

ACCESS TO JUSTICE: A PROSECUTION OR A PERSECUTION PROCESS FOR FILIPINO TRAFFICKED PERSONS?

By: Amy A. Avellano

INTRODUCTION

"By failing to protect and promote women's civil, economic and social rights, governments create situations in which trafficking flourishes.¹"

Radhika Coomaraswamy – 1994-2003 Special Rapporteur on Violence Against Women

Women and girl-children victims of crimes enter the criminal justice system in their attempt to attain justice. It is often an attempt to have some sense of closure and vindication for the wrong committed against them.

But even the pursuit for justice is highly gendered. Otherwise put, the search for justice contributes to isolate women and restricts their empowerment. While men, who enter the court process system, can sustain even protracted and litigious trial, women do not often exercise this choice. Often, they are forced to abandon the legal fight to respond to multiple burdens that society expects them to fulfill at home. Family and family duties must come first over anything else in a

¹ Human Rights Commission, Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 E/CN.4/2000/68 (2000), 54.

typical woman's daily routine. Going to court is definitely not a daily routine for any woman. This situation is compounded by the lack of strong support system from family, community, and government when a woman or girl-child goes to court.

The intent of this paper is to consider the prosecution of human trafficking, in the context of the Philippines, and how it impacts on trafficked persons'² view of justice. The issue will be tackled in four parts. In part one, trafficking is defined and its global magnitude shown. Part two is a glimpse of trafficking in the Philippines. In part three, a contention is made that Philippines is not genuinely sincere to perform its responsibility under its ratified international instruments. Here, arguments are made that initiatives from the ground is the real reason for the country's elevation to Tier 2 Country category.³ In part four, factors that hinder full compliance with minimum international standards are discussed. Specific cases on human trafficking culled from author's personal and professional engagement with clients will be discussed to illustrate the impact – or lack of impact – of national and international legislation on the individual trafficked persons' lives.

² Throughout this paper, the author refers to those trafficked as '*trafficked person/s*,' '*trafficked women*,' or '*trafficked children*' rather than '*trafficked victims*.' The former are less disempowering terms compared to labels like '*victims*' or '*victims of trafficking*.'

³ Tier 2 category means the government is making significant effort to meet minimum standards for the elimination of trafficking.

I. TRAFFICKING IN PERSONS: DEFINITION AND GLOBAL MAGNITUDE

Trafficking in persons, also known as *modern day slavery*, is the recruitment, transportation, transfer, harboring or receipt of persons for the purpose of exploitation.⁴ This crime is committed through threats 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.⁵

Human Trafficking is a global and local phenomenon. The International Labor Organization (ILO) estimates that there are 12.3 million people in forced labor, bonded labor, forced child labor, and sexual servitude at any given time; other estimates range from 4 million to 27 million.⁶ The United Nations Children's

⁴ Article 3 of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as *Trafficking Protocol*). Trafficking also includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. In child trafficking, exploitation may include forced prostitution, illicit international adoption, trafficking for early marriage, recruitment as child soldiers, beggars, for sports (such as child camel jockeys or football players), or for religious cults.

⁵ *Id.*, Trafficking Protocol.

⁶ US Department of State, *Trafficking in Persons (TIP) Report*, June 2008, at 7. Also available at <http://www.state.gov/g/tip/rls/tiprpt/2008/>

Fund (UNICEF) estimates that in the past thirty years trafficking of women and children in Asia for sexual exploitation has victimized over 30 million people.⁷

Poverty, underdevelopment, lack of equal opportunity, and dysfunctional families are the main contributing factors to the problem.⁸ The indifference of society, a weak judicial systems and the constant corruption of government officials compounds the problem.⁹

Development of communications, access to the internet, easy mobility of people and money around the world are some of the factors that facilitate this kind of crime.¹⁰

The 'exploitation' is what mainly distinguishes human trafficking from goods trafficking, specifically drugs and small arms. Human trafficking involves a process of exploitation – from debt dependency to enslavement – to ensure continued income from the same trafficked persons. Traffickers objectify persons

⁷ Cited by Mikel Flamm in *"Exploited, Not Educated Trafficking of Women and Children in South East Asia,"* available at <http://www.un.org/Pubs/chronicle/2003/issue2/0203p34.html>

⁸ Mohamed Y. Mattar, *"United Front for Children: Global Efforts to Combat Sexual Trafficking of Children in Travel and Tourism,"* lecture delivered at the University of Minnesota, (April 21-22, 2006), at 16 (on file with the author).

⁹ *Id.*, at 17.

