

The background of the entire page is a solid red color. In the upper right corner, there are several stylized white bamboo stalks with some leaves. A horizontal band of a lighter red color runs across the middle of the page. On this band, there are white silhouettes of four children walking from left to right. The word 'Stories' is written in a large, white, serif font, with the 'S' being particularly large and the 't' having a small scale of justice icon integrated into it. The words 'from the field' are written in a smaller, white, sans-serif font below 'Stories'.

Stories

from the field

**A Glimpse on
Trafficked Children's
Access to Justice
in Thailand,
Cambodia,
and Philippines**

Asia Against Child Trafficking
Copyright 2013
All Rights Reserved

Legal Consultant: Atty. Rowena Guanzon
Head Researcher: Reggie Florendo
Editing Consultant: Amihan Abueva
Editing Team: Atty. Robert Larga, Hazelyn Joy Bitaña, Magnolia Eva Jacinto
Layout: Eleanor Ramos

Asia Against Child Trafficking
Room 312 Philippine Social Science Center
Commonwealth Avenue, Quezon City
Philippines, 1101

Printing of this document was made possible through the funding support of
Terre des Hommes-Netherlands.

Excerpts from this publication may be freely reproduced
provided that due acknowledgement is given to the source and publisher.

Stories from the Field

A Glimpse on
Trafficked Children's
Access to Justice
in Thailand,
Cambodia,
and Philippines



table of contents

Abbreviations.....	7
Acknowledgments.....	9
■ CHAPTER 1: INTRODUCTION	11
Understanding Access to Justice.....	11
About the Research.....	12
Child Protection and Anti-Human Trafficking Frameworks	14
■ CHAPTER 2: THAILAND	17
Child Trafficking in Thailand.....	17
Anti-Trafficking in Persons Law in Thailand.....	18
The Judicial System in Thailand	25
Legal Procedure in Thailand.....	26
Trafficked Children's Legal Battle in Thailand.....	27
Barriers in Trafficked Children's Access to Justice in Thailand	37
Assisting Indigenous Victims of Child Trafficking	42
■ CHAPTER 3: CAMBODIA	45
Child Trafficking in Cambodia.....	45
The Law on Suppression of Human Trafficking and Sexual Exploitation	47
The Judicial System in Cambodia	51
Informal Dispute Resolution	52
Trafficked Children's Legal Battle in Cambodia.....	52
Barriers in Trafficked Children's Access to Justice in Cambodia	57
Recommendations	60

■ CHAPTER 4: PHILIPPINES	61
Child Trafficking in the Philippines	61
Anti-Trafficking in Persons Law in the Philippines	62
The Judicial System in the Philippines.....	65
Legal Procedure in the Philippines	66
Access to Justice According to the Social Service Providers in the Philippines.....	69
Roles of the Social Service Providers	70
Trafficked Children's Legal Battle in the Philippines.....	76
Avoiding the Legal Battle in the Philippines	98
Barriers in Accessing Justice in the Philippines	101
Recommendations	103
■ CHAPTER 5: ACCESS TO JUSTICE ACCORDING TO THE CHILD TRAFFICKING SURVIVORS	105
Thailand.....	105
Philippines	107
■ CHAPTER 6: SUMMARY	113
■ CHAPTER 7: Asia ACTs' ADVOCACY CALLS FOR TRAFFICKED CHILDREN'S ACCESS TO JUSTICE	123

■ BIBLIOGRAPHY	127
■ APPENDIX.....	131
A. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.....	131
B. United Nations Convention on the Rights of the Child	139
C. United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.....	157
D. ASEAN Guidelines for the Protection of the Rights of Trafficked Children	167

abbreviations

ADHOC	Cambodian Human Rights and Development Association
ASEAN	Association of Southeast Asian Nations
ATP Committee	Anti-Trafficking in Persons Committee
Burma ACTs	Burma Against Child Trafficking
Cambodia ACTs	Cambodia Against Child Trafficking
CFI	Court of First Instance
CMP Committee	Coordinating and Monitoring of Trafficking in Persons Performance Committee
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CPCR	Center for the Protection of Child Rights
CPPCR	Committee for the Protection and Promotion of Child Rights
DOJ	Department of Justice
ECPAT Philippines	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes Philippines
FFW Mae Sod	Foundation for Women in Mae Sod
FGD	Focus Group Discussion
HADF	Hill Area Community Development Foundation
IACAT	Inter-Agency Council Against Trafficking
IDC	Immigration Detention Center
LEASETC	Law Enforcement Against Sexual Exploitation and Trafficking of Children
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LSCW	Legal Support for Children and Women
MOSAVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
MOU	Memorandum of Understanding
National Committee S.T.S.L.S.	National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation in Women and Children

NGO	Non-Government Organization
PACT	Philippines Against Child Trafficking
Palermo Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
PATD	Philippine Anti-Trafficking in Persons Database
RA 9208	Republic Act 9208: Anti-Trafficking in Persons Act of 2003
RTC	Regional Trial Court
UN CRC	United Nations Convention on the Rights of the Child
TIP	Trafficking in Persons
TRAFCORD	Anti-Trafficking Coordination Unit Northern Thailand

acknowledgments

This research on access to justice is the result of the combined efforts of the Asia ACTs Network, specifically with:

THAILAND

- Director Aung Myo Min, Human Rights Education Institute of Burma (HREIB)
- General Manager Juthamas Rajchaprasit, Hill Area Development Foundation (HADF)
- Volunteers Kittiphum Sringammuang and Annick Oerlemans

CAMBODIA

- Cambodia Against Child Trafficking (Cambodia ACTs) Secretariat
 - National Coordinator Song Saran
 - Finance Officers Cheng Chhengkeang, Kim Vannary, and Vannarom
- Director Phok Bunroeun and Project Coordinator Mob Sopha, Cambodia Children Against Starvation and Violence Association (CCASVA)
- Director Chea Pyden, Vulnerable Children Assistance Organization (VCAO)

PHILIPPINES

- Philippines Against Child Trafficking (PACT) Secretariat
 - National Coordinator Salome Ujano
 - Information Officer Vida Subingsubing
 - National Trainer Sheila Grace Formento
 - Admin/Finance Officer Nancy Trani
 - Technical Assistant Sharon Barrientos
- Chairperson Helen Bagasao, PACT
- PACT Members Dr. Marcelina Carpizo, Jinky Sidocon, Dionela Madrona, and Lavern Jabie

The Asia ACTs network also extends its gratitude to the social service providers of the following organizations who graciously shared their experiences in assisting trafficked children to have access to justice:

THAILAND

- Center for the Protection of Children's Rights (CPCR)
- Save the Children UK-Cross Border Project
- New Life Foundation
- Foundation for Women
- Tambon Administrative Office
- Anti-Trafficking Coordination Unit Northern Thailand (TRAFCORD)

CAMBODIA

- Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
- Legal Support for Children and Women (LSCW)
- Cambodian Human Rights and Development Association (ADHOC)
- Cambodian Women Development Association (CWDA)
- Cambodian Center for the Protection of Children's Rights (CCPCR)
- Deputy Governor of Kampongro District
- Head of Social Affairs
- Women Affairs Officer
- Deputy Director of Social Affairs
- Deputy Governor of Chantrea District
- Deputy Director of Social Affairs Department
- Deputy Director of Children's Department; American Rehabilitation Ministries Center
- Law Enforcement Against Sexual Exploitation and Trafficking of Children (LEASETC)

PHILIPPINES

- Assistant City Prosecutor Darlene Pajarito (Zamboanga City)
- Atty. Eduardo Fortaleza (Antique)
- Atty. Fajardo (Iriga)
- Atty. Cristina Sevilla
- Assistant Provincial Prosecutor Vivian Monzon-Rojas (Cavite)
- Prosecutor Ruth Bernabe (Baguio City)
- Atty. Minerva Quintela
- Atty. Mae Nina Gallos
- Mr. Rodel Amano, Department of Social Welfare and Development (DSWD) Baguio
- Ms. Myrna V.
- Mr. Joseph Arfil, City Social Welfare Development (CSWD) Baguio
- Ms. Margarita Lopez, DSWD Region 3
- Ms. Nova Codoy, CSWD Olongapo
- Ms. Trinidad Maneja, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes Philippines (ECPAT Philippines)
- Director Josephine Gabriel Manaag, International Justice Mission (IJM)
- Melinda Garcia, Municipal Social Welfare and Development Office (MSWDO) Cavite
- Sylvia Mangubat, MSWDO Cavite

We would also like to extend our gratitude to the child trafficking survivors and their parents and relatives, who willingly shared their experiences for this research.

1 introduction

Understanding Access to Justice

The United Nations General Assembly adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* in November 2000. Commonly referred to as the Palermo Protocol, it marked the beginning of the global commitment in the fight against human trafficking. From then on, countries around the world have been enacting and implementing national legislation against trafficking in persons, paving the way for the prosecution of traffickers.

The prosecution of cases demonstrates the justice system's capacity to apply the laws created against trafficking in persons. The focus of the prosecution, however, must not be merely about punishing offenders but about protecting and fulfilling the rights of victims.

Victims of human trafficking must not be treated as mere instruments to criminal justice systems.¹ Trafficked victims need lots of support and protection as they fight for justice. They need medical, psychosocial, educational, livelihood, financial, and legal assistance, aside from safety and security protection for them and their families. Due to their vulnerability, child victims of trafficking need additional support from social service providers, their families, their friends, and the community, especially when they choose to exercise their rights and deal with the legal processes to obtain justice.

The United Nations Development Program (UNDP) defines access to justice as the “ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.”² Concurring to this, the Global Alliance Against Traffic in Women (GAATW) views access to justice as procedural access, which means getting a fair trial with a tribunal, or a substantive justice, comprised of fair and just remedies.³ GAATW adds that

1 Alliance Expert Coordination Team (2008)

2 United Nations Development Programme (2005, p.5)

3 Global Alliance Against Traffic in Women (n.d.)

access to justice pertains to the criminal, civil, and administrative processes including immigration reviews or state compensation funds.

As UNDP puts it, “access to justice is a fundamental right, as well as a key means to defend other rights.”⁴

Access to justice is one of the provisions enshrined in the *Association of Southeast Asian Nations (ASEAN) Guidelines for the Protection of the Rights of Trafficked Children*, an instrument that provides minimum standards for the treatment of trafficked children from the moment of victim identification up to their full recovery and social integration. Also referred to as the ASEAN Guidelines, it stipulates that access to justice encompasses: a) victim/witness security and protection; b) criminal proceedings; and c) civil proceedings.

Guided by the ASEAN Guidelines, Asia ACTs and its partner organizations, conducted an indicative study that provides a glimpse on some of the experiences of social service providers and child trafficking survivors who strive to gain access to justice.

The ASEAN Guidelines for the Protection of the Rights of Trafficked Children is a set of guidelines stipulating the minimum standards of care and protection for child trafficking victims. Adopted by the Association of Southeast Asian Nations (ASEAN) Senior Officials Meeting on Social Welfare and Development in 2007, it aims to lead the region towards protecting and upholding the human rights and dignity of trafficked children. Agencies, institutions, and social service providers are encouraged to meet the minimum standards while assisting children victims. More importantly, the ASEAN Guidelines lays down the basis for the formulation of national guidelines in each of the ten-member countries of the ASEAN.

About the Research

In 2010, Asia ACTs embarked on a qualitative research on trafficked children’s access to justice in order to:

1. Obtain an overview of how the right to access justice of trafficked children is ensured, fulfilled, and protected;
2. Identify the barriers that hinder trafficked children from accessing justice; and
3. Provide recommendations that will help trafficked children gain easier access to justice.

4 United Nations Development Programme (2005, p.3)

The study was conducted in Cambodia, Thailand, and Philippines by the members of the network from these countries (see Table 1).

Table 1. Research Areas and Asia ACTs Partner Organizations

Research Area	Asia ACTs Partner Organizations
Cambodia	Cambodia Against Child Trafficking (Cambodia ACTs)
Thailand	Hill Area Community Development Foundation (HADF) and Burma Against Child Trafficking (Burma ACTs)
Philippines	Philippines Against Child Trafficking (PACT)

A total of 141 participants took part in this research and gave their consent on the publication of the results. Thirty-six of them were from Cambodia, 30 from Thailand, and 75 from the Philippines.

Based on their roles and responsibilities, the research participants were grouped into three categories:

1. Social service providers which include non-government organization (NGO) volunteers, government and NGO social workers, house parents, psychologists, law enforcers, investigators, lawyers, prosecutors, and government officials or officers;
2. Parents and relatives of trafficked children; and
3. Survivors of child trafficking.

The participants from Thailand discussed access to justice of Burmese, Lao, and Khmer children trafficked to Thailand; while the participants from Cambodia discussed their experiences in handling Khmer children trafficked to Thailand and Vietnam. On the other hand, the participants from the Philippines shared their experiences in handling domestic trafficking cases involving Filipino children.

Based on these categories, different methodologies such as interview, focus group discussion (FGD), and consultation workshop were utilized (See Table 2). To facilitate better extraction of information, the data gathering instruments such as the interview guides, FGD guides, and workshop questions were translated in local languages.

Table 2. Research Methodology and Participants

Methodology	Participants	Number of Participants		
		Cambodia	Thailand	Philippines
Interview	Social service providers NGO Volunteer	-	1	-
	Social Worker (Government & NGO)	3	6	20
	House Parent	-	-	4
	Psychologist	1	-	-
	Law Enforcer/Investigator	4	-	14
	Lawyer	2	5	1
	Prosecutor	-	-	3
	Government Official/Officer	7	-	-
FGD	Parents/Relatives of Trafficked Children	14	10	7
Consultation Workshop	Child Trafficking Survivors	5	8	26
Total		36	30	75

Limitations of the Research

Because of different country situations and limitations, this research was constrained by the unequal representation of the participants. Moreover, the results of this research came from the personal accounts and points of view of the participants only. Thus, generalization of the child trafficking situation in the participating countries cannot be made.

Child Protection and Anti-Human Trafficking Frameworks

Trafficked children's access to justice greatly relies on the anti-human trafficking and child protection frameworks in each country. Based on the review of laws, conventions, protocols, and programs, the participating countries have common and distinct situations (see Table 3). Cambodia, Philippines, and Thailand are signatories to the *United Nations Convention on the Rights of the Child (UN CRC)*. Likewise, all three countries have anti-human trafficking laws and committees/councils/task forces at the national and local levels. Although the three countries signed the *Palermo Protocol*, only Cambodia and Philippines have ratified it. Additionally, only the Philippines and Thailand have witness protection programs.

Table 3. Anti-Trafficking and Child Protection Frameworks of Participating Countries

Framework	Cambodia	Philippines	Thailand
UN CRC	✓	✓	✓
Palermo Protocol	✓	✓	Signed but not ratified yet
Anti-Human Trafficking Law	Law on Suppression of Human Trafficking & Sexual Exploitation (2008)	Republic Act 9208: Anti-Trafficking in Persons Act (2003)	Anti-Trafficking in Persons Act B.E. 2551 (2008)
Witness Protection Program	X	✓	✓
Anti-Human Trafficking Councils/ Committees/ Task Forces	<p>National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labour Exploitation and Sexual Exploitation in Women and Children</p> <p>Provincial Anti-Trafficking Task Force</p> <p>Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Task Force</p> <p>National Task Force on the Implementation of the Memorandum of Understanding of the Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting the Victims of Human Trafficking</p> <p>National Coordination Team of Undertaking the Repatriation of Trafficked Children and Women</p> <p>Cambodian National Council for Children's Sub-Commission on Trafficking and Sexual Exploitation of Children</p>	<p>Inter-Agency Council Against Trafficking (IACAT)</p> <p>National Inter-Agency Task Force Against Trafficking in Persons</p> <p>Ninoy Aquino International Airport Task Force Against Trafficking</p> <p>Diosdado Macapagal International Airport Task Force Against Trafficking in Persons</p> <p>Department of Justice Anti-Trafficking Task Force</p> <p>Regional Task Force Against Trafficking in Persons</p> <p>Provincial, City and Municipal committees against trafficking</p>	<p>Anti-Trafficking in Persons Committee (ATP Committee)</p> <p>Coordinating and Monitoring of Trafficking in Persons Performance Committee (CMP Committee)</p>

The different states and situations of the child protection and anti-human trafficking frameworks in each country must be considered to acquire a better understanding of the stories shared by the interviewed social service providers.

2 thailand

Child Trafficking in Thailand

Thailand is a destination country for men, women, and children trafficked for commercial sexual exploitation and forced labor in seafood processing, fishing industries, low-end garment production, and domestic work. Most trafficked victims come from Myanmar, Vietnam, Cambodia, Laos, Russia, and Uzbekistan.⁵

**Tier Placement of Thailand
in the US State Department TIP Report**

Year	Tier Placement
2001	Tier 2
2002	Tier 2
2003	Tier 2
2004	Tier 2 Watch List
2005	Tier 2
2006	Tier 2
2007	Tier 2
2008	Tier 2
2009	Tier 2
2010	Tier 2 Watch List
2011	Tier 2 Watch List

Tier 1: Countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards

Tier 2: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards

Tier 2 Watch List: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

Tier 3: Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

⁵ US State Department (2011)

Thailand is also a source country, with its nationals trafficked to Australia, Canada, Germany, Indonesia, Israel, Japan, Kuwait, Libya, Malaysia, Qatar, Saudi Arabia, South Africa, South Korea, Taiwan, and Timor-Leste.⁶ The 2011 Trafficking in Persons (TIP) Report of the US State Department also reported that trafficked Thai nationals were repatriated from United Arab Emirates, Malaysia, Sri Lanka, Bahrain, China, Russia, South Africa, Yemen, Vietnam, the United States, the United Kingdom, and Singapore.

Ethnic minorities, stateless people, and undocumented migrants are also at risk of being trafficked. Their economic situation, citizenship status, and lack of education and information about the Thai law and their rights make them vulnerable to various forms of human rights violations within and across the borders of Thailand.

As a transit country, trafficked victims from North Korea, China, Vietnam, Pakistan, and Burma pass thru Thailand on their way to Malaysia, Indonesia, Singapore, Russia, Western Europe, South Korea, and the United States of America.

Anti-Trafficking in Persons Law in Thailand

Thailand signed the Palermo Protocol in December 2001 but ratification remains pending. Nevertheless, Thailand enforced the Anti-Trafficking in Persons Act B.E. 2551 in June 2008. This law repealed the 1997 Measures in the Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540. Aside from making it more victim-centered, the new Anti-Trafficking in Persons law includes men in its definition of trafficked victims.⁷

The Thai law (Section 6) defines trafficking in persons as whoever, for the purpose of exploitation, does any of the following acts:

- (1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or
- (2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child.

⁶ Ibid.

⁷ Son, N. (2008).

Penalties under the Anti-Trafficking in Persons Act B.E. 2551

Offence	Penalty
<p>Sec. 52 Whoever commits an offence of trafficking in persons</p> <p>If the offence under paragraph one is committed against a child whose age exceeds fifteen years but not yet reaching eighteen years</p> <p>If the offence under paragraph is committed against a child not over fifteen years of age</p>	<p>Four (4) years to ten (10) years imprisonment and a fine from Eighty Thousand Baht to Two Hundred Thousand Baht</p> <p>Six (6) years to twelve (12) years imprisonment and a fine from One Hundred Twenty Thousand Baht to Two Hundred Forty Thousand Baht.</p> <p>Eight (8) to fifteen (15) years imprisonment and a fine from One Hundred Sixty Thousand Baht to Three Hundred Thousand Baht</p>
<p>Sec. 53 Any juristic person commits an offence of trafficking in persons</p> <p>In case where the offender is a juristic person, if the offence of such juristic person is caused by an order or an act of any person, or the omission to issue an order or perform an act which is the obligation of the managing director, or any person who is responsible for carrying out the business of the said juristic person</p>	<p>Fine from Two Hundred Thousand Baht to One Million Baht</p> <p>Six (6) years to twelve (12) years imprisonment and a fine from One Hundred Twenty Thousand Baht to Two Hundred Forty Thousand Baht</p>
<p>Sec. 54 Whoever obstructs the process of investigation, inquiry, prosecution or criminal proceedings on the offence of trafficking in persons so that the process is unable to be conducted in a well-manner, by doing any of the following acts –</p> <p>(1) Giving, offering or agreeing to give property or other benefit to a trafficked person or other witness for inducing such person not to visit the competent official, inquiry official, public prosecutor or not to attend the court for giving facts, statement or testimony, or inducing such person to give facts, statement or testimony that is false, or not to give facts, statement or testimony at all, in the criminal proceedings against the offender under this Act;</p>	<p>Imprisonment not exceeding ten (10) years and a fine not exceeding Two Hundred Thousand Baht</p>

- | | |
|--|--|
| <p>(2) Using of force, coercing, threatening, compelling, deceiving, or using any other means causing a trafficked person or other witness not to visit the competent official, inquiry official, public prosecutor or not to attend the court to give facts, statement or testimony, or inducing such person to give facts, statement or testimony that is false, or not to give facts, statement or testimony, that is false, or not to give facts, statement or testimony at all, in the criminal proceedings against the offender under this Act;</p> <p>(3) Damaging, destroying, losing or rendering useless, taking away, altering, changing, concealing or hiding any document or evidence, or fabricating, making or using any document or evidence that is false in the criminal proceeding against the offender under this Act;</p> <p>(4) Giving, offering or agreeing to give property or other benefit to the Committee member, the CMP Committee member, sub-committee member, any member of the working group or to the competent official under this Act or to judiciary official, public prosecutor, or inquiry official or demanding, accepting, or agreeing to accept a property or any other benefit in order to induce such person to do or not to do any act, or to delay the doing of any act contrary to the duty of such person under this Act;</p> <p>(5) Using of force, coercing, threatening, compelling or using any other wrongful means to the Committee member, the CMP Committee member, sub-committee member, any member of the working group or to the competent official under this Act, or to judiciary official, public prosecutor, or inquiry official to induce such person to do or not to do any act, or to delay the doing of any act contrary to the duty of such person under this Act.</p> | |
|--|--|

<p>Sec. 55 Whoever commits the following act:</p> <ol style="list-style-type: none"> (1) Knowing that an application to obtain documents (2) Knowing or obtaining the documents or information under Section 30 and disclosing such documents or information to any other person, who has no duties in connection with that capacity. 	<p>Imprisonment not exceeding five (5) years and a fine not exceeding One Hundred Thousand Baht, except it is a disclosure in the performance of the duties or according to the law</p>
--	---

The Anti-Trafficking in Persons Act B.E. 2551 prescribes heavy penalties on traffickers and to those who impede or obstruct investigation and prosecution of cases. It also has one chapter on the protection and assistance to trafficked victims.⁸ Chapter 4, Section 33 of which states that:

“The Ministry of Social Development and Human Security shall consider to provide assistance as appropriate to a trafficked person on food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the return to the country of origin or domicile, the legal proceedings to claim compensation according to the regulations prescribed by the Minister, providing that human dignity and the difference in sex, age, nationality, race, and culture of the trafficked person shall be taken into account. The right to receive protection, whether it be prior to, during and after the assistance providing, including the timeframe in delivering assistance of each stage, shall be informed the trafficked person. In this connection, the opinion of trafficked person is to be sought.

The competent official, in providing assistance under paragraph one, may place the trafficked person in the care of a primary shelter provided by the law on prevention and suppression of prostitution, or a primary shelter provided by the law on child protection, or other government or private welfare centers.”

The law likewise created the Anti-Trafficking in Persons Committee (ATP Committee) to oversee the prevention, suppression, rehabilitation, and international cooperation in relation to human trafficking. The ATP Committee is chaired by the Prime Minister. The other members include the Deputy Prime Minister (vice chairman), Minister of Defense, Minister of Foreign Affairs, Minister of Tourism and Sports, Minister of Social Development and Human Security, Minister of Interior, Minister of Justice, Minister of Labour, and four qualified persons appointed by the Prime Minister.

⁸ Chapter 4. Provisions of Assistance and Protection of Safety to the Trafficked Person of Trafficking in Persons

According to Chapter 2, Section 16 of the Anti-Trafficking in Persons Act B.E. 2551, the ATP Committee is tasked to:

- (1) Make recommendations to the Cabinet concerning the policy on prevention and suppression of trafficking in persons;
- (2) Make recommendations to the Cabinet on the revision of laws, rules, regulations or the restructuring of any governmental agency responsible for the prevention and suppression of trafficking in person to enable a more effective implementation of this Act;
- (3) Lay down strategies and measures for the prevention and suppression of trafficking in person;
- (4) Prescribe guidelines and monitor the implementation of international obligations, including cooperating and coordinating with foreign bodies in relation to the prevention and suppression of trafficking in persons;
- (5) Direct and supervise the arrangements of study or research projects and the development of an integrated data base system for the benefit of prevention and suppression of trafficking in persons;
- (6) Issue regulations relating to the registration of a non-governmental organization with a view to preventing and suppressing of trafficking in person, and to prescribe rules for assistance such organization in carrying out its activities;
- (7) Lay down rules, with the consent of the Ministry of Finance, concerning the receipt, payment, keeping, fund raising and the management of Fund;
- (8) Lay down rules concerning the report on financial status and the administration of the Fund for the purpose of implementing this Act;
- (9) Give instruction and supervise the performance of duties of the CMP Committee;
- (10) Perform any other acts as entrusted by the Cabinet.

The Anti-Trafficking in Persons Act B.E. 2551 also created the Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMP Committee). Its members include the Deputy Prime Minister (assigned by the Prime Minister) as the chairman; the Minister of Social Development and Human Security, as vice chairman; the Permanent Secretary of Foreign Affairs; the Permanent Secretary for Tourism and Sport; the Permanent Secretary for Social Development and Human Security; the Permanent Secretary for Interior; the Permanent Secretary for Justice; the Permanent Secretary for Public Health; the Attorney General; the Commissioner-General of the Royal Thai Police; the Director-General of the Department of Provincial Administration; the Director-General of the Department of Special Investigation; the Secretary-General of the Anti-Money Laundering Board; the Secretary-General of the National Security Council; the Governor of Bangkok Metropolitan Administration; the Deputy Permanent Secretary for Social Development and Human Security; and eight qualified persons appointed by the Minister.

According to Chapter 2, Section 23 of the Anti-Trafficking in Persons Act B.E. 2551, the CMP Committee has the mandate to:

- (1) Prepare and monitor the performance according to the implementation and coordination plans of the agencies concerned, whether they be at the central, regional or local level, or in the community and civil society, to ensure the consistency with the policies, strategies and measures on the prevention and suppression of trafficking in persons;
- (2) Prepare and monitor the implementation of plans and guidelines regarding the capacity building for personnel responsible for prevention and suppression of trafficking in persons;
- (3) Formulate and monitor campaigns to inform and educate the public in relation to the prevention and suppression of trafficking in persons;
- (4) Monitor, evaluate and report to the Committee (ATP Committee) the performance according to the policies, strategies, measures, together with the performance under this Act;
- (5) Follow up, and report to the Committee (ATP Committee) the performance under the international obligations, cooperation and coordination with the foreign bodies on the issues of the prevention and suppression of trafficking in persons;
- (6) Lay down rules and approve the payment and disposal of property of the Fund under Section 44 (4);
- (7) Prepare and monitor the implementation plans under this Act with a view to achieve the highest efficiency of law enforcement and to be in line with the law on anti-money laundering, the law on the national counter corruption and any other related laws, including international obligations; and
- (8) Perform any other acts as entrusted by the Committee.

Thailand considers human trafficking as priority in its national agenda. It entered into multilateral and bilateral agreements that seek to address human trafficking and related issues such as labour migration. It signed the ASEAN Declaration against Trafficking and Persons, Especially Women and Children; and the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Process, a multilateral cooperation in the Greater Mekong Sub-Region. It also entered into the following:

1. Memorandum of Understanding (MOU) between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation to Combat Trafficking in Persons, Especially Women and Children (April 2009)
2. MOU on Operational Procedures for Concerned Agencies in Prevention, Suppression and Solution for Human Trafficking Problem in 9 Central Lower Provinces (May 2008)

3. Operational Guideline on the Prevention, Suppression, Assistance and Protection of Trafficked Persons for Labour Purposes (April 2008)
4. Agreement Between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking (March 2008)
5. MOU on Operational Procedures for Concerned Agencies in Prevention, Suppression and Solution for Human Trafficking Problem in 17 Northern Provinces (May 2007)
6. MOU on Operational Procedures for Concerned Agencies in Prevention, Suppression and Solution for Human Trafficking Problems in 8 Southeastern Provinces (March 2007)
7. MOU on Operational Procedures for Concerned Agencies in Human Trafficking in Six Southwestern Provinces (January 2007)
8. MOU on Operational Procedures for Concerned Agencies in Combating Human Trafficking in 19 Northeastern Provinces (July 2006)
9. MOU on Operational Procedures for Concerned Agencies in Combating Human Trafficking in Eight Eastern Provinces (May 2006)
10. MOU between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on Cooperation to Combat Trafficking in Persons, Especially Women and Children (July 2005)
11. MOU between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers (June 2003)
12. MOU between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (May 2003)
13. MOU between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Cooperation in the Employment of Workers (May 2003)
14. MOU on Common Operational Guidelines for Government Agencies Engaged in Addressing Trafficking in Children and Women (2003)
15. MOU on Operations Between State Agencies and NGOs Engaged in Addressing Trafficking in Children and Women (2003)

16. Operational Guidelines for NGOs Engaged in Addressing Trafficking in Children and Women (2003)

17. MOU between the Government of Lao People's Democratic Republic and the Government of the Kingdom of Thailand on Labour Cooperation (October 2002)

Thailand has undertaken education campaigns in schools and communities in all regions and included human trafficking in the curriculum of the Police Cadet School. Likewise, a special unit within the Royal Thai Police was established to respond to cases and assist trafficking victims.

