

The Anti-Trafficking in Persons Act of 2003: Issues and Problems

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Introduction

Trafficking in persons, especially in women and children, is a highly lucrative business worldwide. Millions of women and girls, mostly from poor countries, are trafficked globally into the sex industry. They are traded as objects or goods to be used like any commodity. This human rights problem has been the subject of various international instruments, including, notably, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Trafficking victimizes mostly women and girls because of gender discrimination and their vulnerability.

In response to this problem, many countries have signed or acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which obliges States to pass laws to stop trafficking. The Philippines ratified this convention in 1981. These international instruments notwithstanding, trafficking continues unabated, with syndicates preying on vulnerable women and children from developing countries like the Philippines, Cambodia and Thailand. It thrives as a very lucrative business because there is an existing demand for cheap labor, sex slaves, and organs of human beings. Traffickers take advantage of the lack of laws and inadequate government policies, poor law enforcement, corruption in government, political and economic conditions of the countries of origin, as well as the domestic situations of their target victims.

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In this age of globalization of technology and information, and with the ease in transferring capital worldwide, organized trafficking syndicates, some in groups of as small as three persons, have found sophisticated ways to do business across national borders while minimizing the risk of arrest and prosecution through bribery of government officials. Children and women are sold through the Internet, where evidence for the prosecution will be difficult to obtain, especially in poor and developing countries. Children are easily trafficked between the borders of Thailand, Burma and Cambodia, sold to recruiters and often end up in brothels for international tourists.¹

The figures are alarming. In 1997, the United Nations estimated that corrupt public officials, procurers and smugglers engaged in international trafficking in persons gained USD \$7 billion in profits, making it more profitable than international trade in illicit weapons.² It estimates that trafficking syndicates operate on 5-7 billion U.S. dollars annually, with 4 million persons being moved within and outside their countries.³

Due to the clandestine nature of trafficking, it is difficult to give an actual number of victims in the Philippines and within Asia, especially as most victims would rather keep silent about their harrowing experiences due to lack of resources, fear of being stigmatized by society, and fear of reprisal from their recruiters and traffickers.

In a research conducted in 2003 by the Coalition Against Trafficking in Women – Asia Pacific (CATW-AP) in 12 regions of the Philippines, government and non-government organizations recorded 6,298 cases of trafficking in women and children for sexual

¹ Guide to the New UN Trafficking Protocol, Article Primer, Coalition Against Trafficking in Women, p.2.

² USAID: Gender Matters Quarterly No. 1 [????] February 1999

³ Guide to the New UN Trafficking Protocol, p.2.

exploitation, some dating back three to four years ago.⁶ This is a very conservative number. Several reasons account for the low reporting, such as the lack of resources of victims and the lack of a specific law on trafficking at that time of the commission of the crime. The lack of such a law has resulted in the reported cases as being classified as illegal recruitment or “involuntary” prostitution.

On October 24, 2001, the Philippine government ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000) (UN Protocol). A year and seven months thereafter, Congress passed Republic Act (RA) No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003 (“Anti-Trafficking Act”). The law took effect on June 19, 2003. The principal author in the House of Representatives was Representative Bellafor Angara-Castillo. In the Senate, the bill was filed by Senator Luisa Estrada but the amendments were made by Senate President Franklin M. Drilon. The Philippine Anti-Trafficking Act substantially complies with the U.N. Protocol.

UN Protocol

The UN Protocol addresses the protection of victims of trafficking with a human rights dimension. It defines trafficking in persons as, “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the

⁶ Enriquez, Calalang, Belarmino, Trade in Women and Children, The Asia Foundation, 2003. The regions that are subject of the study are Regions 1, CAR, 3, 4, NCR, 7 to 12 and the Autonomous Region in Muslim Mindanao.

prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁷

The consent of a trafficked victim is deemed irrelevant where any of the means described in the definition is present. If the victim is a child (below 18 years old), the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation will be considered “trafficking in persons” even if it does not involve any of the means described above.⁸

Some of the salient features of the Protocol are: (a) the trafficked persons, especially women in prostitution and child laborers are viewed as victims and not as criminals, (b) global trafficking will be answered with a global response (Art. 10), (c) consent of the victim is irrelevant (Art. 3b), (d) the definition provides a comprehensive coverage of criminal means by which trafficking takes place, including not only force, coercion, abduction, deception or abuse of power, but also the abuse of the victim’s vulnerability. (Art. 3a), and (e) the new international definition of trafficking helps insure that victims of trafficking will not bear the burden of proof (Art. 3b).