¹⁰ Offer of sex with youngsters and live sex tours are now facilitated through the use of internet and mobile phones. In many countries, cyber-sex has become a billion-dollar industry. The development of digital and web cameras, video and computer technology increases and facilitates the production and distribution of child pornography.

under their control, put them at work without payment, subject them to repeated sale, and may force them to take deadly options to destroy evidence – or murder them.¹¹

Trafficking can be international or domestic. Traffickers can be syndicates, mafias, or large networks of organized crime. But in certain jurisdictions, trafficking is often perpetuated by small, family-related networks.¹²

In July 1951, the United Nations (UN) Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others came into force.¹³ In December 2003, the Trafficking Protocol came into force.¹⁴ There are more international documents pertinent to the protection of women and children. Yet, despite their responsibilities and commitments under these conventions and protocols, many states still cannot effectively prevent the numerous forms of

¹¹ Thanh-Dam Truong, Poverty, *“Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management,”* UNESCO (2006) at 23.

¹² *Id* at 74.

¹³ In 1949, this convention consolidated other international agreements on the issue of trafficking. Its main objective is the provision of effective measures against all forms of trafficking in women and the exploitation of prostitution. For the first time, an international document declared prostitution and trafficking to be “incompatible with dignity and worth of the human person and to endanger the welfare of the individual, the family and the community.”

¹⁴ Trafficking Protocol, *supra* note 4. (This is one of the two *Palermo Protocols*, the other being the Protocol Against the Smuggling of Migrants by Land, Sea and Air. It supplements the Convention Against Transnational Organized Crime. The Philippines was among the first states to sign and ratify it. Signing was on December 14, 2000 and ratification followed on May 28, 2002.)

suffering that trafficked persons and their families are subjected to by their perpetrators.

II. TRAFFICKING OF PERSONS IN THE PHILIPPINES: A GLIMPSE

A. TRAFFICKED PERSONS AND TRAFFICKERS

Trafficked Filipinos are as young as 14 years old. Most have entered secondary education but unable to complete it. They come from big and poor families where they are expected to contribute to the family's upkeep. Faced with poverty and family problems, migration, either to a foreign country or to a more urbanized part of the county, become the only viable option to improve their economic lives.¹⁵ Lack of education and knowledge on recruitment process make them dependent on and vulnerable to recruiters and traffickers.¹⁶

The recruiters are often women. They operate through word of mouth by intermediaries. Often the intermediaries are family members, friends, and/or acquaintances known to the victim or the latter's family. If family members are

¹⁵ See No to Trafficking: "A Synthesis of Project-Handled Trafficking Cases," at 3, available at <http://trafficking.org.ph/papers/documents/synthesis.pdf> (last accessed on December 4, 2008). This is an observation earlier articulated by the United Nations Population Fund (... "There is no indication that humankind—on the move since its early history—will refrain from seizing the opportunities that an increasingly interconnected world of expanding prospects has to offer. Migration will endure for at least as long as poverty and inequality affect a huge swath of humanity. The real challenge is how best to expand the positive contributions of international migration—especially when it comes to poverty reduction and development—while mitigating the risks for all involved."), "Chapter 5: Safeguarding Human Rights, Embracing Cultural Diversity," State of World Population, at 67.

¹⁶ *Id.*, No to Trafficking.

involved in the recruitment process, the recruiters usually 'advance' the minor's wage to the latter's parents. They recruit the victims at their home, school, places where they hang around and play, or within the vicinity of the neighborhood (UNODC, 2003).

B. METHODS OF RECRUITMENT AND TRAFFICKING

In domestic trafficking, trafficked persons are recruited from rural areas, particularly the Visayas and Mindanao, to urban areas, such as Metro Manila and Cebu,¹⁷ for sexual exploitation or forced labor as domestic workers, factory workers, or in the drug trade.¹⁸ Others also recruit women and children to be salesladies, "entertainers" or *silbidoras*¹⁹ in *videoke* bars.²⁰ But the former do not often divulge the sexual services that the potential trafficked person was expected to provide to her customers.

In international trafficking, the Philippines is both a country of origin and destination of trafficked persons. Countries of destination are Hong Kong,

¹⁷ The Philippines is an archipelagic country. It is divided into three (3) major islands. Luzon is the largest and most economically advanced compared to the two other major islands, Visayas and Mindanao. Manila is the capital of the country and located in Luzon. Cebu is in the Visayas. It is considered as the Queen City of the South and the second to Manila in terms of economic development and opportunities.

¹⁸ See [humantrafficking.org](http://www.humantrafficking.org), "*Philippines: The Situation*," available at <http://www.humantrafficking.org/countries/philippines> (last accessed on December 5, 2008).

¹⁹ Filipino term for waiter or someone who waits on tables.

