

Tackling Trafficking

Progress Paper on the Role of NHRIs

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Background

Participating States at the 2002 Asia Pacific Forum (APF), New Delhi, included Australia, India, Fiji, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, the Republic of Korea, Sri Lanka and Thailand.

The Advisory Council of Jurists in their *Paper on Trafficking* listed among their recommendations toward trafficking reform:¹

“5.2.1 Educating about human rights and human trafficking

Key target groups for sensitization and training in the human rights aspects of trafficking include public officials such as police, prosecutors, the judiciary, immigration officials and consulate staff as well as civil society groups including the media, educators, NGOs and community leaders.

5.2.2 Monitoring and Advising Governments

National Institutions (NHRIs) could undertake a review of relevant domestic laws, possibly using the UN High Commissioner’s Recommended Principles and Guidelines. In addition to anti-trafficking legislation, attention should be paid to laws relating to immigration, emigration and prostitution; as well as extraterritorial legislation and laws relating to birth registration and citizenship (to ensure that trafficked persons may exercise their right to return home).

NHRIs could also provide policy advice to governments on trafficking and on issues related to it, for example the education of girls and the development of codes of conduct in relevant industries such as tourism, media and communications.

5.2.3 Investigating Human Rights issues connected to Trafficking

NHRIs should ensure that the public is aware that they may lodge a complaint in relation to trafficking and related abuses. NHRIs should also be aware that trafficked persons are illegal immigrants, and target appropriate communication channels accordingly. An inquiry into trafficking in the member country may provide useful information in this regard.

¹ Asia Pacific Forum, Summary of the Advisory Council of Jurists Background Paper on Trafficking.

5.2.4 Working Together

The critical link between trafficking and human rights makes NHRIs especially relevant players in relation to this issue. In some instances, NHRIs cooperating together may well be able to provide important leadership to other key players such as police, judicial and immigration authorities. The follow-up to any recommendations will be critical to their success. The APF and its member institutions could decide to contribute, substantively, to the development of international law as it relates to trafficking, as well as endorsing the Recommended Principles and Guidelines.”

These recommendations, together with the United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking², provide a standard by which the counter-trafficking progress of APF Member States since 2002 can be measured.

AUSTRALIA

Australia has signed³ but has not yet ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (hereafter UN Trafficking Protocol) and the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography⁴. Australia has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter Migrant Workers Convention)⁵.

Throughout 2003, the Government of Australia, with the Australian Human Rights and Equal Opportunity Commission (HREOC) often engaged trafficking as an issue.

In June 2003 the Minister for Justice, Senator Chris Ellison, announced the establishment of an Inter-departmental Committee to consider and report on the federal Government's handling of trafficking issues.⁶

In mid-October 2003, in an effort to reportedly ‘significantly enhance the detection, investigation and prosecution of traffickers, improve the range of support available to victims and help prevent trafficking of persons’, the Australian Government allocated more than A\$20 million over four years toward new counter-trafficking measures.⁷

These developments, however, can be causally linked to the New South Wales Coroner's investigation into the death of a Thai woman at Villawood Immigration Detention Centre.

² E/2002/68/Add.1 (2002).

³ 11 December 2002.

⁴ 18 December 2001.

⁵ Adopted by General Assembly resolution 45/158 of 18 December 1990.

⁶ Asia Pacific Forum, ‘Australian Government commitment to combating people trafficking’, *Human Rights Issues: Trafficking – Latest News*, 13 October 2003, available at: <http://www.asiapacificforum.net/human/issues/news.htm>.

⁷ Ibid.

The woman was detained after a raid on a Sydney Brothel. Despite claiming to have been trafficked into Australia, no investigations had been made into the woman's allegations.⁸

HREOC has most recently engaged counter-trafficking development through the facilitation of the 23-24 October 2003 *Stop the Traffic 2 Conference* with the NHRC of India and the HRC of Malaysia. The conference had 'a particular focus on women trafficked to Australia for prostitution and other women experiencing harm and violence within the sex industry'.⁹

HREOC must not only continue, but also accelerate its promulgation of counter-trafficking measures given Australia's status as a destination for traffickers and as a nation heavily accountable for child sex tourism and commercial sexual exploitation throughout South and South East Asia.