This international definition of trafficking and agreed-upon mechanisms for prosecution, protection and prevention are the standards for national legislations and policies and serve as a basis for harmonizing the laws of various countries. Trafficking cuts across national borders and must be viewed as a continuing crime, and in order for States to be effective as a global effort, the laws of different countries must provide for the definition and penalties of the crime committed even when in transit or en route to the receiving country.

Existing Laws before R.A. No. 9208

⁷ United Nations Protocol, Art. 3.

⁸ *Id.*

It took the Philippines 22 years since the Senate ratified the CEDAW in 1981 to pass the Anti-Trafficking Act. Before it took effect, the laws that were used to prosecute offenders were our Revised Penal Code (RPC) and other special laws. These laws, however, did not address the problem because they do not capture the different dimensions of trafficking. For example, while Art. 272 of the RPC criminalizes slavery, this provision limits the means by which the crime is committed to purchasing, selling, kidnapping, or detaining a person for the purpose of enslaving him or her. The means are very limited considering that there are more ways to commit the crime, and the means provided in the provision require the use of force or must have been against the will of the victim.

Another provision that may be used in filing a case when the victim is a minor is Art. 340 of the RPC on corruption of minors. It punishes the promotion or facilitation of prostitution or corruption of minors to satisfy the lust of another. However, prostitution of victims is just one form of exploitation. Children are also trafficked for forced labor and in some counties, for removal or sale of their organs.

Another provision of the RPC, Art. 341, punishes white slave trade. This may be committed in any manner or under any pretext in order to: (a) engage in the business (of prostitution); or (b) profit by prostitution; or (c) enlist the services of any other person for the purpose of prostitution. The first two modes require profit and habituality, although the third one does not. The purpose of the said provision is to protect women from being victimized and placed in prostitution. It is however imperative to prove that the victim did not consent nor had any knowledge that she would be placed in prostitution in order to get a conviction. All these provisions (Arts. 272, 340, and 341) impose a penalty of *prision mayor*, which is relatively lenient considering the effect of these crimes on the victims, the long duration of their suffering and trauma, and the violation of their rights.

During the administration of then President Corazon Aquino, RA No. 6955 was passed. This law prohibits the matching of Filipino women to foreign national. It punishes any person who: (a) carries on a business that matches Filipinas to foreign nationals through mail-order basis or personal introduction; or (b) advertises for the same or publish propaganda materials to promote the same; or (c) attracts or induces Filipinas to become a member of a club or association that promotes such objective for a fee; or (d) uses the postal service to promote such prohibited acts. It also punishes the manager or officer-in-charge or advertising manager of the tri-media who knowingly allowed or consented to the aforementioned prohibited acts. In the first mode of violation of R.A. No. 6955, there must be a business, which connotes habituality and profit. It does not cover a person who introduced a Filipino woman to a foreigner only once because the perpetrator must be engaged in such kind of business so that he or she may be indicted under this law. In addition, this law was not able to anticipate the swift developments in information technology at the time of its passage such that all advertisements, matching and offer or purchase done through the Internet escaped criminal prosecution.

The special law which carries a high penalty for recruiters often used by the prosecution prior to the Anti-Trafficking Law, is R.A. No. 8042 or the Migrant Workers' Act. This law is applicable when the mode used to traffic a person to foreign countries is offering false employment or when the worker is recruited or placed in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines. The problem with this law is that it treats trafficking as a mere labor problem, when in fact it is a human rights issue and a migration problem. Also, the Migrant Workers' Act does not recognize the gender issues of the problem, and as such does not provide for special protection to victims who are mostly women and girls.

One other limitation of this law is that it applies only to victims who are trafficked abroad. It completely disregards trafficking within the country, where the victims are taken from one region of the country to another or even from one city to another within the same province. This law also provides very little time within which to file a case -- five years from the time of the commission of the crime. In many instances, it takes more than five years for victims of trafficking just to escape from their inhuman situations abroad. By the time they get back to the country, the crime has prescribed. All these weak points were taken into consideration when women's groups lobbied for an anti-trafficking law.