²⁰ Refers to sing-along clubs. *Videoke* is one of Filipinos' favorite pastimes and source of entertainment.

Malaysia, Japan, Korea, Nigeria, Cyprus, Greece, Germany, Italy, USA, and Commonwealth of the Northern Marianas Islands.²¹ A smaller number of women occasionally trafficked for commercial sexual exploitation are from the People's Republic of China, South Korea, and Russia.²²

The trafficked Filipinos are recruited as domestic helpers, caregivers, overseas performing artists, live-in trainees or apprentice, singers, and others, but eventually they wind up in prostitution dens and brothels. Some are trafficked through mail-order bride scheme but also end up in prostitution or forced labor. The usual ways by which international trafficking is done are through the use of fake passports, *baklas*²³ passports, escort system,²⁴ or backdoor exits.²⁵

The Philippines does not have the exact number of domestic and international trafficked Filipinos.

²¹ Coalition Against Trafficking in Women, 2005

²² *Supra* note 1, at 208.

²³ Using a lost or stolen passport, the trafficked person is made to assume the identity of the lost passport owner. The passport picture of the owner is replaced with the picture of the trafficked person.

²⁴ In most of the international trafficking cases that the author worked on, her clients were "escorted" by airport personnel through immigration check. The "escort" works in tandem with an immigration officer. The two communicate via cellular phone to make sure that the trafficked person is escorted to fall in line after other passengers queuing before the concerned immigration officer's desk.

²⁵ Trafficked persons are made to use backdoor exit from Manila to Palawan, down to Malaysia, to Brunei, or to Indonesia. Tawi-tawi is another backdoor exit to Sandakan and to Kotakinabalu, Malaysia. Another identified backdoor exit is the route from Zamboanga to Bongao and in Sandakan, Malaysia.

C. CHILDREN IN SEX TOURISM

Child sex tourism continues to be a serious problem for the Philippines with sex tourists reportedly from Northeast Asia, Europe, and North America to engage in sexual activity with minors.²⁶ Pedophiles are attracted to the Philippines because it has one of the lowest ages of sexual consent in the world: 12 years old.²⁷ Sexual contact with anyone ranging from the age of 12 to 17 for money or remuneration is considered a crime.²⁸ The latter situation becomes complicated when the child and/or family refuse to cooperate in prosecuting the offender on the guise that it was consensual sex.²⁹

III. IS THERE GENUINE COMMITMENT TO CURB TRAFFICKING?

A. TIER 2 COUNTRY

From 2001 to 2006, the US State Department considered the Philippines to be a Tier 2 Watch List country. It faced the risk of being downgraded to Tier 3,

²⁶ Mattar, *supra* note 8.

²⁷ Article 226-A (d) of the Revised Penal Code of the Philippines, as amended by Republic Act 8353 otherwise known as *The Anti-Rape Law*.

²⁸ Republic Act 7610 otherwise known as *Special Protection of Children Against Abuse, Exploitation and Discrimination Act*.

²⁹ Mattar asked the same question: "...how would you make sex tourism a crime when the perpetrator is engaged in sexual activity with a child under the age of 18, but who may have the right to sexual consent?"
Mattar, *supra* note 8, at 11.

which could mean withholding of non-humanitarian, non-trade assistance from the US. This might have prompted the country to get its act together so prevent a Tier 3 assessment.³⁰ In June 2008, the US State Department considered the Philippines to be a Tier 2 country – or the government does not fully comply with the minimum standards for the elimination of trafficking, however, it is making significant efforts to do so.³¹ The report states, to wit:

“The government continued to demonstrate exemplary efforts to prevent trafficking of migrant workers and to protect those who were exploited abroad. However, the government demonstrated weak efforts to prosecute trafficking cases and convict trafficking offenders. There were only three³² convictions under the 2003 anti-trafficking law during the reporting period, a minimal increase from one conviction obtained last year. Given the scope and magnitude of the internal trafficking problem, this number of convictions is troubling. Achieving tangible results in prosecuting trafficking cases and convicting trafficking offenders is essential for the Government of the Philippines to continue progress towards compliance with the minimum standards for the elimination of trafficking.”(underscoring and footnote supplied)

The 2008 TIP Report enjoined the Philippines to *“[s]ignificantly improve the record of prosecutions, convictions, and punishments for traffickers; disseminate information on the 2003 law³³ throughout the country; train law*

³⁰ Because this author believes that the related initiatives and projects of non-government organizations and private sector, not the government, are the ones that really made significant impact on Philippines’ current Tier 2 status.

³¹ 2008 TIP Report, *supra* note 6, at 208.

³² As of December 2, 2008, the total number of conviction is 12.

enforcement officers and prosecutors on the use of the 2003 law; and vigorously investigate and prosecute public officials complicit in trafficking.”