FIJI

Fiji has not signed the UN Trafficking Protocol, the Migrant Workers Convention nor the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography.

The efforts of the Fiji Human Rights Commission in lobbying the Fijian Government toward the elevation of human rights commitments are acknowledged.

The implementation of counter-trafficking measures in Fiji is essential to a combating of both child labour and, as a South Pacific destination, child sexual tourism.

It is the responsibility of the Education/Promotion division of the Fiji Human Rights Commission to include the promulgation of counter-trafficking measures within their mandate¹⁰ of promoting human rights awareness and knowledge through the use of publications, leaflets, poster competitions, essay competitions, radio broadcasts, video documentaries and the Commission's website working with the media to highlight human rights issues in Fiji.

INDIA

India has signed¹¹ but has not yet ratified the UN Trafficking Protocol. India has not signed the Migrant Workers Convention, nor the Convention of the Right of the Child on

⁸ Asia Pacific Forum, 'Australia – Sex Discrimination Commissioner meets with Justice Minister', *Human Rights Issues: Trafficking – Latest News*, 29 July 2003: <http://www.asiapacificforum.net/human/issues/news.htm>.

⁹ Asia Pacific Forum, 'Australia – Stop the Traffic: The Trafficking of Women for Prostitution', *Human Rights Issues: Trafficking – Latest News*, 23 September 2003: <http://www.asiapacificforum.net/human/issues/news.htm>.

¹⁰ Refer Fiji Human Rights Commission: http://www.humanrights.org.fj/about_us/functions.html#edupromo.

¹¹ 12 December 2002.

the Sale of Children, Child Prostitution and Child Pornography.

Recent counter-trafficking progress in India has included the establishment of a child helpline covering 40 cities, the establishment of the world's largest labour elimination program, providing primary education for 250 million children and an increase in the prosecution of traffickers, brothel owners, and other persons involved in the trafficking procurement.¹²

Recent India NHRC counter-trafficking programs have included hosting, in collaboration with the United Nations Development Fund for Women (UNIFEM) and the Women's Institute for Social Education, Mumbai, the Sensitization Programme on Prevention of Sex Tourism and Trafficking in Mumbai¹³, and Participation in the *Stop the Traffic 2 Conference* with Australia's HREOC and the HRC of Malaysia.

In addition to these efforts the Indian NHRC must continue to lobby the government toward further and more effective counter-trafficking measures. Limited resources, police corruption, jurisdictional conflict, slow court proceedings and the increasing number of children engaged in child labour and commercial sexual exploitation each negate the progress of Federal trafficking laws such as the *Immoral Traffic (Prevention) Act*.

INDONESIA

Indonesia has signed but has not yet ratified the UN Trafficking Protocol¹⁴ and the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography¹⁵. Indonesia has not signed the Migrant Workers Convention.

Despite the adoption of a national plan to combat trafficking, implementation and compliance have been poor due to lacking capacity, resources, enforcement and public awareness.¹⁶

The Indonesian Government has increased the penalties for trafficking in the Indonesian Criminal Code and has passed the Child Protection Act. However, Indonesia is yet to produce comprehensive anti-trafficking legislation. Consequentially, 'some local officials continue to treat victims as criminals and abuse them. Although overall government

¹² US Department of State, *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003, available at <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.

¹³ According to the NHRC '[t]he main objective of the programme was to sensitize senior representatives of the hotel and tourism industry in respect of the various issues arising from sex tourism and trafficking': 'Sensitization Programme on Prevention of Sex Tourism and Trafficking', *NHRC Newsletter*, March 2003, available at <http://nhrc.nic.in/nhrc.htm>.

¹⁴ 12 December 2000.

¹⁵ 24 September 2001.