Children as victims

When children are trafficked, the prosecution may seek to apply R.A. No. 7610 or An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, And Discrimination, And For Other Purposes. Now, R.A. No. 9208 may also apply to certain acts such as trafficking a child through adoption using the Inter-Country Adoption Law. Section 7 of R.A. No. 7610 punishes any person who engages 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. The imposable penalty for such act is *reclusion temporal* to *reclusion perpetua*. The maximum penalty is imposed when the victim is below 12 years old, which is lower than the penalty of life imprisonment under R.A. No. 9208 when children below 18 years old are trafficked. "For any other consideration" includes the giving of the child to the trafficker in payment of a debt. However, this law does not include the acts of harboring, transporting or receiving a trafficked child, which are included in R.A. No. 9208.

Section 8 of R.A. No. 7610 referring to the attempt to commit child trafficking penalizes a person who 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. This provision overlooks the fact all children are vulnerable especially those coming from poor or dysfunctional families who want to get away from home.

R.A. No. 9208, which penalizes trafficking of children with life imprisonment, does not amend R.A. No. 7610. While a criminal case for trafficking of a child may be filed under R.A. No. 9208, the prosecution may also file under R.A. No. 7610 to ensure the immediate closure of the establishment. Under R.A. No. 7610, social workers may file the complaint when children are victimized, whereas in R.A. No. 9208 they must have had personal knowledge of the commission of the crime. While R.A. 9208 does not contain provisions on immunity from suit of social workers of the DSWD and local governments, they may still use this legal protection when performing their duties related to trafficking of children.

Women as victims also

Philippine laws as well as prosecutors and judges have recognized children's vulnerability and as such they are considered as victims. Unfortunately, it is not the same in the case of women. Biases and discrimination against women are causes of disbelief when women report that they were prostituted or trafficked. Prior to R.A. No. 9208, legal battles are an uphill climb for women because they have to prove that they did not consent or that they were forced into sexual exploitation before they are viewed as victims by society and the judicial system. Otherwise, they were viewed as criminals for having "participated" in or "consented" to the commission of the crime, or at the least, that they should bear the consequences of their "choice." The laws failed to consider the sad realities of women's lives where opportunities are slim and the future bleak, thus they are vulnerable and fall prey to prostitution or trafficking. This is one gender issue that R.A. No. 9208 rectified. The Anti-Trafficking Act avoided the child/adult divide and treated persons equally as victims, regardless of age, sex, and race.

*The Anti-Trafficking Act
and the laws in some countries⁹*

Other countries such as the United States and Thailand have passed special laws addressing trafficking in persons. Other countries have provisions in their criminal code that punish similar acts.

In 1997, Thailand enacted Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540. It defined trafficking as:

“...buying, selling, vending, bringing from or sending to, receiving, detaining or confining any women or child, or arranging for any woman (sic) or child to act or receive any act, for sexual gratification of another person, for an indecent sexual purpose, or purpose, or for gaining any illegal benefit for his/herself or another person, with or without the consent of the woman or child...”

The focus of the law of Thailand is on sex trafficking, without recognizing the other possible exploitative purposes for trafficked persons such as forced labor or slavery. Only women and children can be victims under the said law unlike the Anti-Trafficking Act in the Philippines that protects all persons, including men.

In compliance with the UN Protocol, Cambodia’s Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Beings penalizes “ any person who lures another person, male or female, minor or adult of whatever nationality by ways of enticing or any other means, by promising to offer any money or jewelry, whether or not there is consent from that other person, by

⁹The authors wish to thank the Commission on Filipinos Overseas, especially Atty. Golda Myra Roma, for its data on the laws in different countries pertaining to trafficking in persons.

ways of forcing, threatening, or using of hypnotic drugs, in order to kidnap him/her for trafficking/sale or for prostitution, shall be subject to imprisonment from ten (10) to fifteen (15) years. The perpetrator shall be punished by imprisonment from fifteen (15) to twenty (20) years, if the victim is a minor of less than 15 years old.” It penalizes accomplices, sellers, buyers and those who provide money or means for committing the offence.

The United States uses its economic and security assistance to countries that meet the minimum standards for the elimination of trafficking. The US law covers two forms of trafficking:¹⁰

1. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
2. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Under the U.S. law, for the indictment of sex trafficking to prosper, the person trafficked must be below 18 years old, in which case he or she need not prove force, fraud or coercion. However, when the person is 18 years old and above, the trafficked person has the burden of proving force, fraud or coercion. This makes it burdensome for adult victims to prove their case and avail of government services and programs.