It is the author’s contention that the problem in the Philippines is not just about low rate of conviction. The process by which trafficked persons are treated from the police investigation up to the court level must also be considered in any assessment. It is in these different stages of case filing that complainants are re-traumatized, thus, causing some – if not a significant number – of them to withdraw from the criminal court process. The gender and child-insensitive attitude from the level of police investigation up to the court trial merely reflect society’s low regard for women and perception of children as mindless, innocent beings.

B. A CASE OF CONSTRUCTIVISM

It is the author’s next contention that Philippines falls under constructivism, or the normative theory. At the fast rate that it ratifies human rights instruments vis-à-vis its degree of compliance thereto, social acceptance within the international community is the motivating factor. Genuine commitment to honor its commitment is lacking in state actors.³⁴

³³ Referring to RA 9208. See *infra* Part III, B.

The Philippines signed and ratified a fair amount of international instruments.³⁵ It signed and ratified the following international conventions relevant to human trafficking: 1) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2) Trafficking Protocol, 3) ILO Convention 182,³⁶ 4) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 5) Optional Protocol to the Convention on the Rights of the Child in Armed Conflict, 6.5) ILO Convention 29,³⁷ and 7) ILO Convention 105.³⁸

The country also signed and ratified other related international human rights documents such as the 1) United Declaration on Human Rights, 2) International Covenant on Economic, Social and Cultural Rights, 3) International Covenant on Civil and Political Rights, 4) Convention on the Elimination of All

³⁴ David Weissbrodt, et.al., *International Human Rights: Law, Policy, and Process*, Fourth Edition [2008], at Chapter 1: Introduction to International Human Rights Law, page 29 (explaining why enforcement of human rights obligations is weak... “[s]tates only talk the talk of human rights because it is the expected norm in the community of nations, not because of any real commitment to achieving human rights.”)

³⁵ *Id* at Chapter 7: Ratification and Implementation of Treaties: The Covenant on Economic, Social, and Cultural Rights, page 7 (differentiating implementation of the two human rights covenants ... “civil and political rights can be implemented more immediately though passing of laws and revising constitutions, while economic, social, and cultural rights generally require action over time, including establishment of social programs.”)

³⁶ Elimination of Worst Forms of Child Labor

³⁷ Forced Labor

³⁸ Abolition of Forced Labor

Forms of Discrimination Against Women (CEDAW),³⁹ 5) Optional Protocol to the Convention on the Elimination of Discrimination Against Women, 6) Convention on the Rights of the Child,⁴⁰ 7) Convention on Transnational Organized Crime, 7) Optional Protocol Against Smuggling by Migrants by Land, Sea, and Air.

In 2003, the Philippines passed Republic Act 9208 otherwise known as "*The Anti-Trafficking in Persons Act of 2003*" (hereinafter referred to as RA 9208). It took more than eight (8) years of continuous and persistent lobbying by women's, children's, and migrants' groups before Philippine Congress finally legislated RA 9208. The law defines trafficking as:

"Sec. 3 (a) Trafficking in Persons - refers to 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."

³⁹ The most obvious indication of Philippines lack of political will and sincerity to honor its commitments under CEDAW is its refusal to pass a comprehensive reproductive health law. To this date, reproductive rights is reduced to the issue of abortion, thus, preventing legislators, for three Congresses, to pass the Reproductive Health Bill.

⁴⁰ Children's groups and UNICEF are lobbying for the passage of the law that would increase the age of sexual consent to at least 16 years old. Still, Philippine Congress has to act on this legislative measure.

The above-quoted definition was taken from Article 3 (a)⁴¹ of the Trafficking Protocol. Similar to Article 3 (b)⁴² the same protocol, RA 9208 made consent of the victim a non-issue.

Following the passage of RA 9208, Philippines adopted the ASEAN Declaration Against Trafficking in Persons Especially Women and Children with other members of the Association of Southeast Asian Countries (or ASEAN).⁴³

Despite being the first Southeast Asian country to pass a human trafficking law, the low rate of conviction reflects the low level of commitment of the Philippines to walk the talk. Five (5) years after its passage, there are only 12 convictions under RA 9208 with the first conviction in 2005. In June 2008, the tenth conviction involved a woman sentenced to life imprisonment for trafficking seven minors for sexual exploitation in a bar in Batangas, a province south of the

⁴¹ *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. Also available at <http://www1.umn.edu/humanrts/instree/trafficking.html>

⁴² (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.