The Judicial System in Thailand

The Judicial System of Thailand is based on its Constitution. The Judiciary is independent and it has distinct functions from that of the legislative and executive branches of the government. It recognizes four courts: 1) Constitutional Court; 2) Court of Justice; 3) Administrative Court; and 4) Military Court.

Civil and criminal cases including violations of the Anti-Trafficking in Persons Act B.E 2551 are adjudicated by the Court of Justice.

The Court of Justice has three levels⁹:

1. The Court of First Instance (CFI), where all cases are first filed, is composed of the following:
a) the Civil Court; b) the Civil Court of Southern Bangkok; c) the Thonburi Civil Court; d) the Criminal Court; e) the Criminal Court of Southern Bangkok; f) the Thonburi Criminal Court; g) the Central Juvenile and Family Court; h) the Central Labour Court; i) the Central Tax Court; j) the Central Intellectual Property and International Trade Court; k) the Central Bankruptcy Court; l) the Provincial Court; and m) the Kwaeng Court.
2. The Court of Appeals, where judgment rendered by the CFI is appealed or reviewed, is divided into: a) the Court of Appeals; and b) the Court of Appeals Region 1 to Region 9.
3. The Supreme Court, as the highest court, adjudicates appeals from the decisions of the Court of Appeals in accordance with the Civil and Criminal Procedure Code.

The judges are governed by the Judicial Service Act B.E. 2543 (AD 2000). Judges are appointed, promoted, transferred, and removed from service based on the provisions set forth by this law.

9 Institute of Developing Economics (IDE-JETRO). (2001).

Legal Procedure in Thailand

A civil action against a trafficker, who is in Thailand or in any of its territories like a Thai ship, may be filed by a trafficked victim; while a criminal action against a perpetrator, who is physically present in Thailand, may be filed directly to the court by an individual or by the police or public prosecutor.¹⁰

If the perpetrator is a Thai national and the crime was committed beyond the jurisdiction of Thailand, the State where the crime was committed may ask the Thai Government to pursue criminal proceedings against the Thai perpetrator, pursuant to the extra-territorial character of the offense as provided in Section 11 of the Anti-Trafficking in Persons Act B.E 2551. Foreign nationals who violate Thai laws or commit a crime against a Thai national outside Thailand may still be prosecuted under Thai laws provided that an extradition is granted.

A criminal case is filed once the police have established the probability of the crime through evidence. The perpetrator has the right to bail but the conditions of bail and the bail bond vary according to the circumstances, probability of guilt, and nationality of the perpetrator.

In the CFI, trial can run for several months or years, depending on various circumstances such as the nature or complexity of the case, availability of lawyers and witnesses, and case load of the particular trial court. If the losing party in the trial court makes an appeal to the higher court, the appellate court will decide the case based only on the evidence that were presented before the CFI. No new evidence can be introduced before the appellate court.

Legal Assistance

The Civil Code and Criminal Procedure of Thailand provides for legal assistance. In criminal cases, a counsel may be appointed by the Court to the defendant if the latter does not have one yet; or if the statute prescribes the maximum sanction of death penalty; or if the defendant, who is 18 years old or below, requests for a lawyer. In civil cases, an indigent plaintiff is exempted from paying filing and other docket fees.

10 Tilleke & Gibbins. (2011).

Trafficked Children's Legal Battle in Thailand

Trafficked children's struggle to access justice starts from the moment they are identified and continues even after the court has rendered a decision. All throughout this long process, they need the support of their families and friends, as well as the assistance of the social service providers.

The interviewed social service providers shared their experiences in handling child trafficking cases involving Burmese, Lao, and Khmer children trafficked to Thailand.

Rescue/Retrieval Operations

Police agencies refer child trafficking cases to NGOs such as the Anti-Trafficking Coordination Unit Northern Thailand (TRAFCORD). TRAFCORD participates in case build-up meetings prior to and during rescue operations. TRAFCORD social workers and lawyers coordinate and share information with the police. They accompany children victims in almost every step such as going to the police station and hospital. They ensure the healing and recovery of victims, as well as their right to legal remedies, including claims for compensation.

According to the interviewed social service providers in Thailand, the following steps should be carried out to ensure trafficked children's safety upon rescue:

- Provide immediate needs and services to trafficked children such as clothing, food, water, and medical treatment.
- Gather initial information about the trafficked children and the incident.
- Accompany trafficked children during police interviews.
- Bring trafficked children to temporary shelters wherein programs and services are provided to the victims for their recovery.
- Trace the identity and location of trafficked children's family and inform the family about the children's situation, whenever appropriate.
- Conduct a case conference to plan for legal procedures.
- Prepare the child for trial.
- Prepare the documents needed to pursue the case in court.

The social service providers noted that the order of executing the steps may vary according to the situation and that some steps could be done simultaneously.

According to the interviewed TRAFCORD social worker, the trafficked children's readiness for the legal proceedings depends on their willingness to help pin down traffickers, their understanding of the legal procedure, and their openness to share relevant information.

Preparing for the Trial

“Upon rescue, the children are placed in a government shelter. Usually, the children just want to go home so it is difficult to make them cooperate in the legal procedure. They are also discouraged when they hear about how long the legal procedure would take because that would mean that they could not go home right away.”

– Interviewed Social Service Provider

The decision to cooperate in the legal action and become a witness lies with the trafficked child. However, attending hearings, talking about the painful incident to the judge and other strangers, and answering difficult questions thrown by lawyers are not typical activities that a child engages in. Sometimes, children take several months and even years to decide whether or not to file a case. The longer it takes for the child to decide, the more chances that they will forget the relevant details of the trafficking incident. The slow prosecution could also have adverse effects on the quality of the testimony.

Before trafficked children testify in court, they go through different activities with the social workers, lawyers, child psychologists, families, and friends to prepare them for the legal procedure.

“If the children do not feel safe at home, they might find it hard to trust us, the service providers. The children will doubt on our capability to help. On the other hand, children who were encouraged or informed tend to be more cooperative.”

– Interviewed Social Worker

According to the service provider from Save the Children UK-Cross Border Project, there are three support mechanisms or procedures that are carried out simultaneously in any child trafficking case. These include the provision of psychosocial support, reintegration assistance, and legal support. Save the Children starts with getting relevant information straight from the trafficked child and from other reliable sources. The information gathered are assessed, verified, and considered when determining the actions in each procedure.

The initial information from the trafficked child gives the lawyer and social workers or case managers an idea as to where or which police department the case can be reported to. After having a case conference with the trafficked child and social workers, the lawyer prepares the necessary documents to pursue the case in court.

The interventions to prepare a trafficked child for the case could contribute to the child's willingness to cooperate in the investigation and prosecution. The preparation is usually undertaken by a social worker and a lawyer.

“The child trafficking case I handled was not brought to the court because the child refused to cooperate. The child is not related to the offender but she maintained communication with the offender whom she perceived as someone who provided her with a job and a place to stay.”

– Interviewed Social Service Provider

Based on the experience of social workers from Save the Children during initial interviews, some trafficked children expressed that they were not forced to do exploitative work. They would also say that their freedom were not restricted and that they were free to leave the place. However, after further probing, incidents of threat and manipulation over the children would surface. Some trafficked children were told that they could no longer go back to their community because their families do not want them anymore. According to the social worker, the children were also told that they will be detained if they report to the police.

In preparation for the trial, trafficked children are informed about their rights, the legal procedures, and the purpose of the legal action. In the Center for the Protection of Child Rights (CPCR), the lawyers and social workers explain to the trafficked child the purpose of the legal action and the need to take the case to court. They explain how the legal action can help prevent other children from becoming victims once their trafficker is penalized and imprisoned.

Trafficked children are oriented about each step of the legal process, the risks involved, the delays, and the possible outcomes. The lawyer and social workers explain what being a witness means and what a witness does. They also inform trafficked children about the roles, identities, and seating arrangements of other people inside a courtroom. More importantly, they assure the child witnesses that they can tell everything about the trafficking incident.

Save the Children also role plays police investigation and court proceedings as part of the preparation. Children who have already gone through police investigation help other children in this exercise and in explaining the police interview to newly-rescued trafficked children. Trafficked children are better able to discuss the investigation process in their own language and words to the new victims.

Save the Children likewise carries out creative ways to orient the trafficked children about the trial. Other than role playing, the social service providers show pictures of the rescue operation to help the child remember the incident. They also prepare a map or layout of the courtroom to

point where the people and the child will be seated during the hearing. These efforts familiarize the trafficked children with the court environment.

Save the Children also help the child witnesses understand the different words or terms that might be used during the trial. For example, the child victim may not understand the word “exploitation” or “exploited.” In explaining these words, the social workers give specific examples of exploitative working conditions, from physical, mental, and emotional harm to unfair wages and restricted freedom. They also explain legal terms such as “defendant,” “witness,” “evidence,” and “testify.”

Using a language that could be understood by the child is very important. For instance, Foundation for Women in Mae Sod (FFW Mae Sod) handled a case involving a 12-year old Burmese girl who does not speak Thai. Fortunately, FFW Mae Sod has one staff who speaks Burmese. Since the staff and the child victim speak the same language, the staff was able to gain the trust of the child and this helped in making the latter share her story comfortably. The child disclosed that she could not sleep because she sees the face of the offender every time she closes her eyes. FFW Mae Sod then brought the child to Mae Sod Hospital for treatment. The child was given medication for her condition.

Save the Children sees the importance of sustaining trafficked children’s cooperation throughout the legal procedure and preparing them for the things that will happen after testifying in court. The social service providers update the child witnesses on every step so that the latter would appreciate the progress of the case. They also comfort the children by giving reassurance of assistance and protection throughout the process.

“If the children are not ready for the legal procedure, the quality of their testimonies will be affected. If the children are not ready to cooperate in the investigation or in the trial court, they will not go to the hearing and pretend to be sick.”

– Interviewed Social Service Provider

If there are several victims by the same trafficker, Save the Children assesses and determines who among the children are ready, able, and willing to give a clear testimony. Victims who are still in a critical condition are no longer asked to testify.

Taking an oath on the witness stand before the judge and other people in the courtroom makes the trafficked children realize that the hearing is a serious matter and that they must be truthful when giving an account of the trafficking incident. During the hearing, the complainant’s lawyer can protect children witnesses by making objections and/or motions for a recess, especially if the children are having difficulty or showing signs of trauma.

Preparing trafficked children in court does not only mean providing the information all at once. The trafficked children's understanding of their rights, the legal procedure, and their roles as witnesses are indicators of their readiness to cooperate in the prosecution. If TRAFCORD does not see these indicators, it files a motion to reset the hearing, albeit the granting of the motion rests upon the discretion of the judge.

The safety and security of trafficked children and their family is a big concern that must also be considered before, during, and after the legal procedure. Trafficked children fear reprisals from traffickers and worry about their family's safety.

“One trafficked girl said that she wanted the person who violated her to be punished, but when she learned that the judicial process could take a while and that it would involve some risks, she felt scared. She was worried about her mother, who was dying, and she was looking forward to going home.”

– Interviewed Social Service Provider

In some instances, traffickers threaten or bribe the family, leaving trafficked children with no choice but to withdraw the case, retract their testimony, or to accept a settlement.

The Thai law extends protection to victims. However, interventions to protect the family of the child witnesses are still lacking.

“Some trafficked children decide to withdraw from pursuing the legal action because the traffickers or other community members threaten them and their family.”

– Interviewed Social Service Provider

Staying at the Shelter

“Most of the children in the shelter come from different places. They have different experiences but only the social workers and psychologists know all the information about these.”

– Interviewed Social Service Provider

Most of the trafficked children usually want to go home after being rescued. However, taking into consideration their safety and the need for the provision of appropriate services for their recovery and reintegration, trafficked children are first brought to temporary shelters. Those who agree to become a witness continue to stay in the shelter during the entire legal proceeding.

In CPR, shelter workers observe the behavior of trafficked children. If they see the need, a child victim is referred to a psychologist. The shelter staff, the social worker, and the psychologist work together in assessing the child's readiness to cooperate in the case.

Parents are informed of their children's situation in the shelter and are allowed to visit their child. This arrangement is considered as a better option than sending the children back home, especially when the children are not yet ready to be reunited with their family. There are times when FFW Mae Sod takes the children back to the community to visit their family. This helps maintain the family ties and prepares the children and the family for the reunification. However, if parents are involved in the trafficking of their child, they are not allowed to visit their child in the shelter.

Preparatory activities for the legal procedure are done while the children are in the shelter. At the same time, TRAFCORD conducts an assessment to determine whether the children are safe to return home. The provincial shelters are temporary shelters and victims stay there for three months. only If going back to the community would not be possible or appropriate for the children, they will be transferred to a permanent shelter. In special cases, other arrangements are explored to ensure the safety and security of the children.

“I handled three cases when the children victims refused to stay temporarily in the shelter, so we asked foster families to take care of them.”

– Interviewed Social Service Provider

Children at the Witness Stand

In Thailand, special court procedures are established to prevent direct contact between the child victims and the perpetrators. One of these procedures is the video-taping of the child's testimony. However, the defense usually objects to it because they will not be able to cross-examine the child witness. The video-taping of testimony does not provide room for any clarifications should there be contradicting testimony from another witness. Another procedure is the provision of a special room. During court hearings, the Thai court allows a child witness to stay in a separate room with a social worker, psychologist, and another person requested by the child.

Testifying in court is like reliving the trafficking incident. Child witnesses are asked to state the facts related to the trafficking incident while the defense lawyer tries to discredit their testimony.

“In one of the cases I handled, the defense lawyer said that the child has a mental disability as a tactic to discredit the child's statement. He said that the child only made up the story.”

– Interviewed Lawyer

The lawyer, the social worker, and the psychologist make sure that they accompany and assure the children during the court hearing. When particularly requested by the children, a family member or someone trusted by the children is allowed to be with the child victims during the trial.

Some children, however, do not want their family members to attend, so that the latter would not know the exact details of the trafficking incident.

In court, the child stays in a separate room with the social service providers and family members. When the hearing is adjourned, the social service providers also ensure that, together with the children, they leave the room first to avoid a direct encounter or confrontation between the child victims and the traffickers.

However, not all courts are equipped with facilities that are sensitive to the needs of child witnesses. Therefore, there are instances when trafficked children are brought to the same room with the offender. This situation makes trafficked children uncomfortable and scared. They become nervous and too scared to speak or answer the questions.

“The courts in Chiang Mai are not well-equipped. There is a separate room for the child witness but the equipment is not working really well. As a result, the child witness had to face and be with the offender in the same room. Based on my experience, I think the courts in Chiang Mai do not give enough protection to child witnesses. However, we can ask the judge not to allow media in the courtroom. So far, I have not seen any media attend the court hearings.”

– Interviewed Social Service Provider

During the trial, the lawyer moves for the marking of evidence and then presents the child witness. As a witness, the child victim has to recall the trafficking incident and state the details. Various questions are asked to establish the probable cause of the case, including questions about the evidences that were earlier presented to the court. FFW Mae Sod assures the child witnesses that they can say that they do not know the answer, instead of making up a story different from or inconsistent with their statement.

Assistance to trafficked children during the actual hearing is very important. Various activities are undertaken to prepare them for the hearing, but on the actual trial, social service providers must continue to be on guard to ensure the protection of child witnesses’ best interest and well-being. The presence of a social worker and/or a psychologist at the hearing is important. They make sure that the child witnesses are emotionally stable to proceed. The psychologist ensures the appropriateness of the questions asked to the child while the social worker helps the child understand the questions. They also help by recommending a recess or reset of the hearing. The psychologist also provides medication to child witnesses when necessary.

Regardless of the victims’ nationality and language, TRAFCORD provides a lawyer and social worker to assist trafficked children during trial. If child witnesses do not understand the question,

the lawyer and social workers can clarify and explain it further. The lawyer also watches out for leading questions or questions that will confuse the children.

Likewise, the availability of an interpreter or translator during the hearing is necessary, especially when child witnesses do not understand and speak the language or dialect used in the courtroom. The interpreter must also understand the context of the case in order to give the proper translation. Some trafficked children usually trust the interpreter because they speak the same language. In the cases handled by Save the Children, most victims come from Burma and Vietnam. Thus, they regularly provide a translator in the shelter and in the court.

The interviewed social service providers in Thailand shared the following practices for the realization of rights of the trafficked children:

Right to Confidentiality

- Only the judge and lawyers of both parties have access to the court records, transcripts, and evidences.
- Social workers, child psychologist, companion of the trafficked child, and the rest of the people present during the trial are not allowed to disclose any information to the media staff and journalists.
- Media coverage is not allowed during hearing.

Right to Protection

- The best interest of the child is the primary consideration in all actions undertaken in the legal action.
- The physical, mental, emotional, and psychological well-being of the trafficked child are ensured throughout the legal procedure, especially during the trial.
- Lawyers, social workers, and psychologists work together to ensure the trafficked child's protection.
- As much as possible, an encounter or confrontation with the offender is prevented.

Right to Information

- The trafficked child is given all relevant information about the legal procedure.
- The trafficked child is informed of any updates or progress in the legal action.
- The trafficked child is given explanation about the court's decision.

Protection during legal procedure includes maintaining the confidentiality of the identity and relevant information pertaining to the trafficked children. NGOs assisting trafficked children do not and should not disclose any information to the public. The information is not shared even among the other children in the shelter. As for the courts, trial is not open to the public when children are involved either as victims or as witnesses.

Assisting Trafficked Children after the Legal Procedure

“I feel good when a case has been concluded because it manifests the realization of the child’s rights.”

– Interviewed Social Service Provider

Save the Children social workers inform the trafficked children immediately when the court has rendered judgment. According to some children, a favorable judgment helps them recover and reintegrate into society, more so when the offender is punished and all the victims are compensated. Trafficked children, however, often bear some feelings of guilt when the convicted trafficker is a relative.

Once the decision of the court is received, TRAFCORD arranges the transportation if the child is ready to be reintegrated with the family. For those who will continue to stay in the shelter, TRAFCORD will continue to provide shelter and skills training.

The assistance provided to trafficked children includes the preparation for their reintegration. If the family or relatives of the victims were traced, the social worker, together with the children, will develop a reintegration plan.

“We had a case involving a girl who fled to Mae Sai because she was molested by her Uncle. In Mae Sai, the girl was trafficked but was eventually rescued. This past experience was taken into consideration in deciding whether she would be sent home or not.”

– Interviewed Social Service Provider

FFW Mae Sod said that there are many factors to determine whether or not the child should be reintegrated to her/his family and community. Although the decision comes from the child and the parents, the social service providers consider the child’s mental condition, education, and safety. They also have to consider the circumstances at home. For instance, FFW Mae Sod shared that one trafficked child’s mother expressed that she might not be able to take care of her child because she needs to leave for work every day. She also raised concern over the possible threats from the relatives of the perpetrator.

In cases of cross-border trafficking, maintaining strong linkages and cooperation with immigration officers, embassy personnel, and organizations abroad is important to ensure the safe and proper repatriation and reintegration of trafficked children. These linkages could also facilitate monitoring of after-care services for trafficked children. For instance, CPCRC continues to monitor the victims of cross-border trafficking after they have returned home. CPCRC visits the bordering countries to know if the victim has been provided with appropriate services.

“If a trafficked child is a foreign national, we cooperate closely with the country of origin. In the past, the child would just be sent home. There was this trafficked girl from China who was immediately sent home. She, however, had nothing to do in her place. So when offered a job in Bangkok, she accepted and this resulted in her being re-trafficked. At present, the shelter staff members are trained to find out why a child is trafficked. They probe into the root causes of the trafficking incident and the information gathered is considered in the intervention plan to prevent re-victimization.”

– Interviewed Social Service Provider

In case the victim has medical concerns such as HIV, the social worker from the country of destination informs his/her counterpart in the country of origin about the child’s health condition and recommends the provision of continuous medical attention.

“In another case, CPCRC had a meeting with service providers from Thailand and Laos to facilitate the turnover of a girl victim who was diagnosed with a mental condition. CPCRC requested the staff from the Lao shelter to monitor the child and make sure that she takes her medicine every day.”

– Interviewed Social Service Provider

In some instances, trafficked children continue to stay in the shelter for several years or even after their cases in court have been concluded. New Life Foundation has a shelter for newly rescued victims and another shelter for those who have already gone through the healing process but still could not return to their family or community for varied reasons. Trafficked children can stay in New Life Foundation as long as they want. Educational assistance is provided to children of school age or skills training for those who might be too old to return to school. These services are provided to reduce vulnerability to exploitation. New Life Foundation also tries to arrange foster families for some children through local organizations.

According to the interviewed social service providers in Thailand, trafficked children who are in or out of the shelter must be provided with the following support after the conclusion of the legal procedure:

- Education and/or skills training
- Reintegration services
- Transportation arrangement for those returning home
- Permanent Shelter for those who could not go back to their community
- Referral to government officials and/or other NGOs for the continuation of reintegration services

Barriers in Trafficked Children's Access to Justice in Thailand

The social service providers identified the different challenges that hinder the realization of trafficked children's right to access justice.

Fear

The safety and security of trafficked children and their families are some of the main considerations before trafficked children agree to cooperate in the investigation and prosecution of the trafficking incident. Some child victims are scared of reprisals from traffickers and the traffickers' family. They are also afraid of the police, prosecutors, lawyers, and judges. Trafficked children could be traumatized again when they face the perpetrator. They are unsure about the outcome of the legal action. Some trafficked children are anxious of what other people might think of them as they recount their experience in court. They fear that the community will know what they went through and that they might be the topic of discussion once they return. The fear of trafficked children may manifest in different ways, but whether or not this feeling is openly expressed by the victims, it must not be disregarded.

The service provider from New Life Foundation believes in the importance of discussing the fears and anxieties of the children. Social workers must then explain what can and will be done to overcome these fears. The service provider shared that in one instance, the trafficked child was scared of the offender's husband because he was a soldier. The trafficked child knows that a soldier is an influential person in the community.

In some cases, trafficked children do not cooperate with the investigation and prosecution, especially if a member of the family is involved in the trafficking incident. The children fear that filing a case against a family member or a relative will cause trouble to the family. Therefore, many of them choose to remain silent about it.

Some of the cases handled by FFW Mae Sod involved Burmese children whose families are considered illegal migrants. Having no legal status in Thailand, the children and their families are afraid of going to the police who might not provide protection, but instead, denounce them to immigration authorities. Rather than face expulsion from Thailand, they believe that dropping the case against the trafficker is more convenient. In response to this situation, FFW Mae Sod tries to orient the families of their rights. They reassure the families that in spite of being illegal migrants, they are still holders of human rights.

Threat

Some family members of trafficked children are threatened or harassed by the offender and/or the offender's family. They are pressured to drop the case or to ask the children to withdraw their statements. According to a lawyer from TRAFCORD, some offenders are not revengeful and do not resort to physical violence. Instead, they constantly persuade, bother, annoy, or bribe the victim's family members.

Language

Trafficked children who come from another country and do not speak the language of the destination country will have difficulty in communicating with and responding to the questions of social workers, law enforcers, lawyers, and judges, unless an interpreter is provided. Even at the early stage of the investigation, the service providers will have to put extra effort in building and pursuing the case if they could not understand the child's detailed account of the trafficking incident.

Trafficked children can better express and explain the trafficking incident in their own language. Having someone who speaks the same language encourages the children to disclose more information. Moreover, having someone in the courtroom who understands their testimony gives them comfort.

Weak Implementation of Child-Sensitive Mechanisms in Courts

The length of court proceedings, the attitude and behavior of defense lawyers and judges towards trafficked children, and the process of testifying in court and facing the perpetrators have an effect on the children's willingness to cooperate and pursue the case in court. There have been instances when a trafficked child withdraws or desists from the case because of these reasons.

“A public prosecutor asked a trafficked child, ‘You knew that the trafficker would abuse you, why did you go with him?’ This question made the trafficked girl feel terribly guilty and ashamed.”

– Interviewed Social Worker

There are existing guidelines on how to ensure the protection of child witnesses such as video-recording their testimony. Aside from preventing an encounter between trafficked children and perpetrators, video-taping the trafficked children's testimony would minimize the delay of the legal procedure and, if taken early, would prevent children from missing important details of the incident. Another protection mechanism is having a separate room where child witnesses can stay during the hearing and testify without having to face the perpetrator. However, defense lawyers object to these mechanisms because they would not be able to cross-examine the child witnesses.

Hostile Environment during Trial

The incriminating, insulting, annoying, and even degrading attitude of some defense lawyers toward trafficked children could have adverse effects on the child witnesses' well-being and behavior during the trial.

“In one instance, a 16-year old victim of sex trafficking in Singapore cried during the hearing so the social worker gave her tissue. The defense lawyer accused the social worker of writing something on the tissue. The accusation made the child feel more upset.”

– Interviewed Social Service Provider

Some of the questions asked during the hearing manifests gender insensitivity. A few defense lawyers tend to accuse girl victims of making the first move or showing interest to have sex with the defendant. There are also instances when child witnesses are asked to explain the exploitative acts done against them in a more graphic or explicit way, making the children feel uncomfortable and ashamed.

If the defense lawyer cross-examines in such an insensitive manner, child witnesses become nervous, confused and pressured. This stressful situation poses difficulty for child witnesses to answer questions or recall the exploitative acts with certainty and conviction.

Delays in Court Procedure

Some trafficked children are anxious about the day of the trial. They feel very active and their energy is high. When the hearing is cancelled, children get disappointed because it means another delay in concluding the legal proceedings and in achieving justice. Additionally, if the trial is scheduled several months apart, there is the tendency that the children will forget some details of the trafficking incident.

The Province of Chiang Rai has a children's court, with a one-way mirror wherein children can see and point at the perpetrator without being seen by the perpetrator and the defense team. Chiang Rai also has a rehabilitation center. Despite these facilities, prosecution of cases is still delayed.

According to the interviewed social service providers in Thailand, "access to justice" means victims are able to access any form of help and offenders are punished. It means that police have a deeper understanding of the law and that they are helpful to victims of child trafficking.

They added that social service providers who are assisting trafficked children access justice MUST:

- Have a clear understanding of the law
- Be familiar with and understand the legal procedure, the judicial system, and the people involved in the process
- Be cooperative and must not withhold information that is relevant to the investigation and prosecution of the case
- Monitor the cases filed in court

According to the interviewed social service providers in Thailand, a social worker performs the following roles to ensure trafficked children's protection during the entire legal proceedings:

- Participates in the rescue operation
- Facilitates the provision of the trafficked child's immediate needs upon rescue
- Facilitates the provision of shelter
- Records or makes a case study/case report of the victim
- Traces the trafficked child's family
- Informs the family about the trafficked child's situation
- Refers the trafficked child to other agencies for particular services (health, skills, education, and other services)
- Conducts regular counseling to the trafficked child and his/her family
- Collaborates with the police, lawyer, and psychologist
- Assists the lawyer in getting the trafficked child's statement
- Prepares the trafficked child for the legal procedure
- Assesses the trafficked child's readiness to attend the trial
- Accompanies the trafficked child to court
- Ensures the trafficked child's safety and protection during the trial
- Monitors the legal case
- Explains and updates the trafficked child about the case
- Informs the trafficked child and his/her family about the court's decision
- Conducts assessment for reintegration purposes
- Facilitates the provision of services like life skills training before the trafficked child is repatriated
- Monitors the trafficked child even after reintegration

Assisting Indigenous Victims of Child Trafficking

Hill Area Development Foundation Inc. (HADF)

According to the social service provider from HADF, the Lahu and Akha Tribes dwell in four villages in the mountain area of Chiang Rai Province. Some members of these tribes are trafficked in groups and brought to town for work. Later, they return to their homes without any amount of money.

