

CONCLUDING STATEMENT AND PLAN OF ACTION

Regional Workshop on Human Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People

Sydney, Australia, 20 – 23 November 2005

Introduction

1. The Asia Pacific Forum of National Human Rights Institutions (**'APF'**) held a regional workshop on “Human Trafficking and National Human Rights Institutions (**'NHRIs'**): Cooperating to End Impunity for Traffickers and to Secure justice for trafficked people” (the **'Workshop'**) from 20 to 23 November 2005 in Sydney, Australia;
2. The Workshop was attended by the NHRIs and related bodies of Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, Republic of Korea, Sri Lanka and Thailand; the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region (**'UNIAP'**), the International Organisation for Migration (**'IOM'**) and Asia Regional Cooperation to Prevent People Trafficking (**'ARCPPT'**); regional and national civil society organisations from Australia, Nepal and Thailand; and the Government of Australia;
3. Participants expressed their sincere appreciation to the Commissioners and staff of the Australian Human Rights and Equal Opportunity Commission (**'HREOC'**) for hosting the Workshop. They also thanked the organisers (APF, HREOC and ARCPPT) and the financial donors (HREOC and ARCPPT) for their support;

The participants of the Workshop:

Key Issues

4. *Noted* with concern, the diverse dimensions of human trafficking for various purposes including forced and exploitative labour, sexual exploitation, forced marriage and adoption in the Asia-Pacific region, both within countries and across international borders and the challenges in responding effectively to this complex, clandestine phenomenon;
5. *Acknowledged* that human trafficking is a serious violation of human rights and encouraged States to place the protection of all human rights at the centre of any measures taken to prevent or respond to trafficking. Special care also needs to be taken to ensure that anti-trafficking measures and policies do not adversely affect the human rights and dignity of trafficked persons and those who are vulnerable to trafficking. In particular, trafficked persons should not be detained, charged or

prosecuted for status-related offences. Their right to freedom of movement should be respected by the State and by service organisations;

6. *Emphasised* the need to effectively combat human trafficking by addressing factors which contribute to vulnerability to trafficking, including, but not limited to, inequalities within and between countries; violence and discrimination especially on the basis of sex and race; underdevelopment; and the demand for, and exploitation of, vulnerable persons;
7. *Recognised* that trafficking is difficult to combat effectively in the context of tension between increased human migration and increased restrictions on the legal movement of people. States should be encouraged to review and modify policies that may compel people to resort to irregular and vulnerable labour migration. They should also examine ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms, in countries of origin and destination, to protect the rights of migrant workers;
8. *Further recognised* that there are linkages between migration, trafficking and HIV/AIDS in the region and that any responses to trafficking should consider these linkages;
9. *Noted*, with concern, the strong link between trafficking and corruption and confirmed the obligation on all States to respond quickly and effectively to public sector complicity in trafficking and related exploitation;
10. *Confirmed* that States have a responsibility under international law to criminalise trafficking and provide for appropriate penalties; to investigate and prosecute trafficking with due diligence; to assist and protect trafficked persons; to provide trafficked persons with access to remedies; to work to prevent trafficking and related exploitation; and to cooperate with other countries to end trafficking. States are also under an obligation to ensure that their responses to trafficking do not violate established rights of both victims and accused persons including the right to a fair trial, the prohibition on arbitrary detention and the prohibition on discrimination;
11. *Further confirmed* that States have special obligations when it comes to responding to trafficking of children and dealing with child victims of trafficking. The best interests of the child must be a primary consideration in all actions concerning trafficked children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs;
12. *Noted* that NHRIs play a very important role in assisting State agencies to develop a victim-centred and human rights-based approach to their counter-trafficking work and that without such an approach, counter-trafficking work will not ultimately be effective. A human-rights based approach involves respect for substantive and procedural rights contained in international human rights treaties and particularly includes promotion of gender equality;

13. *Recognised* that NHRIs within the Asia Pacific region, working in cooperation with Governments and civil society, are uniquely placed to contribute to national, regional and cross-border efforts to eliminate trafficking. The critical link between trafficking and human rights makes NHRIs especially relevant in relation to this issue;

Researching and Understanding Trafficking

14. *Accepted* that effective and realistic strategies to combat trafficking must be based on accurate and current information, experience and analysis. All research on trafficking should be firmly grounded in ethical principles including an understanding of the rights and needs of trafficked persons;

