EMERGING WOMEN'S RIGHTS ISSUES: REVIEW OF CURRENT LEGAL REMEDIES RELATED TO SEX TRAFFICKING

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EMERGING WOMEN'S RIGHTS ISSUES: REVIEW OF CURRENT LEGAL REMEDIES RELATED TO SEX TRAFFICKING*

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I. INTRODUCTION

The problem of trafficking of women is by no means a new phenomenon. It dates back to the early 20th century, when concerns of "white slave traffic" prompted the signing of the International Agreement for the Suppression of White Slave Traffic in 1904.[1]

Trafficking of persons is said to be on the increase around the world. The United Nations estimates that four million persons a year are traded against their will, earning their captors annual profits of up to USD7 billion.[2]

The victims are lured from their home countries through various coercive methods such as trafficking through migrational channels by recruiting women to work as domestic helpers and entertainers, trafficking via marriage arrangement or the problem of mail-order brides, trafficking

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[1] RADHIKA COOMARASWANY, UNITED NATIONS COMMISSION ON HUMAN RIGHTS, INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE; VIOLENCE AGAINST WOMEN 10, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000), *available at* http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2000.68.En?Opendocument. This was the report of the special rapporteur on violence against women.

[2] Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIG. L.J. 73 (1998); R. Jacobson, United Kingdom Safeguards Against Human Trafficking Within the Boundaries of Legislation, at 1 (Nov. 10-12, 2001). The latter was a paper presented before the ASEM Meeting of Law Enforcement Agencies on Child Welfare in Guangzhou, China.

specifically for prostitution, trafficking using force, abduction or deceit, sex tourism, and military tourism.[3] They are brought within the country or across borders where they are forced into exploitative situations against their will.[4]

Traffickers often move victims from their home countries to other areas – within their country or to foreign countries – where the victim is isolated and may be unable to speak the language or unfamiliar with the culture. In many cases, the victims do not have immigration documents or hold only fake passports provided by the traffickers. More importantly, the victims lose their support network of family and friends, making them more vulnerable to the trafficker's demands and threats. Victims may also be exposed to a range of health concerns, including domestic violence, alcoholism, psychological problems, and HIV/AIDS and other sexually transmitted diseases. Victims in these situations do not know how to escape the violence or where to go for help. Victims may choose not to turn to authorities out of fear of being jailed or deported, especially if the country treats victims as criminals. In other countries, there is no protection for victims who come forward to assist in the prosecution of traffickers.[5]

Trafficking in women flourishes in many less developed countries because of the vulnerabilities arising from women's lack of access to resources, poverty and gender discrimination. These vulnerabilities are maintained through the collusion of the market, the state, the community and even the family unit.[6] Civil unrest, internal armed conflict and natural disasters destabilize and displace populations and in turn increase their vulnerability to exploitation and abuse.

Documentation on trafficking patterns reveals that trafficking is undertaken for numerous purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labor and marriage, and adoptive or other intimate relationships. The common elements found in all trafficking patterns are: a) the lack of consent; b) the brokering of human beings; c) the transport; and d) the exploitative or servile conditions of the

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[3] A. De Dios-Javate, Trafficking in Women and Girls: A Global Human Crisis, at 5-6 (Jun. 22-26, 1997). This paper was read at the Human Rights Meeting at Colombo, Sri Lanka.

[4] Young, *supra* note 2.

[5] UNITED STATES DEPT. OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, TRAFFICKING IN PERSONS REPORT 1 (Jun. 5, 2002).

[6] COOMARASWANY, *supra* note 1, at 20.

work or relationship.[7] Thus, any definition of trafficking must capture these elements.

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

> The movement or transport involved is such to place the victim in an unfamiliar milieu where she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases the trafficked women's marginalization and therefore increases the risk of abuse, violence, exploitation, domination or discrimination both by traffickers and by State officials such as the police, the courts, immigration officials, etc. although the crossing of geographic or political borders is sometimes an aspect of trafficking, it is not a necessary prerequisite for these elements to be present. Trafficking occurs within, as well as across, national borders.[8]

Mail-order brides, prostitutes, sex-slaves – these are only a few of the degrading forms of work forced upon Filipino women in various sectors of the world. All these "jobs" are associated with what is known as sex trafficking, which is the systematic and organized transport of women and children for the purpose of sex for profit. Put simply, sex trafficking is the reduction of human lives to mere commodities and instruments of pleasure. The following statistics depict the plight of our Filipinas:

- The Philippines (preceded by Thailand and Brazil) ranks as the third highest country that exports women to "entertainment" industries.

- There are at least 75,000 Filipinas working in Japan as dancers, entertainers, or commercial sex workers.

- There are over 600,000 prostituted women, men and children in the Philippines, the highest in the world.

- In 1995, at least 150 Filipinas were reported to have been sold for sex in Nigeria.[9]

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[7] *Id.* at 10.
[8] *Id.* at 9.
[9] Gabriela, *Purple Rose Campaign*, *at* http://members.tripod.com/~gabriela_p/2-action/purplerose.html (last visited Nov. 10, 2004).

The phenomenon of overseas migration and the increasing number of women going out of the country to work have added an international and probably more alarming dimension to the problem. Women who leave the country ostensibly as entertainers, as fiancées of foreign nationals, as service workers, tourists or undocumented workers fall victim to organized criminal syndicates. Outside the protection of laws, women victims are exposed to serious danger.

The Commission on Filipinos Overseas (CFO) reports that from 1996 to 2001, a total of 168,244 women, comprising 61.28 percent of all emigrants left the country to settle permanently abroad. During the same period, 81,557 women were documented as fiancées or spouses of foreign nationals by the CFO.[10]

In order to show the global reach of the mail-order bride phenomenon:

- In 1989, over 7,000 Filipinos were married and became fiancées to Australians, Germans, Taiwanese, and British nationals, which is an increase of 94% from previous years' estimate.

- In Australia, a total of 20,000 Filipino women were married to Aussies, some 90% of whom came through the system of serial sponsorship.

- In the U.S., some 50,000 mail-order brides have been reported.[11]

[10] Commission on Filipinos Overseas (hereinafter "CFO"), *Statistics*, *at* http://www.cfo.gov.ph/stat_bod.htm (last visited Nov. 10, 2004).

[11] *Id.*

Number and Percentage of Filipino Women Emigrants and Spouses or Fiancées of Foreigners, 1996-2001[12]

Year	Registered Filipino Emigrants		Filipino Fiancées/Spouses of Foreigners	
	No. of Females	% of All Emigrants	No. of Females	% of All Emigrants
1996	36,467	59.87	16,681	90.8
1997	33,123	61.27	16,240	90.5
1998	24,380	62.50	13,337	92.1
1999	25,850	63.80	14,011	91.5
2000	31,124	60.99	13,860	91.4
June 2001	17,300	59.57	7,248	90.5
Total	168,244	61.28	81,557	91.23

This table shows the increasing feminization of migration, not only for employment purposes but for cross-cultural marriages as well. Thus, the likelihood Filipino women would be vulnerable to labor and sexual exploitation, marital violence, as well as exposure to certain health risks are very high.

As of December 2002, CFO estimated that there were about 7.57 million Filipinos abroad – 3.14 million were temporary migrants who may have work or student visas; 2.80 million were permanent residents and about 1.62 million were considered as irregular migrants scattered in at least 90 countries. Irregular migrants are the most vulnerable because they may include illegally recruited workers, undocumented migrants, and persons smuggled by international syndicates.[13]

From 1993 to December 2002, there were 1,013 documented cases of trafficking in the Philippines. However, it is to be understood that in trying to determine the extent and magnitude of sex trafficking of women and girls in the Asian region, one considers the clandestine character of

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[12] *Id.*

[13] Current Practices Leading to Good Practices: Meeting the Needs with Regard to Recovery, Repatriation and Integration in Countries of Origin, at 2 (Sep. 1-3, 2003). This Philippine Country Paper was presented in the Asia-Europe Meeting (ASEM) Seminar in Bangkok, Thailand.

trafficking, which makes it difficult to establish definite figures as many trafficked women and children are kept in captivity and sexual slavery.[14]

In a recent report made by CFO, the following statistics revealed the magnitude of the problem:

- Victims mostly came from Region III (12.4%), NCR (8.4%), Region IV (8%);
- 65% of the victims were women; 25% of women were forced into prostitution;
- 53% were trafficked to Asia-Pacific; 25% to Middle East and 19% to Europe;
- Almost 8% of cases involved in intermarriages;
- Trafficking victims paid as much as $8,500 to recruiters;
- 51% of victims were trafficked with consent or knowledge; 47% were deceived;
- Parties neither related nor known to them recruited 56% of the victims.