¹⁶ US Department of State, *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003: <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.

victim assistance has increased, it [has] remained small in comparison with the scope of the problem'.¹⁷

MALAYSIA

Malaysia has not signed the UN Trafficking Protocol, the Migrant Workers Convention nor the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Counter-trafficking measures introduced by the Government of Malaysia have been largely directed at international cooperation. For instance, Malaysia has agreements in place with the Philippines and Indonesia against trafficking and other transnational crimes.

Recent counter-trafficking programs of the HRC of Malaysia (SUHAKAM) have included a Pre-Round Table discussion on the trafficking of women and children to Malaysia in August 2003¹⁸, meetings with trafficked women and girls in prisons and centres 'to identify the extent of trafficking of women and children to Malaysia; study the causes; identify the problems faced by authorities in combating trafficking, and develop suggestions and recommendations for the relevant authorities to implement'¹⁹; and participation in the *Stop the Traffic 2 Conference* with Australia's HREOC and the NHRC of India.

Whilst the importance of international cooperation is acknowledged, on a domestic level Malaysia is yet to introduce comprehensive anti-trafficking legislation.²⁰ Accordingly, SUHAKAM should pressure the Government of Malaysia toward the development and implementation of an effective national counter-trafficking program.

MONGOLIA

Mongolia has signed and ratified the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography²¹, but has not signed the UN Trafficking Protocol or the Migrant Workers Convention.

The NHRC of Mongolia reported in their *Human Rights and Freedoms in Mongolia Status Report 2003* that '[r]ecommendations of the APF 2002 Annual Meeting stressed the importance of raising awareness on the issue among vulnerable groups and public servants in order to reduce and prevent crimes in trafficking'.²²

¹⁷ Ibid.

¹⁸ Asia Pacific Forum, 'Malaysian Commission hosts Round Table Discussions, 26 August 2003', *Human Rights Issues: Trafficking – Latest News*, 7 October 2003:
<http://www.asiapacificforum.net/human/issues/news.htm>

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ratified 27 July 2003.

²² *Human Rights and Freedoms in Mongolia Status Report 2003* (Mongolia Status Report) at 3.9.8:
<http://www.nhrc-mn.org/docs/Annual%202003%20Status%20Report.pdf>.

During 2003, the NHRC of Mongolia organized a workshop for prosecutors and investigators on the trafficking of women and girls.²³ Involving 21 prosecutors, '[t]he main objective of the workshop was to improve understanding of the issue of trafficking and human rights'.²⁴

The Asia Pacific Forum also reports that the Mongolian NHRC 'is currently working with the Mongolian Ministry of Foreign Affairs on the accession of Mongolia to international treaties related to trafficking'.²⁵ Accordingly, Mongolia's accession to the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography during 2003 is welcomed.

Together with the efforts of the Mongolian NHRC, amendments have been made to the Mongolian Criminal Law. In 2000, a provision was included for "Contracting under Deceit" (Article 111.1), which assigned punishment by imprisonment from 3 to 8 years for trafficking with purpose of prostitution.²⁶ In 2002 a provision was inserted for "Human Smuggling" (Article 113), which assigns punishment by imprisonment from 5 to 15 years for smuggling or trafficking of persons for prostitution.²⁷

These achievements must be used to cement Mongolia's counter-trafficking momentum, rather than be seen to afford space for complacency.

NEPAL

Nepal has signed²⁸ but has not yet ratified the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography. Nepal has not signed the UN Trafficking Protocol or the Migrant Workers Convention.

In February 2003, the NHRC of Nepal announced that it was 'all set to publish the report of Human Rights monitoring conducted in the 35 districts of the kingdom. The Office of the National Rapporteur (ONR) has come out with a one year work plan to contain trafficking while Chairman Khatri says that NHRC, Nepal will collaborate with NHRC India on the issue of trafficking'.²⁹ This same Nepalese National Rapporteur recently resigned from her post.

²³ 'Mongolia – Workshop for Prosecutors and Investigators on the Trafficking of Women and Girls' Asia Pacific Forum *Human Rights Issues: Trafficking – Latest News*, 21 February 2003:

<http://www.asiapacificforum.net/human/issues/news.htm>

²⁴ Ibid.