⁴³ ASEAN Declaration on Trafficking was adopted on November 29, 2004 in Vientiane, Lao People's Democratic Republic. It was signed by heads of States/Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Socialist Republic of Viet Nam.

capital. The last two convictions were recently promulgated.⁴⁴ Currently, 600 cases are pending at different stages – from preliminary investigation,⁴⁵ pre-trial conference, trial, to awaiting decision and promulgation – in the criminal justice system. It remains to be seen how many of these cases will actually result to a conviction.

Although there are international standards on trafficking that gained massive national attention and [legislative and executive] actions that have had significant impacts in the ground, there is still a huge gap between progress in the fight against trafficking and the understanding of the many modern faces of the problem.⁴⁶

C. INITIATIVES FROM THE GROUND

Philippine civil society is very progressive. Activism and vigilance were borne by the Marcos dictatorship⁴⁷ that lasted for two (2) decades. In the

⁴⁴ See UN Office for the Coordination of Humanitarian Affairs' Integrated Regional Information Networks (IRIN), "*New conviction boosts fight against trafficking*," (December 2, 2008) available at <http://www.irinnews.org/report.aspx?ReportID=81771> (accessed on December 4, 2008). Also cross-posted at http://www.stopvaw.org/Philippines_Convicts_Two_for_Human_Trafficking.html (accessed on December 4, 2008)

⁴⁵ Prior to indictment. It is an inquiry or proceeding conducted by a prosecutor to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the defendant is probably guilty thereof, and should be held for trial.

⁴⁶ Visayan Forum with ILO Manila, "*Trafficked Into Forced Labor: Selected Case Studies of Domestic Workers in the Philippines*," (2006)

forefront of civil society are women's, children's non-government organizations (NGOs), human rights organizations, and alternative lawyers groups. Their projects strengthen the rule of law and help the Philippines translate to concrete and affirmative actions its commitments under international instruments and domestic laws.

Noticeably, the anti-trafficking projects on community legal education, training of the five pillars of justice,⁴⁸ and victims' reintegration are mostly upon the initiative of NGOs, private sector, and international and local donors.

Hereunder are selected local efforts:

Visayan Forum⁴⁹ trains ship, airline and bus companies to enlist their support in curbing trafficking. Trafficked children are rescued – and their recruiters

⁴⁷ Ferdinand Marcos ruled the Philippines from 1965 to 1986. Heavy foreign debts, rampant human rights violations, declaration of martial law, suspension of the writ of habeas corpus, arrest and detention of political leaders, students activists, and progressive individuals, massive electoral fraud are some of the deplorable acts that Marcos were accused of by the Filipino people. On August 21, 1983, former Senator Benigno "Ninoy" S. Aquino, Jr. was assassinated. He tried to come home after several years in exile at the United States. Ninoy was a popular political leader and known to be a threat to Marcos' political career. The Ninoy Aquino assassination awakened the Filipino people. It tarnished Marcos' image in the international community. Following Ninoy's assassination, the Philippine economy plummeted even more. Marcos called for presidential snap elections. During the February 6, 1986 presidential elections, Filipino people chose between him and Corazon "Cory" Aquino, the widow of Ninoy. Marcos employed massive vote buying, armed goons, flying voters, ballot box snatching, and tampered and falsified election returns to stay in power. The fraudulent February 6, 1986 election further destroyed Marcos' image domestically and internationally. Cory Aquino and the Catholic Church refused to honor Marcos' sham victory. Civil disobedience was called. The EDSA Revolution broke out on February 22, 1986. On February 25, 1986, the Filipino people euphorically danced in the streets after ousting the dictator through a non-bloody revolution.

⁴⁸ The five pillars of the justice system are the courts, the prosecution, the law enforcement, the correctional system, and the community.

⁴⁹ See Visayan Forum's website at <http://www.visayanforum.org/portal/>

and traffickers apprehended – while in transit and prior to their port of final destination. Visayan Forum rescued and provided assistance to more than 32,000 trafficked minors and potential children in trafficking. It helped file 66 cases of trafficking on behalf of 166 trafficked children. In joint effort with the Anti-Slavery International, Visayan Forum launched massive letter-writing campaign to pressure Philippine Congress to pass *Batas Kasambahay* (Magna Carta for Domestic Helpers).⁵⁰

In 2003 and prior to the passage of RA 9208, Women’s Legal Education, Advocacy, and Defense (WomenLEAD) Foundation,⁵¹ with support from The Asia Foundation, developed a seminar module on sex trafficking. The module was used by the Philippine Judicial Academy (PhilJA) and the Department of Justice (DOJ) to train family court judges, prosecutors, lawyers, social workers, and police. It was the first-ever training received by members of the bench and bar on trafficking. Currently, WomenLEAD continues to represent trafficked persons in court.