Ending Impunity and Securing Justice

15. *Noted* the importance of a strong legal framework around trafficking based on international standards including those contained in human rights law and the United Nations Protocol to Suppress Prevent and Punish Trafficking in Persons especially Women and Children (Trafficking Protocol). States which have not yet done so are encouraged to ratify the relevant UN instruments which address human trafficking as well as those which address related issues including forced labour, child labour and exploitation and gender-based discrimination;
16. *Emphasised* the need to strengthen the criminal justice response to trafficking to ensure that States are in a position to discharge their legal obligation to investigate and prosecute trafficking. Law enforcement officials, prosecutors and judicial officers should be sensitised to their roles and responsibilities in relation to trafficking and the State should ensure that criminal justice agencies are adequately empowered and resourced to undertake this work;
17. *Acknowledged* that a criminal justice system which protects and supports all victims regardless of their initial willingness to cooperate in criminal proceedings, promotes a more effective criminal justice response in which victims are more likely to want to be involved;
18. *Recognised* the need for processes that aid victims' recovery including access to compensation and co-ordinated repatriation programmes. Safe (and to the extent possible, voluntary) return should be guaranteed to trafficked persons. Trafficked persons should be offered legal and practical alternatives to repatriation in cases where it is reasonable to conclude that such return would pose a real risk to their safety and/or the safety of their family or in other special circumstances;
19. *Identified* an important role for NHRIs in monitoring aspects of the national criminal justice response in order to encourage adherence to international criminal justice and human rights standards. The fight against trafficking should not, in any circumstances, be used to justify deviations from internationally accepted standards relating to the rule of law and the right to a fair trial;

20. *Confirmed* the importance of effective and realistic strategies to prevent trafficking. Such strategies should take into account the factors that generate demand for exploitative commercial sexual services and exploitative labour. They should also take into account the factors that increase vulnerability to trafficking;

Internal, Cross-Border and Regional Collaboration

21. *Acknowledged* the importance of working with civil society specially victim support agencies who can bring an important dimension to the work of national human rights institutions on the issue of trafficking;
22. *Welcomed* the development of bilateral and sub-regional agreements on trafficking involving States of the Asia-Pacific region to address trafficking, including the ASEAN Declaration in Trafficking in Persons (2004); the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002); the Coordinated Mekong Ministerial Initiative against Trafficking process and its Memorandum of Understanding and Sub-regional Plan of Action (2004); and bilateral agreements such as those concluded between Thailand and Cambodia and Thailand and Lao PDR;
23. *Encouraged* the implementation of the commitments contained in these agreements as well as further steps to strengthen cooperation between countries on the issue of trafficking;
24. *Noted* the need to ensure that the legislative framework supports mutual legal assistance and extradition in trafficking cases;
25. *Noted* the importance of informal cooperation and information exchange between countries and the potential role that NHRIs could play in this area;
26. *Appreciated and supported* the initiative of Komnas Perempuan (Indonesia) to organise a workshop on “the role of national human rights institutions in Protection of Women labour Migration’ in 2006. The link between trafficking and labour migration has been well established and the proposed workshop will be an important opportunity to further explore how national human rights institutions can, individually and collectively, address these issues;
27. *Welcomed* the offer of the National Human Rights Commission of Malaysia to host, in 2006, a regional seminar for national human rights institutions on the issue of trafficking legislation.

PLAN OF ACTION AND RECOMMENDATIONS

The participants agreed on the following action strategies and recommendations:

Education

1. NHRI should ensure that their own Commissioners and relevant staff are trained and sensitised to the complexities of trafficking and to its human rights aspects.
2. Where States have National Human Rights Action Plans, NHRI should advocate the inclusion of trafficking in these Plans. Where there is a Trafficking National Action Plan it should be based on human rights principles.
3. NHRI should advocate that officials of relevant State agencies receive training on the sensitivities and complexities of trafficking and on their role and responsibilities with respect to the response to trafficking. Where appropriate, NHRI should have input into the development and/or implementation of training packages and advocate that they include a degree of international consistency to encourage cross-border understanding and co-operation.
4. Due to their specific role, immigration officials, border control officials, labour inspectorates, police, prosecutors and the judiciary require separate and specific training on an ongoing and regular basis. Specifically:
 - (a) training for law enforcement officers should advocate investigatory techniques and processes which do not rely exclusively on the evidence of victim witnesses. NHRI should emphasise that training for law enforcement officers and prosecutors include information about the effects of giving evidence on victim witnesses;
 - (b) NHRI should ensure training emphasises the need for police and prosecutors to examine a range of laws to secure a successful prosecution of traffickers (for example, money laundering, sexual assault, forced labour laws);
 - (c) NHRI should promote awareness-raising for the judiciary that is based on peer learning through the use of both domestic and, where relevant, international judicial experts. NHRI should consider developing or assisting in the development of judicial officers' handbooks or bench books on good practices for handling trafficking cases. These materials should emphasise the need to provide appropriate protections for victim witnesses and outline the human rights principles relating to trafficking.
5. NHRI should advocate and/or implement public awareness raising campaigns around trafficking. This should also include targeted community education campaigns that, for example, focus on vulnerable groups or users of the services of trafficked people.
6. NHRI should work with the mass media to encourage awareness raising and an appropriate reporting of trafficking cases which is based on respect for victims'

privacy an understanding of the gender and human rights parameters of trafficking and the responsibilities of the State and that such reporting does not further victimise or stigmatise trafficked persons or place them or others in their situation at risk of harm.