Due to language barrier, some Lahu and Akha people are deceived and taken advantage of when they work outside their tribes. A few of the indigenous people could not leave the place where they were brought because their ID cards were withheld by the employers or traffickers. Others were promised with a certain amount of salary, but received less than the promised amount because, according to their employers, their work was unsatisfactory. Some did not receive any payment at all because they only worked for less than a month.

The village of Lahu Tribe is far from the judicial court and the people prefer to discuss and resolve problems among themselves so that they can comfortably speak in their own language. The victims can report a case directly to the village leader who, in turn, will summon the perpetrator. If the perpetrator is found guilty, the village leader will call the police. However, the leader's action to reported cases could still vary. In cases of rape, the village leader may recommend marriage to resolve the matter if the victim is an adult. If the victim is a child, the perpetrator would be asked to pay a maximum of 2,000 Baht. Yet, there are cases where the leader asks the perpetrator to marry the child once she reaches 13 or 14 years old.

Usually, victims and their family are satisfied with this practice. For them, it maintains the peace and harmony within the community. It also prevents people from other communities to know about the incident.

There are times when the Lahu Tribe refers cases to the one-stop-shop service unit in Chiang Rai. The Chiang Rai shelter is subsidized by the government and most of its clients come from Burma, Laos, and Cambodia.

In the town of Tambon, a sub district in Thailand, the interviewed social worker shared that she goes directly to the family and not to the village leader when a case is reported to her because the village leader could just recommend the settlement of the case. Even

if the social worker receives the report in the evening, she immediately visits the family, sometimes only wearing informal or casual attire.

In handling and referring cases, the Tambon-based social worker noticed that the statistics do not reflect the actual number of cases or victims of child trafficking. She added that, in practice, each agency counts the victims that they have served. Thus, there may be instances of double counting.

In 2008, the Tambon-based social worker received about 20 trafficking cases involving girls. Out of the twenty trafficked girls, ten feared being ostracized if they file a case in court. Nonetheless, even without the victim's consent, the police filed all cases in court. One of the victims was a Lao girl trafficked for sexual exploitation and a 13-year old girl sold by her mother in Southern Thailand. The social worker noted that gathering and preserving evidence are among the problems or challenges in prosecution.

3 cambodia

Child Trafficking in Cambodia

Khmer men, women, and children migrate for work within Cambodia and to other countries such as Thailand and Malaysia. Many, however, are trafficked for forced labor and sex trafficking. Some of them end up in debt bondage situation in brothels, fishing and food processing industries, factories, domestic work, agricultural plantations, and on the streets to beg.

Cambodia is also a destination country for Vietnamese women and children trafficked for sexual exploitation and forced labor in processing industries for bricks, rubber, salt, and shrimp. Some child victims are forced to beg, scavenge, and perform domestic work. Prostitution within Cambodia, particularly in tourist destinations like Siem Reap, Sihanouville, Phnom Penh, and Svay Pak,¹¹ also preys upon Khmer women and children from rural areas.

Determining the extent of child trafficking in Cambodia remains a challenge due to lack of statistics. Nevertheless, cases are recorded individually by different organizations working on women and child trafficking issues. For instance, the Committee for the Protection and Promotion of Child Rights (CPPCR), an organization focusing on child trafficking, has filed nine cases in court since 2001. Since 1992, the Cambodian Human Rights and Development Association (ADHOC) has filed one case of trafficking for forced labor, two cases involving victims trafficked to Vietnam, and one case of trafficking in Phnom Penh.

Another NGO that provides legal assistance to trafficked children is the Legal Support for Children and Women (LSCW). A total of 69 cases were documented by LSCW from 2005 to the second quarter of 2010. These cases include children who were trafficked upon migrating for work. Some of the cases handled by LSCW were referred by the International Justice Mission, World Hope, ADHOC, Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Chab Dai Coalition, and Health Care Center for Children.

11 International Justice Mission. (2006).

Child trafficking cases are also referred to Cambodia Against Child Trafficking (Cambodia ACTs) by the media and NGOs like the LICADHO and the Cambodian Defenders Project. In 2010, Cambodia ACTs received four cases of child trafficking. Cambodia ACTs provides legal assistance to trafficked children during investigation and throughout the trial. It also refers cross-border trafficking cases, as well as cases outside its areas of operation, to other NGOs like the Action Pour Les Enfants.

The social service providers of the abovementioned organizations undergo trainings to enhance their knowledge on the anti-trafficking law, penal code, civil code, and other domestic laws. They also participate in trainings to equip them with investigation skills like gathering information on the identity of the suspect, collecting and preserving evidence, and interviewing skills. They are also trained on child protection.

Specialized trainings are given to the Anti-Human Trafficking Department and provincial units of Law Enforcement Against Sexual Exploitation and Trafficking of Children (LEASETC). Police are also given a special course on victim identification.

**Tier Placement of the Kingdom of Cambodia
in the US State Department TIP Report**

Year	Tier Placement
2001	Tier 2
2002	Tier 3
2003	Tier 2
2004	Tier 2
2005	Tier 3
2006	Tier 2 Watch List
2007	Tier 2 Watch List
2008	Tier 2
2009	Tier 2 Watch List
2010	Tier 2
2011	Tier 2

Tier 1: Countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards

Tier 2: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

Tier 2 Watch List: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into

compliance with those standards and: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

Tier 3: Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

In the last three years, the US State Department's tier placement of the Kingdom of Cambodia has moved from Tier 2 (2008) to Tier 2 Watch List (2009), then to Tier 2 again in 2010. The TIP Report of the US State Department recognized the efforts undertaken by the Kingdom of Cambodia to eliminate human trafficking. It, however, urged the government to work on the prosecution and conviction of traffickers, especially the involved government officials. It also emphasized the need to address labor trafficking and probe into the activities of labor recruitment agencies.

The Law on Suppression of Human Trafficking and Sexual Exploitation

The Kingdom of Cambodia is a state party to Palermo Protocol. It signed the Protocol in November 2001 and ratified in July 2007. In January 2008, the Senate approved the Law on Suppression of Human Trafficking and Sexual Exploitation. This law repeals the 1996 Law on Suppression of Kidnapping, Human Trafficking/Sale of a Human Being and Exploitation of a Human Being. It reaffirms the commitment of the Kingdom of Cambodia to protect its people, including children, from human trafficking.

While not specifically designated as trafficking in persons, the Cambodian Anti-Trafficking Law defines¹² and punishes the following acts which, technically, are acts of trafficking:

- (a) Article 13: "The act of selling, buying or exchanging a person shall mean to unlawfully deliver the control over a person to another, or to unlawfully receive the control over a person from another, in exchange for anything of value including any services and persons."
- (b) Article 8: "The act of unlawful removal in this law shall mean to:
 - 1. remove a person from his/her current place of residence to a place under the actor's or a third person's control by means of force, threat, deception, abuse of power, or enticement, or
 - 2. without legal authority or any other legal justification to do so, take a minor or a person under general custody or curatorship or legal custody away from the legal custody of the parents, care taker or guardian."
- (c) Article 12: "The act of unlawful recruitment in this law shall mean to induce, hire or employ a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means."
- (d) Article 10: "The terms 'any form of exploitation'... shall include the exploitation of the prostitution of others, pornography, commercial sex acts, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs."

12 Unofficial Translation of the Law on Suppression of Human Trafficking and Sexual Exploitation by UNICEF. (2008).

The law defines a child or a minor as a person below 18 years old (Article 7: Definition of Minor). It also defines child prostitution, child pornography and indecent acts.

As added protection for victims of human and child trafficking, the Anti-Trafficking Law of Cambodia provides for the non-disclosure of information that would lead to the identification of trafficked persons by newspapers and other mass media.¹³ Trafficked persons may also claim for damages aside from the restitution of unjust enrichment.¹⁴ Unjust enrichment is referred to as the gains obtained by the offender from the crime of trafficking and no other legal source of wealth or resources can be determined. Further, victims have preference over property confiscated by the state for their compensation and restitution.¹⁵

The Anti-Trafficking Law of Cambodia has limited provisions on victim protection. A more comprehensive protection policy for victims of trafficking in Cambodia is contained in the “Policy on the Protection of the Rights of Victims of Human Trafficking” and the “Minimum Standards on the Protection of the Rights of Victims of Human Trafficking.” These two instruments, which were launched by the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSAVY), ensure the quality and sustainability of services for trafficked victims from the time they are rescued and throughout their rehabilitation and reintegration process.

In 2009, the Kingdom of Cambodia established the National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation in Women and Children (National Committee S.T.S.L.S.). This committee is a consolidation of the National Task Force to Combat Trafficking, which assisted in the implementation of agreements such as memorandum of understanding between Cambodia and other countries, and the Leading Task Force to Fight Human Trafficking, Smuggling, Exploitation and Sexual Exploitation of Women and Children.

13 Article 49

14 Article 46

15 Article 47

The National Committee S.T.S.L.S. is composed of the following members:

1. Minister of Ministry of Interior – Chairperson
2. Minister of Ministry of Women’s Affairs – Vice Chairperson
3. Minister of Ministry of Social Affairs, Veterans and Youth Rehabilitation – Vice Chairperson
4. Minister of Ministry of Justice – Vice Chairperson
5. Minister of Ministry of Labor and Vocational Training – Vice Chairperson
6. Minister of Ministry of Tourism – Member
7. Minister of Ministry of Health – Member
8. Minister of Ministry of Education, Youth and Sports – Member
9. Secretary of State of Council of Ministers – Member
10. Secretary of State Ministry of Interior – Permanent Member (Head of Secretariat)
11. Secretary of State of ministry of National Defense – Member
12. Secretary of State of Ministry of Foreign Affairs and International Cooperation – Member
13. Secretary of State of Ministry of Information – Member
14. Secretary of State of Ministry of Economy and Finance – Member
15. Secretary of State of Ministry of Culture and Fine Art – Member
16. Secretary of State of Ministry of Post and Telecommunication – Member
17. Commissar General of National Police – Member
18. Commander of Military Police – Member

The six working groups of the National Committee S.T.S.L.S. are:

1. Prevention Working Group
2. Protection, Rehabilitation, Reintegration and Repatriation Working Group
3. Law Enforcement Working Group
4. Judiciary Affair Working Group
5. International Cooperation Working Group
6. Child Affair Working Group

The National Committee S.T.S.L.S. is recognized as the “commanding body of the Royal Government in combating human trafficking, smuggling, labor exploitation and sexual exploitation in women and children.”¹⁶ As such, it is mandated to undertake the following tasks:

- “Lead coordination with Ministries, partner institutions and relevant countries to protect citizens especially women and children to get out of trafficking, smuggling, labor exploitation and sexual exploitation
- Be the direct commander on the secretariat in monitoring and evaluation the situation, implementation of plans to combat human trafficking, smuggling, labor exploitation and sexual exploitation in women and children of the 06 (six) technical working groups and provincial and municipal commanding units

16 Sub Decree on Establishment of National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation in Women and Children (S.T.S.L.S) Number: 162. ANKR/BK

- Review and decide on reports submitted by the secretariat for further submission to the Royal Government
- Review, resolve suggestion and recommendation, advise, lead to enable the implementation of the secretariat and all working groups and take actions in accordance with their targets
- Guide and encourage the provincial-municipal commanding units, competent authority, Ministries, and relevant institutions to strengthen their focus and responsibility in combating human trafficking, smuggling, labor exploitation, and sexual exploitation in women and children
- Take actions to rescue, protect and uphold better quality of services of rehabilitation, reintegration and repatriation of victims especially women and children
- Eradicate impunity by encouraging investigation and prosecution on ring leaders and offenders in relations to human trafficking, smuggling, labor exploitation and sexual exploitation in women and children
- Raise awareness to increase confidence of citizens especially victims on public services and increase participation in legal enforcement
- Be responsible for leading the coordination among relevant working groups and be an active promoter within each Ministry in implementing the plan to combat human trafficking, smuggling, labor exploitation and sexual exploitation in women and children as well as submitting report to the secretariat in a timely manner
- National Committee convenes every quarter to exchange ideas on reports prepared by the secretariat; solve suggestions; review the proposed recommendations, evaluate the situation, and set objectives and strategies
- In case of necessity, the chairperson can summon an extraordinary meeting. In each meeting, there could be a representative, high ranking official with a privilege to make decision, to participate in the meeting if any member is absent.
- Regularly submit report to the Head of the Royal Government on the works to combat human trafficking, smuggling, labor exploitation, and sexual exploitation in women and children”¹⁷

The National Committee S.T.S.L.S. organizes a similar structure at the provincial and municipal levels. The Municipal-Provincial Committee S.T.S.L.S., headed by the Municipal-Provincial Governor, implements the Anti-Human Trafficking Law of Cambodia along the six main areas of work: Prevention, Protection, Rehabilitation, Reintegration and Repatriation, Law Enforcement, Judiciary, International Cooperation, and Child Affairs.

17 Ibid.

Other Anti-Human Trafficking Task Forces in Cambodia at the National Level

- COMMIT Task Force – chaired by MOWA
- National Task Force – chaired by MOSAVY
- National Coordination Team of Undertaking the Repatriation of Trafficked Children and Women through the Cambodian-Thai Border – chaired by MOSAVY
- Cambodian National Council for Children (CNCC) Sub-Commission on trafficking and Sexual Exploitation of children – chaired by the Ministry of Interior
- CNCC Sub-Commission on Child Labour and Other Forms of Exploitation – chaired by the Ministry of Labour
- Criminal Justice Technical Working Group on Human Trafficking – chaired by the Ministry of Justice
- Cambodian National Council on Women – chaired by the Minister for Women’s Affairs

Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia

The Cambodian National Council for Children (CNCC) approved and adopted the Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia in December 2007. Based on the ASEAN Guidelines, this national guideline stipulates the minimum requirements that should be observed when identifying a trafficked child, handling the child upon initial contact, providing protection and support to the child and his/her family, and securing the child’s access to justice.

The Judicial System in Cambodia

The 1993 Constitution declares the independence of the judiciary from the executive and legislative branches of government. The judicial branch of Cambodia consists of the following:¹⁸

1. Court of First Instance – serves as the lowest in the hierarchy and includes the Provincial, Municipal, and Military Courts. The provincial and municipal courts have jurisdiction over a particular geographical area where the court is located. They have two departments: the civil court and the criminal court. Due to the limited number of judges, the courts

18 Khmer Institute of Democracy, The. (n.d.).

cover both cases in the meantime. On the other hand, the military court has jurisdiction over cases committed by military personnel in the whole country. The Military Court is administratively, financially, and logistically under the Ministry of Defence.

2. Appeal Court – reviews the decision of the Courts of First Instance by way of an appeal. The appealed cases are heard by a Trial Council composed of three judges. The Appeal Court will then make a new adjudication which may uphold, modify, or annul the lower court's judgment or decision. The Appeal Court may undertake additional investigation to resolve gaps not covered by the lower court.
3. Supreme Court – renders final judgment on appealed cases from the Appeal Court. It is headed by the President. The Supreme Court is composed of a Civil and Social Chamber and a Penal Chamber. The Civil and Social Chamber handles civil, labor, and commercial disputes, as well as marriage, family, and administrative matters. The Penal Chamber handles criminal matters.

Judges and prosecutors are appointed and supervised by the Supreme Council of Magistracy (SCM). SCM is an independent body that was established in accordance with the 1993 Constitution. It upholds the independence of the judiciary and is chaired by the King and composed of the Minister of Justice, the President of the Supreme Court, the Prosecutor-General of the Supreme Court, the President of the Appellate Court, the Prosecutor of the Appellate Court, three judges (elected by judges), and three alternate judges (elected by judges).¹⁹

Informal Dispute Resolution

The traditional method of resolving disputes is still being practiced by some Cambodian people especially in cases that are not very serious. Concerned parties resort to the elder people or prominent individuals in their villages or communes for reconciliation.

Trafficked Children's Legal Battle in Cambodia

The interviewed social service providers shared their experiences in handling child trafficking cases involving Khmer children trafficked to Thailand and Vietnam.

¹⁹ Ibid.

For the interviewed social service providers in Cambodia, “access to justice” means:

- ✓ Respect of the law
- ✓ Enforcement of the law to give justice due to victims
- ✓ Fair access to legal remedies
- ✓ Conviction of perpetrators
- ✓ Payment of compensation

NGOs and government agencies receive suspected and verified reports of child trafficking from victims, parents, guardians, or other NGOs. Reports are received and case referrals are made through calls, visits to offices of NGOs, and field visits.

Trafficked children have to deal with different social service providers before, during, and after the legal procedure. They are interviewed by police officers to get all information necessary to start an investigation, gather evidence, look for witnesses, and file a complaint in court. All throughout this process, police officers work closely with social workers, psychologists, shelter staff, lawyers, and trafficked children’s family. During the interview, social workers accompany the trafficked children.

In providing assistance to trafficked children, the interviewed social service providers acknowledged the significance of their roles, as well as the roles of other people around the victims, in fulfilling trafficked children’s right to access justice. They believe that the decision to take a legal action or to cooperate in the legal process lies with the trafficked children and their parents or guardians. However, not all trafficked children would want cooperate in the legal procedure.

The social service providers also acknowledged the importance of collaborating with the other stakeholders to obtain justice for trafficked children. The lawyers and law enforcers must work together for the investigation, prosecution, and conviction of traffickers. On the other hand, lawyers, social workers, and psychologists ensure the trafficked children’s safety and well-being at all times. Likewise, civil society and community members have roles to play in ensuring trafficked children’s right to access justice. They are part of the network that protects and gives trafficked children the chance to rebuild their lives.

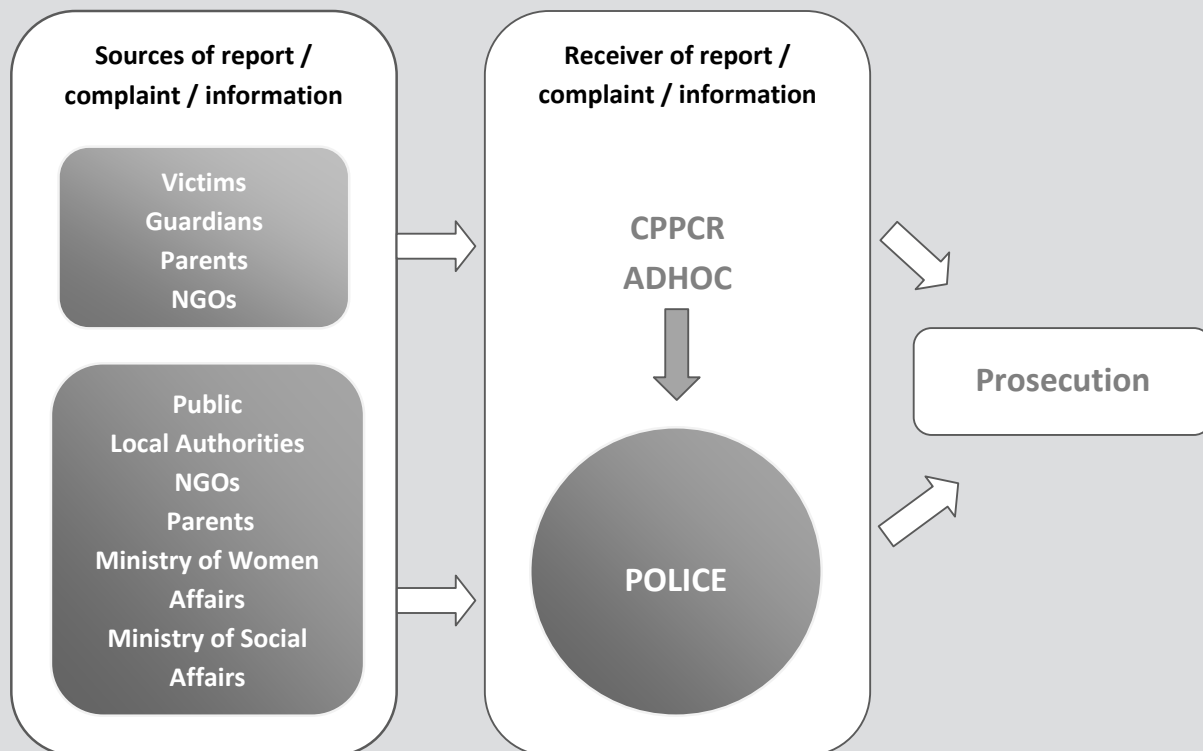
“Lawyers protect children victims and their rights. We try to ensure that other people, including the judges and defense lawyers, respect them as well.”

– Interviewed Lawyer

Children who have agreed to testify in court are considered ready to be witnesses after they have been oriented about the legal procedure, the trial, and the roles of witnesses and other people

in the judicial system. Trafficked children are perceived to be ready for the legal action once they have understood their rights. According to the social service providers informing the children about their rights boosts their confidence in pursuing the legal action.

Illustration of CPPCR and ADHOC'S Reporting Procedure



The police and NGOs work towards the prosecution of cases.

Preparing for Trial

Assisting trafficked children through the entire legal procedure entails a lot of work that must be carried out by different social service providers. The shelter staff, social workers, and lawyers work together to prepare trafficked children for the hearing. Helping trafficked children obtain justice requires building the children's trust and confidence, explaining the legal procedure clearly, and assuring them of their safety and protection the whole time. For the lawyers, protecting children during the trial also means reminding the judge and defense lawyers about the trafficked children's right to special protection.

According to some interviewed lawyers, one of their basic services includes helping the trafficked children feel comfortable and safe so that they will be able to testify clearly. Lawyers file a motion to set the hearing at an early date so that the victims will not have to wait long to testify. Some courts

grant the motion. However, there are times when the trial is delayed. The interviewed lawyers shared that they had a case which took five years to conclude.

A visit to the courtroom before the hearing is arranged by the trafficked children's lawyer, subject to the approval of the judge. The purpose of the visit is to familiarize child witnesses with the physical set up of the court and the places where the judge, the witnesses, and other people involved in the proceedings will be seated. The visit helps lessen the trafficked children's anxiety over the legal proceedings and the court environment.

Like any other children, trafficked children have the capacity to cope with situations; they just have to know the necessary information. The main information that trafficked children need concerns their rights. They must also be informed about the legal procedure and the progress of the case. The social workers, lawyers, police, shelter staff, and other people assisting trafficked children have the responsibility of explaining such information in a language known to the trafficked children or in terms that could be easily understood by the children.

The NGOs assisting or providing services to trafficked children also respect the victims' right to confidentiality. Relevant information pertaining to the trafficking incident, including personal circumstances of the victim, is shared only with law enforcement officers, assigned lawyers, social workers, and shelter staff. The sharing of information is done only for the purposes of providing appropriate services and prosecuting the trafficking case. For cross-border cases, the important information must be shared with the liaison officers of the concerned countries. In LEASETC case, however, it only shares information with countries that has existing MOUs with Cambodia.

Staying at the Shelter

Shelters in Cambodia are primarily managed by NGOs. The shelters are accessed by trafficked Khmer citizens who cannot go home to their families or place of origin, and Vietnamese victims who are waiting to be repatriated.²⁰ Victims give their consent to stay in the shelter and they are allowed to leave the place when they are ready.²¹

There are various shelters for abused women and children in Cambodia. The Cambodia ACTs network has at least four member NGOs that manage shelters for trafficked children: Vulnerable Children Assistance Organization (VCAO), Cambodian Children Against Starvation and Violence

²⁰ Gallagher, A. & Pearson, E. (2008).

²¹ Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking. (2007).

Association (CCASVA), Cambodia Women's Crisis Center (CWCC), and Cambodia Women's Development Association (CWDA).

NGOs providing other services to trafficked children make sure that they refer their clients to an NGO that has a shelter for victims. LSCW also makes sure that its beneficiaries are taken care of in a shelter.

The availability and accessibility of temporary shelters are important in guaranteeing the safety and security of children victims of trafficking. While the children are in the shelter, they are provided with psychosocial and other rehabilitation and reintegration services. The social service providers acknowledge the importance of bringing the children to a place where their safety is ensured; where food and clothing are provided to them; and where educational assistance or vocational trainings are accessible to them.

Trafficked children undergo counseling sessions while in the shelter. These sessions are conducted to help victims overcome trauma and regain confidence. Social workers can also get additional information from trafficked children during these sessions. Trafficked children try to recall the details of the trafficking incident. These sessions also help prepare the trafficked children for the legal action, especially for the court hearing. If trafficked children want to pursue a legal action, the social workers or NGOs look for good lawyers.

In ensuring the mental and psychological preparedness of trafficked children, psychologists spend time with the victims before, during, and after the trial. Sessions with a psychologist before the trial help trafficked children build their confidence in testifying.

Children at the Witness Stand

When enough evidence is gathered and the investigation is done, the victim is then asked to go to court. On the day of the trial, relevant documents are prepared and brought to court.

Trafficked children are instructed to raise their hand if they cannot understand what the judge or the defense lawyer is saying in order for the children's lawyer to request the judge to repeat the question. Victims are also reminded that they can ask questions from the judge or the lawyer if they need further clarifications before giving their answers.

Individuals who do not have any participation in the case are not allowed to observe the trial. Although reporters are allowed to be observers during the trial, they are not allowed to take down notes, take photographs, and record the court proceedings in order to protect the right to privacy

and confidentiality of child victims. However, if the victims agree, news reporters can interview them outside the court after the hearing.

As for the judges and prosecutors, they are bound by the code of ethics which has provisions relating to child protection and upholding the dignity of children victims of trafficking.

The interviewed social service providers in Cambodia identified the following reasons for case dismissal:

- Lack of evidence
- Death of suspect
- Lapsed prescriptive period for filing a case
- Out-of-court settlement
- Bribery of perpetrators
- Mediation of local officials to settle the case

Monitoring the Cases in Court

LEASETC has a system of monitoring the cases in 10 provinces in Cambodia. They have a database and they undertake field visits to check or follow up the cases. However, collaboration between NGOs and law enforcement officers still has to be strengthened to improve the monitoring of cases.

Barriers in Trafficked Children's Access to Justice in Cambodia

The interviewed social service providers identified the following factors that hinder trafficked children from pursuing legal action and encourage them to withdraw their complaints.

Fear

During the trial, trafficked victims are afraid to talk in front of the perpetrator. Some trafficked children are not able to answer well during the cross examination because they are frightened by the presence of the perpetrator in the courtroom.

Trafficked children are also sometimes scared of the judge and the defense lawyer. There are instances when the trafficked victim does not understand the question of the judge or defense

lawyer. As a result, the victim gives irrelevant answers. A few trafficked children get intimidated by defense lawyers who appear arrogant and mean. In one instance, a lawyer even accused the trafficked children of telling lies. This made the children very upset and they no longer wanted to answer the questions.

Other victims are not able or are not willing to identify their perpetrators because of fear. Sometimes, the perpetrators are relatives of the victims. The child witnesses do not want to cause any trouble to their family so they refuse to pursue legal action.

The judge's manner of speaking also causes fear to trafficked children. If the judge speaks too loud, trafficked children are rattled. They could not provide clear answers or remember important details of the trafficking incident.

Financial Constraints

Pursuing legal action entails expenses for filing fees, transportation to and from the court, and food. It also requires resources for gathering, preserving, and submitting evidence. In other words, extending legal assistance to trafficked children and their family consequently means allocating resources for other programs and services.

Involvement of Powerful or Influential People

Some of the interviewed social service providers handled child trafficking cases that involved powerful or influential people. These people intimidate, force, threaten, and use their status or position to stop the witnesses from filing a case or testifying. In some instances, perpetrators are released from jail without serving the full sentence due to their connection or influence.

Delays in Court Procedure

According to one shelter staff, the issuance of notice of court hearing may take one month to one year. The trial is usually scheduled five to seven days after receipt of the notice. Based on their experience, scheduled hearings are often cancelled due to reasons like the non-appearance of the defendant's lawyer or the judge's unavailability.

Absence/Lack of Information

Not having enough knowledge of the steps of the legal process, the length of time required for a case to conclude, and the rights and obligations of children as complainants and witnesses, among

others, hinder trafficked children from exercising their right to seek justice. According to some of the social service providers, the trafficked children's knowledge and understanding of their human rights help in boosting their courage, redeeming their value or self-worth, and strengthening their confidence in testifying and facing the perpetrators.

Effects of Trafficking

The adverse effects of being subjected to exploitative conditions may vary depending on the children's capacity to cope and recover. Trafficked children have to deal with the trauma and try to stabilize their mental and psychological conditions. They also have to overcome stigmatization and ostracism. All of these conditions have bearing on the trafficked children's readiness and willingness to pursue a case against the perpetrators.