⁵⁰ *Batas Kasambahay* is a proposed legislation that aims to protect domestic workers in the Philippines. Many rescued children living at Visayan Forum’s halfway houses and centers are domestic child workers who were illegally recruited and/or trafficked. Although the Philippine Congress has not yet passed *Batas Kasambahay*, some local government units approved local ordinances to register and provide programs for domestic workers. The *Batas Kasambahay* campaign helped put pressure on Philippine Government to finally ratify ILO Convention 29. It is imperative for Congress to pass *Batas Kasambahay* to give protection to domestic helpers who, tricked about the conditions of their work, find themselves trafficked and exploited.

⁵¹ WomenLEAD is a member of the Alternative Law Groups and a feminist legal resource institution for women. WomenLEAD’s sex trafficking module tackled trafficking from a human rights perspective with emphasis on inter-disciplinary approach to investigation; international standards, and trafficked persons psycho-social needs.

The first primer on RA 9208 was crafted by Sentro Para sa Alternatibong Lingap Panligap (SALIGAN) with Coalition Against Trafficking in Women in Asia Pacific (CATWAP). The primer was translated to different dialects, thus, making it easier for grassroots women and community legal advocates to read and understand the law. SALIGAN, a member of the Alternative Law Groups (ALG)⁵² and with more than 100 partner-organizations all over the country helped increase people's awareness about the law. Like WomenLEAD, it also assists trafficked persons in court through provision of gender-sensitive and competent *pro bono* legal representation.

CATWAP represents the women's sector at the DOJ-convened Inter-Agency Council Against Trafficking (IACAT). It went to identified hot spots of trafficking incidents and trained local police and community legal advocates. It provided technical support to Senator Manny Villar, principal author of RA 9208, during the plenary debate when it was still pending before Philippine Senate.

Batis Center for Women is another women's NGO that assists trafficked and prostituted women. Through collaboration with Philippine embassies and the International Organization on Migration, it facilitates the repatriation of trafficked Filipino women and children to the country. Batis Center initiated the support

⁵² ALG is a group of non-governmental organizations engaged in alternative lawyering that has been working for the empowerment of the poor and marginalized groups of Philippine society through developmental or alternative legal work. ALG members' operations cover a wide area including issues on women, labor, peasants, fishing, children, urban poor, indigenous peoples, local governance, and the environment.

group formation for prostituted persons and women trafficked to Japan. The latter evolved into Batis Aware. Currently, Batis Aware and Batis Center for Women visit different communities around the country to educate the people through the use of theatre. The *teatro* tells stories of trafficked women some of whom ended at the hands of the *Yakuza* ring in Japan.

The International Justice Mission is, by far, the most active legal NGO in *pro bono* representation of trafficked children in court. It conducts surveillance work with local police that resulted to rescue of prostituted and trafficked children from bars and nightclubs and prosecution of the perpetrators.

The Child Protection Unit-Philippine General Hospital (CPU-PGH) lends its multi-disciplinary expertise to Visayan Forum, IJM, WomenLEAD Foundation and other legal NGOs working on child abuse and neglect. It is pioneering in the conduct of forensic videotape interview of trafficked children. The video preserves the complainant's testimony and useful in prosecution in case the complainant disappears or becomes unavailable to testify in court.

Members of the business community are also involved in the fight to curb trafficking. Vallacar Transit, Inc. signed a memorandum of agreement with an anti-trafficking group, Philippine Solidarity Office, for the provision of free bus fare to trafficked persons.⁵³ Similarly, the 13-member Association of Mindanao Bus Companies and Trade Unions signed a Memorandum of Agreement with

⁵³ *Bus firm signs MOA for free fare to trafficked victims*, available at http://trafficking.org.ph/v5/index.php?option=com_content&task=view&id=2103&Itemid=56

American Solidarity Center. The association pledged to play a more pro-active role in the fight against trafficking from prevention to provision of transportation assistance to trafficked persons.⁵⁴

In July 2008, the Commission on Filipino Overseas developed an operating system called Philippine Information System on Trafficking (Philist) under the project of Strengthening the Enabling Environment to Improve Response to Trafficking in Persons and Related Cases (STEER).⁵⁵ The system is designed to have a permanent data banking of cases involving trafficking in persons and other acts of human smuggling embraced under RA 9208. Currently, STEER trains members of the Philippine National Police (PNP) on Philist. The training is supported by the US Department of State through the American Solidarity Center.⁵⁶

So this leads to the question: what has the Philippine done so far?