Traffickers find and recruit potential victims in a number of ways. They advertise in local newspapers, offering good jobs at high pay in exciting cities. They also use fraudulent employment, travel, modeling and matchmaking agencies to lure unsuspecting women into the trafficking networks. In local villages, a trafficker may pose as a "friend of a friend," and meet with families and convince parents that their children will be safe and better taken cared by the "friend." Traffickers often mislead parents into believing that their children will be taught a useful skill or trade, but the children end up enslaved in small shops, on farms, or in domestic servitude. Traffickers also promise parents that they will marry their daughters but the girls are forced into prostitution. In some violent situations, traffickers may kidnap or abduct victims.[15]

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[14] *Id.* The paper cited data from the Department of Foreign Affairs and CFO.
[15] DEPT. OF STATE, *supra* note 5.

II. INTERNATIONAL INSTRUMENTS ON SEX TRAFFICKING

Many regional and international agreements have recognized and dealt on the problem of sex trafficking, but this paper will only discuss the pertinent provisions of some of these instruments.

Initially, there is the International Agreement for the Suppression of the White Slave Traffic (1904), followed by the International Convention for the Suppression of the White Slave Traffic (1910)[16], International Convention for the Suppression of the Traffic in Women and Children (1921),[17] and the International Convention for the Suppression of the Traffic in Women of Full Age (1933).[18] The Philippines is a party to the Convention.

In 1949, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was concluded[19] and the Final Protocol in 1951.[20] Article 1 provides that any person who "procures, entices or leads away for the purpose of prostitution, another person or exploits the prostitution of another person." The Convention also provides for measures for the prevention of prostitution in article 16, which regards prostitution as "incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community."

Although the Convention declares all forms of traffic in women as reprehensible and extraditable, it is not a labor-specific standard and it does not squarely address the prostitution trade as it exists worldwide. The Convention, however, contributes by imposing upon State Parties the obligation to supervise employment agencies in order to prevent the traffic and to provide rehabilitation for victims of prostitution.[21]

The Convention was drafted along the lines of the abolitionist policy; espoused by the International Abolitionist Federation (IAF), which

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[16] May 4, 1910, TS 20/1912.

[17] Sep. 30, 1921, TS 26/1923.

[18] Oct. 11, 1933, A.T.S. 1936 No. 12 (electronic), *available at* http://www.austlii.edu.au/au/other/dfat/treaties/1936/12.html.

[19] Dec. 2, 1949, 96 U.N.T.S. 271, 316. It entered into force July 25, 1951, and the Philippines ratified it on September 19, 1952.

[20] Mar. 21, 1951, 96 U.N.T.S. 316.

[21] Myrna Feliciano, *Human Rights and Women, with Emphasis on International Conventions and Philippine Laws*, 1998 PHIL. PEACE & HUMAN RTS. REV. 51, 89 (1998).

was responsible for convincing more than fifty countries to sign this instrument. According to the IAF, prostitution is *per se* incompatible with the dignity and worth of the individual, the family and the community, and all free prostitution is in the end forced prostitution.[22]

In 1956, the Supplementary Convention on Slavery considered forced marriage as a form of slavery if:

a) a husband is paying a sum of money for the marriage to the parents or the wife;

b) the wife becomes transferable upon death of the husband; and

c) the wife may be inherited upon the death of the husband.

Despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime was approved at Palermo, Italy on December 12, 2000. The Philippines was a signatory to the Protocol, and ratified it on May 28, 2002.

The Protocol supplements the UN Convention Against Transnational Organized Crime and must be interpreted together with the Convention. It is significant in two aspects: First, the it has moved from addressing trafficking as a prostitution related activity under the 1949 Convention by recognizing a more comprehensive definition. Second, it has shifted from criminalizing the act of the trafficked person to treating such a person as a victim.

Under the Protocol, "trafficking in persons" is defined as the recruitment, transportation, transfer, harboring or receipt of persons, by means of 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

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[22] ASIA & PACIFIC RESOURCES COLLECTION NETWORK, ASIAN AND PACIFIC WOMEN'S RESOURCE AND ACTION SERIES: LAW 154 (1993).

exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practiced similar to slavery, servitude or the removal of organs.[23]

A victim's consent is irrelevant where any of the means set forth in the above definition have been used.[24] The recruitment, transportation, transfer, harboring of receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the indicated means.[25]

Thus, there are seven forms of trafficking:

a) Trafficking for the exploitation of prostitution of others;

b) Trafficking for other forms of sexual exploitation;

c) Trafficking for forced labor;

d) Trafficking to place someone in a condition of servitude;

e) Trafficking for the purpose of enslavement of someone;

f) Trafficking for purposes similar to slavery; and

g) Trafficking for organs, or the removal of organs from human beings.[26]

In appropriate cases and to the extent possible, each State Party is required to:

a) protect the privacy and identity of the victims of trafficking in persons, including making legal proceedings confidential;

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[23] Art. 2(a).
[24] Art. 2(b).
[25] Art. 3(c).
[26] Mohamed Mattar, *Comparative Analysis of the Elements of Anti-Trafficking Legislation in the Asia-Pacific-U.S. Region: What Countries in the Region Have to Do to Comply with the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* (Nov. 13-15, 2002), *available at* http://www.protection project.org/commentary/ca.htm.

b) provide to victims information on relevant court and administrative proceedings and assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings;

c) implement measures to provide for the physical, psychological and social recovery of victims of trafficking by providing appropriate housing, counseling and information, in particular, their legal rights in a language that the victims understand; medical, psychological and material assistance; and employment, educational and training opportunities;

d) take into account the age, gender and special needs of victims, especially the children, including appropriate housing, education and care;

e) provide for the physical safety of victims while within its territory;

f) ensure the possibility of obtaining compensation, for damage suffered by the victims of trafficking.[27]

The Protocol also considers that appropriate measures must be taken by the Receiving State to permit victims of trafficking to remain in its territory, temporarily or permanently as well as the repatriation procedures of the victims.[28]

Recognizing trafficking as a crime is not enough; the legal system must also recognize trafficking as a serious crime. Furthermore, the UN Convention defines a serious crime as any crime the punishment of which is four years or more.[29]

On the Protocol itself, Dr. Mohamad Mattar makes the following observations:

> The Protocol is silent as to the issue of forfeiture of assets although an early draft of the Protocol provided that... all necessary and appropriate measures to allow the seizure of confiscation of gains obtained by the criminal organizations from offenses covered by this Protocol... But the Parent Convention does state in article 14(2)... to returning confiscated proceeds of crime a property to the

[27] Protocol, art. 6.

[28] Art. 8.

[29] Mattar, *supra* note 26.

