces and wealthy homes of Katmandu. Many of them were used as objects of recreation and sexual pleasure. Although in a different form, this process continues to this day as girls and women from Nepal villages are trafficked to cities in India and elsewhere to work as prostitutes and laborers.

As regards sex tourism, Indonesia has become the target for child sex tourism and the networks of international pedophilia has spread in many countries.

Pornography is viewed through the Internet as a means of sexual exploitation especially of women and children.

B. Labor Exploitation (illegal labor, bonded labor, etc.)

Many people are trafficked to work abroad for higher salaries than they could get in their home country, and most of them are exploited by their employers. In many cases their wages are fraudulently cheated either by their exporting agents or their employers. The worst are those who have mortgaged or sold their land to pay for the trafficking fee but are sent to destination countries only to be stranded in a foreign land without jobs or a means of living.

In Lao, in 1994, four illegal agents were arrested for recruiting people in Vientiane. In one case, an illegal agent went to the villages of Bokeo province and offered money to the ethnic minority families in exchange for their children's labor in factories, or as servants and as waitresses. The children ended up in Chiang Rai Province, Thailand. Officials in Savannakhet province reported that more than 15,000 of their youth mostly young girls under 15 years of age sought employment in Thailand in 1995.

C. Others (begging, false adoption, organ trafficking etc.)

In Thailand, one of the forms of labor exploitation for women and children is begging. Most of them are Cambodian and are exploited by organized crime syndicates. They are lured, but are also willing to be brought to Thailand to work as beggars. Some have to pay the traffickers for the trafficking management. While in Thailand they have to work under the control of agents who provide them with shelter and protection.

In Indonesia, many Indonesian pregnant women have been trafficked to go abroad. After they give birth to their babies in the destination country, the babies are sold by the agent to the prospective or adopting parents.

In Russia, there were more than 700 cases of stolen hearts and livers. Criminals took the organs from the corpses of those who have no relatives to bury them. In Argentina, criminals took the eyes of dead people after faking death reports.

VII. PROBLEMS AND SOLUTIONS IN DETECTION, INVESTIGATION, PROSECUTION, TRIAL AND PUNISHMENT

A. Problems of Detection, Investigation and Prosecution of Trafficking in Women and Children

1. The lack of Information from the Victims

It is difficult to detect, investigate and prosecute the trafficking in women and children.

In many cases, women victims of trafficking believe that they will get good jobs and high salaries in destination countries, therefore they do not think of themselves as a "victim". On the other hand, most child victims of trafficking have no idea where to request help. Victims of trafficking cannot be expected to declare their damage to the police or other law enforcement agencies (herein after called "law enforcement") in source / sending countries.

The situation of victims of trafficking must, to a certain extent, be respected in destination countries; they are often scared of reprisals against themselves and their families. In most cases they

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are residing illegally in destination countries, so they also face punishment or deportation, and have little trust in law enforcement. Whenever law enforcement detect trafficking cases, the victims of trafficking are reluctant to talk about the criminal organizations.

2. The Complexity of Modus Operandi

The Modus Operandi employed in trafficking of women and children involves expertise and comes in various forms. That's why it is difficult to detect them at the time of departure from source countries or upon entrance to destination countries.

3. The Problem of Corruption

In some cases, the corrupt staff of law enforcement, especially the police and the immigration bureau, are involved in trafficking. Hence, it becomes more difficult to detect, investigate and prosecute the offenders.

4. The Lack of Knowledge on the Part of Law Enforcement About the Problem of the Trafficking in Women and Children

In some countries, law enforcement officials have little knowledge about the problem of trafficking in women and children and they treat the victims not as the victims but as offenders.

5. The Leniency of Laws that Punish a Trafficker

In many countries, the man-power of law enforcement is limited. So if the law punishes traffickers leniently, law enforcement would rather investigate and prosecute other offenders who commit more severe crimes like rape than the traffickers.

6. Involvement of Many Organized Criminal Groups in the Trafficking Process

In many countries, law enforcement believes that organized criminal groups participate in trafficking cases and it is difficult to detect them because many groups, of which relationships are hard to prove, are involved in the trafficking process. In some cases, it is possible to detect the organized criminal group that exploits the victims of trafficking in destination countries. But it is difficult for law enforcement in destination countries to detect the other organized criminal groups who were involved in the invitation or transportation process.