The formation of IACAT is the first step undertaken by the Philippine Government for the effective implementation of RA 9208. It operates under DOJ. Worth noting, however, that many projects conducted by IACAT are undertaken with technical assistance of women's, children, and migrants NGOs. While NGOs

⁵⁴ *Mindanao bus operators, ALU and American Solidarity Center sign MOA vs. human trafficking*, available at http://trafficking.org.ph/v5/index.php?option=com_content&task=view&id=2062&Itemid=56

⁵⁵ Jonnie H. Buenaventura, *"STEER Provides Philist Software to PNP Members,"* available at http://trafficking.org.ph/v5/index.php?option=com_content&task=view&id=2258&Itemid=56

⁵⁶ *Visayan Daily Star, "Databanking Training on Anti-trafficking Held,"* available at http://trafficking.org.ph/v5/index.php?option=com_content&task=view&id=2141&Itemid=56

and government collaborative projects yield more productive and meaningful outputs, the latter, usually, could not sustain these efforts beyond the project cycle.

The Philippine has 17 anti-trafficking prosecutors in DOJ and 72 prosecutors in regional DOJ offices.⁵⁷ Philippines consider trafficking as heinous crime. But if the complainant is a woman or a child, the case will not fall within the jurisdiction of a heinous crime court but with a family court.⁵⁸ Not all provinces and municipalities have heinous crime courts and family courts. So in the absence of both types of courts, the case will automatically fall within the jurisdiction of a regular or a single-sala court. Overloaded with other types of cases to prosecute, among other hindering factors, the author doubts if these 89 prosecutors could increase the rate of criminal convictions.

IV. HINDERING FACTORS

The embarrassing low rate of conviction cannot be totally remedied by 89 anti-trafficking prosecutors. There are varied reasons for Philippines' poor performance in prosecution of trafficking cases. Very often, it is cause by the

⁵⁷ humantrafficking.org, *supra* note 18.

⁵⁸ Based on the August 23, 2003 list of the Office of the Court Administrator of the Supreme Court of the Philippines, there are 96 family courts and 150 single-sala courts in the Philippines. In the National Capital Region, there are 31 family courts.

disappearance or lost of interest of the complainant to testify. But a complainant does not simply disappear or give up the legal fight. Corruption, lack of understanding of the issue, low level of sensitivity towards complainants, court delay, family pressure, fear of retaliation, stigmatization, among others, affects their view of justice and impacts on their willingness to testify.

A. CORRUPTION

Philippines 141st out of the 180 countries surveyed in the 2008 Corruption Perceptions Index of Transparency International.⁵⁹ Corruption in the Philippines is characterized by a combination of societal factors, institutional factors as well as an incentives system that contribute to corruption.⁶⁰ Corruption is a given and Philippine society, somehow, has tolerated it. Thus, offer of bribes – or asking for ‘tokens’ – in government-run offices is not unusual.

An eroded trust on the justice system is a major hindering factor in increasing the number of conviction of traffickers. In criminal cases, both private complainant⁶¹ and defendant are aware of the possibility of bribery that could either make or break a case.

⁵⁹ See Transparency International: The Global Coalition Against Corruption, *available at* http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table (last accessed on October 13, 2008).

⁶⁰ Philippine Country Profile, *available at* <http://www.business-anti-corruption.com/normal.asp?pageid=337> (last accessed on Nov. 6, 2008)

⁶¹ Distinguished from *People of the Philippines*, the plaintiff or main complainant in criminal cases. Private complainant only serves as key prosecution witness in criminal cases.

Corruption starts at the police investigation level. Unlike in other jurisdictions, the police are viewed as pot-bellied, corrupt men in uniform. Aware of this *modus operandi*, trafficked persons are wary of reporting the crime to the police. There is the cynicism that their case would be used by the police to extort or to take bribes from the perpetrators in exchange for the non filing of the case at the prosecutors' office.

If the investigating police cannot be bribed, the next level to have the case dismissed is the Prosecutors' Office. Pay off is offered to the investigating prosecutor for the dismissal of the complaint. Bribery of prosecutors is a factor that affects the number of traffickers being indicted in court.

Even the judge and the court personnel are not exempted from perception of judicial corruption.⁶² The pervasiveness of judicial corruption is another factor

⁶² Business Anti-Corruption Portal identified the various levels of corruption in Philippine society: the individual, business, and political sectors. The Portal described the three levels as follows:

Individual corruption: Citizens in the Philippines generally hold the view that judges are corrupt. This is substantiated by Transparency International's Global Corruption Barometer 2007 in which citizens perceive the judiciary to be corrupt. Judges have been known to take bribes in order to grant bail to litigants, even in cases where the law prohibits granting bail. In the courts, citizens may also encounter other procedural irregularities which may give rise to corrupt behaviour, such as lack of knowledge of laws and procedures, resulting in false charges.