Absence/Lack of Support and Protection System

The support group for trafficked children may include their parents, neighbors, community, local authorities, and other people important to the victims. These people can help trafficked children regain their confidence, rebuild their trust, and feel protected or secured from being exploited again. Trafficked children who have taken a legal action must also be reassured of their safety from the perpetrator's reprisals. To have a fully functional support and protection system, capacity building and skills training must be conducted to the support group, including lawyers and judges. Trafficked children feel reassured to know that there are people who will protect and support them throughout the legal process.

Lack of Cooperation among Social Workers, Law Enforcers, and Victims

The lack or late cooperation among the social service providers and victims affects the prosecution and its eventual outcome. Some important pieces of evidence are not obtained or, if obtained, are not preserved properly. Weak evidence means weak prosecution. In some instances, law enforcers have a difficult time arresting the perpetrators, thus, giving the perpetrator the opportunity to hide or leave the country to escape prosecution.

Recommendations

The interviewed social service providers expressed the importance of carrying out collaborative efforts with different stakeholders to obtain justice for trafficked children. Furthermore, they identified different areas that must still be worked on.

Capacity Building of Social Service Providers

Government officials and NGO staff working towards the elimination of child trafficking must have continuous training on the anti-trafficking law and its implementation.

Police officers must continuously be equipped with knowledge and skills on gathering and preserving evidence. This training would help strengthen cases that will result in more successful prosecution.

Administering Justice in a Child-Sensitive Manner

Judicial bodies have the mandate to administer the law. In doing so, they must consider that among the people seeking for justice are children who are still developing their mental and physical capacity, and yet were already subjected to exploitative acts. Certain ethical standards must be carried out by lawyers and judges to ensure that the best interest of the children remains the primary consideration at every stage of the judicial process.

Strengthening Collaboration within the Country and Across Borders

Working relationships with various stakeholders within the country and across borders must be fostered to ensure the proper handling of child trafficking cases upon rescue, rehabilitation, and reintegration. Likewise, these links could facilitate the pursuit of justice in terms of gathering and preserving evidence, case monitoring, and providing services to trafficked children.

The linkages to be built and strengthened must be between and among police officers, immigration officials, lawyers, government and NGO social workers, shelter staff, community members, and other local authorities. Information sharing and case monitoring systems must also be improved to ensure the child's protection and the just and speedy disposition of child trafficking cases.

4 philippines

Child Trafficking in the Philippines

The number of cases of child trafficking in the Philippines continues to rise. Although this can be viewed either as actual increase in trafficking incidents or increase in the reporting of cases as a result of community education and awareness campaign, it nevertheless signifies that more and more children need special protection, including legal protection and assistance in seeking justice.

**Tier Placement of the Philippines
in the US State Department TIP Report**

Year	Tier Placement
2001	Tier 2
2002	Tier 2
2003	Tier 2
2004	Tier 2 Watch List
2005	Tier 2 Watch List
2006	Tier 2
2007	Tier 2
2008	Tier 2
2009	Tier 2 Watch List
2010	Tier 2 Watch List
2011	Tier 2

Tier 1: Countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards

Tier 2: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards

Tier 2 Watch List: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

Tier 3: Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

In the November 2011 report of the Inter-Agency Council Against Trafficking (IACAT), a total of 61 convictions on human trafficking cases were obtained since the enactment of the Republic Act 9208: Anti-Trafficking in Persons Act of 2003 (RA 9208). Twenty-five of these cases involved children victims, wherein majority of the victims were trafficked for sexual exploitation and the rest for forced labor and slavery and involuntary servitude.

Anti-Trafficking in Persons Law in the Philippines

Republic Act 9208: Anti-Trafficking in Persons Act of 2003

Considered as one of the first and the most comprehensive, progressive, and gender-sensitive anti-human trafficking legislation, RA 9208 or the Anti-Trafficking in Persons Act of 2003 was signed into law on May 2003. It took nine years before the law was passed, but is deemed as a “groundbreaking law that substantially complies with international human rights standards and provides holistic and comprehensive protection to victims.”²²

The law criminalizes trafficking in persons and defines it 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.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as “trafficking in persons” even if it does not involve any of the means set forth in the preceding paragraph.”

The Philippines signed the Palermo Protocol on December 14, 2000 and ratified it on May 28, 2002.

The law further defines and criminalizes specific acts of trafficking, acts that promote trafficking, use of trafficked persons for prostitution, and violation of confidentiality.

22 Guanzon, R. & Calalang, C. (2004). p. 90

RA 9208 mandates the government agencies to establish and implement preventive, protective, and rehabilitative programs for the trafficked victims.²³ It also provides the victims with legal protection²⁴ and preferential entitlement under the witness protection program.²⁵ Furthermore, it stipulates mandatory services to be given to the human trafficking victims by the government agencies to ensure the victims' full recovery and social reintegration.²⁶

RA 9208 also establishes the IACAT, which is comprised of representatives from relevant government agencies and NGOs from the women, children, and Overseas Filipino Workers sectors.

Under Section 23 of RA 9208, the mandatory services to trafficked persons include:

- a) Emergency shelter or appropriate housing
- b) Counseling
- c) Free legal services which shall include information about the victims' rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person
- d) Medical or psychological services
- e) Livelihood and skills training
- f) Educational assistance to a trafficked child

To achieve its mandate and strengthen the campaign against trafficking in persons, IACAT created different task forces such as the National Inter-Agency Task Force Against Trafficking in Persons, four Regional Task Force Against Trafficking in Persons, the Department of Justice (DOJ) Anti-Trafficking Task Force, the Ninoy Aquino International Task Force Against Trafficking, and the Diosdado Macapagal International Airport Task Force Against Trafficking in Persons. Likewise, Guidelines were issued to govern the creation of anti-trafficking committees at the provincial, city and municipal levels. The local committees coordinate and monitoring local anti-trafficking efforts.

IACAT has promulgated in June 2009 the Implementing Rules and Regulations on Trafficking in Persons for the Sale and Removal of Organs, supplementing the rules and regulations issued in 2003.

23 Section 16

24 Section 17

25 Section 18

26 Section 23

Composition of IACAT

Chairperson: Secretary of the Department of Justice

Co-chairperson: Secretary of the Department of Social Welfare and Development

Members:

- (a) Secretary, Department of Foreign Affairs;
- (b) Secretary, Department of Labor and Employment;
- (c) Administrator, Philippine Overseas Employment Administration;
- (d) Commissioner, Bureau of Immigration;
- (e) Director-General, Philippine National Police;
- (f) Chairperson, National Commission on the Role of Filipino Women; and
- (g) 3 NGO representatives from the women, children, and OFW sectors

Penalties and Sanctions under Section 10 of RA 9208

- (a) Any person found guilty of committing any of the acts of trafficking in persons shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00).
- (b) Any person found guilty of committing any of the acts that promote trafficking in persons shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00).
- (c) Any person found guilty of qualified trafficking under shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00).

Moreover, the government carried out efforts to strengthen the implementation of RA 9208. In 2010, the DOJ issued a circular²⁷ directing all prosecutors to prioritize and immediately resolve cases of human trafficking. It also ordered the prohibition of case dismissal based on the Affidavit of Desistance executed by the victims or their guardians. Likewise, the Office of the Court Administrator of the Supreme Court issued a circular²⁸ instructing all judges to speed up the disposition of cases involving violations of RA 9208.

²⁷ DOJ Circular No. 57. (2010).

²⁸ Supreme Court Office of the Court Administrator Circular No. 151. (2010).

Philippine Guidelines for the Protection of Trafficked Children

Approved and adopted by the IACAT on July 2008, The Philippine Guidelines for the Protection of Trafficked Children provides the minimum requirements that should be considered and observed at all stages of care and protection of children victims of trafficking. It includes specific measures on identifying a trafficked child, handling the child upon initial contact, providing protection and support on the child and his/her family, and securing the child's access to justice.

Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases

The manual aims to provide law enforcers and prosecutors with a step by step guide from investigation to conviction of human traffickers. Prepared by law enforcers, prosecutors, and a consultant, the manual discusses the roles and responsibilities of relevant agencies in the enforcement and prosecution of the anti-trafficking law, the establishment of criminal liability, the tools and principles in handling cases of trafficking, and the programs and services for the protection of the victims.

The Judicial System in the Philippines

Seeking justice in the Philippines involves dealing with the different courts of the judicial system such as the highest court, lower courts, and special courts. The Constitution of the Philippines “ordains that judicial power shall be vested in one Supreme Court and such lower courts as may be established by law.”²⁹ The Philippine Judicial System is composed of the following courts:

- a) The Supreme Court is the highest Court in the Philippines and the final arbiter of any and all judicial issues. Composed of one Chief Justice and 14 Associate Justices, it may sit en banc or in divisions of three, five, or seven members when deciding.
- b) The Court of Appeals has jurisdiction over appeals from the decisions of the Regional Trial Courts and certain quasi-judicial agencies, boards, or commission. It is composed of one Presiding Justice and 68 Associate Justices.
- c) The Lower Courts include the Regional Trial Courts (RTC), Metropolitan Trial Courts (MeTC, in Metro Manila), Municipal Trial Courts in Cities (MTCC, for cities other than those in Metro Manila), Municipal Trial Courts (MTC) and the Municipal Circuit Trial Courts (MCTC). They are vested with exclusive original jurisdiction over civil and criminal cases to the exclusion of other courts. These courts are generally described as “trier of facts”.

29 Section 1, Art. VIII

RTCs are established in the 13 judicial regions of the country and there are as many RTCs in each region as the law mandates. In criminal cases, it has exclusive original jurisdiction over cases where the penalty is six years of imprisonment and above. It also has appellate jurisdiction over the decisions of the MTCs in their respective territorial jurisdiction.

The MTCC, MTC, and MCTC have exclusive original jurisdiction over city and municipal ordinances and criminal cases punishable by imprisonment of less than 6 years, regardless of fine and accessory penalties, within their territorial jurisdiction. Every city has MTCC and every municipality has an MTC.

Shari'a Courts in certain areas in Mindanao are established where the Muslim Code of Personal Laws operates.

- d) Special Courts include the Court of Tax Appeals and the Sandiganbayan for tax-related cases and graft and corruption cases involving public officials, respectively.

Cases involving children either as a complainant or an accused fall exclusively within the jurisdiction of the Family Court pursuant to Republic Act No. 8369 (RA 8369) or the Family Courts Act of 1997. RA 8369 mandates the establishment of family courts “in every province and city in the country,” and in case the city also serves as the province capital, family courts “shall be established in the municipality which has the highest population.”³⁰ As such, family courts are mostly located in urban areas in the country.

In the absence of Family Courts, the RTCs designated as Family Court hear and try cases involving children, including child trafficking.

Before a case reaches the courts of appropriate jurisdiction, a preliminary investigation or inquest proceedings is conducted by prosecutors of the DOJ on cases brought either by law enforcement agencies or the private complainants themselves.

Legal Procedure in the Philippines

During the Workshop on Access to Justice organized by Asia ACTs in October 2011 in Bali, Indonesia, Atty. Rowena Guanzon talked about the legal procedure in the Philippines. According to Atty. Guanzon, the legal process can take three to five years or more.

30 Section 3

Usually, victim identification starts when children report to the police with the help of their families, friends, social workers, or NGOs. In some cases, the police conduct rescue operations to free the victims from exploitation or bondage. After the rescue and once the children have stabilized, the law enforcers interview the children for the purpose of filing cases or pursuing further police operations. Trained women police officers from the Women and Children's Desk usually interview the children. The results of the inquiries are put together in a police report.

Law enforcers prepare the children's sworn statements in a question and answer form. More often than not, the children do not want to answer some of the questions immediately because of fear and anxiety. Follow-up interviews with the children are carried out after the children have become familiar with or have started to trust the social service providers. The lawyers of the children can also prepare a complaint-affidavit and file the complaint at the Prosecutor's Office.

The prosecutor conducts the preliminary investigation.³¹ After receiving the complaint and finding the ground to continue with the investigation, the prosecutor sends a subpoena to the respondent in his last known address, attaching to it a copy of the complaint and supporting affidavits and documents, and ordering the respondent to submit his/her counter-affidavit. The prosecutor sets a hearing if there are matters to be clarified from any party to the case. The prosecutor then prepares a resolution and rules on whether there is sufficient ground to hold the respondent for trial. If so, the prosecutor files the Information in court accusing the respondent with an offense (i.e., trafficking in persons); otherwise, s/he dismisses the case.

Generally, after the filing of the Information in court (ten days in the case of the RTC), the judge personally evaluates the resolution of the prosecutor and its supporting documents. If there is probable cause, the judge issues a warrant of arrest or a commitment order if the accused has been arrested already; otherwise the judge dismisses the complaint. The law enforcers serve the warrant to the accused. When arrested, the accused may post bail after arraignment,³² unless the offense is punishable by capital punishment (or *reclusion perpetua* or life imprisonment, as the case may be) and the evidence of guilt is strong.

When the court acquires jurisdiction over the offense and the person of the accused, the judge schedules the arraignment and subsequently orders a pre-trial conference. During the arraignment,

31 Sec. 1 of Rule 112 of The Revised Rules of Criminal Procedure (2000) defines Preliminary Investigation as "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."

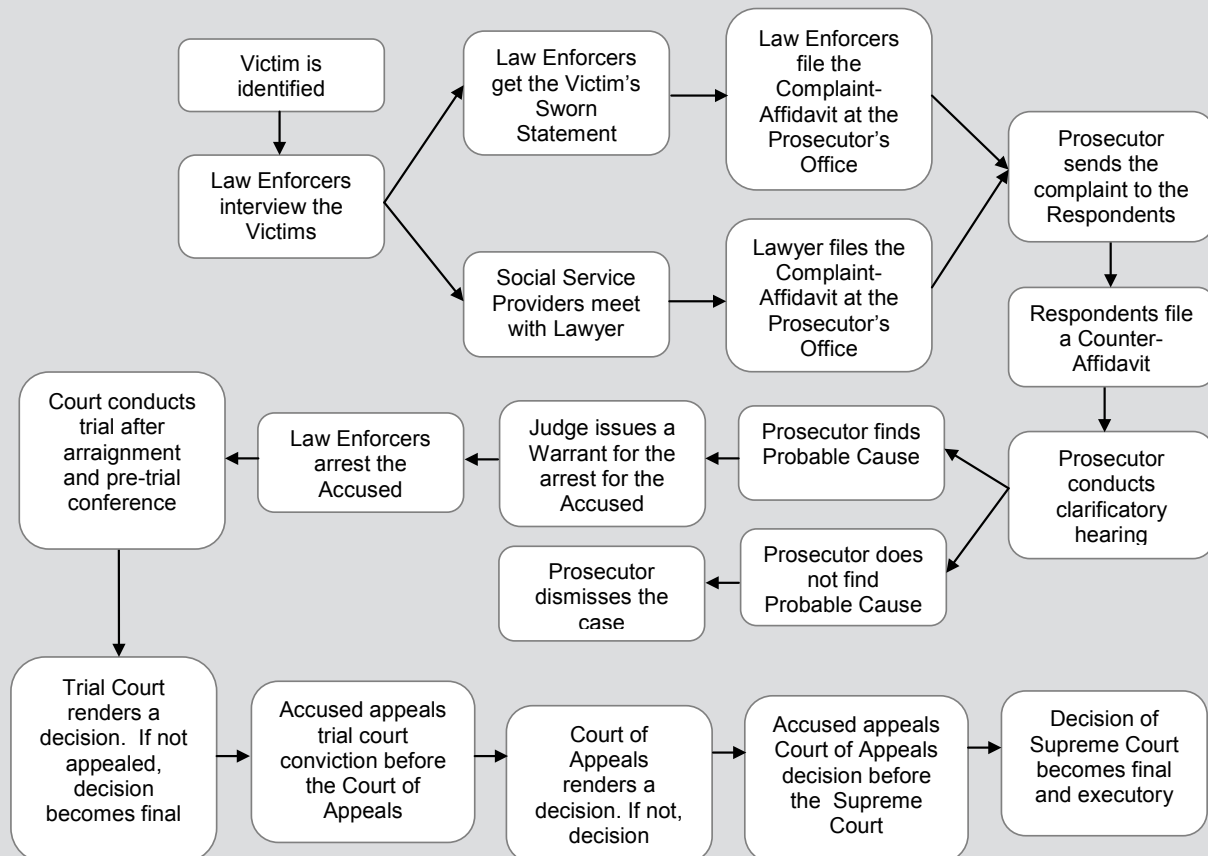
32 Sec.1 of Rule 116 of The Revised Rules of Criminal Procedure (2000) states that arraignment shall be made by reading the Complaint or Information to the accused in the language or dialect known to him, and asking him whether he pleads guilty or not to the charges.

the reading of the charges is made in front of the accused. The accused then enters his plea of guilty or not guilty to the charges. At the pre-trial conference, the parties stipulate the facts, mark evidence, agree on the number of witnesses to be presented, and discuss other matters that need to be taken up during trial, with the end view of minimizing the number of trial days.

The child victims and other witnesses testify in court. They can testify in the chamber of the judge or via live-link television. The defense lawyer cross-examines the children and the witnesses. Thereafter, the accused and other witnesses testify and are cross-examined by the prosecution. After the conclusion of the hearing and offer of evidence, the judge renders a Decision based on the evidence and the testimonies of the children, the accused, and the witnesses. The acquittal of the accused is not appealable, especially if it will place him in double jeopardy.

If the court Decision is not acceptable to the accused, the accused can file an appeal to the Court of Appeals. Similarly, if the decision made by the Court of Appeals is not acceptable to the accused, an appeal may be taken before the Supreme Court. The Supreme Court's decision is final and irrevocable.

The Legal Process in the Philippines



Access to Justice According to the Social Service Providers in the Philippines

From their own points of view, the interviewed social service providers defined justice and access to justice in various ways. According to the social workers, justice is attained when one's rights and dignity are upheld and respected; when the prosecution of perpetrators is successful; when compensation, protection, and assistance are provided to the victims; and when the victims are able to recover from the traumatic experience.

Justice is for everyone, as agreed by the social service providers. There are instances, however, when accessing justice depends on one's social and economic status.

“If the victim is against someone from the society's upper class, it takes time before justice is claimed. Also, if the victim belongs to the lower class, it takes a long time to find justice.”

– Interviewed Law Enforcer

Access to justice is defined based on different interrelated factors. For the social service providers, it refers to freedom; equal treatment; enforcement of the law; and protection of the rights of the victim. Having access to justice also means being aware of one's rights and being able to protect and fight for those rights. Justice can be achieved through the arrest, prosecution, and conviction of the perpetrators.

On defining access to justice, social service providers put emphasis on legal support and other forms of assistance to the trafficked children.

“Some victims have no access to justice because they do not have the means to avail of government services.”

– Interviewed Social Worker

They believed that access to justice relies on the availability of efficient and free or affordable legal support at all stages of the judicial process. It also pertains to the equal opportunity to gain access to resources and victim services such as assistance from social service providers, psychosocial counseling, compensation schemes, witness protection program, and fund for the legal pursuit. Moreover, access to justice banks on the kind of treatment received by the victims from service providers and authorities. It is affected by the immediacy of the response and the appropriateness of the behavior and sensitivity of social workers, law enforcers, prosecutors, judges, and other social service providers.

Roles of the Social Service Providers

The interviewed social service providers shared their perceived roles in helping trafficked children gain access to justice. They also evaluated their partnership with other social service providers in fulfilling their duties to help the trafficked children.

Law Enforcers

A few of the interviewed law enforcers believed that law enforcement units in the Philippines have the manpower and expertise to investigate the possible cases of child trafficking, yet they fall short of the public's expectations due to inadequate funds and equipment. In contrast, majority of the interviewed law enforcers agreed that not all law enforcers and officials have in-depth knowledge of the anti-trafficking law and relevant guidelines. They said that some are still not familiar with the law. Hence, their behavior and treatment toward children victims are inappropriate.

“Not all law enforcers are knowledgeable on the proper handling of child trafficking cases. Many are still not informed of the appropriate process. Sometimes, female victims feel harassed by the male policemen so they have to be handled by policewomen.”

– Interviewed Law Enforcer

Additionally, some law enforcers mentioned that only members of the Women and Children's Concern Desk of the Philippine National Police have sufficient knowledge of RA 9208. Law enforcers in remote areas need to be educated and trained about the law against trafficking in persons.

Selected law enforcers attend specialized trainings on RA 9208 conducted by IACAT, DOJ, United States DOJ, and NGOs. However, the fast turnover of the trained law enforcers hinders the sustained and consistent application of the learning and skills acquired. Law enforcers should also participate in trainings that are appropriate for their positions to ensure effectiveness of these trainings. For instance, administration officers or clerks of the law enforcement units should attend the basic orientation on trafficking in persons, while the investigators or those working on the ground must be further educated on proper handling of cases of child trafficking from surveillance, investigation, prosecution, and collaboration with other social service providers.

While law enforcement units are expected to work harmoniously with other social service providers to strengthen the anti-human trafficking efforts and initiatives, the interviewed law enforcers believed that gaps still exist in their partnership with other agencies. Some of them think that their relationship with the social workers should be enhanced. On the other hand, a few of them mentioned that law enforcement units have good relations with judges and prosecutors. Some

of them also believed that they have good relations with the community and NGOs. Likewise, law enforcers work harmoniously with the media despite issues about preserving the confidentiality and privacy provisions of the anti-trafficking law. One police officer recounted that the media included sensitive information, such as the details of the incident and even the name and home address of the victim, in newspaper reports. From then on, he has been very circumspect about the type of information he gives to the media.

The interviewed law enforcers know the importance of protecting the confidentiality of the case and the privacy of the victims. They are aware that sensitive information should be secured and should not be shared to the public. However, some of the law enforcers are unsure about the perimeters of sharing information with other social service providers. They are uncertain on who should have access to the gathered information about the case. Some of them mentioned that they share the information with the other law enforcers and local government units. One police officer said that she shares the details with the social worker only, while another stated that she shares it with the social worker, lawyer, and prosecutor involved in the case. One law enforcer mentioned that she discloses information with her colleagues in the police department but not with the members of other government agencies. At least three social service providers pointed out that the sharing of case information depends on the characteristics of the case and on receipt of a proper request. They said that they discuss the case during joint conferences and when there is a task force that works with them.

Collaborating with partner agencies is deemed important by the interviewed law enforcers. However, this area must be further developed to ensure the proper handling of child trafficking cases. The social service providers suggested conducting case conferences and meetings to exchange issues, ideas, inputs, and updates, thus improving inter-agency cooperation in the process. They also recommended continuous conduct of seminars and trainings for all stakeholders to educate them about the proper treatment, support, and assistance that child trafficking victims need. Some also suggested the appointment of a focal person who will be in-charge of the inter-agency cooperation. They also mentioned the creation of database of all the cases, despite the existence of the Philippine Anti-Trafficking in Persons Database (PATD) since 2009. This may imply that not all law enforcers are aware of the PATD.

According to the law enforcers, other than the authenticity of the victim's statement, the PATD can further help them manage human trafficking cases by generating valuable and valid information which is very crucial in detecting a possible case of child trafficking. They also said that proving the elements of the offense is crucial in establishing the criminal liability of the accused. They have to gather evidence to satisfy the three main elements of trafficking. They must also be able to identify and locate the traffickers and then secure a search warrant and a warrant of arrest.

In December 2009, the IACAT launched and called for the implementation of the Philippine Anti-Trafficking in Persons Database (PATD), a web-based data banking system that can produce timely data that are essential for policy formulation and program development. It intends to systemize the information about the trafficked persons and the assistance provided for the victims from the moment of identification up to their full recovery and social reintegration.

One component of PATD is the National Recovery and Reintegration Database. It aims to document the profile of trafficked persons. It is designed for the use of social workers and other social service providers who directly manage human trafficking cases. It is also an online facility that keeps track of the delivery of psycho-social, economic, and other reintegration services, as well as of the referrals made between service providers.

The other component, the Law Enforcement and Prosecution Database, seeks to monitor the investigation and prosecution of trafficking cases and to facilitate the provision of legal assistance to victims. It also has the capacity to generate periodic reports on the investigation and prosecution of trafficking in persons cases. It is intended for the use of law enforcers, investigators, and prosecutors.

The law enforcers also highlighted the need for the victim's cooperation and clear understanding of the legal process to help them fulfill their roles. Some of them expect conviction of perpetrators when victims do not retract their statements. Similarly, law enforcers must maintain communication with the victim, even after the victim has returned home or transferred to another facility, in order to ensure that the victim does not lose interest in the case.

Another important factor that affects the performance of law enforcers in handling child trafficking cases involves their own safety.

"I experienced harassment in one of our cases. The perpetrator was bribing me and I received threats. They wanted me to talk directly to the victim's family and urge the family to withdraw the case. Thankfully, a general and a bishop helped me because my enemies were two 'big time' lawyers. It felt very disappointing and demoralizing. Plus, the main culprit was one of my colleagues."

– Interviewed Law Enforcer

For the law enforcers, these harassments and bribery from the traffickers are demoralizing, especially when they are doing their best to fulfill their roles as social service providers. At the same time, they worry that the long legal process might affect the pursuit of justice of the victims' families because, just like what they have experienced, families are also vulnerable to harassments and bribery.

Social Workers

“Social work is based on respect for the inherent worth and dignity of all people, and the rights that follow from this. Social workers should uphold and defend each person’s physical, psychological, emotional and spiritual integrity and well-being.”

- International Federation of Social Workers and
International Association of Schools of Social Work (2004)

When the interviewed social workers were asked about their roles in helping trafficked children access justice, they provided a range of responses that start from the moment the victim is identified until the case is resolved. Throughout this process, the social workers establish partnership with other relevant stakeholders to ensure the protection and assistance to the victims.

During the victim identification stage, social workers immediately contact a law enforcement unit to arrange a rescue operation. They usually contact the police officers who are assigned in the Women and Children Protection unit. Not all social workers, however, participate in the rescue. As soon as trafficked children are rescued, the social workers address the immediate needs of the victims, and then prepare and execute a case management plan with and for the victims. They get protective custody of the children and arrange for a temporary shelter. They refer children for medical examinations and assist them during the process. They provide psychosocial intervention through counseling or refer the children to psychologists for evaluation and therapy. They also attend to the education of the children by providing or referring them for skills training, or by looking for schools where the children could continue their education. When the resources are scarce, the social workers also look for possible sources or donors to cover the food, transportation, and other expenses of the victims during the legal battle.

Some interviewed social workers said that their partnership with the police stops after the victims’ affidavits or sworn statements have been taken or when the police officers have filed the case at the prosecutors’ level. However, other social workers mentioned that they keep in touch with the law enforcers when the latter are needed to testify as witnesses or when the victims need security escorts in going to the court.

When the child trafficking case is filed and the attending prosecutor finds probable cause, the social workers believe that they have a responsibility to work closely with the prosecutor. A few of them mentioned that they communicate with the prosecutor almost every day. They make sure that the prosecutor gets accurate information about the case by validating the data or gathering more facts. They collaborate with the prosecutor regarding evidences and witnesses.

Likewise, the social workers accompany the trafficked children during court hearings. They orient the children beforehand and make the children feel secure. They consult with judges in certain instances, such as when the victim is considering retraction as a witness in order to find out whether the case can be pursued even after the victim's desistance.

Given their involvement with the children and the case, social workers also have to testify as witnesses at times. Additionally, social workers see the importance of the family's role in the pursuance of the case. Thus, they believe that they also have a duty to bridge the communication between the victims and their families.

"When the children feel that their families are not supportive of the case, they do not want to pursue the case anymore. Because of that, we do family assessment and home visits to check the situation of the family and the community."

– Interviewed Social Worker

The interviewed social workers also shared that they update the family about that status of the children and the case. Whenever possible, they ask family members to be present in court to show support for the children. Furthermore, social workers assess possible assistance for the family.

A few of the government social workers mentioned that they coordinate with and maintain healthy relations with NGOs, despite the limited number of NGOs that work within or near their area of operations. NGOs assist the social workers during retrieval operations, support the child in the legal process, and act as the social workers' advocacy partners. The social workers also try to establish partnerships with other relevant stakeholders including the local government units.

Prosecutors

The prosecution stage begins when the complaint for violation of RA 9208 is filed for inquest or preliminary investigation. The responsibilities of prosecutors in helping trafficked children gain access to justice begin, however, even before the filing of the case. According to the interviewed prosecutors, they can contribute in the victims' legal battle starting from victim identification stage and even after the court has rendered its decision on a case.

"Inquest is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court."