7. NHRI should specifically include trafficking as an issue in general human rights and discrimination awareness raising materials directed at groups vulnerable to trafficking.

Monitoring and Advocacy

Research

1. NHRI should conduct or support research on trafficking that will inform government responses and ensure that a human rights approach to trafficking is adopted. NHRI should encourage that all research into trafficking protects the safety and privacy of trafficked people and does not further traumatise victims. NHRI should ensure that all research that they support or conduct is outcomes focused and strategic. Where appropriate, research should be coordinated across the region.
2. Wherever possible and appropriate, trafficked people should be involved in the design and conduct of research.

Legislation and legal processes

3. NHRI should review trafficking and related laws and policies to determine their conformity with international human rights standards and should recommend amendments as needed. In particular, NHRI should review legislation and legal processes to ensure that evidentiary rules for trafficking reflect the most sensitive practices developed in, for example, child abuse or sexual assault trials.
4. NHRI should encourage States to enact laws that allow taking of evidence for use out of jurisdiction and the use of that evidence recorded out of jurisdiction in prosecuting countries. NHRI should recommend strong, consistent national laws and international agreements on this issue. NHRI should also encourage States to develop bilateral agreements for witness protection developed specifically for trafficking cases.
5. NHRI should recommend comprehensive bilateral extradition arrangements for trafficking prosecutions.
6. NHRI should advocate for a comprehensive human rights based approach to repatriation and reintegration.
7. NHRI should advocate that victims have access to supportive reintegration programmes, based on a timely risk assessment. Such programmes should include

adequate follow-up processes. NHRIs should seek to be included in the planning and monitoring of repatriation and reintegration programmes.

8. NHRIs should recommend and advocate for the development of procedural guidelines around raids and rescues that protect and promote human rights. These guidelines should ensure that raids do not occur without adequate planning for the protection and support of trafficked people in advance of the raid. They should ensure that adults identified as victims in the raid are willing to be removed from their situation and in the case of children that the best interests of the child are primary. NHRIs should advocate that they are consulted during the development of these guidelines and encourage police to consult with NHRIs before raids occur.
9. NHRIs should monitor the counter-trafficking work of law enforcement agencies and advocate for changes to procedures and other aspects as appropriate to ensure the human rights of all persons including both trafficked persons and suspects are respected.
10. NHRIs should consider making recommendations to government to ensure that law enforcement agencies are adequately empowered and resourced to undertake counter-trafficking work.
11. Those NHRIs that do not have a specific power to seek leave to intervene in court cases should consider advising government to amend their governing legislation to include such a power.

Immigration law and practice

12. NHRIs should ensure that immigration laws and policies respect human rights and take account of the particular needs of trafficked people.
13. NHRIs should review migration law and policy, or encourage States to do so, to ensure that trafficked people are explicitly recognised as victims of crime who have suffered significant breaches of their human rights in that country. In particular NHRIs may review migration policies and programs to ensure that they do not unfairly restrict freedom of movement of targeted groups, but provide information to all travellers.
14. NHRIs should advise government to provide alternatives to immigration detention for people who have been trafficked, recognising that the detention environment can in itself breach the human rights of trafficked people and is counter productive from a law enforcement perspective. NHRIs should regularly visit detention centres with a view to assisting in the identification of victims of trafficking.

Whole of government response

15. NHRIs should seek to be routinely consulted about the human rights implications of draft criminal laws, especially relating to trafficking.

16. NHRIS should promote ratification, as well as signature, of all human rights instruments.
17. The United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking should be incorporated into the legislative and programmatic environment of all States. NHRIs could assist this process by advocating for the formal adoption by of this framework by States and by using the Principles and Guidelines in their own monitoring and advocacy work.
18. NHRIs should establish agreements with agencies of the criminal justice system (for example, the police) which clearly define their respective roles and responsibilities in relation to trafficking responses. These agreements should be supported with regular high level face-to-face meetings to review the success of the cooperation.
19. NHRIs should undertake regular monitoring and evaluation of government responses to trafficking and to ensure that all government processes relating to trafficking respect the rights of trafficked people.