B. The Countermeasures to Solve the Problems of Detection, Investigation, and Prosecution

1. On the Part of the Victims

- The lack of information from the victims

The main strategy is to conduct public information campaigns which would encourage victims to give information to law enforcement in destination countries.

- Non-punishment of the victims

If the victims of trafficking are not punished in destination countries, law enforcement can easily extract information from the victims. However, the victims of trafficking in women and children, especially women, are often illegally residing or are engaged in illegal work in destination countries. Therefore, each country must develop appropriate means, in accordance with its basic principles, to avoid punishing the victims of trafficking, such as "immunity" or "prosecutorial discretion".

- Providing the victims of trafficking with a permanent or temporary residence status in destination countries

It is probably an effective way to get evidence from the victims of trafficking to provide them with a permanent residence status, but it might not be acceptable for many countries. However, we must consider providing them with temporary residence status at least during the criminal proceedings or process, for their protection and assistance.

- Provide suitable protection and assistance to the victims of trafficking

The victims of trafficking have little trust in the law enforcement of the destination countries, so it is necessary to provide them with protection and assistance like medical care, home care, language and legal assistance not only from the government agencies but also from the NGOs. In this way they can be cured, assisted and persuaded to talk about their ordeal to the law enforcement. NGOs can play an important role in the persuasion.

- Developing effective means to get the statements of the victims

It is difficult to get a statement from a victim of trafficking as evidence to punish traffickers, because the victims do not want to appear before investigators and before the court repeatedly, and they also may not want to be faced with any pressures, especially in court. Besides they may also want to go back to their home country as soon as possible. Therefore, developing effective means to get the statements of the victims that would reduce their burden, and would be admissible as evidence in court, is important. Such means should of course be, in accordance with the basic principles of the criminal procedure of the respective countries.

In Japan, pre-trial statements are, in principle, inadmissible in court. However, when there is cause to believe that a victim of trafficking who has voluntarily furnished information at the interview by a public prosecutor may be subjected to pressures to withdraw or change such statements in testimony at the trafficker's trial, the public prosecutor may request the judge to interrogate a victim as a witness before the first date fixed for the trafficker's trial. And a document that contains a statement of a victim given before a judge may be used as evidence at the trafficker's trial under certain conditions. For example, a victim cannot appear or testify on the date for the trafficker's trial because she is staying outside of Japan.

2. For Modus Operandi Complexity

It is necessary to train law enforcement to deal with skillful and various Modus Operandi.

3. For Corruption

There is a need to educate the staff of law enforcement on the problems of corruption, severe penalties and betterment of working conditions.

4. For the Lack of Knowledge About the Problem of Trafficking in Women and Children

The staff of law enforcement should be indoctrinated with the problem of trafficking in women and children.

5. For the Leniency of Laws

The enactment of a law to punish the traffickers severely enough as other vicious criminals must be established in each country.

6. For the Organized Criminal Groups

Quick exchange of information about organized criminal groups that participate in the trafficking process among source, transit and destination countries is indispensable. And we must consider the introduction of a "Special Task Force" that will specially focus on the investigation of trafficking in women and children and / or smuggling in each country, especially in a high scale problem country. The task force will be the information center collecting records of traffickers, agents, offenders and related criminals, and also exchange information with other countries. The task force will also be the expert at detecting, investigating and performing sophisticated operations to suppress trafficking of women and children. Officers in the special task force should have the language ability to communicate with other countries, especially with the destination or origin country of the trafficking. Equipment and readiness to succeed in the mission should also be provided. The task force in each country should be alert to cooperate and have the capability to support the international mission. The team should have the ability to investigate, search for evidence or arrest criminals when a request is made from member countries.

C. Problems and Solutions in Trial and Punishment

1. Problems

As described above, criminal cases involving human trafficking are usually transnational organized crimes, so it is important to make clear the position and role of the defendant to decide the appropriate sentence. However, if a criminal case is disclosed, the whole truth of it is not necessarily made clear, especially if the head of the criminal organization is difficult to identify. Moreover, defendants often deny indicted facts, especially conspiracy or the “*mens rea*” of the crime, or insist on an alibi.

In those cases, statements of accomplices and victims are very important evidence. However, if they are afraid of the defendant, they may neither be able to come to the court nor tell anything about him for fear of retaliation. If a statement is made against the defendant, the deponent must be able to state this without undue influence, and he/she should be protected both inside and outside of the court.