- DOJ Circular No. 61 (1993)

The prosecutors mentioned that they provide legal advice to law enforcers before a rescue operation is conducted, especially when they sit as a member of an anti-trafficking task force. They even provide advice to law enforcers or investigators on how to strengthen the case by providing tips on preparing a good sworn statement or complaint-affidavit.

However, when they act as investigating prosecutors, they maintain a certain level of impartiality and objectivity so as not to frustrate the ends of justice and be labeled as partial to a party. They carefully examine the complaint-affidavit of the victims and of their witnesses. They ascertain the veracity of the statements of the involved parties, such as the complainants, witnesses, and respondents, by asking clarificatory questions. More importantly, the prosecutors look for probable cause.

“We conduct investigations and look for probable cause. If we can conclude that there is probable cause, we will file a case, whether it is considered as a child trafficking case or other type of case. If there is no probable cause, we do not dismiss it outright as much as possible. To help the police, the social workers, and other agencies, we return the file to them and explain what is lacking. We tell them that they have to look for stronger evidence or conduct further investigation and, when done, submit the file back to us. However, if there is really no probable cause, we have to dismiss the case.”

– Interviewed Prosecutor

Public prosecutors function as the lawyers of the State and of the victims. There are instances when they are joined by private lawyers of the complainants. At that instance, private lawyers are called private prosecutors. The public and private prosecutors prosecute the case together. The Rules on Criminal Procedure is clear that private prosecutors conduct the prosecution under the control and supervision of public prosecutors. In other words, private prosecutors cannot run the prosecution of a case on their own.

According to the interviewed prosecutors, they have the responsibility of identifying, proving, and substantiating the elements of the trafficking in persons. When the court hearing is over, the prosecutors also ensure that the victims get the proper intervention and assistance from different government agencies.

The prosecutors shared their views on the importance of collaboration with different stakeholders when handling child trafficking cases. They work closely with law enforcers who serve as sources of information and evidence. There are instances, however, when coordination with the law enforcement units become difficult.

“It seems that the police only coordinate at a certain part of the legal process and eventually stop. Unlike what we see in the movies, the police in real life are not proactive.”

– Interviewed Prosecutor

The prosecutors said that they coordinate with DOJ for possible coverage of the victims under the Witness Protection Program. They also collaborate with the police and social workers to ensure that the witnesses, including the trafficked children, will attend the court hearings. Additionally, the interviewed prosecutors emphasized that collaborating with the social worker is crucial in fulfilling their roles to trafficked children. Specifically, prosecutors need a social worker in rephrasing questions in a more child-sensitive manner.

“I feel that I might intimidate the child. I might be asking questions that the child cannot understand. The social worker is helpful because she articulates my questions to the child and explains the need for asking that question. She also helps the child recall the incidents.”

– Interviewed Prosecutor

The social workers also value the role of the prosecutors in helping trafficked children access justice. The social workers work closely with the prosecutors in gathering accurate and validated information and documents on the case.

Before trafficked children testify, the prosecutors explain the court processes to them. They review the children’s statements as stated in the documents and conduct rehearsals or dry run to prepare the children at the witness stand.

Trafficked Children’s Legal Battle in the Philippines

The social service providers relayed their stories on what they do at the different stages of trafficked children’s legal battle. They shared their experiences and practices in handling cases involving Filipino children who were trafficked domestically.

Rescue/Retrieval Operation

Social service providers should carry out child protection measures at the onset of victim identification. The rights of trafficked children must always be upheld from this stage onwards.

Moreover, just like any type of operation, a rescue must be carefully planned to ensure its success and efficiency.

“Before conducting any operation, the social workers or police officers usually ask for legal advice. If it is an entrapment operation, prosecutors give advice on the procedure. If the victim is already rescued, we determine if the evidence is sufficient or if they need to secure a search warrant. They basically consult us on the legal parameters of raids and rescue to avoid lapses and technicality, which could be grounds to invalidate the evidence obtained from the operation and declare the arrests made illegal.”

– Interviewed Prosecutor

Law enforcers usually serve as the first point of contact for suspected human trafficking cases. They get reports through walk-in complaints and referrals and these require different actions. Law enforcers also encounter cases wherein one of the victims managed to escape from the exploitative condition and report the situation to the social service providers. From the victim’s account, the police would plan a rescue operation to save the other trafficked children.

The interviewed law enforcers stressed the need for case build-up or surveillance to identify the persons involved, uncover the mode of operation, determine the extent of the operation, and plan a rescue. There are situations, however, when a warrantless arrest is carried out, such as in entrapment operations, especially when time is of the essence (i.e. to prevent further exploitation and abuse to trafficked children or when trafficked children are in imminent danger).

For suspected violations of the Anti-Trafficking in Persons Law, entrapment operations are usually conducted at the transit point. In this type of operation, police officers are sometimes accompanied by the media who are armed with video cameras. This practice, however, is not viewed positively by the rescued victims. According to the trafficked children, the presence of the video cameras in rescue operation makes them feel like they are just being used for a television show. A prosecutor also mentioned the same issue in entrapment operations.

“I worked with a law enforcer who was very helpful during the entrapment operation. I got my evidence from her. We had a problem, however, when her boss provided the media with the video tapes containing the footage of the child negotiating with the pimp and the buyer. Nonetheless, we were able to get a temporary restraining order to prevent the television station from airing the said video.”

– Interviewed Prosecutor

Aside from the participation of the media during entrapment operations, some of the social service providers are confused about who among them should be with the law enforcers during retrieval operations. Law enforcers argue that social workers are expected to be always present

during rescue operations, especially since social workers have immunity from suit,³³ while law enforcers do not have that cover. A few social workers said that they join rescue operations but not all the time. Yet, some of them know the importance of their presence during the operations.

“During rescue operations, the social workers should be there to protect the interest of the children. The social workers must ensure that the children are not in danger and that the case is not sensationalized. So while the police officers handle the perpetrator, the social workers take care of the victims.”

– Interviewed Social Worker

The presence of the social workers during the actual retrieval operation is important to ensure that the victims immediately receive the needed interventions. According to the social workers who have joined rescue operations, they provide immediate assistance to the trafficked children once identified and rescued. The social workers help the children calm down and assess their condition. They also conduct interviews when the children have stabilized. They provide psychosocial counseling and, in the process, inform the children about their rights, including their right to confidentiality. Furthermore, social workers get in touch with the children’s families and the local government unit where the children come from.

Law enforcers acknowledge the significant role of social workers during rescue operations. The latter’s absence delays the immediate interventions to the rescued children. In instances where no social workers are present during rescue operation, law enforcers bring the children to the Department of Social Welfare and Development albeit with delay because this is done only after the children’s sworn statements are obtained.

Investigation Stage

The *Philippine Guidelines for the Protection of Trafficked Children* articulated the protection measures that law enforcers should observe in interviewing children victims.

The social workers shared that they accompany trafficked children when giving statements to the law enforcers as a measure of securing the children’s rights. They explain to the children the purpose of giving statements to reduce anxiety and stress.

The law enforcers shared that they interview the children with due regard to their right to confidentiality, access to information, and security. For instance, they interview children in a

33 Section 10 of Republic Act 7610: Special Protection of Children Against Abuse, Exploitation and Discrimination Act and its Implementing Rules and Regulations

closed-door room in the presence of a social worker. They also make sure that nobody else knows about the case, except for the family and the involved social worker. Other police officers who are not involved in the case are not allowed to interview the victim or observe the interview. Documents such as blotters or records are kept confidential. Only the members of the Women and Children's Concern Desk or the Women and Child Protection Unit who handle the case can access case records.

"The Women and Children Protection Unit have a separate logbook. Those who do not belong to our unit cannot see our logbook. Only I and the desk officer have access to the blotter logbook kept in my cubicle."

– Interviewed Law Enforcer

Case records are stored in a secure place and are marked "Off the Press." During the investigation stage, law enforcers make sure that no media is present when they interview the victim.

Moreover, the law enforcers said that they protect the personal data or information about the victim and that they ensure that the victim is not exposed. Nonetheless, as previously mentioned, some law enforcers still have uncertainties regarding who should have access to the information about the case. One interviewed social service provider recounted that there was an incident wherein she gave information to the media, but the media shared sensitive information to the public such as the victim's name and home address.

The social service providers shared that they discuss victim's rights with the children and their families. They also orient them on the legal process including the need for children, and in some cases, for the members of the family as well, to execute a statement as part of the evidence. They also ensure the safety and security of the trafficked children by escorting the children at all times and giving them phone numbers that they can contact in cases of emergency.

Initiation of Criminal and Civil Actions

Different factors affect the decision to institute a criminal or civil action against the traffickers. These include those relating to legal requirements such as the presence of all the elements of an offense and the evidence supporting the commission of the offense. Others relate to the cooperation of the victims and their families.

Child Trafficking Cases Handled by the Interviewed Social Workers

AREA	NO. OF CHILD TRAFFICKING CASES HANDLED BY SOCIAL WORKERS	NO. OF CASES FILED FOR PRELIMINARY INVESTIGATION OR COURT TRIAL
LUZON		
Baguio	5	2
Nueva Ecija	4	
Olongapo	15	6
National Capital Region	44	4
Cavite	48	9
Camarines Sur	9	4
Masbate	9	3
MINDANAO		
Agusan del Sur	13	10
Surigao del Sur	12	6
Bukidnon	4	
Zamboanga	33	7
TOTAL	196	51

Based on the experience of the interviewed social workers, not all child trafficking cases are eventually filed in court. The social workers said that the results of initial investigation affect their next steps. They immediately file the case when the initial investigation by law enforcement agencies shows the presence of elements constituting the offense of human trafficking.

“The approach differs when the suspect was apprehended or not. Case filing is also different when there was a rescue operation.”

– Interviewed Law Enforcer

Under Republic Act 9208, three elements must be satisfied in order to prove a trafficking offense. These are:

- 1) **ACT/S** – the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders
- 2) **MEANS** – the use of threat or 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
- 3) **EXPLOITATIVE PURPOSE/S** – prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal or sale of organs

When the evidence is not strong enough, law enforcers conduct further investigation to make a stronger case of trafficking in persons.

“Evidence gathering to prove the elements of the offense is very important. If one of the human trafficking elements is missing, it will result in dismissal.”

– Interviewed Prosecutor

The evidence gathered must clearly exhibit the elements of the case. According to the prosecutors, the evidence must be well-documented, preserved, and properly handled. The chain of custody of the evidence must be credible, and the evidence must be proven to be uncontaminated.

“Evidence gathering is crucial. The evidence is presented and discussed in courts, not just the statements or testimonies of the victims and other witnesses. The evidence corroborates the statements.”

– Interviewed Prosecutor

In cases of child trafficking, an example of a material fact that requires evidence is a document to prove that the victim is a child. The age of the child could be established by the child’s birth certificate, baptismal certificate, or dental examination. Suspected victims of sexual exploitation are also usually brought to hospitals or health centers for medical check-up.

According to Section 5 of Republic Act 9208, the means of trafficking need not be identified if the victim is a child. This denotes that only two elements (acts and exploitative purpose) are needed to prove a case of child trafficking.

Clearly, the interviewed social service providers regard strong evidence as an important factor in the deciding whether or not a case will be filed. However, collection of evidence is not as easy as other would think. The inadequate interview skills, lack of knowledge on the nature of the case, and the state of material facts to be proven at the trial by law enforcers, social workers, and other service providers affect the quality of the statements from witnesses and of the evidence obtained. Collection of evidence may also be affected by the unavailability of documents and the absence or lack of cooperation from witnesses.

A few interviewed social service providers are not very keen on conducting follow-up investigations and gathering additional evidence before filing a case. One law enforcer mentioned that before children are referred to social workers, the case is already filed; in which case, he will no longer conduct follow-up investigation. The child victims, however, are still encouraged to identify additional witnesses even if the case was already filed.

The trafficked children's statements are crucial. Their detailed accounts can be the basis of their sworn statement, which is prepared by the law enforcer, or of their complaint-affidavit, which is drafted by their lawyer. Most of the time, however, trafficked children only divulge detailed information to the social service providers when the latter have earned the former's trust.

"There are times when children do not disclose the information during the initial interview at the police station. There are details that they divulge only once you have gained their trust. Most of the time, the victims narrate the story that transpired only on the day of the entrapment operation. The complete story unfolds much later."

– Interviewed Prosecutor

When the case has been filed before the children divulged the additional information, the lawyers submit supplemental affidavit as may be necessary and as may be allowed by existing rules.

Regarding who should decide whether a legal case will be filed or not, a number of the social service providers think that trafficked children should have the final decision. They said that a case should not be pursued if the children are not interested in filing. A few, however, believe that although the children and their families should be consulted, the final decision should not solely rely on them.

"The Task Force wanted the perpetrator to be prosecuted, but we have to wait for the trafficked girls to decide. The objective of the rescue operation is to arrest the perpetrator and save the victims. Inherent in this process is the filing of the case. With this purpose and the legal mandate, the Task Force immediately files the case."

– Interviewed Social Worker

Despite the different points of view on this aspect, the interviewed social service providers agree that trafficked children and, to some extent, their families must be consulted before making legal actions. According to the social workers, the children should be involved in the decision-making because the cases will affect their lives. They will be the ones to be questioned on the witness stand and recall the negative experience that happened to them. By pursuing the case, the children will realize that they have rights and that the traffickers should be held responsible for violating their rights. Moreover, when children themselves decide to file, the possibility of them not dropping the case will likely be high.

The social workers deem that they should assist children in the decision-making process. The children must understand the legal process and all the matters relating to it, including the advantages and risks of filing a case and testifying as a witness. Although the interviewed social service providers acknowledged the importance of this action, some of them may not be doing it. According to End Child Prostitution, Child Pornography and Trafficking of Children for Sexual

Purposes Philippines (ECPAT Philippines), some children referred to the organization were not properly oriented about the legal process and yet their cases were already filed.

Trafficked children must be properly informed of their rights. They should understand that they have the right to be protected from exploitation and the right to file a complaint against violations. They must be made aware of the Anti-Trafficking in Persons Law. The social service providers discuss the salient features of RA 9208 to the children and even to their parents using simple terms. Through this, the trafficked children realize that they are not criminals but victims who are protected by law. When the children acquire an understanding of the law, they develop trust on the social service providers.

To further help the children decide whether to file a case or not, the social workers said that they also discuss the available assistance and support services to the victims. These include legal assistance; possible coverage under the Witness Protection Program when they and their families are threatened; and access to Victim Compensation Program. Trafficked children also get assurance of support from the social service providers if they decide to pursue the case.

“The Witness Protection Program extends the following benefits:

- security protection and escort services;
- immunity from criminal prosecution and not to be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents or writings produced;
- secure housing facility;
- assistance in obtaining a means of livelihood;
- reasonable traveling expenses and subsistence allowance while acting as a witness;
- free medical treatment, hospitalization and medicine for any injury or illness incurred or suffered while acting as a witness;
- burial benefits if the witness is killed because of his participation in the Program;
- free education from primary to college level for the minor or dependent children of a witness who dies or permanently incapacitated; and
- non-removal or demotion in work because of absences due to his being a witness and payment of full salary or wage while acting as witness.”

– Inter-Agency Council Against Trafficking (2004, 117-118)

Still, some children victims are not informed of these services, particularly about the Witness Protection Program and Victim Compensation Program. The interviewed social service providers said that there is no clear understanding on who should inform the children about these programs.

“There is a certain period when the Victim Compensation Program can be availed of. This should be addressed during the preliminary investigation. So when the case is already with us for trial, we assume that the victims already availed of the compensation since the time within which to apply had passed.”

– Interviewed Prosecutor

According to Republic Act 7309 or An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes, claims from victims of violent crimes must not exceed beyond P10, 000 or “the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to injury, whichever is lower” (Section 3). Filing of claims should be done “within six months after being released from imprisonment or detention, or from the date the victim suffered damage or injury” (Section 5).

According to the social workers, the children must also be given time to process all the information and make a decision. They must be given the choice to file a case or not. If the children decide not to proceed with the legal action, they must also be informed that the government may still file the case based on the evidence gathered by the police.

Based on the experience of the interviewed social service providers, children and/or their families consider a number of factors when deciding whether to file a case or not. These include the children’s and/or their families’ understanding of the legal processes; the assurance of assistance and support from the relevant agencies; and the implications on their security and safety. The extent of exploitation, degree of suffering experienced, and the acceptance of children that they are victims also affect the decision-making process. Parents also carry some weight in the child’s decision, especially when the child speaks or decides in their presence. Some parents give precedence to the case while others prioritize their work to provide for their family. To some extent, the victims’ *utang na loob* or debt of gratitude/goodwill to the recruiters or traffickers influences the decision-making process. The psychological and emotional state of the children at the time of decision-making also shapes their legal actions. The children choose to file a case if they feel that they are important or if they deem that the case will help them regain respect from the society.

“Many writers have made use of various translations of Filipino gratitude. Known in the vernacular as *utang na loob*, it has been translated as gratitude, as debt of gratitude, debt of goodwill, and, quite literally, as interior debt (p.110).

When *utang na loob* is incurred, the benefactor makes no mention of it because to do so is indecorous and goes against the common sense of courtesy of a Filipino. The benefactor conveys good will, but must not make a big show of it. In turn, the debtor is expected to know, without being told, that he has incurred *utang na loob*.

There is, however, an added twist to all this. First of all, because *utang na loob* is indebtedness due to good will out of which a favor is granted, it demands that the same favor be granted out of sheer benevolence, and not because of any expectation of reward or return (p. 115).”

–Dancel, F. (2005)

Preparing for the Trial

When trafficked children agree to file a case and participate in court hearings as witnesses, the social workers said that they constantly give encouragement and motivation. They work hard to sustain the children’s interest in the case, especially when the children feel frustrated in the different aspects of the legal process. The prosecutors said that they also update the children about the status of the case.

“In a very simple way, we would explain to them the step by step procedures of the legal process. We tell them at what stage the case is at that moment and what would happen next. If the hearing is cancelled, we also explain the cause.”

– Interviewed Prosecutor

In preparation for the children’s appearance at the witness stand, the prosecutors familiarize the children with the court proceedings.

“First, we orient the child on the court scenario. We tell them what will happen; who will be there in court; and what these people will most likely do or say. We inform the children that the accused will be in the courtroom as part of their human rights.”

– Interviewed Prosecutor

Likewise, the children are advised on how to conduct themselves inside the courtroom. They are reminded to be calm despite the intimidating and confusing tactics of the defense team.

“We do not give false promises. We tell the children that we cannot assure that the other party will not frighten them. We tell the children that the defense team might shout at them. So if the parents are in the court too, we advise the children to look at their families. We also tell them that in family courts, children can request to repeat the question in a respectful manner.”

– Interviewed Social Worker

The social workers and prosecutors also conduct rehearsals to further make the children acquainted with the courtroom scenario.

“We hold a mock trial, like a question and answer scenario. I tell them if their answer is okay. If it is not okay, I tell them how they should answer.”

– Interviewed Prosecutor

Conducting rehearsals do not only prepare the children in their appearance in court; it also helps the children remember their statements in their affidavits.

“Sometimes several months pass between the filing of the case and the court hearing, so I will ask the children to read their affidavit again. Usually, the children have difficulties in remembering dates so I help them recall those details.”

– Interviewed Social Worker

One prosecutor shared that before the actual day of the hearing, he brings the children to the court where their cases will be heard.

“The children enjoyed and even had their pictures taken inside the court. The trip helps them understand that the portrayals of court hearings in television dramas are not accurate. We bring the children inside the court so that they will not be intimidated or surprised on their first day in court.”

– Interviewed Prosecutor

In instances where the children’s testimony will involve the use of live-link television, the children are oriented about it and its use and purpose, prior to the actual hearing. Together with the social worker, the children also go inside the judge’s chamber as there will be instances when the judge will talk to them inside the chamber, not in open court.

Child witnesses may testify outside the courtroom via live-link television. The court may order the use of live-link television so that children will not be traumatized while in the presence of the accused and his defense team. The children’s testimony will be recorded on video tapes, digital discs, or other recording devices.

Section 25 of The Rules on Examination of a Child Witness states that “If the court orders the taking of testimony by live-link television:

- (1) The child shall testify in a room separate from the courtroom in the presence of the guardian ad litem; one or both of his support persons; the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child;
- (2) The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.
- (3) If it is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.
- (4) The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.”

Children’s appearance in court is very crucial. Thus, social service providers carry out different measures to make sure that the children attend the trial. For instance, the social workers get the schedule of court hearings and arrange relevant activities based on this date. They remind the children about the hearing date, plan a trip to the court, and inform the children’s teachers about the schedule. They establish close relationship with the prosecutor and request them if the case could be given preferential attention. They also check on the physical and mental fitness of children. Additionally, they make sure that they can accompany the children in courts and that the transportation in going to court is arranged.

The children are also continuously informed of their rights as trafficked victims and as witnesses in the case. The prosecutors talk to the children about their right to confidentiality and legal assistance. Children are also informed that they are entitled to have a support group composed of people whom they are comfortable with. At the same time, the prosecutors and the social workers explain to the children the purpose of the transfer to a shelter.

Staying at the Shelter

Ideally, trafficked children should be reunited with their families once they are rescued from exploitative conditions. However, when the parents are involved in the trafficking case or when the security of the children is at risk, the children are referred for temporary shelter. The social workers believe that the children who filed or who are intending to file a case and testify as a witness against their exploiters should be kept in shelters for security purposes. Yet due to unavailability of shelters

in an area or the shelter's limited capacity and resources, many child witnesses return to their communities of origin and stay with their families.

Newly admitted children at the shelter are welcomed by house parents and children residents. According to a house parent working in a facility for girls, the first few days at the shelter are usually the most difficult. The girls usually demand for many things, ask a lot of questions, and sometimes, act wildly. They want to get out of the shelter because they feel like they are being imprisoned. They also reject the rule of the shelter on turning over to the shelter staff some of their belongings including mobile phones.

At the shelter, children are provided with clothing. They undergo routine medical check-ups and psychosocial interviews. Some children are responsive to the services, especially since they are allowed to play and do activities which make them experience and enjoy being children.

The social service providers assess the children's needs and conduct case conferences with different agencies. For instance, ECPAT Philippines reviews the children's need for family visits or medico-legal assistance. Social workers go to the Child Protection Unit where a team of service providers attend to the needs of the children.

During case conferences, children are consulted or asked of their opinions and preferences, but social service providers always consider the best interest of the children in all actions to be taken. The children are asked if they want to continue their studies or go home. If they opt to go home, for example, the social workers conduct family and community assessment. If the children's residences are near the perpetrators' or recruiters' house, the social workers keep the children in the shelter and explain to them the reason for not allowing them to return home. On the other hand, if the children's security will not be put at risk, the social workers provide transportation assistance to the children, sometimes with the help of the local government unit.

The NGOs, shelters, or social workers carry out the services identified on the treatment plan culled from the assessment and case conferences. However, if they lack the capacity to provide these services, they refer the children to other agencies. They also conduct an evaluation after the interventions have been executed to determine the effectiveness of the treatment plan.

Whether they decide to file a case or not, trafficked children can avail of assistance and support. Their access to services is primarily based on the assessment and case conferences. As a prerequisite, some agencies providing services to the children ask for an endorsement or referral from the local government unit, *barangay* (village) officials, police officers, and NGOs. Other documents that may be required include a case study report; a certification from the *barangay* (village) captain

confirming the economic status of the children; certification from the assessor's office that the family does not own property; and school credentials if the children are currently enrolled.

Children at the shelter should always be protected from possible harm and threats. Their whereabouts are kept confidential. The use of mobile phones is not allowed in the shelter and the children are told not to entertain questions from anybody. Children are also reminded not to allow anyone to take their photos and to avoid interviews by the media or other people. House parents accompany the children whenever the latter leave the shelter to go to school or attend a mass. In school, the teachers are informed about the case and are asked to monitor the children. Police officers even provide security during school hours when there is an extreme security threat. Shelter security rules are also tightened. Sometimes, the children have to wear a disguise whenever they go out of the shelter. Shelters limit visits, record all those who are coming in and out, and stringently screen the visitors. One social service provider shared that there was an incident when one of the trafficker's friends pretended to be a staff of Technical Education and Skills Development Authority (TESDA) who was tasked to give free haircuts for the children in the shelter.

While in the shelter, house parents make sure that the children communicate with their parents. Nevertheless, house parents talk to or orient the families first, as a protective measure, before handing the phone to the children. House parents also stay with the children whenever other social service providers such as their lawyers and social workers talk to them.

The social service providers ensure that the rights and special needs of the trafficked children are protected and addressed at the shelter. To avoid exclaiming unnecessary and insensitive comments, shelter employees are informed of the children's situations. They are also oriented on children's religious or cultural differences. The shelters allow children to practice their faith. House parents ensure that court hearings do not fall on the children's schedule for religious activities. Masses are held or pastors preach inside the shelter. Likewise, children with disabilities receive special assistance. For instance, Katilingban Para sa Kalambuan, Inc., an NGO shelter based in Zamboanga, sent a trafficked child to a special education learning center for sign language training before testifying in court.

The children's stay at the shelter, on the other hand, is difficult for some families, especially when the children work to contribute to the family's income.

“Many cases of child trafficking involve child victims who support their families financially. The children’s stay at the shelter is a big loss to the family. Members of the family share the problems to children, may these be big or small. Consequently, the children become disturbed and worried because they can no longer help their families. In one case, the child was told that her mother was at the hospital and very ill. One of the social workers went to visit the mother and found out that she just had urinary tract infection. The family always finds a way for the child to leave the shelter.”

– Interviewed Social Worker

Social service providers also try to attend to the needs of the trafficked children’s families in order to lessen the stress experienced by the children. The social workers ensure the safety and security of the children’s families and provide them with financial or medical assistance, if resources allow.

“We had a case wherein the child’s parent was confined in the hospital so we took care of the hospital bills and expenses for medicines.”

– Interviewed Social Worker

Similarly, trafficked children who are not staying at the shelter also receive the abovementioned assistance and support from the social service providers.

Children at the Witness Stand

Transport arrangements for children to attend court hearings depend on where they stay. If the children stay at the shelter, social workers arrange a vehicle and hire a driver to bring the children to the court. Sometimes, the driver of the City Social Welfare Development Office or a police officer from the Women’s Desk fetches the children while the social workers wait for them in the court’s staff room. If the children do not stay at the shelter, the social workers fetch the children from their homes. However, when the social worker would not be able to pick them up, or there is no available vehicle and/or driver, the children are just given transportation allowance to go to court without any companion.

Before the court hearing starts, the social workers and the lawyers talk to the child again to give reassurance that they will also be in the courtroom; to encourage the child to be strong; and to advise the child to tell the truth even with the frightening and confusing questions of the defense lawyer. The social workers also make the child feel relaxed.

“We do not allow children to smoke; we teach them different ways to release stress like jogging, but in one particular case, we allowed a child to light a cigarette so that she could release her stress.”

– Interviewed Social Worker

The social workers and the lawyers also remind children on the expected ambience in the courtroom. While waiting for their turn to testify, the children and the social workers stay at a special holding area when such is available. In some situations, the police officers also stay at the holding area. The judge also allows the children to go inside the court first to protect the children from being confronted by the other party. Additionally, children are allowed by the judge to bring toys and wear sunglasses at the witness stand.

“We tell the children that they can wear sunglasses so that they will not be intimidated if the perpetrators look at them.”

– Interviewed Social Worker

When necessary, a parent or a companion is allowed to stay beside a child at the witness stand. The parents or companions receive transportation or financial assistance.

“During the trial, social workers should be present and visible to the children. In cases of closed-door hearings wherein the social worker is not allowed inside, I have to assure the children that I am just outside. Also, a person significant to the child can stand beside the child. In one of our cases, the child requested our former staff to accompany him in court because he is comfortable when that staff is around.”

– Interviewed Social Worker

The house parents make sure that children dress appropriately when they testify in court. Social workers provide meals for the children and the lawyers during court hearings. They also provide an interpreter for the children when necessary. Furthermore, the social workers observe how the other social service providers treat the children. When the social workers feel that the children are intimidated or confused, they ask the lawyers to object, repeat the question, or request for a recess.

Some social workers said that children are well-treated in court, especially with the video conferencing facility. It prevents the children from unnecessary stress or from experiencing intimidation. Child-sensitive questioning also protects the children from verbal abuse. Some children, however, still experience inappropriate treatment in courts, particularly from the defense lawyers. Some defense lawyers shout at the children and frighten them through tricky questions and intimidating expressions. Social workers believe that defense lawyers are social service providers too; hence, they must be child-sensitive as well.

“One of the child witnesses I handled was very sensitive to body language. He said that he did not like the way the defense lawyer looked at him and he did not like the shouting in the room. He said that these affected the way he answered the questions.”