¹⁰ Section 103, sub-section 8, Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386-October 28, 2000.

Interviews with victims and studies conducted by organizations like the Coalition Against Trafficking in Women Asia-Pacific, reveal that trafficking happens to many women above 18 years of age and that there are other factors that contribute to or facilitate trafficking aside from coercion, threat or fraud, that on the surface might give the impression that the victim “consented” to the trafficking or that it was her “choice”. Examples of these are poverty, violence in the home from which the victim wants to escape, lack of economic opportunities to those who did not attain high level of education and the like.

The Philippines considered all the above in drafting the law and closely followed the definition provided in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. As a result, Republic Act No. 9208 defines trafficking in persons as:

“...the recruitment, transportation, 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 which includes at a minimum, the 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.”¹¹

The purpose of trafficking is quite clear, which is to place the victim in a situation of exploitation. Thus, trafficking can be

distinguished from any other crime, for example smuggling, by considering the purpose/s for the recruitment or transfer or receipt.

Other salient features of R.A. No. 9208

One of the most important concepts forwarded by R.A. No. . 9208 is that trafficking can be committed with or without the consent of the trafficked persons, who are considered victims and not criminals. Thus, trafficked persons cannot be penalized for crimes directly related to the acts of trafficking enumerated in this law or in obedience to the order made by the trafficker such as signing a falsified passport. Section 17 of R.A. No. 9208 absolves victims from any criminal liability.

The following are some of the punishable acts under Section 4 of the Anti-Trafficking Act:

- a) recruiting, transporting, transferring, harboring, providing or receiving a person including those done under the pretext of domestic or overseas employment or training, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- b) introducing or matching for money, profit or other consideration, any person to a foreign national, for marriage for the purpose of acquiring, buying, offering or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- c) undertake or organize tours and travel plans for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

- d) maintaining or hiring a person to engage in prostitution or pornography;
- e) adopting or facilitating the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- f) recruiting, hiring, adopting, transporting or abducting a person by means of threat, force, fraud, deceit, violence or intimidation for the purpose of removal or sale of organs

The above acts are punishable with 20 imprisonment and a fine of not less the P1 million but not more than P2 million.

Acts that promote trafficking¹² such as knowingly leasing or allowing to be used any building or house for trafficking; advertising, publishing or distributing advertisements for the purpose of trafficking; assisting in the exit or entry of persons for the purpose of trafficking; facilitating the acquisition of clearances and exit documents from government agencies; confiscating, concealing or destroying the travel documents or personal belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country. These are punishable with 15 years imprisonment and a fine of not less than P500,000.00 but not more than P1 million .

Section 6 provides that the crime of trafficking is qualified when:

- a) the victim is a child (below 18 years old);
- b) when the adoption is done through the Inter-Country Adoption Act of 1995 and said adoption is for the

¹² Section 5, R.A. 9208.

purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

- c) when committed by a syndicate or by a group of three or more persons, or if committed against three or more persons;
- d) when the offender is an ascendant, parent, sibling, guardian or person who exercised authority over the trafficked person;
- e) when the offense is committed by a public officer or employee;
- f) when the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- g) when the offender is a member of the military or law enforcement agencies;
- h) when by reason of the act of trafficking the victim dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS)

The penalty for qualified trafficking is life imprisonment and a fine of not less than P2 million but not more than P5 million.

Some of these provisions are not new but have also been included in Section 6 because of the responsibility that goes with the relationship of the offender to the victim. The same is true with public officers and employees, or the members of the law enforcers who are supposed to provide protection to victims and instead they violate their human rights.

Trafficking cases prescribe in 10 years. When committed in large scale or victimizing 3 or more persons or by a syndicate (when

committed by 3 or more perpetrators), the prescription period is 20 years.

As most trafficked persons are not ready to file complaints immediately given their traumatic experience the law recognizes the fact that they need to be healed and to prepare themselves and their resources for litigation which is the reason for providing them a period of 10 years within which to file an action. If the trafficking were committed by a syndicate or in large scale, the prescriptive period is 20 years. The prescriptive period shall commence to run from the day on which the trafficked person is delivered or release from conditions of bondage (Section 12). This is in response to the gap in other special laws where the prescriptive periods are too short and do not give any consideration to the difficult situation of the victims.