²⁵ Asia Pacific Forum, 'UN Trafficking Protocol signed by APF member countries', *Human Rights Issues: Trafficking – Latest News*, 29 July 2003: <http://www.asiapacificforum.net/human/issues/news.htm>.

²⁶ Mongolia Status Report at 3.9.6.

²⁷ Mongolia Status Report at 3.9.7.

²⁸ 8 September 2000.

²⁹ National Human Rights Commission, Nepal *E-Bulletin* Vol. 1, No. 18, 14th February 2003: <http://www.nhrc-nepal.org/?Id=141>.

Counter-trafficking activities of the NHRC of Nepal during 2003 included a one-day workshop organised by the Office of the National Rapporteur in Trafficking on Women and Children [Dr. Renu Rajbhandari] on the “Challenge of Trafficking in Woman and Children”. This workshop included representatives from District Task Forces on Trafficking, security officials, members of the police, media personalities and representatives from NGOs.³⁰ Additional Nepalese projects include the information campaigns of the Ministry of Women, Children and Social Welfare (MWCSW) and “Village Vigilance Committees”.

Whilst there have been efforts by the NHRC of Nepal toward rehabilitation and awareness, the trafficking of women and children out of Nepal remains inadequately addressed in Nepalese legislation. For instance, whilst the *Human Trafficking Control Act of 1986* sanctions trafficking offences with penalties of up to 20 years imprisonment, ‘this legislation does not criminalize the separation of minors from their legal guardians with the intent of trafficking. Thus, trafficking children out of Nepal may not be prosecutable as a crime until it is too late’.³¹

NEW ZEALAND

New Zealand has signed³² but has not yet ratified the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography. New Zealand has signed and ratified the UN Trafficking Protocol³³ but has not signed the Migrant Workers Convention.

Counter-trafficking activities of the NHRC of New Zealand during 2003 included encouraging the New Zealand Government to ratify the UN Convention against Transnational Organised Crime and the accompanying Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The HRC provided support for a ‘Prostitution Reform Bill, which decriminalised prostitution and creates an environment that is both less hostile and more transparent to those victimised by the trafficking industry’³⁴ and continued the “Safe House” Program³⁵ (operational since 1999) which the APF reports to have been ‘successful in assisting a number of Thai women to escape the Auckland sex trade and return to Thailand’.³⁶

³⁰ ‘The workshop focused on international treaties related to trafficking and the roles that government agencies and NGOs can play in combating trafficking’: Asia Pacific Forum, ‘Nepal Workshop - Challenge of Trafficking in Women and Children’, *Human Rights Issues: Trafficking – Latest News*: <http://www.asiapacificforum.net/human/issues/news.htm>.

³¹ US Department of State, *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003: <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.

³² 7 September 2000.

³³ Signed 14 December 2000; ratified 19 July 2002.

³⁴ ‘New Zealand Commission Working with National and Local Governments’, Asia Pacific Forum *Human Rights Issues: Trafficking – Latest News*: <http://www.asiapacificforum.net/human/issues/news.htm>.

³⁵ The placement of pink stickers in areas where the commercial sex trade operates providing advice in both English and Thai about how to access the assistance services.

³⁶ *Ibid.*

While this progress is acknowledged, the New Zealand NHRC must, with Australia's HREOC, continue to lobby toward further effective counter-trafficking measures given the heavy accountability of nationals of both countries for child sex tourism and the commercial sexual exploitation in South and South East Asia.

PHILIPPINES

The Philippines is the only APF Member State to have signed and ratified both the UN Trafficking Protocol³⁷ and the Migrant Workers Convention³⁸. The Philippines has both signed and ratified the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography.³⁹

In May 2003, the Government of the Philippines enacted the *Republic Act 9208*, an Act to institute policies to eliminate trafficking in persons especially women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons, providing penalties for its violations, and for other purposes.

Since the introduction of the *Republic Act* there have reportedly been 18 arrests leading to one conviction, and 29 trafficking establishments have been closed.⁴⁰ It is hoped that this legislation will secure a greater proportion of convictions in 2004.