– Interviewed Social Worker

Judges, on the other hand, have diverse treatment on child witnesses. A few social workers said that some judges conduct closed-door sessions, excluding the public from the courtroom. Judges talk to the witnesses in a child-friendly manner, help the children understand the questions, and reprimand defense lawyers for their insensitive behavior towards the children.

“The judge handling our case in a family court is child-friendly. He is male but underwent much training on proper handling of children. In the past, when a child testified, he told the child, ‘Maybe you also liked what he did to you!’ I reported him so he was obliged to undergo training. We petitioned for it.”

– Interviewed Social Worker

On the other hand, some judges are not child-sensitive. They do not exclude the public whenever a child testifies. Some allow the defense to ask insensitive questions and give intimidating remarks against the children.

“I had an experience when the defense lawyer attacked the child with questions during the cross-examination. The lawyer went through the sworn affidavit line per line to the point that the child could not bear it anymore. The child felt embarrassed, especially on the sensitive questions. Then, the lawyer asked the child ‘Are you ashamed?’ So the child eventually discussed the sensitive parts of her experience even when we already oriented her on how to answer those questions.”

– Interviewed Social Worker

Social workers also notice that although judges try to protect children, some still struggle in treating the child appropriately.

“On his seat, the judge looked hostile and unkind. He allowed the exclusion of the public but he did not know how to properly talk to the child. He said ‘Jesus taught us not to tell lies, right?’ He waited for the child to say yes and then he added, ‘children who lie go to hell. Do you know that?’”

– Interviewed Social Worker

Aside from the treatment of the judges and the defense lawyers, the interviewed social service providers identified different factors that affect the children’s experience in court. For instance, despite the legislated child protection measures, some child trafficking victims still face the perpetrators while giving their testimony. The presence of the perpetrator inside the courtroom elicits fear from the children. People who pretend to be relatives of the accused also remain in the courtroom during closed-door sessions. Moreover, children get nervous whenever they could not understand the question or could not recall exact details such as the specific time when the incident happened. In addition, some court translators do not properly interpret the questions and answers.

Children are also affected by the actions of the people who are important to them. For example, there are instances where the social workers are not allowed to talk and can only give napkins to the children when the latter cry while testifying. The visibility of the social workers in the courtroom is an assurance of support for the children. However, when children are testifying at the witness stand, the defense lawyer sometimes ask the social worker not to look at the children or to wear sunglasses so as not to influence the answers of the children. This make the children more tensed.

Similarly, the behavior of the parents while inside the courtroom affects the composure of the children.

“When the mother is in the courtroom, I ask her if she could bear listening to what her child is saying. She might hear details that she does not know yet. So, I constantly check on the mother because the child is discouraged whenever she sees her mother crying.”

– Interviewed Social Worker

After the children testify, social workers take the children and immediately leave the courtroom to avoid confrontation or contact with the perpetrator. They escort the children back to the shelter or their homes. The social workers and house parents also talk to the teachers of the children to ensure that consideration will be given to the children. Social service providers debrief and comfort the children, take them out for lunch or dinner, or accompany them to the mall. If, however, the court appearance had a negative psychological impact on the children, the social workers and house parents carry out appropriate psychosocial interventions and other protective measures.

“We encourage the children to talk and express their feelings after the trial. We provide counseling sessions and refer them to a psychologist after the children admitted suicidal tendencies. They are also provided with anti-depressants.”

– Interviewed Social Worker

In some cases, the children’s court experience could lead to the their withdrawal from the case.

“When the children went home, they either decided to retract or their parents hid them away from the social workers because they want to escape the troubles of the legal process. This is frustrating on our part.”

– Interviewed Social Worker

Delayed Court Hearings

Testifying in court is very crucial and challenging for child victims, particularly with the long and, most of the time, delayed process. The defense team has tactics which affect the adjournment and, to some extent, the possible resolution of the case.

“The court allowed the accused to repeat the psychological evaluation of the witness. Later on, we found out that the psychologist was a friend of the defense lawyer. The psychologist tried to feed the victim with information which confused the child.”

– Interviewed Social Worker

When the court trials are delayed, children are frustrated, bored, or dismayed. The delay weakens the children’s confidence. Social workers explain to the children the reasons for the delay so as not to lose their interest in the case.

“One of the children felt that she was already prepared. She already gained the courage to testify in court. However, when the trial was postponed, she wanted to quit. She cried. We had to make her understand, but when we could not console her, we did not argue with her. We just said that we will visit her again. I also reminded her that the delay was a tactic of the defense team and it was beyond our control. We encouraged her to rest and to release her negative emotions. We also let her realize that all of us prepared and travelled for this case.”

– Interviewed Social Worker

Although the children are oriented on the legal process, they are discouraged by the long and tedious procedure. Sometimes, they reach a stage when they are no longer comfortable in giving information, especially the delicate details about their exploitation. Social workers continue to encourage the children to be strong and to understand the importance of pursuing the case, while emphasizing that a case does not always result in conviction.

The delay in court hearings also allows perpetrators to find ways to settle the case out of court. The perpetrators may bribe the children or their families to withdraw the case.

Impact on Children

The interviewed social service providers identified some of the positive and negative impacts of case filing on children.

When the children testify in court and miss classes, they are given special exams or they attend make up classes. Those who agree to file a case in court and/or stay at the shelter continue to

attend school and are able to graduate from high school and pursue vocational courses. On the other hand, there are children who have a hard time coping after the court appearance, and this sometimes leads to delayed submission of school requirements. Some children withdraw from the case, escape from the shelter, and stop attending school. They are no longer interested to continue their studies because they were more concerned of working and earning for their families.

“I am concerned with children who stop going to school because of the filing of the case. I think that it should not happen, or if it cannot be stopped, there must be a program or plan that would prepare them when they decide to go back to school.”

– Interviewed Social Worker

Pertaining to children’s health, the social service providers said that those who file a case in court or testify at the witness stand experience sleeping difficulties; tend to cry more often; and have lower immune system, thereby becoming vulnerable to diseases. The children feel tired due to the long legal process and this affects their daily activities. Case filing also affects the psychological and emotional health of the children. Some experience depression and develop suicidal tendencies.

The children’s relationships with other people are also affected by their exploitative experience. Some children feel that they could not live a normal life anymore. They are constantly seeking for a sense of belongingness. They experience humiliation and stigmatization.

“It is not the filing of the case which causes the stigma against the victim but the idea that she was arrested as a criminal.”

– Interviewed Social Worker

Moreover, children have to endure discrimination from their family, relatives, and other members of the community. Some teachers also could not understand the children’s absences from class. Furthermore, the children have to deal with the hostility and negative treatment from other people.

On the other hand, some people treat the children positively upon learning and understanding their situation. Although they have negative reactions at the start of the trial, they eventually support the children. Some of the children’s friends, neighbors, schoolmates, and teachers sympathize with the victims and even admire their courage for pursuing the case.

“It appears that the child’s neighbors knew what happened to her so they extended help. The child thought that while she was in the shelter, her neighbors gossiped about her, but in fact, the neighbors contributed to pay for her transportation needs.”

– Interviewed Social Worker

With the help of the social service providers, a number of children become more determined to pursue the case. Although a few children could not shun the feeling of giving up and withdrawing their participation from the case, others became aware of their rights and learned how to protect their rights.

“We explain to the children that they also have corresponding obligations. As victims, they should do something. They also have responsibilities.”

– Interviewed Prosecutor

Case Monitoring

The progress of the case at the prosecutor’s level can be slow. According to the interviewed prosecutors, this could be attributed to the rescheduling of the presentation of evidence and the volume of the cases handled by the prosecutor.

After the case is filed at the prosecutor’s level, a few social workers mentioned that they take care of following up the case status at the prosecutor’s office. Likewise, some law enforcers monitor the status of the case while some do not, unless the prosecutor requests for their presence or action.

During the time of the research, the handled cases of the interviewed social workers are at different stages. Most of the social workers are optimistic that the efforts they put on the cases will have a positive outcome. Yet, they still prepare themselves for the unexpected results. Some social workers are also frustrated and disappointed with the slow legal process. They said that there are long intervals between hearings, probably because there is limited number of family courts in their areas.

Post-Trial

Whether the case results in conviction, acquittal, or dismissal, the social service providers continue their support and assistance for the full recovery and social reintegration of trafficked children. The social workers conduct assessments on the court process and debrief or counsel the children. More importantly, the social service providers reintegrate the children to their families and/or community after careful evaluation. The children receive aftercare services until they are deemed to be self-reliant.

Case Archiving, Withdrawal, and Dismissal

Some cases are filed but are not pursued due to various reasons such as when the perpetrator remains at large and the warrant of arrest could not be served or when the evidence is insufficient to hold the accuse on trial.

“We had a case wherein the court asked for additional evidence from the prosecution, but the prosecutor could not find any other evidence to submit. That case has been pending since 2008.”

– Interviewed Social Worker

Child trafficking cases are usually dismissed due to insufficient evidence. Aside from this, the interviewed social workers said that some factors that lead to case dismissal include the insufficient knowledge of the other social service providers about the law; and the not so well-written case reports because the multi-disciplinary team and the prosecutors are still learning about the law during the case-writing process.

Some social service providers also treat children harshly, leading to the children’s withdrawal from the case.

“One time, during the preliminary investigation, the investigator scolded the child. He said ‘why did you go with him?’ and that scared the child. So when we had to visit the investigator again, the child did not want to go anymore.”

– Interviewed Social Worker

The social workers said that some of the children decide not to pursue the case anymore because of the long judicial process. Also, when the children have already adjusted to the life in the shelter, they begin to re-think their decision to pursue the case. They enjoy getting along with the other children but they also fear that they will stay in the shelter as long as the case is not finished. Similarly, children who are not staying at the shelter lose their interest in the case, particularly when nothing is happening with it.

As mentioned earlier, the decision of the children’s families to participate in the legal process affects the outcome of the case. Children withdraw from the case and execute affidavit of desistance because their families were bribed and/or threatened by the perpetrators. The perpetrators and their relatives always find ways to encourage the children and their families to retract. In one instance, a child was persuaded to sign an affidavit of desistance without knowing its implication on the case.

“We found out that the friends of the perpetrator were visiting the child and the family, bribing them with money and influencing their decision. Through the persuasion of perpetrator’s friends, the child signed a document, without knowing it was an affidavit of desistance and without realizing its effect on the case.”

– Interviewed Social Worker

The children’s affidavit of desistance must not be a basis for case dismissal. DOJ Department Circular No. 57, s. 2010 stated that “Cases involving such violations shall not be dismissed on the mere account of Affidavit of Desistance executed by either the victim/s or their parents or legal guardians, especially where there is other evidence to establish probable cause. All, therefore, are directed to relentlessly prosecute the offenders and vigorously oppose and/or manifest strong objections to motions for dismissal despite the desistance of the victim/s or their parents or legal guardians; neither shall a motion to dismiss on account of such desistance be initiated by the prosecution.”

The families’ limited resources also affect their decision on whether or not the case should be pursued.

“We experienced delayed court hearings and the family received threats. They lived in the farthest part of the province and had to travel to the city to attend court hearings. Sometimes, the financial support from the city government for their transportation cost does not reach them. It became tiresome for the family.”

– Interviewed Social Worker

According to the interviewed social service providers, other cases also result in case dismissal or acquittal because the perpetrators have power and money. Other perpetrators petition for bail and are released despite the charge being not subject to bail and the overwhelming evidence against them.

In some instances, children withdraw from the case because they felt like they have already moved on with their lives. In one occasion, a survivor pitied the sons and daughters of the perpetrator; she said that she could not bear to think that the children of the perpetrator would have to grow up without a mother.

Avoiding the Legal Battle in the Philippines

Some identified cases of child trafficking do not end up in courts. According to the interviewed social service providers, different factors similar to the reasons for case withdrawal affect the initiation of criminal or civil action. Some cases are not filed in courts because of the children’s unpreparedness for the legal process. They do not know and understand what to expect, what

to do, and who would protect them. The children are not ready to give their statements or to cooperate in the case.

“In one of our experiences, the child did not seem to be prepared. At the beginning, she was angry and so were her parents. During the preliminary investigation, the child could not understand what was going on. She was afraid. She was not properly oriented on the possibility that she might have to face the perpetrator.”

– Interviewed Social Worker

The involvement of any of the family member in the child trafficking case also affects the decision to file a case.

“If the family does not agree with the case filing, the victims usually do not file a case. This happens especially when the person who brought the child to the bar was a member of the family.”

– Interviewed Social Worker

The impact on the family’s income also influences the pursuance of the case. The family or the children decide not to file a case because the legal pursuit would disturb the flow of the family’s earnings.

“Sometimes, children would decide to file a case but the parents would disagree. The parents would convince the children not to push through with it for financial reasons. Children who file cases cannot work. They cannot go back to Manila to work. This means that they can no longer help their family. Sometimes, even the children do not like this.”

– Interviewed Social Worker

Filing a case entails expenses. Most victims and their families do not have the capacity to pay for a lawyer and shoulder the costs to attend hearings. Some courts are located far from the place of the victims, entailing time and effort just to be able to reach the court. For the victims and their families, this will also mean loss of opportunity to earn. Moreover, they see that the government does not have the capacity to provide them with the support they need. In their desire to avoid the long and tedious legal process, many of them prefer amicable settlements. The perpetrators also bribe the victims’ families in order to persuade the children not to file a case.

Based on the stories shared by the social workers, some parents are worried about the safety of their children, and case filing might put their children at greater risk. So as long as their children return home, they are no longer concerned with the civil and criminal actions. They believe that they will have peace of mind if they will not pursue legal action.

“Some parents do not complain as long as their children could come home. They do not want trouble because it will only affect their work. That is what they want even if we tell them that we will help them with the case.”

– Interviewed Social Worker

On the other hand, a few parents do not want to file a case because they want to escape humiliation. They do not want people to talk about them. Also, some parents are enveloped with fear. They are afraid of the possible retaliation from the perpetrators, especially when the perpetrators are rich or powerful. They are worried that once the perpetrators have served their sentence and are released from jail, the perpetrators would kill them.

The children take great consideration of their family’s stand in case filing. Although this cannot be generalized, children follow the advice and decisions of the family. Parents’ support is very important for the children.

“There are children who are no longer interested in filing a case due to absence of support from their parents. Some of the family members are even angry at the child victims. These children do not want to go home anymore because they feel too oppressed already.”

– Interviewed Social Worker

Other factors that affected the pursuance of legal action involve the social service providers’ work and performance such as the lack of gathered evidences and the inadequate skills and knowledge.

Assistance for Non-Witnesses

Like the child trafficking survivors who decide to testify in court, children who opt out of the legal battle still receive assistance and support from the social service providers. Whichever is for their best interest, the children stay in the shelter or with their families. Moreover, the social service providers ensure the protection of the children by not allowing the children to go out alone; reminding the children not to share their exploitative experience to other people; concealing the location of the children; and keeping the communication lines open. For children staying at the shelter, the social workers allow them to be visited and contacted by their parents and relatives.

The social service providers also attend to the immediate necessities of the children such food and clothing, as well as to the children's religious and cultural needs. They support the children who need medical assistance, psychological counseling, educational support, and livelihood assistance.

Barriers in Accessing Justice in the Philippines

The interviewed social service providers identified different challenges they encountered in their struggle to access justice. One of the reasons pertains to the victims' cooperation on the case. When the children feel harassed, threatened, stigmatized, or humiliated, they do not want to participate in the legal process any further. They withdraw or change their statements; do not show up in courts; or resort to amicable settlements. In some instances, the children do not consider themselves as victims. They sympathize with the perpetrators so they hesitate to share the details of their experience, deny the occurrence of exploitation, and reduce their participation in the case. Sometimes, these children even prefer to transfer to another exploitative workplace after the rescue operation.

The children's families could also become unsupportive of the case. They do not want their children to get involved with legal matters because they fear that the perpetrators will retaliate. They agonize about the long judicial process and are concerned about the expenses related to court trials and the loss of family income. They also think that participating in the legal process would mean that their children will not be able to go home. Because of these, some of the family members choose to accept the money offered by the perpetrators in exchange of case withdrawal.

“In one case, the child already gave her statement, but during the trial, she only answered ‘I don’t know’ to the questions. We later found out that the perpetrator bribed the family. The recruiters urged the victim’s mother to convince her child to retract. When the perpetrator offers money, the victims find it hard to refuse.”

– Interviewed Private Lawyer

Another factor that hinders trafficked children's easy access to justice concerns the available services for the children and their families. The social service providers said that they had difficulty arranging temporary shelter, had issues with lawyers, and had inadequate funds and equipment.

“If not all, some live-link equipment were donations to the courts. The judiciary did not appropriate funds for their maintenance. Technically, the court should provide blank video tapes for the recordings but since no funds were allotted for such types of expenditure, we were requested to bring our own. There were times when the judges paid for the tapes.”

– Interviewed Prosecutor

Moreover, some social service providers have to deal with slap suits while giving assistance to children. They are harassed and threatened, negatively affecting the performance of their tasks.

“There was a case when the family members asked why the children were placed in the shelter instead of letting them work to help in the family’s income. They threatened to burn the shelter so we reported it to the police in case something happens in the shelter on Saturdays or Sundays when some employees were not around. The relatives also accused the shelter staff as militants and rebels. They wanted the release of the children. They questioned the pursuance of case filing.”

– Interviewed Social Worker

The social service providers’ unsatisfactory performance also poses as a challenge in trafficked children’s access to justice. Their lack of knowledge, experience, and skills in handling child trafficking often result in incorrect identification of cases, lapses in gathering sufficient information and evidence, and improper orientation of children victims and their families. According to the social workers, some agencies give false hopes and promises to the children in order to convince the latter to stay in the shelter. These result in children’s disappointment and mistrust. Some social workers also conduct poor family assessment which leads to the re-victimization of the children. Moreover, a number of social service providers are still insensitive to the special needs of the children, including child-friendly treatment and protection. Some of them still do not know how to respect and protect trafficked children’s right to confidentiality, information, opinion, and services.

Another barrier in trafficked children’s access to justice includes the involvement of syndicates and the strong influence of the traffickers. Rich and powerful perpetrators employ extralegal means to force the children and their families to withdraw the cases. They threaten and bribe the victims to accept out of court settlement. Perpetrators also bribe some of the social service providers, such as prosecutors and judges, to make sure that the ruling will be in their favor.

The slow judicial process also works in favor of the perpetrators. This affords perpetrators to buy time and use the periods between court hearings to make offers to the children, their families, and social service providers. Children also lose their interest in the case because of the long and tedious legal process.

“Because of the inefficient and slow legal process, the complainants lose their enthusiasm. They would ask, ‘is it worth it?’ or ‘what will happen to us later on?’ Justice delayed is justice denied.”

– Interviewed Prosecutor

One of the social service providers shared that she has been handling a case since 2007 and it has not been resolved after three years. The schedule of the case hearing was reset five times and the child did not want to continue with the case anymore; the child just wished to go home to experience spending Christmas with her family again.

The delay in the legal process is caused by a number of factors, such as the lack of sufficient evidence to prove the elements of the crime; the difficulty in gathering complete and correct details of the incident; the inability to find and arrest the perpetrators; and the high number of handled cases by the prosecutors. The tactics of the defense to postpone court hearings also contribute to the delay.

Likewise, the community and the public still have difficulties in understanding the issue of child trafficking. This often results in victim stigmatization.

Recommendations

The interviewed social service providers recommended some measures that may provide a more responsive and timely assistance and support to the trafficked children during the entire legal process.

The law enforcers suggested establishing a shared database among relevant agencies such as the Philippine National Police, National Bureau of Investigation, Philippine Overseas Employment Administration, Department of Labor and Employment, Bureau of Immigration, and other related government agencies. The database will contain, among others, information about offenders which could help in determining their identity and location. Other social service providers proposed the formation of task forces. Both of these, however, have already been done by the IACAT at the time of the research. This, then, implies that not all social service providers are aware of IACAT initiatives.

Other recommendations pertain to measures that further build the capacities of service providers. These include the development by IACAT of standard interview guidelines or mechanisms in order to effectively gather crucial information and evidence that will determine the commission or non-commission of the offense of trafficking. Again, this confirms the earlier conclusion that IACAT guidelines are not properly and widely disseminated. The IACAT has developed a manual on the investigation and prosecution of trafficking cases for law enforcers and prosecutors. As part of the annexes, the manual contains an interview guide that lists down suggested questions that will likely establish the commission of a trafficking offense.

Additional trainings for law enforcers were also raised to further improve their knowledge on human trafficking and on the available programs and services for trafficked persons. These trainings will enhance their skills in conducting investigation in a child-sensitive and gender-sensitive manner. They would like to be trained as well on victim identification and proactive investigation.

Similarly, prosecutors and judges must also be properly educated on the anti-trafficking law and child protection measures.

The social service providers said that the country needs additional individuals who will be committed to providing social services to child trafficking victims. They also mentioned that they need protection from harassment and threats in order to perform their duties well.

Moreover, the social service providers reiterated the need for additional family courts with child-friendly facilities such as live-link television. Funding must be assured to make the court more functional and truly child-friendly. Resources must also be allocated to services for children and their families including counseling, shelter, medical check-up, legal assistance, and livelihood support. Correspondingly, the social service providers called for easy access to resources of their agency or for quick response to budget requests and technical support. They also asked for the improvement in the implementation of the Witness Protection Program and Victim Compensation program.

Adjustments must be made in the legal process in order to provide children with easier access to justice. The social service providers believe that child trafficking cases must not be witness-based, especially since children are vulnerable to withdrawing their statements.

Furthermore, the social service providers called for the immediate processing of child trafficking cases. Cases involving children must be given preferential attention over all other cases and should be resolved within the possible quickest time. Appropriate issuance must be made, or if made, should be complied with strictly. Court personnel must also be sensitive to the condition of trafficked children and their families in order to encourage victim participation in the case.

The social service providers highlighted the need to fulfill children's right to information, especially those who decide to pursue legal cases. The children must always be properly informed about their rights, responsibilities, and services entitled to them as child witnesses. They must also be oriented about the legal procedure and be updated on the results of the court hearings.

As a prevention measure, livelihood assistance must be provided to the most impoverished to help thwart children from falling into the traps of the traffickers. Likewise, children, parents, teachers, and other members of the community must be continuously oriented about the dangers of child trafficking, the legislation against it, and the measures to combat it. Widespread advocacy to support the fight against child trafficking must be undertaken across sectors.

5 access to justice according to the child trafficking survivors

Thailand

Eight Burmese children and ten of their family members who were trafficked from Burma to Mae Sod and to other parts of Thailand shared their experiences. They discussed the modus operandi of traffickers, the trafficking routes, and the challenges they faced during the travel.

The recruiters and traffickers employed different techniques in convincing the children and their families to leave their place of origin and travel to another location. Half of the child participants went with a small group of young people and traveled to Bangkok or to other parts of Thailand. They were promised to be generously paid. Three children went with their father or mother, without them knowing their destination and the conditions waiting for them.

The traffickers did not explain to the children and their parents how they would travel but they were asked to pay 5,000 to 8,000 Baht per person. They did not pass through the main road. Instead, they journeyed through the jungle for three to five days. They were not allowed to use their mobile phones and their mobile phones were later confiscated as they arrived in their final destination.

In Thailand, most of the victims worked in a factory or toiled in a fishing boat without being paid for two to three months. One child was sold for begging. They were all eventually arrested by the police as illegal immigrants and were deported back to Burma.

Justice for the Trafficked Burmese Children

The children had to endure different forms of exploitation, yet their experiences seemed to be analogous.

During a raid at the factory, the law enforcers arrested the children and their families. The children were separated from the adults and were interviewed by the police. When the children said that their family members also worked in the factory, they were reunited at the Immigration Detention Center (IDC).

One child was sold for begging and was forced to work for over one year until he was arrested by the police. The Thai law enforcers asked the child if he was trafficked, but the child got scared and did not tell the truth. He told the police that no one brought him to Bangkok. He was sent back to Mae Sod immediately.

The other children said that the police arrested them while the boat was anchored on the shore. The police raided the boat and checked the identification cards of all the workers. Since the trafficked children and their families could not present any ID cards, the police officers brought them to the police station. One of the arrested adults warned the children not to reveal their trafficking experience to the police. He said that the police must not know that they were trafficked and sold to the boat owner because the latter might retaliate and kill them. He added that if the children revealed that they were trafficked, the children will not be released immediately because the police would want to protect them from the threats of the boat owner. The children heeded the misleading warning and did not reveal anything to the police.

Children's Recommendations

Based on the information gathered, human trafficking victims do not know that they can have access to justice. They never thought that they have rights as children and as victims of trafficking in persons. As such, there is a need to educate the people about their rights, especially those from areas considered as vulnerable to trafficking like Mae Sod. The community must also be properly oriented and constantly informed about child trafficking. Groups working against human trafficking must be more active in reaching out to communities and in setting up a community protection network.

Social service providers, police officers, and immigration officials must have a clear understanding of the rights of trafficked victims. They must be able to discern and immediately identify the victims from others. Once identified, the victims should be afforded the protection and assistance they deserve. Their security and safety is important; they must be put in a safe place so that they will not be susceptible to the threats of the perpetrators.

Moreover, information about NGOs that provide assistance to rescued victims of trafficking must be disseminated at the Bangkok IDC and other provincial police detention centers so that the law enforcers and the victims would know who to contact and how to contact the NGOs for support.

Philippines

Trafficked children from the Philippines discussed their experiences, reflections, and recommendations on accessing justice. Some of them have pursued legal action while others did not. When asked of their opinion about case filing, both groups had the same impression. For them, filing a case in court involves extensive and heavy discussions, chaos, and fear.

The children said that during the interviews, the social service providers were calm and gentle to them. The interviewers did not force them to give the details they did not want to divulge.

When they were brought to the shelter, the children said that they were scared and some even cried because they were uncertain about what their lives would be like at the shelter.

“I was confused when the van went the other way. I asked my mother where we were going. Then, the social worker said that I will be staying in the shelter for my own good and safety because the enemy might get back at me. I was crying until we arrived in the shelter. I did not want to get off the van. I even threatened my mother that if I stay in this shelter, I will not face her when she visits me. I was angry at her because we were already separated for a long time and then we will be separated again. I later realized that she gave her consent to this arrangement for my own good.”

– Interviewed Child Trafficking Survivor

The children were also angry upon arriving at the shelter. They did not listen to the explanations of the social workers and believed that they were being detained. They wanted to go home as they longed for their parents and families.

“During my early days at the shelter, when my mother came to visit me, I almost packed my bags.”

– Interviewed Child Trafficking Survivor

However, after a while, the children came to understand the purpose of staying at the shelter. They began to appreciate the efforts to protect and assist them.

“The children were separated by dorms. When I first arrived, I saw children sleeping. The next day, I saw more children! The children and the social workers asked me to tell my story. They listened to me. They did not judge me. They wanted to help me. They told me that the shelter is a temporary home for me. They said that they will help me recover and seek justice. I went through counseling. It took me almost a month to understand things.”

– Interviewed Child Trafficking Survivor

In the shelter, the children gladly received different forms of assistance and support from the social service providers. They were referred to a dental clinic as part of the follow-up investigation. The social service providers ensured their security and safety. The children were advised to tell the social workers if someone invites them to go out.

“Eventually, I understood the reason of our stay in the shelter. The social worker became my source of strength.”

– Interviewed Child Trafficking Survivor

Children who pursued legal action shared some of their reflections and realizations. They learned that they should always tell the truth. They must be honest to themselves and to other people. They need to be strong and confident. They must not be afraid even if their family members could not be with them in court hearings. They must fight for their rights. They realized that filing a case is the right thing to do because it will stop the traffickers from victimizing and exploiting other children. They further realized that they could contribute to educating other children and the community about child trafficking by sharing the lessons they learned.

The children who did not file cases against their traffickers had their own realizations as well. Although some people consider case filing as integral to the children’s recovery and reintegration, the interviewed children survivors who avoided that legal battle believed otherwise. When asked about how they felt about not filing a case, the children said that they experienced freedom and happiness because they can move freely, forget about the negative experience, go on with their lives, and live peacefully.

Whether the children pursued legal action or not, they received aftercare services until they were deemed to be self-reliant. When the children were reintegrated to their families, the social workers maintained communication with them to ensure that their home was safe; that they ate the right food; and that they continued with their studies.