A new concept being introduced by this law is punishing a person who buys or engages the services of a trafficked person as provided in Section 11. First time offender will be punished with 6 months community service and a fine of P50,000; while those convicted for the second and subsequent offenses will be penalized with 1 year imprisonment and a fine of P100,000. This is the first time a law punishes buyers of trafficked persons, who are mostly prostituted.

The law discourages the use of any person, young and adult alike, for sexual gratification and it is a progressive step towards eventually repealing our law on vagrancy and prostitution. The cited provision also veers away from looking at women in prostitution as criminals and confronts the real culprits in the system of prostitution, who are the customers, pimps, and establishments that uses and profits from them. Unfortunately, R.A. 9208 did not expressly repeal Article 202 of the Revised Penal Code, another law that discriminates against women.

As trafficking is considered a public crime, any person who has personal knowledge of the crime may file the complaint. The parents, spouse, siblings, children or legal guardian of the trafficked person may file it as well (Section 8).

R.A. No. 9208 has introduced another radical change in relation to venue. Trafficking is a continuing crime and the criminal action may be filed where the offense was committed, or where any of its elements occurred, or where the victim resides at the time of commission of the offense (Section 9). Most service providers and prosecutors have had difficulty in pursuing their cases once victims have gone home to their communities. With this option, more victims would be encouraged to report and prosecute cases, as they do not need to go out of their hometown.

Section 23 enumerates the mandatory services available to trafficked persons such as emergency shelter, counseling, free legal services, medical or psychological services; livelihood and skills training; and educational assistance to be provided by the concerned government agencies. Government personnel must be trained to be sensitive in the handling of victims, taking into consideration their sex, age, and painful experiences.

Conclusion and Recommendations

Although it took nine years to pass the Anti-trafficking Act, it is a groundbreaking law that substantially complies with international human rights standards and provides wholistic and comprehensive protection to victims. Judges, prosecutors and lawyers need to study this law and its rationale, as well as the situation of trafficked persons, so as to have an adequate appreciation of every trafficking case that they are handling. To dispense justice, they must understand women's experiences and get rid of their biases against women that continue to prevail in Philippine society and permeate in the judicial

and legal system. Not only must trafficked persons, especially women and children, have remedies under the law, they must have adequate access to justice, which is possible only if, among others, they have lawyers and prosecutors who are trained in R.A. No. 9208, and prosecutors and judges who are gender-sensitive. Law schools should also include R.A. 9208 and other special laws protecting women and children in their curriculum.

Government agencies, especially the Department of Social Welfare and Development, local government units, and non-government organizations continue to face difficulties in providing services and programs for victims because of lack of funds, facilities and personnel. The law adequately provides remedies for victims but it is yet to be seen if the government will provide adequate funding for services in its budget and go after traffickers with the full force of the law. The commitment of law enforcers and *barangay* officials are required in order to stop this menace in their communities.

Inasmuch as non-governmental organizations render services for trafficked women and children and several are collaborating with government agencies, the national government and local government units should give them financial support and other resources. Non-governmental organizations help government do its work and are entitled to a share in government resources.

Although the problem is serious, trafficking does not get as much attention from the public compared to domestic violence or abuse of women in intimate relationships because of the difficulty in detecting traffickers in the community, the lack of information on their identities and locations, and the unwillingness of many victims to report the crime. Public information and community organizing could help in solving these problems. These entail a massive information campaign and the popularization of the law in the *barangay* so as to warn the community against recruiters and teach people their remedies under the law.

The obligation of the Philippine Government under international law does not end with the passage of the Anti-Trafficking Act. To fully respond to the problem of international trafficking, the government needs to forge and enforce bilateral and or multi-lateral agreements among countries to come up with mechanisms to prevent trafficking.

At the same time, the government should solve the problem of poverty and provide adequate jobs and livelihood with social protection for more than one-third of its population who are poor. The search for better-paying jobs abroad is the primary reason for migration of Filipinos. The feminization of migration compounds the problem for women, who are recruited for household chores and lesser paying jobs in the host countries. It is this desperate search for jobs that makes people susceptible to the baits of traffickers.

Governments would be ineffective in solving the problem of trafficking if they do not address development issues. Seeing also that mostly women and girls are victimized, our government and society must seriously address the problem of gender inequality, which results to the exploitation and discrimination of women.