> requesting party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
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> ...
>
> ...In the public awareness campaigns, are we including a warning against the prostitution as the 1949 Convention specifies, or only a warning against the dangers of trafficking as the 2000 Protocol mandates? Unlike the 1949 Convention that provides for "measures for the prevention of prostitution" in Article 16, which the Convention regarded as "incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community," the Protocol shifts the focus to the "prevention of trafficking" in Article 9.
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> ...
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> I would like to see the Protocol providing for the principle of the non-criminalization of the acts of a trafficked victim. Unfortunately, the Protocol was silent in this regard. This is a problem, providing for the principle of non-criminalization of the conduct of the trafficked victim, whether it relates to:
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> - illegal entry into a country;
> - working without the proper permit; or
> - prostitution.[30]

On the protection level, the Protocol mandates that State Parties provide, or consider providing as appropriate and as permitted by domestic laws, appropriate assistance and protection.[31]

III. REVIEW OF PHILIPPINE LAWS

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

These laws are divided into: those penal in nature, which impose penalties after the victim has already experienced trafficking and is able to file a complaint; those administrative in nature, which focus on the regulation of the labor export industry covering administrative liabilities in illegal recruitment; and laws which provide government incentives and

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[30] *Id.*

[31] Protocol, art. 9.

schemes of promoting the overseas labor market which range from medical benefits as well as tax exemptions to Overseas Filipino Workers.[32]

A. REVISED PENAL CODE

In so far as sex trafficking is involved, the Revised Penal Code contains provisions on slavery and the white slave trade. Article 272 gives a penalty of *prision mayor* and a fine not exceeding 10,000 pesos for anyone who shall purchase, sell, kidnap or detain a person for the purpose of enslaving that person. The penalty is dealt in its maximum period if the crime was committed for the purpose of assigning the victim to some immoral traffic.[33]

How is this distinguished from kidnapping and detention? The distinction lies in the purpose. If the purpose is to enslave the victim, it is considered slavery; otherwise it is kidnapping and illegal detention.[34]

Further, article 341 penalizes acts constituting white slave trade with a penalty of *prision correccional* in its medium and maximum periods.[35] Once it is proven that a person enlisted the services of women for the purpose of prostitution, he is criminally liable even if there is no proof that he shared in the profit. And even if there were no proof that he enlisted the services of women for the purpose of prostitution, he would still be liable if he shared in the income of the prostitutes.[36]

Habituality is not a necessary element of white slave trade.[37] Note that the provision specifies "women" which connotes that to enlist the service of more than one woman is necessary to convict the accused. Moreover, the person responsible under article 341 is the person who

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[32] Carolina Ruiz-Austria, A Critique of Current Philippine Laws and Policy Related to Trafficking 4 (Mar. 2002). This was a statement made at Lyceum University.

[33] REV. PEN. CODE, art 272.

[34] II LUIS REYES, THE REVISED PENAL CODE 530 (rev. 12th ed. 1981).

[35] REV. PEN. CODE, art. 341 states that "The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of women for the purpose of prostitution."

[36] People v. Nuevas, G.R. No. 154, 76 Phil. 276, Mar. 18, 1946; People v. Go Lo, CA-G.R. No. 21787-R, 56 O.G. 4056, Aug. 25, 1959.

[37] People v. Bueno, CA-G.R. No. 01378-CR, 62 O.G. 1381, Oct. 17, 1964.

maintains or engages in the business,[38] and he need not be present at the time of a raid or arrest.[39]

Likewise, article 340 of the Penal Code punishes the corruption of minors with *prision correccional* in its minimum and medium periods. The sentence is aggravated when the culprit is a public officer by adding the penalty of temporary absolute qualifications.[40] There are two ways of committing the offense: (1) when the offender habitually promotes or facilitates the prostitution or corruption of a minor of either sex; or (2) whenever the offender in promoting and facilitating the prostitution and corruption of the minor, avails himself of his authority over the minor, or acts with abuse of confidence.

Professor Antonio Gregorio explains:

> The execution of a single act of facilitating the prostitution of a minor, by placing her at another's disposal for immoral purposes, does not legally constitute the said crime if it was committed habitually, unless it was done with abuse of authority or confidence on the part of the person who promotes or facilitates the commission of such immoral act, in which case, the execution of a single act is alone sufficient to make its perpetrator liable under said article.[41]

Articles III and IV of Rep. Act No. 7610 (1992) have modified this provision.

B. THE LABOR CODE AND THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995

According to article 25 of the Labor Code, "the private employment sector shall participate in the recruitment and placement of workers, locally and overseas, under such guidelines, rules and regulations as may be issued

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[38] People v. Gomez, CA-G.R. No. 1140, 40 O.G. Suppl. 4, 157, Jun. 21, 1939.

[39] People v. Sta. Maria, CA-G.R. No. 12875-R, Jun. 21, 1957, *cited by* III RAMON AQUINO, THE REVISED PENAL CODE 437 (1988 ed.).

[40] REV. PEN. CODE, Art. 340 states that "Any person who shall, habitually or with abuse of authority or confidence, promote or facilitate the prostitution on corruption of persons under age to satisfy the lust of another, shall be punished by *prision correccional* in its minimum and medium periods, and if the culprit be a public officer, he shall suffer the penalty of temporary absolute qualifications.

[41] ANTONIO GREGORIO, FUNDAMENTALS OF CRIMINAL LAW REVIEW 467 (3rd ed., 1971), *citing* United States v. Javier, No. 6881, 20 Phil. 337, 339, Oct 12, 1911. *See also* United States v. Chu Chang, No. 2307, 6 Phil. 74, Apr. 9, 1906.

by the Secretary of Labor." Under the Philippine Overseas Employment Administration (POEA) Regulations,[42] an applicant for a license to operate a private employment agency or manning agency should submit an undertaking under oath stating, among others, that the applicant:

> (3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, health and disability compensation and repatriation."
>
> (4) Shall guarantee compliance with the existing labor and social legislation of the Philippines and of the country of employment of recruited persons.

In *Catan v. National Labor Relations Commission*,[43] the Supreme Court ruled that the recruitment agency is solidarily liable for the unpaid salaries of a worker it recruited for employment with a foreign principal pursuant to Book I, Rule V, § 10 of the Labor Code's Implementing Regulations.

Even if the recruitment agency and the principal had already severed their agency agreement at the time of the worker was injured, the recruitment agency may still be sued for violation of the employment contract. The contract between the local agent and its foreign principal not coterminous with the term of such agreement is either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end. It extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted.

It has been held that even if it was the agent's principal that contracted with a private respondent, it is nevertheless, as the manning agent in the Philippines, jointly and solidarily liable responsible with its principal.[44]

The Migrant Workers and Overseas Filipinos Act of 1995[45] has, as its salient features, the codification and institution of the policies of overseas employment and the establishment of a higher standard of protection and

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[42] Book II, Rule II.

[43] G.R. No. 77279, 160 SCRA 691, Apr. 15, 1988.

[44] Seagull Maritime Corp. v. Balatongan, G.R. No. 82252, 170 SCRA 813, Feb. 2, 1989.

[45] Rep. Act No. 8042 (1995).

promotion for the welfare of migrant families and overseas Filipinos in distress. The Act has limited the countries of deployment to those that will protect the rights of Filipino workers, and limited only to jobs that require skilled Filipino workers. Likewise, both documented and undocumented workers are given equal protection and treatment. It also addresses the various issues of labor migration, from funding to illegal recruitment.

Under this law, illegal recruitment is defined as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not when undertaken by a non-license or non-holder of authority contemplated by under article 13(f) of Pres. Decree No. 442, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-license or non-holder who in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed as engaged."

Section 6 of the Migrant Workers Act lists other acts of illegal recruitment whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority.[46]

On the other hand, article 13(b) of the Labor Code states that "recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether, for profit or not. However, any person or entity which,

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[46] Section 6 considers the following acts of illegal recruitment:

"a) to charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

b) to furnish or publish any false notice or information or document in relation to recruitment or employment;

c) to give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

d) to induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

e) to influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

f) to engage in the recruitment or placement of workers in jobs harmful to public."

in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

In *People v. Panis*,[47] the Supreme Court interpreted article 13(b) and ruled that the number of persons is not an essential ingredient of the act of recruitment and placement of workers. Any of the acts mentioned will constitute recruitment and placement and the *proviso* merely lays down a rule of evidence. The Court also laid down in *People v. Goce*,[48] that to prove that the accused was engaged in recruitment activities, it must be shown that the accused gave the distinct impression that she had the power or ability to send the complainant abroad for work, such that the latter was convinced to part with her money in order to be employed. Where such act or representation is not proven, there is no recruitment activity and conviction for illegal recruitment has no basis.

However, in *People v. De la Piedra*[49] the fact that the accused did not receive any payment for the promised or offered employment is of no moment. From the language of the statute, the act of recruitment may be "for profit or not;" it suffices that the accused "promises or offers for a fee employment" to warrant conviction for illegal recruitment.

In *Darvin v. Court of Appeals*,[50] Justice Flerida Ruth Romero, speaking for the Court, noted the lack of evidence to prove that the receipt of the amount for airfares and United States visa for an individual could hardly qualify as recruitment activities.