2. Suggested Solutions

- (i) Voluntary testimony of the witness could not be obtained due to absence of Witness Protection Programs as suggested by the U.N.
 - Establishing procedures for the physical protection of the witnesses and their relatives in criminal proceedings, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.
 - Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

The Convention additionally provides for the assistance and protection of victims. It states that: each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense.

- (ii) The importance of protecting the identity of trafficking victims facing retaliation from traffickers, in accordance with the Protocol which requires States to protect the identity and privacy of victims including the confidentiality of the legal proceedings is not recognized.

In addition, The Protocol says that each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- Information on relevant court and administrative proceedings;
- Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.

- (iii) Those provisions do not contain any legal obligations, and it is not so easy to implement these provisions of the Convention and the Protocol because legislative changes are necessary in States. However, States should endeavor to do so.

In Japan, the privacy and identity of a victim is protected. To reduce the mental burden of a witness / victim, the following provisions of the code of criminal procedure should be adopted.

- An attendant of the witness may be present
- The setting up of a screen which separates the witness and the accused or spectators
- A video linked method of examination, wherein the witness is in a separate room from the court and testifies to the questioner inside the court room through a screen / sound; this is a measure which The UN Convention suggests. From June 2001 when this method became usable to September 2002, 23 cases of using the video links have been reported in the Tokyo District Court.

- (iv) Many countries do not have a special law against trafficking, so prosecutors use various kinds of laws, such as criminal law, immigration control law, anti-prostitution law and so on, to prosecute traffickers. The problem is, those laws are not supposed to punish severe trafficking cases by a transnational organization, so defendants who committed serious crimes will not necessarily receive heavy sentences.

Trafficking of women and children is an inhumane crime committed against the weak, which violates their fundamental human rights. Therefore, appropriate punishment should be imposed in order to effectively prevent such crimes.

- (v) Many countries have the problem of delays in their criminal procedure that is: investigation, prosecution and trial. A long procedure makes it more difficult to uncover the real facts in criminal cases, and diminishes the general deterrent effect of punishment. Moreover, it will continue to burden trafficking victims with their trauma for a long time if they have to testify their cases in court after a long interval. Consequently, we must make every effort to implement the principle of speedy criminal procedure.

VIII. LEGISLATION ISSUES

Trafficking is a multi-dimensional issue. The legislation issue can be tackled as both a criminal and a human rights issue.

A. Trafficking as a Criminal Issue

The role of the criminal justice system and criminal law is decisive and necessary. That is why the International Community has adopted two instruments to tackle trafficking, namely:

- The United Nations Convention against Transnational Organized Crimes; and the
- The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the UN Protocol above mentioned adopted by the UN General Assembly in November 2000.

The principle is as follows: States must first be a party to the Convention in order to become a party to the Protocol. As of 15 August 2002, there were 106 signatories to the Protocol and 14 ratifications. The Protocol will enter into force if 40 members ratify it. Moreover, while some countries have domestic laws related to trafficking (which can be amended, however), others do not have any. In order to prosecute and punish the traffickers or assist victims, these countries can apply some non-specific laws such as:

- Criminal Code
- Immigration Law
- Law related to human rights
- Law related to money laundering
- Victim compensation law
- Labor Law

And yet, from a penal viewpoint, trafficking must be criminalized. This approach involves legislative reforms and the introduction of more stringent laws. This policy also aims at intensifying training and cooperation of law enforcement officials for the effectiveness of the criminal system. But, achieving this goal should not bring about insensitivity towards the victims of trafficking. For, in some instances the victims' security and protection are placed in a subordinate position to the interests of prosecution and trial. The protocol has achieved those goals and made some requirements of the states.

Thus, the countries that have not yet enacted domestic laws relating to trafficking can do so by including the following provisions:

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1. Adequate Provisions of the Law to Address the Special Needs of Victims

States shall incorporate additional relevant provisions which are both gender and child sensitive in terms of education, housing and care.

2. Protection of the Victim as Well as His/Her Relatives

States shall ensure the safety of the victims, not just those who are witnesses at a trial. To the extent possible, States shall not reveal the identity of victims in connection with trials. Access to this kind of information should be limited to persons such as law enforcement officials.

3. Guarantee of the Right of Victims to Compensation

First the offender must provide compensation. In case of impossibility, States shall consider providing compensation by establishing funds financed partly by the confiscated assets, profits made by the convicted party or fines paid.