Difficulties Faced by Child Trafficking Survivors

In accessing justice, the children encountered challenges along the way. In one case involving four trafficked girls, the social service providers failed to orient the children about the legal process. All the children involved were also not consulted on whether they wanted to file legal action against their traffickers or not. Two of the four girls decided to file a case in court. However, the other two only learned about the case when they were already asked to testify. One of the uninformed girls said that she was surprised when the police started asking questions and taking down notes, and then she was asked to sign a paper. The paper was already signed by the other girls so she thought she had no other choice but to sign it as well.

The children who appeared in courts experienced fear and anxiety. They were nervous and afraid because of the indifference of the judges, the insensitivity of the defense lawyers, and the presence of the perpetrators and other people in the courtroom.

“I felt like the defense lawyer was terrorizing me. I was also so scared of the judge who seemed not to care when a child like me is afraid. Seeing the recruiter and his lawyer scared me too. I felt that the judge and the prosecutor did not believe me. I felt like they favored the other side.”

– Interviewed Child Trafficking Survivor

Moreover, the children had to endure insensitive treatment not only inside but also outside of the courtroom. They had to deal with the discrimination, hostility, and negative treatment from their family, relatives, and other members of the community.

“My father and relatives blame me and my mother for what happened. They did not want me to go back to our community because they believe that I will just be an embarrassment to our family. I told them not to worry because I decided not to go home and just make a living on my own.”

– Interviewed Child Trafficking Survivor

“My uncle calls me and my mother stupid for deciding to pursue the case. He said that we should have just accepted the money from the trafficker rather than going to court. I feel sad knowing that he does not care about what the trafficker did to me.”

– Interviewed Child Trafficking Survivor

A Case from Zamboanga

Eight children aged ten to 17 from a shelter based in Zamboanga City participated in the consultation. Five of them were exploited as domestic workers while the rest were victims of sexual exploitation. Some of them filed a case while others did not. All children received the same assistance and support from the social service providers, but additional protection measures were provided to children who instituted legal action.

For these children, justice means penalizing the perpetrators by putting them behind bars. Some of them believe that locking up the traffickers and recruiters in jail is a way to end further exploitation. However, they also said that court cases are chaotic and involve lengthy discussions about them and their experiences.

The children who filed a case in court said that they are happy because they will get justice for what they went through. At the same time, they feel nervous because the perpetrators might get out

from jail and retaliate. They also feel sad because they were separated from their families, at least for the duration of the court proceedings.

For the children who pursued legal action, they had a hard time concentrating in school because they were always thinking of what will happen to the case. They skipped classes, especially when there were court hearings. They got low scores in quizzes. Furthermore, they were confused and disturbed. They cried. They could not sleep or eat well. Sometimes, they had headaches because they were preoccupied with the case.

The children said that a police, a social worker, and a shelter coordinator accompanied them to meet the prosecutor. The prosecutors were friendly to the children and introduced themselves as their lawyers. The prosecutor, social worker, police officer, coordinator from the shelter, and clerk of court oriented the children on what will happen before, during, and after the court trial. They reviewed the statements of the children and gave advice on how to answer questions. They also reminded them to be brave and calm and to always tell the truth. Moreover, the parents supported their children by being present in court while the children testified.

From what they saw on television shows, the children knew that the judges wear robes. They perceived the judges as a powerful person in the courtroom. So during the actual court hearing, the children feared the appearance of the judges. One child said that she trembled when she saw the judge because the judge looked like a ghost with a cape. Some of the actions of the judges further scared the children.

“Every time he hits the table with that wood (gavel) in his hand, I got nervous. My hands were shaking.”

– Interviewed Child Trafficking Survivor

The children became more frightened because of the actions of the defense lawyer. Defense lawyers usually annoyed and insulted the children. They called the children liars and accused them of enjoying what happened to them in the hands of the traffickers. When these happened, the children cried, got angry, and felt ashamed. They just tried to be strong and confident because they knew that they were telling the truth.

There were also instances when the children had difficulties comprehending the questions or conveying their answers while at the witness stand. One child shared that she could not understand what the defense lawyer was saying so the judge translated it to the child’s native language. Other children were also allowed to use their native language in their testimonies because the court interpreter translated their testimony for others to understand. The child with a hearing disability

was taught how to communicate through sign language and gave her testimony in that manner. Furthermore, when the children could not understand the question, they looked at the social worker and their lawyer to signal to them that they needed help.

According to the child witnesses, they did not see the perpetrators inside the courtroom, but they did get a glimpse of them outside. When that happened, the children got nervous and angry. One child shared that she felt frightened because the perpetrator saw her and gave her a terrorizing look.

Some of the children were not able to testify because the trial was postponed several times. The slow and tiring legal process irritated the children. One child said that the trial was rescheduled because the defense lawyer did not appear.

The child survivors also prepared themselves for the possibility that the perpetrators will be acquitted because of bribery, bail, or lack of evidence. Nonetheless, the children believe that they communicated their experience well and shared everything they wanted because they have good lawyers and interpreters.

After the children testified, they felt happy, relieved, and free. One child exclaimed that she felt like she was released from a cage. Another shared that she was happy because she made a positive contribution since the perpetrator can no longer exploit children. Even after the court trial, the children remained at the shelter until they are safe to return home and be with their families. They received scholarship grants, while their siblings and parents received assistance and support.

From these positive and negative experiences, the children said that they do not want to be court witnesses again. The children believed that all children witnesses in the Philippines are always being shouted at and not taken seriously. They do not want to feel nervous or frightened again. They do not wish to recall the exploitative experience and undergo the same difficult process. They just want to have a peaceful life together with their families.

Children's Recommendations

The children who participated in this research shared their recommendations for the improvement of services for child trafficking victims.

As preventive measures, bars and clubs must be regularly or periodically monitored to determine if children were employed. Hotels and motels should also be cautious about adults checking-in with accompanying children. Additionally, more community awareness campaigns on child trafficking

should be undertaken. Social service providers and other stakeholders should be educated in order to have a clear understanding of the laws that protect children. They must also be proactive in rescuing children trapped in exploitative situations.

Moreover, the children want law enforcers to always ensure the privacy of victims and confidentiality of the case records and proceedings. They should also be more responsive to the victim's needs at any stage of the process. Values education and formation must be integrated to the curriculum of criminology students in order to help the future law enforcers fulfill their duties and responsibilities according to the law and professional ethics. Furthermore, higher penalties must be imposed on law enforcers who participate in the exploitation of trafficked children. Corrupt officials in the law enforcement units must be dismissed from service.

The children also hope that judges become more sensitive to the trafficked children's needs and conditions. Defense lawyers must always be kind to the children victims. Social workers must continue providing services and assistance to the victims.

The children also have recommendations for parents and family members. According to them, parents must educate their sons and daughters about child trafficking and sexuality. Parents must enhance their parenting skills; give full support to their children; and accompany the children during the investigation stage to give assistance and encouragement to the children.

With regard to the legal procedure, the children suggest faster disposition of child trafficking cases. They propose to improve holding areas for child witnesses in court by providing toys, books, and other materials that will make the children more comfortable. Children who will testify at the witness stand must not stay too long inside the court. They also wish that people will believe their testimonies.

6 summary

Accounts from Practical Experience

Defining Access to Justice

From their points of view, the interviewed social service providers defined access to justice in various ways. They said that access to justice is freedom; awareness of one's rights; fighting for one's rights; enforcement of the law; fair access to courts; arrest, conviction, and imprisonment of the perpetrators; and assistance to and compensation for the victims. They view access to justice as a basic human right, and it can be obtained if the victim is determined to pursue the case and the social service providers are firm in filing the case.

Rescue

The road to access to justice for the trafficked children usually starts when they get out from the exploitative situation either by finding a way to escape from the traffickers and report the case to the social providers or by being rescued by the social service providers.

In rescuing child trafficking victims, the social service providers employ different methods depending on the case situation. However, some of them are still confused on who among them should be with the law enforcers during the rescue. Also, the presence of the media during the rescue frightens the children survivors and makes them feel like they were just being used for the television show. In the Philippines, there was an instance when the name and address of the child was even published.

Interview and Investigation

After the rescue or initial contact with the child survivors, law enforcers conduct initial interviews as part of the investigation. The social workers accompany the children during the interviews for psychosocial support. In Thailand, social workers brief the children on the questions that might be

asked by the police officers or investigators. They explain to the children the anticipated technical terms which may be used during the interview. They also show the children some pictures that were taken during the rescue to help the children remember the incidents.

Throughout the process, the social service providers protect the privacy of the children and the confidentiality of the information that the children shared. Nonetheless, some social service providers still have uncertainties regarding who should have access to the gathered information.

Gathering of evidences against the traffickers is part of the investigation procedure of the law enforcers. The social service providers shared that they encounter difficulties in this task; the “lack of evidence” results in the dismissal of the cases. A law enforcer from the Philippines shared that strong evidence is necessary for filing a case. Hence, not all cases are filed in courts because of insufficiency of evidence to establish and prove the elements of the crime.

Case Filing and Child Witnesses

Aside from the strength of the evidence, the interviewed social service providers mentioned that the decision on filing a case is largely dependent on the consent of the victims. Before the children decide whether to file a case or not, the social workers, lawyers, and law enforcers explain to the children the steps of the legal process that they have to go through should they decide to file a case. Children are also informed of the advantages and risks that come with filing a case. When the children are provided with information beforehand, there is lesser chance for them to drop the case. However, the practice of informing the children is not carried out all the time. Some child survivors shared that they did not get any information on case filing. Thus, they were surprised when they were told that they needed to testify because a case was already filed.

The social service providers had varying views on who should make the final decision whether the case should be filed. Some of the participants believed that the children should make the final decision, while some also believed that the parents, relatives, or task force should have the final say.

Children are also informed about the victim compensation program as stipulated in the laws of the Philippines. There were instances, however, when the children were not informed about this because of the confusion among the social service providers on who should be informing the children. As a result, the victims did not receive compensation because the prescriptive period for applying for the program already elapsed.

Along with explaining the nature of case filing, the social service providers let the children decide if they want to participate as a witness to the case. The children are informed of the possible scenarios that might happen should they agree to be child witnesses. Social workers inform them of the benefits and the challenges that come along with being a witness. Moreover, in countries where there are witness protection programs, the children are informed of the protection and security they will receive if they agree to be witnesses. Despite these, some children still hesitate to participate as witnesses because they feel like they had no assurance that their family members and the people important to them will also be safe from the possible threats and dangers posed by the traffickers.

Preparing for Trial

Child trafficking victims are kept in shelters for safety and security while waiting for the court trial. While in the shelter, the children are prepared for the trial by the social workers, house parents, lawyers, and psychologists. The children are briefed on the nature of the court proceedings, including the timeframe of the whole process. They are also told that they are allowed to express feelings of discomfort and that they should tell the truth if they do not know or remember the answer to the question. Furthermore, the children are familiarized with the legal terms that might be used during hearings.

The children are counseled to determine their readiness to testify. The social service providers also prepare the children by reviewing the latter's statements given during the interview with the law enforcers. Role playing is employed to familiarize the children with the possible questions to be asked by the lawyers of both parties. Likewise, the children are informed of the personalities who will be in attendance during the trial. Maps or layouts of the courtroom are presented to the children to give them an idea on where the personalities will sit. Court visits prior to the actual trial are undertaken to familiarize the children with the court environment.

The social service providers regularly communicate with the families to keep them updated about the status of the children and the case. The children are allowed to talk to their parents and relatives, except when the family members are involved in the trafficking incident.

The Philippines did not have yet the circular regarding the speedy disposition of human trafficking cases at the time of the research.³⁴ On the other hand, Thailand already had the law regarding fast tracking the court procedures for children victims. In Cambodia, the cases involving

34 The DOJ Circular No. 57, s. 2010 was signed in June 2010 while this research started in March 2010.

children were given priority. Nevertheless, in practice, delays in the court proceedings involving child trafficking cases still happen.

The delays in the court proceedings have adverse effects on the children and on the case. Some children lose interest in the case while others become anxious of the outcome of the case. They also become worried of their safety and the safety of their family since the perpetrators are still not convicted. Likewise, court delays allow the traffickers to bribe the family or relatives of the child survivors so that the case will be withdrawn.

Children at the Witness Stand

The social service providers make sure that they are always with the children during the court hearings. During the transfer from the shelters to the courts, the security and safety of the children are the primary consideration. There are cases when the social service providers had to find resources to accommodate the transportation cost and other expenses related to the court hearing.

Philippines and Cambodia have special courts for children cases. Thailand, on the other hand, has a special court for juvenile justice cases only. Nonetheless, all three countries have special court procedures for cases involving children. The courts have special rooms where the children can stay while waiting for the hearing to start or for their turn to testify. Social workers stay with the child in the room and throughout the entire court proceedings.

The laws of Thailand allow the use of recorded video for the children's testimony, while the Philippines permits the use of live-link television wherein the child would testify inside a special room while being questioned and cross-examined. These measures are done to prevent the children from having direct contact with the traffickers. However, problems in resources arise in these new techniques. The limited budget for video tapes, purchase of equipment, and maintenance hamper the extensive use of these facilities. Also, the lawyers of the perpetrators argue that these new techniques hamper the court process. Moreover, there are still instances when the children have to testify in the presence of the traffickers, causing stress to the children.

During the children's testimony in courts, the social workers and psychologists stand beside the children to make them feel relaxed and less anxious. Translators are also provided to make the children feel more comfortable in conveying their testimonies. Still, children are frightened by the court environment, especially when the defense lawyers ask confusing questions and make derogatory remarks. The judges' loud speaking voice and black robes frighten the children as well.

While the case is on trial, the social workers render other services to the victims relating to their education and health. They also give assistance to the families of the victims pertaining to their security and relocation. However, due to limitations in resources, they could not help all the families in need.

After Care Support and Services

After testifying in courts or after the whole legal process, trafficked children still need support. Social service providers give them psychosocial assistance through debriefing and counseling sessions. The children's cases are also monitored as part of the recovery and reintegration process.

Challenges in Trafficked Children's Access to Justice

Rescue

The trafficked children's right to confidentiality remains a huge concern during rescue operations, especially when media is around to cover. The hostility and chaos during a rescue traumatize the children. The confusion on the presence of social service providers during and after a rescue affects the timely delivery of support and assistance to trafficked children.

Interview and Investigation

The trauma prevents children from recounting their trafficking experience with certainty and completeness of details. This becomes a barrier in the evidence gathering by law enforcers and investigators.

Again, the protection of the privacy of trafficked children and the confidentiality of the information they shared at this stage of the legal process is a major stumbling block in obtaining cooperation from the children. The involvement of law officers in trafficking adds to their misapprehension of the whole legal system and mistrust to the helping process. The law enforcers need better understanding of the anti-human trafficking laws and child protection policies.

Case Filing and Child Witnesses

The right of trafficked children to express their views and opinions on pursuing legal action must be fully taken into account. There are instances where children are not appropriately informed of the decision to file a case or are not provided with appropriate information on the nature of the case, the risks and the benefits of filing a case, and the assistance they will receive throughout the process. The decision must be based on an informed choice.

Similarly, the information provided to children must be accurate. Providing them with false information will lead them to withdraw participation from the case, or develop mistrust on the social service providers.

The fear of the traffickers' threats and retaliation remain an important concern for the victims and their families. Unless these are overcome by guaranteeing their safety and security, they will unlikely cooperate or sustain their cooperation in the process.

The lack of coordination between social service providers negatively impacts the children's access to victim compensation, witness protection, and other legal remedies.

Problems with acquiring the necessary documents of children, especially the stateless children, also arise. There is the difficulty in making the children and their families understand their rights and the issue of human trafficking due to lack of education and awareness.

Preparing for Trial

The delays in the court proceedings negatively affect the cooperation of the victims in the case. When the legal process is taking too long, they lose their interest and decide not to pursue with the trial. Delays also affect the safety and security of the children and their families. They pave the way for threat and bribery of the perpetrators. These make the children and the families withdraw from the case.

Moreover, the delays make the children forget the initial statements they have made. The distant location of the courts also dismays the children. Additionally, the court environment creates fear in children.

Children at the Witness Stand

Ensuring the legal rights, security, and safety of children in filing cases is very costly but the resources for legal assistance and victim support are limited.

Prosecutors, lawyers, and judges must be trained on the dynamics of child trafficking aside from the applicable laws and procedures. The skills of court translators must be improved, especially when working for child witnesses. An understanding of the child trafficking issue would help.

Hostile court environment poses stress and fear to children. There are not enough special courts for children with child-friendly facilities such as live-link television. The children are afraid of the cross-examination techniques of the defense and they resent the behavior of defense lawyers toward them. The children become stressed, causing difficulty for them to remember their statements. In extreme instances, children do not cooperate anymore once they experienced hostility in courts.

Corruption in the legal system exists. Prosecutors and judges are bribed for a favorable decision for the traffickers. Fairness and transparency must be upheld at all times. In one case, the psychologist turned out to be a distant relative of the lawyer of the trafficker. This unduly creates doubts on children and discourages them to continue.

Slap suits are filed against the social service providers and these weaken their capacity to give assistance and support to the victims.

After Care Support and Services

Limited budget and lack of support remain constraints for full recovery and reintegration of the victims and their families.

Recommendations of the Social Service Providers, Parents, and Survivors

Based on their experiences, the social service providers gave recommendations for the improvement and strengthening of trafficked children's access to justice.

Continuous awareness-raising on the issue of human trafficking

- All concerned social service providers such as social workers, law enforcers, investigators, prosecutors, psychologists, lawyers, judges, government officials and employees, and NGO workers should have in-depth awareness of the human trafficking issue and the applicable laws to combat it.
- The community, especially those who are vulnerable to human trafficking, should be made aware of the issue and be mobilized to help stop incidents of trafficking in their areas.

Capacity building for social service providers

- The anti-trafficking councils, committees, or task forces should provide guide questions during investigation interviews in order to help service providers in the appropriate and successful extraction of information from the child victims.
- Guidelines during the rescue operations and other legal processes should be provided to ascertain the roles of each of the social service providers at different stages.
- Social service providers should be trained on case build up, data collection, and evidence gathering.
- Recruits and replacements for anti-trafficking staff and personnel must be properly trained on the anti-human trafficking laws and policies.

Child-friendly treatment and environment inside and outside the courts

- Lawyers and judges should be made aware of the proper treatment of child trafficking victims.
- Additional special courts for child-related cases should be established.
- Special procedures for the protection of children's rights in courts should be strictly implemented.
- Communities must be educated on the dynamics of trafficking in persons and its effects on victims in order to prevent stigma against victims.

Court procedures for trafficking cases

- Prosecution of trafficking cases must not rely heavily on victim testimony.
- Case monitoring and information sharing should be institutionalized and must be easily accessible to social service providers.
- Protection measures for children witnesses must be well-funded and utilized.
- Child trafficking cases should be given priority and be processed promptly.

Protection for social service providers

- Social service providers must be protected against slap suits.

Coordination and collaboration of social service providers

- The coordination and collaboration between social workers, law enforcers, prosecutors, judges, lawyers, psychologists, NGOs, anti-trafficking task forces, and other social service providers must be improved.
- Information sharing and case referrals between social service providers should be enhanced.

End Corruption and impunity

- Corruption, power play, and political influence should end.

7 Asia ACTs' advocacy calls for trafficked children's access to justice

Based on the research results, the Asia ACTs network developed advocacy calls for the trafficked children's right to access justice and right to assistance for their full recovery and social reintegration.

- Adopt and implement the international human rights standards for children.
 - The Thai government must ratify the Palermo Protocol.
 - Thailand, Cambodia, and Philippines must ensure the proper implementation of the standards stipulated in the child protection and anti-human trafficking mechanisms.
- Treat trafficked children as victims not as offenders.
 - Trafficked children have the right to child-friendly treatment and child-friendly environment.
- Protect the children's right to confidentiality, right to information, and right to their own views.
 - Trafficked children have the right to privacy. Their security and safety must be protected at all times.
 - Trafficked children deserve to be informed of their legal rights. They should be made aware of the legal processes and the status of their cases.
 - Trafficked children have the right to their own views. Their opinions regarding the legal processes should be respected and given weight in accordance with their evolving capacity.
- Trafficked children need special protection measures in courts.
 - Develop special courts and special court procedures to help the trafficked children access justice and to prevent causing further trauma or re-victimization.

- Protect children's right to seek and access legal remedies.
 - Provide legal assistance and support to the victims and their families.
 - Properly implement the victim compensation and witness protection programs for the victims and their families.
 - Provide financial assistance to trafficked children and their families to help them access justice.
- Trafficked children have the right to programs and services for their recovery and reintegration.
 - Provide accessible programs and services for the education, health care, social services, and livelihood of the trafficked children and their families.
- Strengthen the capacity of social service providers to help them fulfill their roles from the victim identification stage up to the recovery and reintegration of the victims.
 - Social service providers must be well-informed of the laws, policies, and other related matters regarding human trafficking and child protection.
 - Conduct specialized trainings for the social service providers.
 - National guidelines on the legal process from the rescue, investigation, evidence gathering, case filing, interim care, and after care should be provided to the social service providers to help them in their tasks.
 - Extend protection programs for the well-being of social service providers whose lives are also put at risk while assisting trafficked victims.
- Strengthen the collaboration between stakeholders to improve the services and assistance provided to the trafficking victims.
 - Improve the referral system between social service providers.
 - Carry out and properly utilize data keeping and information sharing.
 - Enhance the coordination between and among social service providers.
- Penalize the perpetrators of child trafficking.
 - Ensure that the perpetrators of child trafficking are held accountable through appropriate legal proceedings and penalties.
 - Confiscate and forfeit the proceeds and instruments derived from trafficking of children.

- End corruption and impunity.
 - Corruption should end at all levels of the government, from the executive to the legislative to the judiciary. Government officials and employees who are proven to be perpetrators of child trafficking should not be exempted from the legal proceedings and penalties.

These advocacy calls reiterate the governments' commitments to the international anti-human trafficking and child protection frameworks. The Palermo Protocol requires state parties to provide assistance and protection for the victims of human trafficking;³⁵ mandates governments to establish policies, programs, campaigns, and other measures to combat trafficking in persons, in cooperation with NGOs and other relevant organizations;³⁶ and requires relevant government officials and NGOs to undergo trainings that will focus on methods for the prevention of human trafficking, prosecution of traffickers, and protection of the rights of the victims.³⁷

Additionally, the UN CRC stipulates the children's right to protection against sale and trafficking;³⁸ to privacy,³⁹ to information,⁴⁰ and to respect for their own views.⁴¹

With these, Asia ACTs and its partner organizations advocate for the fulfillment of these commitments and obligations to protect the rights of trafficked children, especially their right to gain access to justice and right to assistance.

35 Article 6: Assistance to and protection of victims of trafficking in persons

36 Article 9: Prevention of trafficking in persons

37 Article 10: Information exchange and training

38 Article 35

39 Article 16

40 Article 13

41 UN CRC Article 12

bibliography

CHAPTER 1

Asia ACTs. (2010). *ASEAN Guidelines for the Protection of the Rights of Trafficked Children*. Philippines

Alliance Expert Coordination Team. (2008). *Statement on compensation for trafficked persons*. Retrieved from <http://www.osce.org/odihr/34433>

Global Alliance Against Traffic in Women. (n.d.) ACCESS TO JUSTICE: Increasing and broadening spaces within which trafficked persons and migrant workers can access their rights. Retrieved from <http://www.gaatw.org/atj/>

Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia. (2007).

United Nations Development Programme. (2005). *Programming for justice: Access to all A practitioner's guide to human rights-based approach to access to justice*. Bangkok, Thailand: United Nations Development Programme

CHAPTER 2

Anti-Trafficking in Persons Act B.E. 2551. (2008).

Constitution of the Kingdom of Thailand B.E. 2550. (2007).

Institute of Developing Economies (IDE-JETRO). (2001). The judicial system in Thailand: An outlook for a new century. *IDE Asian Law Series*, 6, 12. Retrieved from http://d-arch.ide.go.jp/idedp/IAL/IAL000600_004.pdf

Judicial Service Act B.E. 2543 (AD 2000)

Son, N. (2008). *Thailand's anti-trafficking in persons act B.E. 2551 (2008): A new development in human rights protection and justice, in factis pax (in knowledge there is peace)*, 2 (2), 335-364

Tilleke and Gibbins (2011). *Thailand legal basics*. Retrieved from http://www.tilleke.com/sites/default/files/2011_TLB.pdf

US State Department. (2011). *Trafficking in Persons Report*. US Department of State Publication.

CHAPTER 3

Agreement on Guidelines for Practices and Cooperation Between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking. (2007).

Gallagher, A. & Pearson, E. (2008). *Detention of trafficked persons in shelter: A legal and policy analysis*. Retrieved from <http://ssrn.com/abstract=1239745>

International Justice Mission. (2006). *Assessment of its anti-trafficking program in Cambodia*. USAID. Retrieved from http://pdf.usaid.gov/pdf_docs/PNADG806.pdf

Khmer Institute of Democracy, The. (n.d.). *Judicial system of Cambodia, the*. Retrieved from <http://www.khmerrough.com/pdf/CriticalThinking-Eng/Part1-CriticalThinking.pdf>

Law on Suppression of Human Trafficking and Sexual Exploitation, The. (2008).

Philippine Guidelines for the Protection of Trafficked Children. (2008).

Sub Decree on Establishment of National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation in Women and Children (S.T.S.L.S) Number: 162. ANKR/BK

UNICEF. (2008). *Unofficial translation of the law on suppression of human trafficking and sexual exploitation*.

US State Department. (2011). *Trafficking in Persons Report*. US Department of State Publication.

CHAPTER 4

1987 *Constitution of the Republic of the Philippines, The*. (1987).

Dancel, F. 2005. *Utang na loob* [Debt of goodwill]: A philosophical analysis in Gripaldo, R. (Ed.), *Filipino cultural traits* Claro R. Ceniza lectures (pp.109-128). Washington, D.C.: The Council for Research in Values and Philosophy

DOJ Circular No. 57. (2010).

DOJ Circular No. 61. (1993).

Guanzon, R. and Calalang, C. 2004. Anti-trafficking in persons act of 2003: Issues and problems, *The Integrated Bar of the Philippines Journal*, 30 (1), 79-91

IACAT & USAID. (2008). *Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases*.

Inter-Agency Council Against Trafficking. (2004). *Anti-trafficking in persons: A policy resource book*. Philippines

International Federation of Social Workers and International Association of Schools of Social Work. (2004). *Ethics in social work: Statement of ethical principles*. Retrieved from <http://ifsw.org/policies/statement-of-ethical-principles/>

Republic Act 7309: An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes

Republic Act 7610: Special Protection of Children Against Abuse, Exploitation and Discrimination Act and its Implementing Rules and Regulations

Republic Act 8369: Family Courts Act of 1997

Republic Act 9208: Anti-Trafficking in Persons Act of 2003

Revised Rules of Criminal Procedure, The. (2000).

Rules on Examination of a Child Witness. (2000).

Supreme Court Office of the Court Administrator Circular No. 151. (2010).

US State Department. (2011). *Trafficking in Persons Report*. US Department of State Publication.

CHAPTER 7

United Nations Convention on the Rights of the Child. (1989).

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. (2000).

appendix A

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, 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,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2
Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3
Use of terms

For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Article 4
Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

- (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
- (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8
Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9
Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10
Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11
Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic

law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14
Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

appendix B

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

Part I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social

and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent

and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

Part II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated,

indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

Part III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

appendix C

UNITED NATIONS GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME

The Economic and Social Council,

Recalling its resolution 1996/16 of 23 July 1996, in which it requested the Secretary-General to continue to promote the use and application of United Nations standards and norms in crime prevention and criminal justice,

Recalling also its resolution 2004/27 of 21 July 2004 on guidelines on justice for child victims and witnesses of crime, in which it requested the Secretary-General to convene an intergovernmental expert group in order to develop guidelines on justice in matters involving child victims and witnesses of crime,

Recalling further General Assembly resolution 40/34 of 29 November 1985, by which the Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the resolution,

Recalling the provisions of the Convention on the Rights of the Child, adopted by the General Assembly by its resolution 44/25 of 20 November 1989, in particular articles 3 and 39 thereof, as well as the provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the Assembly by its resolution 54/263 of 25 May 2000, in particular article 8 thereof,

Recognizing that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused persons,

Recognizing also that children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process,

Mindful of the serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses, in particular in cases involving sexual exploitation,

Mindful also of the fact that the participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions, in particular where the child victim may be the only witness,

Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice in matters involving child victims and witnesses of crime,

Noting with appreciation the work of the Intergovernmental Expert Group Meeting to Develop Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, held in Vienna on 15 and 16 March 2005, for which extrabudgetary resources were provided by the Government of Canada, and taking note of the report of the Intergovernmental Expert Group,³⁵

Taking note of the report of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005, regarding the item entitled “Making standards work: fifty years of standard-setting in crime prevention and criminal justice”,

Welcoming the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,³⁶ adopted at the high-level segment of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, in particular paragraphs 17 and 33 thereof, in which the importance of providing support and services to witnesses and victims of crime is recognized,

1. *Adopts* the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, annexed to the present resolution, as a useful framework that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system;
2. *Invites* Member States to draw, where appropriate, on the Guidelines in the development of legislation, procedures, policies and practices for children who are victims of crime or witnesses in criminal proceedings;
3. *Calls upon* Member States that have developed legislation, procedures, policies or practices for child victims and witnesses to make information available to other States, upon request and where appropriate, and to assist them in developing and implementing training or other activities in relation to the use of the Guidelines;
4. *Calls upon* the United Nations Office on Drugs and Crime to provide technical assistance, within available extrabudgetary resources, not excluding the use of existing resources from the regular budget of the United Nations Office on Drugs and Crime,³⁷ as well as advisory services, to Member States, upon request, to assist them in the use of the Guidelines;
5. *Requests* the Secretary-General to ensure the widest possible dissemination of the Guidelines among Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other international, regional and nongovernmental organizations and institutions;
6. *Recommends* that Member States bring the Guidelines to the attention of relevant governmental and non-governmental organizations and institutions;
7. *Invites* the institutes of the United Nations Crime Prevention and Criminal Justice Programme network to provide training in relation to the Guidelines and to consolidate and disseminate information on successful models at the national level;

³⁵ E/CN.15/2005/14/Add.1

³⁶ A/CONF.203/18, chap. I, resolution 1.