Illegal recruitment, when committed by a syndicate or in large scale, is considered an offense involving economic sabotage. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three or more persons individually or as a group.[51] The persons criminally liable for the above offense are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.[52]

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[47] G.R. No. 58674, 142 SCRA 664, Jul. 11, 1986.
[48] G.R. No. 113161, 247 SCRA 780, Aug. 29, 1995.
[49] G.R. No. 121777, 350 SCRA 163, Jan. 24, 2001.
[50] G.R. No. 125044, 292 SCRA 534, Jul. 13, 1998.
[51] Rep. Act No. 8042, § 6(2)-(3) (1995); LAB. CODE, art. 38(b).
[52] Rep. Act No. 8042, § 6(3).

In *People v. Tan Tiong Meng*[53] the acts of the accused in accepting placement fees from job applicants and representing to them jobs in Taiwan constituted recruitment and placement under the Labor Code. Since the POEA certified that the accused is not authorized to recruit for overseas employment, it is clear that the offense committed is illegal recruitment in large scale against six complainants, which merited life imprisonment, and a fine of P100, 000.00.

A person convicted for illegal recruitment under the Labor Code can also be convicted for violation of the Revised Penal Code provisions on *estafa* provided the elements of the crime are present.[54]

The law also provides for mandatory repatriation of underage migrant workers and strengthens government assistance through the country-team approach.

Section 7 of Rep. Act No. 8042 provides the penalties for illegal recruitment.[55] A criminal action arising from illegal recruitment shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense. The court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts. These provisions also apply to those criminal actions that have already been filed in court at the time of the Act's effectivity.[56]

The preliminary investigation of cases under this Act shall be terminated within a period of thirty calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecutor and a *prima facie* case is established, the corresponding information shall be filed

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[53] G.R. No. 120835, 271 SCRA 125, Apr. 10, 1997.

[54] People v. Hernandez, G.R. No. 141221, 378 SCRA 593, Mar. 7, 2002.

[55] Rep. Act. No. 8042, § 7 (1995) provides for these penalties:

"(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (P500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (P500, 000.00) nor more than One million pesos (P1, 000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

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

[56] § 9.

in court within twenty-four hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a *prima facie* case is found to exist, the corresponding information shall be filed by the proper prosecution officer within forty-eight hours from the date of receipt of the records of the case.[57]

Illegal recruitment cases under this Act prescribe in five years. However, illegal recruitment cases involving economic sabotage as defined herein prescribe in twenty years.[58]

A mechanism for free legal assistance for victims of illegal recruitment was to be established with the Department of Labor and Employment (DOLE) and its regional offices. The mechanism must include the Department of Justice (DOJ), the Integrated Bar of the Philippines, and non-governmental organizations and other groups. Any victim of illegal recruitment is entitled to the Witness Protection Program under Rep. Act No. 6981. Note that the victims of violence including rape can also avail of the compensation of not more than P10, 000.00 from the DOJ's Board of Claims under Republic Act No. 7309 (1992).

To date, there have been fifty cases decided by the Supreme Court on illegal recruitment since 1999, but none on sex trafficking. In 2003, the Regional Trial Court of Bulacan decided a case involving girls who were trafficked to Nigeria but were able to escape and filed an action here in the Philippines against their recruiter.[59]

It is interesting to note that there is a United States trafficking case, which involved a co-owner of Mood & Music NightClub at Saipan, Northern Marianas Islands who recruited waitresses and singers from the Philippines. In 1997, Elizabeth Castañeda hired three women at her recruiting office in the Philippines and told the applicants that the job included "greeting the customers at the door of the club with a kiss, sitting with the customers and perhaps holding their hands." The three women were offered a salary of USD3.05 per hour and a one-year contract in exchange for a placement fee of P15, 000.00. The women signed a booklet entitled "Personnel Rules and Policies" which prohibited any employee who resigned prior to the expiration of the contract would bear the cost of the

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[57] § 11.

[58] § 12.

[59] People v. Villanueva, RTC-Branch 50, Malolos, Crim. Case No. 1051-M-200, Mar. 11, 2003.

return airline fare back to the country of origin. Upon their arrival at Saipan on July 5, 1997, they were forced to line-up for selection by male customers to accompany them to private VIP rooms and were made to provide sexual services. They complained to the manager and Castaneda but to no avail. In August 1997, they stopped working and filed a complaint with the Federal Bureau of Investigation (FBI). She pleaded guilty and was indicted for the transportation of the women for purposes of criminal sexual activity in violation of the Mann Act, 18 U.S.C. § 2421. Since she was sentenced to a period of eighteen to twenty-four months, she appealed to the Circuit Court of Appeals, which remanded the case back to the District Court of Marianas for resentencing.[60]

The inadequacies of the Labor Code and Rep. Act No. 8042 are pointed out by Atty. Carol Ruiz-Austria of WOMENLEAD:

> Republic Act No. 8042 basically takes off from the same premises of the Labor Code (it refers to the Labor Code definition and adopts the same) and in fact punishes the same types of acts which are essentially, *Illegal Recruitment* and a set of *prohibited acts* committed by recruiters (*i.e.* contract substitution, collection of usurious fees and rates, etc.).
>
> Both laws define illegal recruitment essentially as deployment activities undertaken by non-licensed agencies. The crime is the act of deployment without authority, the main damage of which is tax evasion. In effect, existing penal laws focused on "illegal recruitment" do not focus on the problem as it is actually experienced by the survivor/victim of trafficking.
>
> This narrow definition actually poses a problem when it comes to prosecuting acts of Illegal Recruitment perpetrated by officially licensed agencies and individuals connected with such agencies. This type of illegal recruitment in fact is so common place that OFWs with long standing records of overseas work and experience are very familiar and on guard about the practice of licensed agencies which change their business names and offices quite often to evade liability.
>
> Because the provision is penal in nature, courts are wont to strictly construe in the interpretation of the law. And unless the licensed recruiter is also proven guilty of the other prohibited acts, they are not likely to be convicted of "illegal recruitment" even if the act was essentially illegal recruitment, that is deploying the worker through the back door channels or under assumed and fake names and documents.

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[60] United States v. Castaneda, 239 F. 3d 978 (9th Cir. 2001).

> This means the simplest way to evade prosecution is simply to secure a license as a legal recruitment firm and engage "illegal recruitment" activities on the side.
>
> Ironically, while the 1995 law still adopts a narrow definition of Illegal Recruitment, its policy statements in fact give the impression that the law adopts comprehensive measures "protective" of OFWs.
>
> In one section, the law purports that the country will only deploy workers to countries, which have signed bilateral agreements as well as ratified international conventions for the protection of migrant workers.
>
> At the rate of over 7 million Filipinos (documented) working abroad, it is not surprising the provisions of this law are hardly being observed at all.
>
> By the Secretary of Labor's own admission, there are hardly any bilateral agreements for the protection of OFWs in many of the countries where the Philippines deploys workers. Likewise, many of these states have yet to ratify existing international agreements on the protection of migrant workers."[61]

C. THE ANTI-MAIL ORDER BRIDE LAW

Rep. Act No. 6995 (1990), or the Anti-Mail Order Bride Law, has been enacted in order to protect Filipino women from being exploited in utter disregard of human dignity in their pursuant of economic upliftment. Section 2 of the Act lists the acts that are declared unlawful.[62]

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[61] Ruiz-Austria, *supra* note 32, at 6-7. "The only agreements already concluded were with Austria way back in 1982, United Kingdom and Spain in 1989, France in 1994, and Canada in 1996. Other treaties are at present in their various stages of negotiations. Ratified in November 1997 is the RP-Quebec Understanding on Social Security covering around 5,000 Filipino migrant workers. On the other hand, for signing are bilateral agreements with Belgium and Italy, which are expected to cover over 100,000 OFWs. Arrangements for possible ties with the USA, Greece, Cyprus and Saudi Arabia have been initiated by SSS. The SSS has also coordinated with the DFA to explore possibilities of bilateral agreements with other countries (Social Security System Website)."