B. Trafficking as a Human Rights Issue

On the assumption that any person, even an offender has basic human rights and fundamental freedoms, trafficking in persons itself is seen as a serious violation of human rights. Thus, states as the protectors of human rights of the people living in their territory are held responsible for the fight against trafficking. All the measures to tackle the phenomenon, as well as measures to support and assist the victims, are guided by this principle.

The strength of the protocol and national laws lie in the fact that they provide requirements for legal measures, through combining human rights and law enforcement. The enactment of domestic law shall make a balance between the two approaches.

IX. COOPERATION AMONG DOMESTIC AGENCIES

“Domestic agencies cooperation” may involve the government or non-government organization (NGO) within a country, by using formal and informal cooperation, for the purpose of preventing or tackling the trafficking of women and children. Domestic cooperation is an important measure to prevent and tackle trafficking but many countries still have the following problems:

- Lack of cooperation among agencies; and
- No clear roles and responsibilities among domestic agencies.

The cooperation should have good planning and management such as, a good focal contact point, clear strategy and good monitoring. The cooperation should aim to prevent and tackle the problems, even if the final result may not happen in the country itself.

The cooperation in a country may comply with the UN convention framework for direction and guidance.

A. The Purpose of the Cooperation

The cooperation among internal agencies shall aim at the following purpose:

- To prevent and combat trafficking in persons, paying particular attention to women and children; and
- To protect and assist the victims of trafficking with full respect for their human rights.

B. Grouping the Agencies in the Same Area

There are many agencies in a country, which are involved in trafficking problems, but they focus on different areas. The grouping up of relevant agencies in the same area to work together can bring more efficiency in the prevention and tackling of the problems. The idea of grouping should be as follows for example:

- Among the police, immigration, coast guard, public prosecutors and judges etc. Improve the working method to be faster or have a “Fast Track” system.

- Among the Ministry of Education, Foreign Affair, Interior and Labor, NGOs, legislation system, communities etc.

Providing awareness information for women and children.

- Among the Ministry of Health, Interior, NGOs, social workers etc.
- Health care, home care services, vocational training programs.

C. The Result of Cooperation

The cooperation may focus on the outcome of trafficking. Trafficking involves the following issues:

- Migration problem: the cooperation should focus on the prevention of illegal immigrants.
- Criminal problem: the cooperation should focus on finding the real criminals such as the traffickers and not punishing the trafficked women or children.
- Human rights problem: the cooperation should focus on treating the suffering people as victims.
- Labor problem: the cooperation should focus on finding jobs for workers in their own countries or other countries.
- Health problem: the cooperation should focus on giving health care to victims.

X. CONCLUSION

There are many solutions on how to prevent and tackle the trafficking of women and children in this paper. However, it is considered that some special countermeasures should be designed to combat this problem. These countermeasures were extracted from the whole idea but the measures we thought were best and possible to attain in solving the problem of trafficking among countries are as follows:

A. Speedy Criminal Procedure

Delay in criminal procedure, particularly in investigation, prosecution and trial is a big problem in many countries. Considering that trafficking is a serious crime which infringes the human rights of the victims, it is imperative that a speedy criminal procedure should be adopted to effectively prevent such crimes.

B. Effective Means to Get the Statements of the Victims

Adopting more effective ways to get statements from the victims that is admissible in court as evidence against the traffickers is important. It will also reduce the pressure and burden of the victims. These systems must of course be in consonance with the basic principles of the criminal procedure of the respective countries.

C. Witness Protection Program

Unless victims can testify without undue influence, the true facts of the case could never be made clear. In many countries, victims and/or witnesses find it hard to tell practically anything inside the courtroom, nor even come to the court for fear of retaliation. Therefore, a Witness Protection Program is very important to ensure the victim's and/or witness' safety and reduce their mental burden.

D. Special Task Force in Law Enforcement

The problem on how to tackle the trafficking of women and children is very difficult and complicated. It is therefore recommended that a large scale special task force be set up in every country. The task force will serve as the records information center and an exchange information center to other countries. It should be equipped with expertise in detection and investigation; have proficiency in language; equipment; the readiness to accomplish the mission successfully and the capability to support an international mission. The creation of a special task force will make effective the suppression of international crime especially the network of trafficking women and children.