Support, recovery and repatriation

20. NHRIs should encourage States to provide trafficked people with a minimum period of residency in the destination country. That residency should include work permits that allow the person to undertake any legal form of work without restriction.
21. NHRIs should advocate for safe and, to the extent possible, voluntary repatriation of trafficked persons.
22. NHRIs should monitor and review cases of repatriation to ensure appropriate consideration is given to the human rights and safety of the repatriated person and may consider conducting a review of repatriation cases to ensure that they meet this standard.
23. NHRIs should, as appropriate, assist victims to consider legal options for longer term residency in the destination country, including taking refugee applications on the basis of gender based violence.
24. NHRIs should advocate for, and assist in developing, minimum human rights based standards for victim identification and assistance and should advocate that Victim Support Agencies (VSA) are also consulted in that process; these minimum standards should encompass, in addition to identification guidance, standards on shelter, medical care, psychological care, legal advice, vocational training and reintegration assistance. These minimum standards could be prepared in the form of information kits for all relevant government officials and specify the accountability of the agencies concerned.
25. NHRIs should encourage States to implement comprehensive birth registration for all people in their jurisdiction where they do not already exist.

26. NHRIs should advocate that trafficked people are able to engage in employment or government funded education, before repatriation, as a matter of course.
27. NHRIs should remind governments of their international legal obligation to treat all children within their jurisdiction equally - irrespective of race or national origin particularly when it comes to right of access to protection, support and education.

Legal processes

28. NHRIs should encourage court processes to include victim impact statements in sentencing of traffickers and, where appropriate, to appoint a separate representative to advocate for the trafficked person.

Investigation and Complaint Handling

29. NHRIs should conduct outreach to raise awareness of their complaint handling function to assist trafficked people, as appropriate.
30. In the absence of receiving complaints from trafficked persons, NHRIs should consider using their proactive powers to investigate trafficking cases.
31. NHRIs should develop their capacity to provide a comprehensive complaint service that encompasses a specific response to trafficking, through training of complaint handling staff on issues specific to trafficking including the importance of confidentiality of complaints, as complainants often face considerable personal risk.
32. NHRIs should develop and maintain strong relationships with VSAs working with trafficked people.
33. NHRIs should consider the potential for VSAs to make complaints on behalf of people who have been trafficked.
34. NHRIs should develop follow up mechanisms for tracking outcomes once complaints have been finalised.
35. NHRIs, particularly those in which the complaint handling function does not extend to dealing with allegations related to trafficking, should consider using other powers, for example in relation to inquiries or policy work.
36. NHRIs should consider requesting States to amend their governing legislation to extend the powers of NHRIs to more effectively deal with cases of trafficking.

Working in Cooperation

37. NHRIs should work in partnership with VSAs in appropriate cases.

38. NHRIs should consider developing or participating in protocols or memorandum of understanding with State agencies working on trafficking, especially criminal justice agencies including police.
39. The APF should explore the potential for staff exchanges between NHRIs to further expand their capacity and cooperation in protecting the human rights of trafficked persons.
40. The APF should facilitate and strengthen the Trafficking Focal Point Network drawn from NHRIs. NHRIs that have not already done so are requested to nominate a Trafficking Focal Point from within its institution to become part of the APF Trafficking Focal Point Network. The Focal Point Network should be used to share resource materials from each country, in particular, for training. Good practices should be identified, documented and distributed among the network.
41. The APF should call on the international community and donors to strengthen support for the continued regional promotion and protection of the human rights of trafficked persons and development of programmes to reinforce the work of the APF in this area.
42. NHRIs should consider recommending that government enter bi-lateral and multi-lateral agreements with countries in the trafficking chain to ensure appropriate information exchange on trafficking, repatriation and reintegration. Any such agreements should ensure that data exchanges operate within a human rights framework and respect privacy. Such agreements may include mechanisms by which the NHRI focal point is notified when a trafficked person has been identified and is to be repatriated.
43. NHRIs should consider using their own networks to facilitate information exchange in appropriate cases.
44. The APF should consider developing an Asia-Pacific Regional or Sub-Regional instrument or protocol, for example, between NHRIs, on trafficking. This instrument should draw upon the Un principles and Guidelines and on the report of the APF Council of Jurists on trafficking.
45. The APF should consider promoting, overseeing or otherwise supporting the development of a best practice trafficking law to assist those countries which are working to strengthen the legal framework around trafficking and to promote common understandings and approaches throughout the region.
46. The APF should continue to provide focused and outcome oriented workshops and training on trafficking that build on previous activities..
47. The APF should consider making representations on trafficking issues to regional groups such as ASEAN to promote a human rights-based, comprehensive and regional response to trafficking.

48. The APF could consider establishing working groups drawn from the Focal Point Network to consider particular issues in detail and develop resources and information including information on VSA contacts for use by all APF members.