[62] Rep. Act 6995 (1990), § 2 declares the following acts unlawful:

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

(1) To establish or carry on a business which has for its purpose the matching of Filipino women for marriage to foreign nationals either on a mail-order basis or through personal introduction;

In case of violation of this Act by an association, club, partnership, corporation, or any other entity, the incumbent officers thereof who have knowingly participated in the violation of this Act shall be held liable.[63] Any person found guilty by the court to have violated any of the prohibited acts shall suffer an imprisonment of not less than six years and one day but not more than eight years, and a fine of not less than eight thousand pesos but not more than twenty thousand pesos. If the offender is a foreigner, he shall be immediately deported and barred forever from entering the country after serving his sentence and payment of fine.[64]

To date, this law does not have any implementing rules and regulations, nor has any administrative agency been tasked to monitor its implementation. Likewise, the law does not cover Internet advertisements. Neither does the E-Commerce Act of 2000[65] have a provision regarding sex trafficking. This is significant because new technical innovations facilitate the sexual exploitation of women and children. People can now easily buy, sell and exchange millions of images and videos of sexual exploitation of women and children efficiently and anonymously.[66]

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

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(2) To advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier, or any propaganda material calculated to promote the prohibited acts in the preceding subparagraph;

(3) To solicit, enlist or in any manner attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage in foreign nationals either on a mail order basis or through personal introduction for a fee;

(4) To use the postal service to promote the prohibited acts in subparagraph 1 hereof.

(b) For the manager or officer-in-charge or advertising manager of any newspaper, magazine, television or radio station, or other media, or of an advertising agency, printing company or other similar entities, to knowingly allow or consent to, the acts prohibited in the preceding paragraph."

[63] § 3.

[64] § 4.

[65] Rep. Act. No. 8792 (2000).

[66] Donna Hughes, *The Use of New Communications and Information Technologies for Sexual Exploitation of Women and Children*, 13 HASTINGS WOMEN'S L.J. 127, 129-148 (2002).

A man in search of a Filipina bride-to-be will find it unnecessary to do more than an Internet search. The term "Filipina women" is enough to bring countless Internet sites,[67] which contain pictures and physical descriptions of women who are ready to go at any moment. All one needs are access to the Internet and a valid major credit card. The companies and individuals indicate in their website that it is relatively easy to deal with the immigration authorities. Moreover, there are men who pose as husbands but are in reality pimps and force the women into prostitution. In other instances, the wives are "killed" by their husbands in order to obtain insurance proceeds.

In 1996, 984 Filipino women were computer-matched by a Korean religious sect on the so-called Moonies, formally The United Church of Rev. Sun Myung Sam, with predominantly Korean men who were reported to have paid USD2,000 each for the service.[68] The mass wedding of the Filipinas to the Korean nationals was conducted through a giant screen officiated by Re. Sun in Korea. A team of agents of the National Bureau of Investigation (NBI) and the POEA went to Seoul to look into the activities of the Moonies. The interviewed Filipinas stayed at the different Unification Churches rendering voluntary service for the church and doing all the household chores. All of them entered Korea on a tourist visa (C-3) for ninety days and upon expiration, their visas were changed to trainee visas (D-4). They were issued Certificates of Alien Registration by the Ministry of Justice of the Republic of Korea. The change in the status to trainee was done by the Unification Church without the women leaving Korea first. The investigation team recommended the prosecution of the "Moonies" and that the Moonies be banned in the Philippines for violating the laws of the country and for exploitation and deception of Filipinas.[69] But in March 1998, the DOJ Secretary reversed their own findings when the Moonies, represented by Atty. Rene Saguisag, used the defense of "free expression" and religious freedom "for conducting the so-called inter-cultural" marriage.[70]

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[67] *See, e.g.*, www.filipina.com; www.filipinaladies.com; www.singlefilipina.com.

[68] PHIL. DAILY INQUIRER, Jan. 25, 1996, at 1; MANILA CHRONICLE, Feb. 4, 1996.

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

[70] Ruiz-Austria, *supra* note 32, at 7.

D. THE PHILIPPINE PASSPORT ACT OF 1996

A passport is a travel document issued by the Philippine government to its citizens and requesting other government to allow its citizens to pass safely and freely, and in case of need to give him or her all lawful aid and protection.[71] If a minor is applying for a passport, an affidavit of consent from a parent as indicated in the application is required if the minor is traveling with either parent and a clearance from the Department of Social Welfare and Development (DSWD) if the minor is traveling with a legal guardian or a person other than a parent.[72] However, if the applicant is an adopted person, the duly certified copy of court order of adoption, together with the original and amended birth certificates duly issued and authenticated by the Office of the Civil Registrar have to be presented. In case the adopted person is an infant or a minor or the applicant is for adoption by foreign parents, an authority from the DSWD is required. The adopting foreign parents shall also submit a certificate from their embassy or consulate that they are qualified to adopt such infant or minor child.[73]

The application for a passport may be denied on the following grounds: (1) on orders of the court, after due notice and hearing, to hold the departure of an applicant because of a pending criminal case; (2) when so requested by the natural or legal guardian, if the applicant is a minor; when the applicant has been found to have violated any of the provision of this Act; and (4) such other disqualifications under existing laws.[74]

The application for a passport may be cancelled: (a) when the holder is a fugitive from justice; (b) when the holder has been convicted of a criminal offense; provided that the passport may be restored after service of sentence; or (c) when a passport was acquired fraudulently or tampered with.[75]

Any aggrieved person, whose application for a passport has been denied or cancelled, has the right to appeal to the Secretary of Foreign Affairs, from whose decision, judicial review may be had to the courts in due course. The Philippine passport remains at all times the property of the Government, the holder being a mere possession thereof as long as it is

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[71] Rep. Act No. 8239, § 1(d) (1996).
[72] § 5(f).
[73] § 5(g).
[74] § 8(a).
[75] § 8(b).

valid and the same may not be surrendered to any person or entity other than the government or its representative.[76]

More often, once a migrant reaches her job destination, the trafficker takes hold of the passport so that the victim cannot escape. Other syndicates produce forged or fake Philippine passports in order to accommodate their evil schemes.

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

The law penalizes five categories of offenses:

a) Offenses relating to issuances of a passport which are committed by a diplomatic or consular officer or any person claiming to act in any capacity of office. Penalties range from a fine of PHP15,000.00 to 60,000.00 and imprisonment of eighteen months to six years;

b) Offenses relating to false statements in any application for passport or the use of any passport which was secured by reason of any false statement. Penalties range from PHP15,000.00 to 60,000.00 and imprisonment of not less than three years to ten years.[77]

Travel and recruitment agencies whose agents or representatives are convicted of offenses relating to false statements shall, in addition to fines and penalties, have their licenses revoked, and all deposits, escrow accounts or guarantee funds shall be forfeited in favor of the government, without prejudice to the agency's officials charged as accessories and, upon conviction, barred from engaging in the travel agency business.

c) Offenses relating to forgery. Any person who forges, counterfeits, mutilates or alters any passport or supporting document with the intent of using the same is penalized with a a fine of not less than PHP60,000 to 150,000 and imprisonment from six to fifteen years. If he willfully or knowingly uses or attempts to use or furnishes to another for use any false,

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[76] § 11.
[77] § 18.

forged, counterfeited, mutilated or altered passport or travel document or any valid/issued passport which has become void, he is similarly penalized.

Travel and recruitment agency officers would be held similarly as their agents or representatives. Forgeries of five or more passports would be considered as massive forgery tantamount to national sabotage and penalized by a fine of PHP250, 000 to 1,000,000, and imprisonment from seven to seventeen years.

d) Offenses relating to improper use:

- Uses or attempts to use any passport issued or designed for the use of another; or

- Uses or attempts to use any passport or supporting documents in violation of the conditions or restrictions contained herein; or

- Furnishes, disposes or delivers a passport to any person, for use by another or other than the person for whose use it was originally issued or designed; or

- Defaces or destroys a Philippine passport penalties imposed range from PHP60, 000.00 to 150,000.00 and imprisonment of not less than six to fifteen years.

e) Offenses relating to multiple possession. No person or individual may hold more than one valid passport and for every unexplored passport found in his possession, be punished by a fine from PHP15, 000.00 to 60,000.00 and imprisonment of eighteen months to six years.

Any duly accredited travel or recruitment agency, which violates the prescription on application for passport, shall have such accreditation suspended without prejudice to civil, criminal, or administrative sanctions including revocation of its license to operate.[78]

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[78] Rep. Act No. 7610 (1992), § 20.

E. THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT

Child trafficking is committed by "Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of *reclusion temporal* to *reclusion perpetual*. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age."[79]

The Act lists instances where there is an attempt to commit child trafficking.[80] A penalty lower by two degrees than that prescribed for the consummated felony under section 7 is imposed upon the principals of the attempt to commit child trafficking.[81]

Under this law, a child refers to a Filipino citizen who is below eighteen years of age or those over this age but unable to take care of themselves.[82]

Section 5 provides that children, whether male or female, who for money, profit, or any consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct are deemed to be children exploited in prostitution and other sexual abuse.

There is an attempt to commit child prostitution under section 5(a) when any person who, not being a relative of a child, is found alone with the

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[79] § 7.

[80] Under section 7, there is an attempt to commit child trafficking when:

(a) When a child travels alone to a foreign country without valid reason therefore and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child's parents or legal guardian;

b) When a pregnant mother executes an affidavit of consent for adoption for a consideration;

c) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking;

d) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or

e) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-caring institutions who can be offered for the purpose of child trafficking.

[81] § 8.

[82] § 3(a).

said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution or sexual abuse.[83] There is also an attempt to commit child prostitution when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two degrees than that prescribed under the consummated penalty shall be imposed upon the principals of the attempt to commit child prostitution under the law or under the Revised Penal Code.

For child prostitution, the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed to those who engage in or promote, facilitate or induce child prostitution, which include but not limited to the following:

1. Acting as a procurer of a child prostitute;

2. Inducing a person to be a client of a child prostitute by means of written or oral advertisements on other similar means;

3. Taking advantage of influence or relationship to procure a child as a prostitute;

4. Threatening or using violence towards a child to engage him as a prostitute; or

5. Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.

Further:

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution on subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended,

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[83] § 6.

> the Revised Penal Code, for rape or lascivious conduct,[84] as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and
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> (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Complaints on cases of unlawful acts committed against children may be filed by the offended party, the parents or guardians, ascendant or collateral relative within the third degree of consanguinity, officer, social worker or representative of a licensed child-caring institution, officer or social worker of the DSWD, Barangay Chairman, or At least three (3) concerned responsible citizens where the violation occurred. [85]

The offended party shall be immediately placed under the protective custody of the DSWD. In the regular performance of this function, the DSWD officer shall be free from any administrative, civil or criminal liability.[86]

At the instance of the offended party, his or her name may be withheld from the public until the court acquires jurisdiction over the case. The media is also prohibited from causing undue and sensationalized publicity of any case which results in the moral degradation and suffering of the offended party.[87]

The Family Court has exclusive original jurisdiction, among others, to hear and decide cases on: (a) criminal cases where one of the accused is below eighteen years but not less than nine years, or where one or more of the victims is a minor at the time of the commission of the offense, (b) petitions for guardianship, custody of children; (c) petitions for voluntary or involuntary commitment of children; (d) violations of Rep. Act No. 7610.[88]

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[84] *See* Rep. Act No. 8353 (1997), which expanded the definition of the crime of rape.

[85] Rep. Act No. 7610, § 27 (1992).

[86] § 28.

[87] § 29(2).

[88] Rep. Act No. 8369, § 5 (1997).

The creation of the Family Courts by Rep. Act No. 8369 spurred the drafting of special rules by the Supreme Court Committee on the Revision of the Rules of Court.

The Rule on the Examination of a Child Witness was promulgated on November 21, 2000. Its objectives are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, and encourage children to testify in legal proceedings, and facilitate the ascertainment of truth. This Rule shall be liberally construed to uphold the best interests of the child and to promote the maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

Among its important features are: the appointment of a guardian *ad litem* for child, the right of the child to be accompanied by a support person, the provision of waiting areas for child witnesses, the use of testimonial aids such as anatomically-correct dolls, puppets and drawings, mannequins or any appropriate device, the use of live-link television testimony in criminal cases where the child is a victim or witness; use of screens, one-way mirrors and other devices to shield children from accused; the use of videotaped deposition, the hearsay exception in child abuse cases and the protection of privacy and safety of the child.

The Rule on Commitment of Children was promulgated on February 28, 2002 and became effective April 15, 2002. This Rule seeks to protect the child from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to his development. A petition for the involuntary commitment by the DSWD or duly authorized child-placement or child-caring agency can be filed with the Court when they have knowledge of a child who appears to be dependent, abandoned or neglected. A guardian *ad litem* is appointed by the Court if neither of the parents cannot be located or the court finds them incompetent to protect the best interests of the child. On the other hand, a parent or guardian of a dependent, abandoned or neglected child may voluntarily commit him to the DSWD or duly licensed child placement agency upon a verified petition before the court.

The DSWD estimates that there are 1.5 million street children and this number increases annually by 6,365. Of the 1.5 million street children, 60,000 are prostituted. The DSWD claims that the annual average increase of prostituted children is 3,266. The Philippines is the fourth country with the most number of prostituted children.[89]

The demand for child sex in the Philippines comes from both local men and foreigners (including tourists). Tourists are concentrated in big urban areas but, according to the ESCAP study, local men frequent sex establishments in all the provinces of all the countries studied. In the Philippines, nine out of ten customers of children in commercial sex are Filipinos.[90]

Given the specific topographical make-up of the Philippines, children are moved from island to island by sea and so easily slip through the cracks in port-based oversight. Such "invisibility" puts the children, especially girls, at risk of recruitment into commercial sex. Once they are moved around, children easily fall through the cracks, even of parental oversight.[91]

In order to fight this phenomenon, the government should:

- To promote community mobilization and vigilance to counter trafficking;
- To strengthen multi-sectoral alliances across borders;
- To undertake time-bound measures linked to national development goals;
- To mobilize international cooperation and support;
- To strengthen existing laws, including ILO Convention 182 and the Optional Protocols, their implementation in order to stop impunity at national and sub-regional levels; and
- To raise awareness, including among children themselves, schools and parents.

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[89] Philippine Resource Network, Child Protection in the Philippines; Facts and Figures, *citing* DSWD, ECPAT, 1996 and Intersect, Dec. 1995.

[90] INTERNATIONAL LABOR ORGANIZATION, TRAFFICKING AND SEXUAL EXPLOITATION OF CHILDREN; AN EVALUATION OF ILO-IPEC PROGRAMMES IN THAILAND, PHILIPPINES, COLOMBIA, COSTA RICA AND NICARAGUA 8 (Jun. 2001).

[91] *Id.* at 9.

F. THE ANTI-TRAFFICKING IN PERSONS ACT OF 2002

After eight long years of women's advocacy, the Anti-Trafficking in Persons Act[92] was finally signed by President Gloria Macapagal-Arroyo on 26 May 2003. Its main objective is to protect the people from any threat of violence and exploitation, eliminate trafficking in persons and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly to ensure their recovery, rehabilitation and reintegration in to the mainstream of society.[93]

"Trafficking in Persons" refers to the recruitment, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.[94]

Many trafficking cases involve a process of recruitment through agencies that organize or facilitate trafficking. Some agencies are legal but some recruit with deception for the purpose of trafficking. Trafficking does not, however, only involve recruitment. It may also involve transportation, transfer, harboring or even the mere receipt of a person. Trafficking may occur within or across national borders. Thus, trafficking may be committed even within the Philippines "consent" of the trafficking person is irrelevant in trafficking cases.

If a child is recruited, transported, transferred or received for the purpose of exploitation, it shall be considered as trafficking in persons.

Section 4 of the law lists acts by any person, natural or juridical that are deemed to be unlawful.[95] The penalty for the violation of the above is

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[92] Rep. Act No. 9208 (2003).

[93] § 2.

[94] § 3(a).

[95] Section 4 lists the following acts as illegal:

a) To recruit, transport, transfer, harbor, provide or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.

imprisonment of twenty years and a fine of not less than PHP1 million but not more than PHP2 million.[96]

Section 5 further lists other acts that promote trafficking in persons which are considered unlawful.[97] The penalty for the violation of the above

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b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

e) To maintain or hire a person to engage in prostitution or pornography;

f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and

h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

[96] § 10(a).