³⁷ This new language does not provide a basis for an increase in the regular budget or requests for supplemental increases.

8. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its seventeenth session on the implementation of the present resolution.

Annex
Guidelines on Justice in Matters involving Child Victims and
Witnesses of Crime

I. Objectives

1. The present Guidelines on Justice for Child Victims and Witnesses of Crime set forth good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.
2. The Guidelines should be implemented in accordance with relevant national legislation and judicial procedures as well as take into consideration legal, social, economic, cultural and geographical conditions. However, States should constantly endeavour to overcome practical difficulties in the application of the Guidelines.
3. The Guidelines provide a practical framework to achieve the following objectives:
 - (a) To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child,³⁸ by parties to that Convention;
 - (b) To assist Governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;
 - (c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;³⁹
 - (d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.
4. In implementing the Guidelines, each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime, where the nature of the victimization affects categories of children differently, such as sexual assault of children, especially girls.
5. The Guidelines cover a field in which knowledge and practice are growing and improving. They are neither intended to be exhaustive nor to preclude further development, provided it is in harmony with their underlying objectives and principles.
6. The Guidelines could also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.

³⁸ General Assembly resolution 44/25, annex.

³⁹ General Assembly resolution 40/34, annex.

II. Special considerations

7. The Guidelines were developed:
- (a) Cognizant that millions of children throughout the world suffer harm as a result of crime and abuse of power and that the rights of those children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;
 - (b) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;
 - (c) Recognizing that girls are particularly vulnerable and may face discrimination at all stages of the justice system;
 - (d) Reaffirming that every effort must be made to prevent victimization of children, including through implementation of the Guidelines for the Prevention of Crime;⁴⁰
 - (e) Cognizant that children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses;
 - (f) Recalling that the Convention on the Rights of the Child sets forth requirements and principles to secure effective recognition of the rights of children and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets forth principles to provide victims with the right to information, participation, protection, reparation and assistance;
 - (g) Recalling international and regional initiatives that implement the principles of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including the *Handbook on Justice for Victims* and the *Guide for Policy Makers on the Declaration of Basic Principles*, both issued by the United Nations Office for Drug Control and Crime Prevention in 1999;
 - (h) Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice for child victims and witnesses of crime;
 - (i) Considering that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process;
 - (j) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders;
 - (k) Bearing in mind the variety of legal systems and traditions, and noting that crime is increasingly transnational in nature and that there is a need to ensure that child victims and witnesses of crime receive equivalent protection in all countries.

III. Principles

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:
- (a) *Dignity*. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;
 - (b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language,

40 Resolution 2002/13, annex.

- religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;
- (c) *Best interests of the child.* While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:
 - (i) *Protection.* Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;
 - (ii) *Harmonious development.* Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;
 - (d) *Right to participation.* Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

IV. Definitions

9. Throughout these Guidelines, the following definitions apply:
 - (a) “Child victims and witnesses” denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders;
 - (b) “Professionals” refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system and for whom these Guidelines are applicable. This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defence lawyers; diplomatic and consular staff; domestic violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers;
10. “Justice process” encompasses detection of the crime, making of the complaint, investigation, prosecution and trial and posttrial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice;
- (e) “Child-sensitive” denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views.

V. The right to be treated with dignity and compassion

10. Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.
11. Every child should be treated as an individual with his or her individual needs, wishes and feelings.

12. Interference in the child's private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.
13. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.
14. All interactions described in these Guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.

VI. The right to be protected from discrimination

15. Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child's, parent's or legal guardian's race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.
16. The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socioeconomic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.
17. In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.
18. Age should not be a barrier to a child's right to participate full in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

VII. The right to be informed

19. Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, inter alia:
 - (a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;
 - (b) The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which "questioning" will be conducted during the investigation and trial;
 - (c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
 - (d) The specific places and times of hearings and other relevant events;
 - (e) The availability of protective measures;

- (f) The existing mechanisms for review of decisions affecting child victims and witnesses;
 - (g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
20. In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of:
- (a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case;
 - (b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.

VIII. The right to be heard and to express views and concerns

21. Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:
- (a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19 above;
 - (b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;
 - (c) Giving due regard to the child's views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

IX. The right to effective assistance

22. Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in paragraphs 40 to 42 below. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. All such assistance should address the child's needs and enable him or her to participate effectively at all stages of the justice process.
23. In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.
24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.
25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:
- (a) Child victim and witness specialists to address the child's special needs;
 - (b) Support persons, including specialists and appropriate family members to accompany the child during testimony;
 - (c) Where appropriate, to appoint guardians to protect the child's legal interests.

X. The right to privacy

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.
27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.
28. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.

XI. The right to be protected from hardship during the justice process

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.
30. Professionals should approach child victims and witnesses with sensitivity, so that they:
 - (a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;
 - (b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;
 - (c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;
 - (d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.
31. Professionals should also implement measures:
 - (a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;
 - (b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;
 - (c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

XII. The right to safety

32. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.
33. Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.
34. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:
 - (a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process;
 - (b) Using court-ordered restraining orders supported by a registry system;
 - (c) Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;
 - (d) Placing the accused under house arrest;
 - (e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

XIII. The right to reparation

35. Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.
36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.
37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.

XIV. The right to special preventive measures

38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.
39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.

XV. Implementation

40. Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses.
41. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services.
42. This training should include:
 - (a) Relevant human rights norms, standards and principles, including the rights of the child;
 - (b) Principles and ethical duties of their office;
 - (c) Signs and symptoms that indicate crimes against children;
 - (d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
 - (e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;
 - (f) Special measures and techniques to assist child victims and witnesses in the justice process;
 - (g) Cross-cultural and age-related linguistic, religious, social and gender issues;
 - (h) Appropriate adult-child communication skills;
 - (i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;
 - (j) Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;
 - (k) Methods to protect and present evidence and to question child witnesses;
 - (l) Roles of, and methods used by, professionals working with child victims and witnesses.
43. Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.
44. International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses.
45. Professionals should consider utilizing the present Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.
46. Professionals should be enabled to periodically review and evaluate their role, together with other agencies in the justice process, in ensuring the protection of the rights of the child and the effective implementation of the present Guidelines.

appendix D

ASEAN GUIDELINES FOR THE PROTECTION OF THE RIGHTS OF TRAFFICKED CHILDREN

1. Definition of Terms

1.1 Child

A child is any person under eighteen (18) years of age.

1.2 Child trafficking

1.2.1 Child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, within or outside a country, which shall include but not be limited to child prostitution, child pornography and other forms of sexual exploitation, child labour, forced labour or services, slavery or practices similar to slavery, servitude, removal and sale of organs, use in illicit/illegal activities and participation in armed conflict. For the purposes of these guidelines, the recruitment, transportation, transfer, harbouring or receipt of a child by means of adoption or marriage for the purpose of exploitation shall be likewise considered child trafficking.

1.2.2 The consent of the child or the person exercising custody over the child to trafficking or any of its elements is irrelevant and does not exempt the offender from or lessen his/her liability for committing acts that constitute or promote child trafficking.

1.2.3 The employment 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 the child is irrelevant and does not constitute an essential element in the crime of child trafficking.

1.3 Trafficked child

1.3.1 A child who has been recruited, transported, transferred, harboured or received for the purpose of exploitation, within or outside a country.

1.4 Social welfare service provider

1.4.1 A social welfare service provider shall include all those persons involved in providing direct services to trafficked children, whether from government or non government organizations.

2. General Principles

The following principles should be considered at all stages of care and protection of trafficked children.

2.1 Rights of the Child

2.1.1 Trafficked children are entitled to the full respect and exercise of their survival,

development, protection and participation rights as recognized under the Convention on the Rights of the Child.

2.1.2 Trafficked children have special needs and are therefore entitled to special protection measures.

2.2 Best Interests of the Child

2.2.1 In all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child should be the primary consideration.

2.3 Right to Non-discrimination

2.3.1 All trafficked children should be entitled to the same protection and rights in the country/place of origin, transit or destination regardless of their status, nationality, race, color, sex, language, faith, religion, political or other opinion, ethnic or social origin, property, disability, birth or other status. Likewise it is the responsibility of the country of origin, transit and destination to make the trafficked child free from any stigma brought about by trafficking.

2.3.2 Whenever applicable, these guidelines should also apply to children who are conceived and subsequently born of trafficked persons.

2.4 Respect for the Views of the Child

2.4.1 A trafficked child who is capable of forming his or her views should enjoy the right to express those views freely in all matters affecting him or her, including in relation to the legal process, interim care and protection and the identification and implementation of a durable solution.

2.4.2 The views of the trafficked child should be given due weight in accordance with his or her age, maturity, evolving capacities and best interests.

2.5 Right to Information

2.5.1 Trafficked children should be provided access to information about all matters affecting them including entitlements, services available and the family reunification and/or repatriation process.

2.5.2 Information should be provided in a language, which the trafficked child is able to understand. Suitable interpreters/ translators should be provided whenever necessary.

2.6 Right to Confidentiality

2.6.1 Information about a trafficked child that could endanger the trafficked child or his/her family members should not be disclosed except as required by law.

2.6.2 All necessary measures should be taken to protect the privacy and identity of trafficked children. The name, address or other information that could lead to the identification of the trafficked child or his/her family members, should not be revealed to the public or media.

2.6.3 The permission of the trafficked child should be sought in an age appropriate manner before sensitive information is disclosed.

2.7 Respect for the Child's Ethnic, Cultural, Faith and Religious Identity

2.7.1 The trafficked child's ethnic, cultural, religious and faith identity should at all times be respected.

2.7.2 Where applicable, assistance should be provided to the trafficked child in order to enable him/her to exercise or practice his/her ethnic, cultural, faith or religious practices.

2.8 Responsibility of the State

2.8.1 The State should take positive action to combat child trafficking and to protect and assist trafficked children.

2.8.2 The State should take all appropriate legislative, judicial, administrative and other measures to protect and assist trafficked children.

2.8.3 The State is responsible for taking pro-active measures to protect persons who provide care and assistance to trafficked children from reprisals from traffickers. These measures should extend to persons working in non-government organizations, civil society, faith-based and religious groups.

3. Specific Guidelines

3.1 Detection and Identification of Child

3.1.1 Presumption of Age

3.1.1.1 Aside from birth documents/family books of the trafficked person, his/her identification cards, school records, physical appearance, psychological maturity, statement, consensual medical or dental examinations can be considered in determining the age of the trafficked person. Legally recognized documents attesting to the birth or age of the child from persons who have personal knowledge about these facts can likewise be considered. Documents recording cultural or religious practices which indicate age may also be considered.

3.1.1.2 Where the age of the trafficked person is uncertain and there are indicators to believe that the person is a child, the presumption should be that the person is a child.

3.1.1.3 Pending a reasonable time for the verification of the trafficked person's age, he/she should be treated as a child and should be accorded all special protection measures stipulated in these guidelines.

3.1.2 Pro-active identification measures

3.1.2.1 The State should develop and adopt effective procedures for the rapid identification of trafficked children. These may include the strengthening of birth registration procedures, the listing and recording of missing and exploited children and the creation of a checklist of warning signs that may indicate that a child is a victim of trafficking.

3.1.2.2 The State should train all persons having or most likely to have direct contact with trafficked children (i.e. seaport and airport personnel, immigration officers, border patrols, law enforcement officers, social welfare and health care providers, etc.) on rapid

identification procedures. This may include training on the use of a checklist of warning signs that may indicate that a child is a victim of trafficking and on how to distinguish trafficked children from illegal migrants.

3.1.2.3 The State and non government organizations should conduct intensive efforts to provide information to families and communities about the issue of child trafficking. Procedures for reporting and referring suspected and actual child trafficking cases should be established.

3.1.2.4 Measures to coordinate information sharing between government agencies, including law enforcement authorities, and social welfare agencies and non-government organizations should be adopted to facilitate rapid identification of trafficked children.

3.2 Initial Contact

3.2.1.1 Upon identification of a trafficked child or suspected trafficked child, the investigator/officer should immediately contact a social welfare service provider and, where possible, the parents/guardian of the trafficked child. In the case of cross border trafficking, the responsible authority of the country of origin, as represented in the country of destination or transit (eg: embassy/consulate) should also be contacted.

3.2.1.2 The investigator/officer should protect the trafficked child's right to privacy and prohibit media exposure and interviews.

3.2.1.3 The initial interview of the investigator should only be for the purpose of collecting biographical data like the name, age, name of parents/guardians and last known address and contact numbers, country/place of origin and/or nationality.

3.2.1.4 The investigator/officer should assist the trafficked child in retrieving his/her personal belongings.

3.2.1.5 The trafficked child or suspected trafficked child should be removed from the place s/he is found and immediately brought to a safe location and environment, preferably with a social welfare service provider. The trafficked child should not be kept at police stations or detention centers.

3.2.1.6 At no time should the trafficked child be placed in the same room or in direct contact with the suspected trafficker/s.

3.2.1.7 For the safety and security of the trafficked child and the social welfare service providers, the trafficked child's whereabouts should be kept confidential.

3.2.2 Child-sensitive interview

3.2.2.1 The State should design a standard interview guide and mechanism that will gather all the information that may be needed by all agencies involved in the case.

3.2.2.2 A multi-disciplinary team trained to conduct a child sensitive interview shall undertake such interview to gather all the information necessary as basis for the provision of appropriate intervention/services to the trafficked child as well as for the filing of charges and eventual prosecution of the perpetrator/s.

3.2.2.3 Law enforcement authorities should respect the trafficked child's right to privacy. The express consent of the trafficked child and his/her parent/guardian or social welfare service provider shall be acquired prior to the conduct of the interview.

3.2.2.4 The trafficked child should be allowed some time to rest and stabilize before s/he is interviewed.

3.2.2.5 As much as possible, the investigator/officer and interpreter/translator, should be of the same gender as the trafficked child, dressed in civilian clothes, trained in administering child friendly/sensitive interview methods and knowledgeable about the issue of child trafficking.

3.2.2.6 Prior to the interview with the trafficked child, the investigator/officer should inquire whether prior interviews have already been conducted by any person or agency, and if so, s/he should acquire the results from such prior interview.

3.2.2.7 The interview should be conducted in a language known to the trafficked child. Where this is not possible, a qualified translator/interpreter should be provided.

3.2.2.8 The trafficked child should be interviewed in the presence of a representative of the social welfare service provider, parent/guardian or trusted adult of his/her choice.

3.2.2.9 The trafficked child should be interviewed in a child-friendly/ sensitive environment. The confidentiality of proceedings and the protection of the trafficked child's right to privacy should at all times be respected.

3.2.2.10 The consent of the trafficked child and his/her parent/ guardian, social welfare service provider or trusted adult of his/her choice must be secured before using any recording equipment including video cameras or tape recorders.

3.2.3 Legal protection for child

3.2.3.1 Trafficked children are victims of human rights violations. They should not be treated as offenders or subjected to or threatened with criminal sanctions for any offense related to their situation as trafficked children.

3.2.3.2 Access to basic social welfare and support services should not be dependent on the trafficked child's willingness to cooperate with law enforcement authorities.

3.3 System of Referral, Coordination, Collaboration and Cooperation

3.3.1 Regional Mechanism

3.3.1.1 States should endeavor to enter into a regional agreement to define a system of referral and specific areas for coordination, collaboration and cooperation.

3.3.1.2 States should endeavor to establish referral, coordination, collaboration and cooperation mechanisms with international non-government organizations, networks and coalitions actively working on the issue of trafficking in the region.

3.3.1.3 Each State should designate their own liaison officer/ office who shall be responsible for cross-border linkage and referral to the appropriate office for immediate response to cases of cross-border trafficking.

3.3.2 National Mechanism

3.3.2.1 States should develop a national arrangement that will define the roles and functions of each government agency in relation to child trafficking and a system of referral and areas for coordination and cooperation.

3.3.2.2 Each State should establish a national body for coordinating referrals for both internal and cross-border trafficking.

3.3.2.3 Each State should develop a database that will centralize all information about national efforts to combat child trafficking and data and statistics in relation to incidents of child trafficking occurring within the country or affecting nationals of the country. The development of such a database should take into due consideration the rights to privacy and confidentiality of trafficked children.

3.3.2.4 States should endeavor to establish referral, coordination and cooperation mechanisms with non-government organizations, networks and coalitions actively working on the issue of child trafficking in the country.

3.3.2.5 States should be responsible for training all relevant agencies about the referral system so as to ensure prompt, effective and appropriate responses to cases of child trafficking.

3.4 Interim Care and Protection

3.4.1 Safe places for children

3.4.1.1 Safe, secure and child-friendly shelters, homes and crisis centers should be provided for trafficked children. Existing facilities should be improved to accommodate the needs of trafficked children.

3.4.1.2 Shelters, homes and crisis centers should be run by a sufficient number of well-trained and competent staff, such as but not limited to, social workers trained in the case management of trafficked children. The gender of the staff should be appropriate for the needs of the trafficked children.

3.4.1.3 States should set up monitoring mechanisms to oversee, regulate and evaluate shelters and services.

3.4.1.4 Trafficked children should not be detained in detention centers, police cells, prisons or other detention facilities for children and/or adults or be in the private custody of law enforcement authorities. Nor shall children be sheltered within military bases or at other inappropriate locations.

3.4.2 Support Services

3.4.2.1 States should allocate the necessary annual budget to ensure trafficked children's security from threat and reprisals from traffickers, food and accommodation, access to health-care and psychosocial support.

3.4.2.2 The primary objective of interim care is the healing and recovery of the child. Immediate counseling, psychosocial services, legal aid, education, vocational skills training and other support services should be made available to the trafficked child and his/her family as necessary and appropriate.

3.4.3 Legalization of stay

3.4.3.1 States should establish laws, policies and procedures to ensure that trafficked children, who are not nationals/residents of the country/place of destination or transit are not treated as illegal migrants.

3.4.3.2 For trafficked children without legal documentation, the transit or destination country should assist them to immediately legalize their stay such as, but not limited to, the granting of a temporary visa.

3.4.3.3 States should ensure that trafficked children are exempt from all government fees and charges normally imposed in the process of legalizing their stay in the country of destination or transit.

3.5 Social Case Management of Trafficked Children

3.5.1 Individual Case Assessment

3.5.1.1 Each trafficked child is entitled to have his/her case individually assessed to determine the appropriate handling of his/her case, with his/her best interests being the primary consideration. This assessment should be conducted by a social worker or allied professional who has background/intensive training in child protection. A social case management intervention plan should then be developed for the child.

3.5.1.2 The social case management intervention plan should consider the preservation and integrity of the trafficked child's ethnic, cultural, faith and religious identity.

3.5.1.3 Where it is considered to be in the trafficked child's best interests to do so, the social welfare service provider, in coordination with its counterparts in the country/place of origin and destination should take steps to locate the trafficked child's family in order to reunite him/her with his/her family.

3.5.1.4 The implementation of the social case management intervention plan should be done through a multidisciplinary team approach.

3.5.2 Identification of a Durable Solution

3.5.2.1 Authorities in both the country/place of origin and destination, in partnership with non government organizations, have the responsibility to identify the most appropriate long term solution for the trafficked child.

3.5.2.2 In the process of identification of a durable solution, the nationality and citizenship of the trafficked child, family background, environment and other circumstances, risk of reprisal from traffickers and security capability of the country/place of origin and destination should be taken into consideration.

3.5.2.3 The State should appoint a qualified guardian to represent and assist the trafficked child during the process of identifying a durable solution and the implementation of this solution. The guardian should represent the trafficked child for as long as it is considered necessary to protect the interests of the trafficked child. Any expenses incurred by the guardian in the conduct of his/her duties should be reimbursed by the State. The guardian should be given appropriate protection while performing his/her tasks

3.5.2.4 A trafficked child should not be returned to the country/place of origin unless suitable care arrangements have been established. The parents/guardian, relatives, social welfare service providers and the State must accept responsibility for the care and protection of the trafficked child in the country/place of origin.

3.5.2.5 The views of the trafficked child shall be taken into consideration when considering whether s/he should be returned to the country/place of origin and/or reunited with his/her family, with due consideration given to his/her age, maturity and evolving capacities.

3.5.2.6 All decisions made on the issue of the return of a trafficked child to the country/place of origin and/or reunification with his/her family must be subject to independent review.

3.5.3 Implementation of a Durable Solution

3.5.3.1 In cases where it is in the best interests of the child to be returned to the country/place of origin, the authorities in the country/place of origin should expeditiously provide travel documents and coordinate with the country/place of destination for the safe return of the trafficked child.

3.5.3.2 In cases where a trafficked child is to be repatriated to the country/place of origin, the country/place of origin should cover the costs of repatriation. In the event that the country/place of origin does not have the financial capacity to cover such costs, the country/place of destination or transit should provide assistance. Where none of the country/place of origin, transit or destination have the financial capacity to cover the costs of repatriation, assistance should be sought from international organizations such as the United Nations or the International Organization for Migration.

3.5.3.3 In cases where the return of the trafficked child to the country/place of origin is not in his/her best interests, authorities from the country of origin should work in collaboration with the country of destination or transit to make arrangements for the provision of alternative care. Where families in the country of destination or transit are willing to provide alternative family care, this is an option to consider.

3.5.3.4 In cases where it is not in the best interests of the trafficked child to settle in the country of origin or destination, the countries of origin and destination should explore the possibility of having the child resettled in a third country.

3.5.3.5 Long-term care arrangements should, as much as possible, favor family and community-based arrangements rather than residential/institutional care.

3.5.3.6 Long term care arrangements should include protection for the trafficked child and his/her family against reprisals from traffickers, access to health-care, psychosocial support, social services, education and livelihood assistance.

3.5.4 Monitoring of Implementation of Durable Solution

3.5.4.1 Both the country/place of origin and destination should establish mechanisms for monitoring trafficked children to avoid them being trafficked again.

3.5.4.2 The country/place of origin should establish systems/ mechanisms to monitor the implementation of the durable solution.

3.6 Access to Justice

3.6.1 Victim / Witness Security and Protection

3.6.1.1 A trafficked child should be given time to recover before deciding whether or not to cooperate as a witness in any legal case.

3.6.1.2 Before a trafficked child makes a decision about whether to cooperate as a witness in a legal case, a professional assessment should be conducted to determine whether the trafficked child is ready and able to make such a decision.

3.6.1.3 A trafficked child who agrees to testify as witness should be provided with special protection measures to ensure his/her safety and, if necessary, the safety of his/her family or of other persons significant him/her.

3.6.1.4 The State should adopt special court procedures that are sensitive to the needs of trafficked children. These may include, but not be limited to, the taking of depositions, admission of video-taped interviews, the giving of testimony through closed circuit television and other practical schemes to minimize the need for the child's physical presence in the court room and/or confrontation with the trafficker/s during trial.

3.6.1.5 Wherever possible, the State should establish a special court for children which has facilities for child friendly court proceedings such as video conferencing facilities and the availability of qualified translators/interpreters.

3.6.1.6 At all stages of the investigation, prosecution and hearing of any criminal or civil action, the right to privacy of the trafficked child should be protected. The confidentiality of the action should be ensured by the law enforcement, prosecution and judicial authorities and service providers.

3.6.1.7 The media should respect trafficked children's rights to privacy and confidentiality in all proceedings.

3.6.2 Criminal Proceedings

3.6.2.1 A trafficked child must be fully informed, in a language understood by him/her, of the risks and security issues that are associated with criminal proceedings prior to deciding whether or not to cooperate in such proceedings.

3.6.2.2 At all stages of criminal proceedings trafficked children should be provided with free and competent legal representation.

3.6.2.3 Wherever possible, the taking of a statement by any law enforcement authority, lawyer, prosecutor or any other authorized officer should not prevent or delay a trafficked child's return or reunification with his/her family.

3.6.2.4 Wherever possible, and whenever it is in the best interests of a trafficked child, his/her testimony should be given and/or his/her statement should be taken at the earliest possible time.

3.6.2.5 The State should consider providing measures to allow the confiscation, freezing and forfeiture of the assets of the trafficker/s so that the proceeds of the sale of such property may be used for the payment of compensation or outstanding liabilities to the trafficked child.

3.6.3 Civil Proceedings

3.6.3.1 Wherever applicable, a trafficked child and his/her parents/guardian should be informed that the child has a right to claim compensation for the damage caused to him/her as a result of him/her being trafficked.

3.6.3.2 The State should consider providing measures to allow civil actions to be considered as impliedly and simultaneously instituted in the criminal case. In such a case, the prosecutor should serve as legal counsel for the trafficked child.

3.6.3.3 A trafficked child should also have the option of filing a separate claim for compensation, according to the procedures acceptable to the State. The State should provide free and competent legal representation in such a case.

3.7 Care and Protection for Social Welfare Service Providers

3.7.1 Compensation

3.7.1.1 The State should endeavor to develop a mechanism for providing compensation to social welfare service providers who suffer harm or injury as a result of providing assistance to trafficked children, especially those resulting from or likely to be the result of reprisal from traffickers.

3.7.2 Legal Assistance

3.7.2.1 In a case where a suit is filed by a trafficker against a social welfare service provider for an act done in good faith as part of his/her function to provide assistance to a trafficked child the State should provide legal protection and/or free legal assistance. Legal assistance may include, but not be limited to, legal counseling, preparation of pleadings, filing of action in courts and legal representations in criminal, administrative and civil proceedings.

3.7.3 Support System

3.7.3.1 The State should establish a support system for social welfare service providers and provide venues for the sharing of learning and experiences.

3.8 Capacity building

3.8.1 Communities

3.8.1.1 Community awareness seminars, activities and trainings should be conducted to children, families and communities so that they can actively fight in order for them to be able to actively participate in addressing the problem of child trafficking.

3.8.2 Multi-disciplinary team working with trafficked children

3.8.2.1 Training programs for the members of the multidisciplinary team working with trafficked children should be developed. Such programs should be based on the identified needs of the people who will be participating in the programs. A system for monitoring and evaluating the effectiveness of such programs should also be established.

3.8.2.2 The multi-disciplinary team working with trafficked children should have access to education and training programs which deepen their understanding and knowledge of the issues related to child trafficking. Such training could include topics on human rights, children's rights, gender and development, reproductive health, child labor, migration issues and international legal frameworks.

3.8.2.3 The multi-disciplinary team working with trafficked children should have access to education and training which gives them practical skills to assist them in their work with trafficked children. Such training could include topics on psychological and legal counseling, social case management, documentation, data collection, child-friendly interview methods, investigative techniques and stress management.

3.8.2.4 The multi-disciplinary team working with trafficked children should be trained in the use of these guidelines.

3.8.2.5 States should allocate the necessary funds to conduct capacity building activities to address all of the training needs mentioned in these guidelines.

Asia ACTs' Stories from the Field: A Glimpse on Trafficked Children's Access to Justice in Thailand, Cambodia, and Philippines is a collection of experiences on the pursuit of justice for child trafficking victim-survivors. Social service providers, parents and relatives of children, and child trafficking survivors shared their personal accounts in the struggle to access justice.

Access to justice is usually associated with the prosecution of cases which demonstrates the judicial system's capacity to apply the laws created against child trafficking. Justice, however, must not be merely about punishing offenders, but also about protecting and fulfilling the rights of victims.