Further, in 2002 the Government of the Philippines committed itself to international cooperation with the Governments of Indonesia and Malaysia to combat of transnational crimes, including trafficking in persons.

This progress is acknowledged, further counter-trafficking programs and laws is encouraged. The combating of trafficking in the Philippines requires a national plan that, in implementation, can be no less than proportionate to the trafficking problem.

REPUBLIC OF KOREA

The Republic of Korea has signed⁴¹ but has not yet ratified the UN Trafficking Protocol and the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁴² The Republic of Korea has not signed the Migrant Workers Convention.

The Government of South Korea is yet to introduce national anti-trafficking legislation.

³⁷ Signed 14 December 2000; ratified 28 May 2002.

³⁸ Signed 15 November 1993; ratified 5 July 1995.

³⁹ 28 May 2002.

⁴⁰ US Department of State, *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003: <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.

⁴¹ 13 December 2000.

⁴² 6 September 2000.

Nonetheless, in 2002 the Government reportedly ‘detained and investigated 450 suspected traffickers, indicted 90, and convicted 68 perpetrators’.⁴³ Three years imprisonment, however, was the average sentence.

Further counter-trafficking measures implemented by the Government of South Korea have included stricter standards in issuing ‘entertainer’ visas, international cooperation, including work with Interpol, investigations into police corruption, broad funding of domestic NGOs and providing trafficking victims with free legal representation toward seeking compensation for unpaid wages.⁴⁴

Whilst the Government of South Korea is encouraged to develop anti-trafficking legislation and, with other APF Member States, sign the Migrant Workers Convention, South Korea’s counter-trafficking progress since the 2002 APF exceeds that of many other APF member States.

SRI LANKA

Sri Lanka has signed⁴⁵ but has not yet ratified the UN Trafficking Protocol, has signed and ratified the Migrant Workers Convention⁴⁶ and has not signed the Optional Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Current measures toward the combating of trafficking in Sri Lanka rest largely with the Police Women’s and Children’s Bureau and the National Child Protection Authority (NCPA).⁴⁷

Despite being one of only two APF Member States to have ratified the Migrant Workers Convention⁴⁸, Sri Lanka must improve its efforts to enforce the anti-trafficking laws that are contained with the Sri Lankan Penal Code.

Further, to prevent the further victimisation of trafficked persons, the Sri Lankan Government must, at the behest of the Sri Lankan NHRC, ensure that foreign women trafficked into Sri Lanka are not arrested.⁴⁹

THAILAND

Thailand has signed⁵⁰ but has not yet ratified the UN Trafficking Protocol, and has not signed the Migrant Workers Convention nor the Optional Protocol to the Convention of

⁴³ US Department of State *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003: <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.

⁴⁴ Ibid.

⁴⁵ 13 December 2000.

⁴⁶ Ratified 11 March 1996.

⁴⁷ US Department of State *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003: <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.

⁴⁸ 11 March 1996.

⁴⁹ US Department of State *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003: <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.

the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography.

The Government of Thailand must make the prevention of trafficking a chief priority. This demands compliance with the minimum standards toward the elimination of trafficking.

In 2002, the Government of Thailand reported 504 trafficking related arrests. These arrests resulted in only 42 prosecutions and 21 jail sentences.⁵¹

The establishment of a transnational crime department, the development of Memorandums of Understanding (MOUs) with the Governments of Laos and Australia; the increased training of police and consular officials on trafficking issues and the operation of Government shelters for abused women and children are illustrative of Thai Government efforts to combat trafficking.

Nonetheless, the Thai Government's counter-trafficking campaign must be proportionate to the scale of trafficking that affects Thailand. Accordingly, the Thai Government and NHRC of Thailand should elevate the intensity of their counter-trafficking campaigns.

⁵⁰ 18 December 2001.

⁵¹ US Department of State, *Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, 11 June 2003: <http://www.state.gov/g/tip/rls/tiprpt/2003/21277.htm>.