[97] Section 5 lists the other illegal acts that promote trafficking:

a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;

b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;

c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;

d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;

e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;

acts is an imprisonment of fifteen years and a fine from PHP5, 000 to 1,000,000[98]

An offense of trafficking in persons is qualified when any of the following acts are present, and the penalty is increased to the maximum:

- When the trafficked person is a child, *i.e.* a person below the age of 18;

- When the adoption is effected through Republic Act No. 8043 and the adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, and involuntary servitude or debt bondage. Republic Act No. 8043 is the Inter-Country Adoption Act of 2003 and unlike those undertaken through the domestic adoption law, the person adopted is transported to another country, making it difficult to locate the child;

- When the offense is committed by a syndicate or in a large scale. It is syndicated when committed by a group of three or more persons, and in a large scale when committed against three or more persons;

- When the offender is an ascendant, parent, sibling, guardian, or a person who exercises authority over a trafficked person;

- When the offense is committed by a public officer or employee;

- When the trafficked person is recruited to engage in prostitution with any member of the military. There are

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f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and

g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

[98] § 10(b).

cases where women are being trafficked to military bases outside the country for prostitution as part of the rest and recreation action activities of servicemen. This was the situation of the "comfort women" who were forced to provide services to the Japanese military;

- When the offender is a member of the military or law enforcement agency;

- When the trafficked person dies, becomes insane, suffers mutilation or is afflicted with HIV-AIDs as a result of the act of trafficking.[99]

Who may file a complaint for trafficking? Any person who has personal knowledge of the commission of any offense under this Act, the trafficked person, the parents, spouse, siblings, children or legal guardian may file the complaint.[100] It can be filed in the court where the offense is committed or where the elements occurred, or where the trafficked person actually resides at the time of the commission of the offense.[101] The prescriptive period for trafficking cases prescribe in ten years but those committed by a syndicate or in large scale prescribes in twenty years.[102]

Any person who buys or engages the services of a trafficked persons for prostitution shall be penalized as follows:

a) 1st offense – six months of community service as may be determined by the court and a fine of PHP50,000

b) 2nd and subsequent offense – Imprisonment of one year and a fine of PHP100,000[103]

Other salient features of Rep. Act No. 9208 are as follows:

- Ensures the confidentiality of cases and protects the rights of victims and their families;[104]

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[99] § 6.
[100] § 8.
[101] § 9.
[102] § 12.
[103] § 11.
[104] §§ 7, 12.

- Proceeds and Instruments derived from Trafficking are confiscated and forfeited and put in a trust fund use exclusively for prevention, protection, rehabilitation, and reintegration programs for trafficked persons;[105]

- Automatically entitles the trafficked persons to government programs, *i.e.* Witness Protection Program;[106]

- Trafficked persons recognized as victims and as such shall not be penalized for crimes directly related to the acts of trafficking and their consent shall be considered irrelevant.[107]

- Creates an Inter-Agency Council Against Trafficking (IACAT) to be headed by Secretaries of DOJ and DSWD as chairpersons with Secretaries of the DFA, DOLE, POEA Administration, Bureau of Immigration Commission, PNP Director-General, NCRFW Chairperson and three (3) representatives from NGOs representing women, OFWs and children as members.[108]

- Develop a mechanism for the timely, coordinated, and effective response to trafficked cases.

- Provide for a holistic program to prevent and protect trafficked persons and support their recovery, rehabilitation and reintegration into society.[109]

This anti-trafficking law is the first to be passed in Asia and the most comprehensive act which implements and complements the provisions of the Protocol to Prevent, Suppress and Punish Trafficking of Persons. Moreover, it amends the provisions of the Mail-Order Bride Law, Inter-Country Adoption Act and the Revised Penal Code. Moreover, it does not repeal the provisions of Rep. Act No. 7610.

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[105] §§ 14-15.
[106] § 18.
[107] § 17.
[108] § 20.
[109] §§ 15-16.

G. OTHER MECHANISMS

1. Other government bodies

Aside from the IACAT, several bodies were established to principally provide policy directions against trafficking and institutional support for trafficked persons. These include:

a) *The Senior Government Working Group (SGWG) on Human Trafficking and People Smuggling*. The SGWG is mandated to develop and carry out a national strategy to address trafficking in persons and people smuggling and ensure the fulfillment of Philippine commitment under the UN Convention Against Transnational Organized Crime and its Supplemental Protocols.

b) *The Office of the Undersecretary for Migrant Affairs (OUMWA)*. Under the Department of Foreign Affairs (DFA), the OUMWA has a Trafficking Desk that handles all concerns regarding human trafficking and people smuggling and serves as the focal and coordinating office within the DFA.

c) *The Sub-Committee on Human Trafficking of the National Law Enforcement Coordinating Committee (NALECC)*. This Committee meets regularly for purposes of sharing data on human trafficking, briefing on actions being done in the prosecution of human trafficking cases and adopting measures to strengthen a coordinated approach against the problem.

d) *The Philippine Center on Transnational Crime* (PCTC). It is principally tasked to formulate and implement a concerted program of action of all enforcement intelligence and other government agencies for the prevention and control of transnational crime such as trafficking in women and children, particularly through improved coordination, research, and data banking.

e) *The Anti-Illegal Recruitment Coordinating Councils* (AIRCCs). The AIRCCs are inter-agency groups composed of different sectors concerned with illegal recruitment and serves as a venue at the grassroots level for consultation and sharing experiences and maps out strategies to improve the anti-illegal recruitment program of the government.

f) *The Local Councils for the Protection of Children*. Established at the provincial, city, municipality, and barangay (village) levels, these local councils assist in identifying conditions that may lead to child abuse, neglect and exploitation and facilitate immediate response to reported cases of child abuse and exploitation.

The Philippine Government has acknowledged the problem in trafficking of persons and has carried out activities through the collective efforts of various national and local government unit in collaboration with the non-governmental organizations (NGOs) and the private sector. The church, through its international networks and various migrant-focused organizations, provide counseling, referrals, and crisis care for Filipinos abroad.

2. Programs and services

There are a variety of programs and services which generally apply to distressed migrant workers and Filipinos overseas apply to trafficked persons because they are likewise considered "in distress." These programs and services include:

a) The *Legal Assistance Fund* is used exclusively for providing legal services to migrant and overseas Filipinos in distress which include fees for foreign lawyers hired to represent migrant workers facing charges abroad, bail bonds to secure temporary release of workers under detention, court fees and other litigation expenses. The DFA extends services to Filipinos abroad through the Philippine embassies and consulates, which are open to Filipino migrants, whether documented or undocumented, without the need of any special requirement or qualification.

b) The *Assistance to National Fund* under the DFA is used to pay for repatriation expenses of Filipinos in distress.

c) *Filipino Workers Resource Centers (FWRC)* have been established in countries where there is a large concentration of Filipinos. These centers daily or a 24-hour basis and provide counseling, legal services, and welfare assistance, among others.

d) *Repatriation Programs for Trafficked Persons* are undertaken by the Philippine service posts with dispatch, with a view to repatriate the victim at the soonest. Temporary refuge is given to them at the FWRC, while appropriate interventions are done with the employer and the Labor Department.

e) The *Emergency Repatriation Fund* for the repatriation of workers during emergencies and where the principal (such as the foreign employer) or recruitment agency cannot be identified.

There are also existing rehabilitation and reintegration programs for women and children aimed at facilitating recovery from traumatic experience and return to normal life. These programs also include provision of opportunities for continuing education as well as vocational and skills training. The livelihood assistance addresses the economic aspects of the reintegration process through grants of financial and technical assistance in project planning and training for those who choose to venture into income generation projects. Community organizing is also a component of the program.

These programs are provided for by the DSWD Crisis Intervention Unit which operates a 24-hour hotline in the fifteen regions of the country; the DSWD Centers which include twelve Girls Homes, twelve Reception and Study Centers for Children, four *Lingap* Centers and twelve substitute homes, Project Haven (Hospital-Assisted Crisis Intervention for Women Victims/Services of Violent Environments), an inter-agency government project of the NCRFW, Department of Health, Women's Crisis Center, and East Avenue Medical Center, piloted as a hospital-based crisis and healing center for victims of violence against women and children.

3. Procedures for the rescue, recovery, repatriation, and reintegration

The rules and regulations implementing Rep. Act No. 9208 provide the procedure for the rescue, recovery, repatriation and integration of trafficked persons. It adopts the country team approach wherein embassies abroad shall provide protection to trafficked persons regardless of their immigration status. Under this approach, all officers, representatives, and personnel of the Philippine government posted abroad regardless of their mother agencies act as one-country team under the leadership of the ambassador or Head of Mission.[110]

a) Procedure for rescue or recovery at the country of detention

The embassy or consulate (post) which has jurisdiction over the place where the victim is residing has the primary responsibility for rescue or recovery at the country of destination. Upon receipt of a report, the Post shall verify the alleged incidence of trafficking and inquire about the condition of the victim. It shall then send a team composed of a consular officer, personnel from the Philippine Overseas Labor Office (POLO) or the FWRC, the Office of the Social Worker attaché as the case may be, to conduct a visit to the jail, establishment, work site, or residence of the victim. Representation with the police authorities or other relevant law enforcement agencies shall be undertaken with respect to the conduct of rescue operations. Rescue operations shall be made in cooperation and close

[110] Rules and Regulations. Implementing Rep. Act No. 8043, art. VIII, § 28.

coordination with some NGOs, local contacts or private individuals, if necessary. In countries where the services of the FWRC are not accessible, a mobile type of services shall be extended by the country team members to trafficked persons, regardless of the status in the host country.

The victim will be encouraged to execute a sworn statement recounting the recruitment or transfer and deployment, the *modus operandi* employed and other pertinent information which could lead in the investigation and eventual prosecution of the perpetrators.

b) Procedure for the Repatriation of Trafficked Persons

Regardless of whether the trafficked person is documented or not, the DFA in coordination with the DOLE and appropriate agencies shall have the primary responsibility for their repatriation. If the repatriation of the trafficked persons shall expose the victims to greater risk, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection as may be legally permissible. In appropriate cases and to avoid re-victimization, the Post may withdraw the passport of the victim and forward it to the DFA and in its place issue a travel document valid for travel to the Philippines. The Post shall report to the DFA through the OUMWA, copy furnished the Office of Consular Affairs, the actual date of repatriation and other pertinent information and submit a copy of the sworn statement and relevant documents.

In appropriate cases, especially when the victim is suffering from mental illness, has suffered physical or sexual abuse or has received serious threats to his or her life and safety, the victim will be met upon arrival in the Philippines by DSWD personnel, in coordination with other government agencies such as OWWA, Bureau of Immigration (BI), and DOH. The victim will be encouraged, if he or she has not done so before, to execute a sworn statement with the view of filing the appropriate charges against the suspected trafficker in the Philippines. In cases where recruitment agencies are involved, the case shall also be referred to the POEA for appropriate action and to BI for case build-up.

The victim may be referred to the DSWD or to the National Bureau of Investigation One-Stop Shop for psycho-social interventions, psychological and medical examinations and follow-through therapy sessions. Protective custody and emergency shelter shall also be provided to the victim in appropriate cases.

c) Rehabilitation and Reintegration[111]

A comprehensive gender-sensitive and child-friendly program for the rehabilitation and reintegration of victim survivors shall be provided, such as but not limited to residential care, child placement, educational assistance, livelihood and skills training, and other community-based services. Such programs must be responsive to the specific needs of victims and their families. Thus, the active involvement and participation of the victims in the rehabilitation and reintegration process is encouraged through the cooperation of NGOs and other members of civil society.

IV. PROBLEMS ENCOUNTERED

The following are issues and concern that have a bearing on the capacity of the government to meet the needs of victims of trafficking during recovery, repatriation, and reintegration.

1. Limited number of Foreign Service posts

The Philippines has only eighty-three posts abroad, and these are not enough to meet the needs of migrant Filipinos. For example, the Philippine post in Nairobi has jurisdiction over twenty African countries. In areas where there is huge concentration of Filipinos such as Saudi Arabia, there are only two Foreign Service posts to cater to almost million Filipinos. Thus, this severely curtails the DFA's ability to promptly and proactively meet the needs of its citizens especially those who are in distress.

To further aggravate the situation, some trafficking destinations are beyond embassy range. Moreover, trafficking syndicates can change route as often as they change their *modus operandi* to evade interception of law enforcement agents. The clandestine and syndicated nature of trafficking operations severely hinders the DFA's capacity to recover trafficked persons and to prevent potential victims from being victimized.

2. Identification of trafficked person

It is critical to correctly identify a trafficked person since failure to do so can likely result in further denial of that person's right. The problem in identifying and treating them as such is they often do not see themselves as "victims." Filipino migrant workers may prefer to suffer exploited labor conditions in a wealthier destination country and be able to support their families rather than face impoverishment back home.

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[111] Art. IX, §§ 11-36.

Then, there is the lack of cooperation from the victims, because they consider themselves not "rescued" from their situation but are "captured" by the authorities and therefore are "hostile victims" or witnesses who are unwilling to cooperate with the authorities. This may also be a direct result of the abuse, as well as the treatment of authorities.

To emphasize this point, according to Anti-Slavery International:

> People who migrate in search of employment or a better life, and end up being trafficked, tend to be those who had the initiative and courage to change their situation, be seeking shelter, fortune, and opportunity in migration. These are not people who will always blame others for their misfortune, and they certainly do not start by seeing themselves as victims.[112]

In both countries of destination and origin, trafficked persons are often treated as criminals rather than as victims. While in the country of destination, they may be prosecuted and detained for violations of immigration and labor laws, as well as Anti-Prostitution laws. Returning to their countries of origin, they may face prosecution for using false documents and/or assuming fraudulent identities and thus, forfeiting their passports.

Since most countries of destination consider trafficked persons as illegal immigrants and thus do not give them permanent legal residence status, they are deported or voluntarily returned to their countries of origin. Note that enroute to their homes; trafficked persons face several additional risks, including being recaptured by traffickers.[113]

3. Lack of resources to implement reintegration program

Philippines is perennially confronted with lack of resources to implement a comprehensive, adequate and appropriate program. There is not only a lack of temporary shelters for victims but insufficient personnel who are well trained and committed to provide timely and appropriate psycho-social interventions and follow-through sessions.

4. Security, safety and stigmatization of trafficked person

Upon return home, there is lack of consideration for the safety of the victims who suffer from reasonable fear of reprisals from traffickers,

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[112] E. PEARSON, HUMAN TRAFFIC, HUMAN RIGHTS: REDEFINING VICTIM PRACTICES 3233 (2002).

[113] *Id.* at 13.

which is a threat to their lives and safety of their families. Moreover, the shame and stigma associated with being a prostitute, particularly for victims of sex trafficking prevents them from returning to their families and communities which make them prone to becoming revictimized.

V. CONCLUSION

The trafficking of women and children for forced labor, domestic servitude and prostitution is increasing on a global scale. With the advancements made in technology, it has made it easier for traffickers to illegally transport persons in and among countries. Trafficking has emerged as a multi-billion dollar industry.

The problem is huge in scope, multi-faceted and sensitive, both culturally and politically. Tackling this kind of complex issue is possible if countries are committed to address the problem as a matter of urgency and when the international community is willing to join and support them in this endeavor.

A review of some policies may also be in order. For example, the Philippine government emphasis on labor export to support its balance of payment deficits has contributed to trafficking of Filipinos in Japan. Related to this is the policy in respect of screening of Filipino entertainers before they are deployed to Japan. Corruption in the screening process has led to virtual exploitation of women right in this country.[114]

Also, it is necessary to make representations with the host government to ensure the safe, orderly, and where possible, voluntary return of trafficked person and to explore the option of residency in the country of destination of third country resettlement.

Finally, the advocacy efforts of the National Commission on the Role of Filipino Women and many non-governmental organizations such as CATWIP, ECPAT, WEDPRO, WLB, and WOMENLEAD are necessary in order to address our urgent concern regarding the trafficking of women and children.

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[114] LUCITA LAZO, PULSE ASIA, PUBLIC PERCEPTIONS OF TRAFFICKING OF WOMEN IN THE PHILIPPINES17-18 (Ulat ng Bayan Survey, Nov. 2002).