Business corruption: In the Philippines, companies' confidence in the judicial system is low because of allegations of graft and corruption, as well as incompetence within the judiciary. According to the World Bank & International Finance Corporation (IFC) Enterprise Survey

that hinders trafficked persons to completely participate in the prosecution of their cases. Doubtful of the impartiality of the judge and other key players in the courtroom, they do not see the court as a venue for seeking or acquiring justice.

In one case, an American citizen was indicted in court in a case involving an 11-year old child. Prior to arraignment, the respondent filed a motion in court requesting that his case be remanded to the Prosecutors' Office for submission of additional evidence. The court granted the motion. Interview conducted by the CPU-PGH social worker revealed that respondent bribed both the child's mother and the investigating prosecutor to influence dismissal of the case. Each one

2003, approximately 15% of companies surveyed admit to bribing judges to influence verdicts.

Companies should note that there are quite a few irregularities in judicial procedures. For example, there are cases where the public prosecutors were absent in criminal cases, combined with a shortage of sufficient judicially competent personnel, which causes prolonged delays and postponements. Some trials can drag on for years. Due to the low level of public confidence in the judicial system, some companies prefer to avoid the courts altogether. This is confirmed by the World Bank/IFC Enterprise Survey 2003, which indicates that only 2% of payments disputes are taken to court. There are examples of judges using bail as a way to increase their income: for a fee, the judge will grant bail, even in those cases where the law prohibits bail.

Political corruption: The judicial system is constitutionally independent from both the legislature and the executive branches. However, there are many instances where judges interfere in policy-making instead of simply interpreting the law. Furthermore, the judiciary is perceived as burdened by very cumbersome procedures, and it is also perceived to be corrupt. Many judges are believed to accept bribes by influential elites. This is confirmed by lawyers in a SWS survey. About half the lawyers had personal knowledge of judges taking bribes. One prominent example is the justice secretary, Hernando Perez, who was prosecuting former President Estrada for economic plunder. Perez was forced to resign for accepting a USD 2 million bribe from one of Estrada's associates in order to secure a lucrative contract."

received five hundred thousand pesos (Php 500,000.00).⁶³ Defendant promised to give to the child's mother another five hundred thousand pesos after the final dismissal of the case. The child was placed for protective custody at a government-run shelter to prevent the mother from further pressuring the child to withdraw the case. The timely discovery of the bribery and vigilant monitoring of the case by children's NGOs prevented the investigating prosecutor from dismissing the case. He elevated back the case to the trial court. Eventually, even the trial judge was asked to inhibit from the case for patent bias in favor of the defendant. From grapevine stories, the judge and his clerk of court also received money from the respondent. That case captures the pervasiveness of judicial corruption in the Philippines. Fortunately for this particular case, the US Embassy-Manila was particularly interested in charging the defendant under the U.S. Protect Act of 2003.⁶⁴

Amidst trafficked persons' lack of financial and other logistical resources aggravated by eroded trust on a corrupt justice system, they see a court case as a futile exercise to fight off their traffickers. If ever they file a case, they often withdraw either due to family members' pressure to give up the fight and accept

⁶³ Equivalent to 10,000USD at then-exchange rate of Php 50.00 to 1USD.

⁶⁴ This is an excellent example of extra-territorial law. U.S. Protect Act of 2003 protects children. It extends jurisdictional arm and prosecutorial power over any U.S. citizen who, while traveling abroad, solicits or engages in child prostitution. It also applies to "any person who travels in interstate commerce, or travels into the United States."

the defendant's settlement offer or a belief that their case will eventually be dismissed since justice can be bought.

The Philippine government must address its continuously sinking image due to corruption. Government employees charged with corruption must be investigated and held accountable, if found guilty.

B. LACK OF UNDERSTANDING OF THE ISSUE

Police, prosecutors, and court's lack of understanding of trafficking, both as legal and psycho-social issues, impacts on trafficked persons and affects their willingness to participate in the process.

Despite trainings provided by PhilJA and DOJ, complainants are still asked in court why they consented to be trafficked. This, despite the fact that trafficked person's consent and knowledge is irrelevant under RA 9208. This kind of questioning must never be allowed in court. It leaves a complainant feeling that there was no one to be blamed but her self. This could cause them not to come back to court to finish their testimony.

In one concrete situation, a state prosecutor exhibited her lack of understanding of RA 9208. She was asked if trafficking is committed by mere solicitation but without the potential trafficked person's acceptance of the offer.

'No' was the answer given. Trafficking in persons, as defined under the Trafficking Protocol and RA 9208, is very clear. Mere recruitment is sufficient to consummate the offense. But if prosecutors are looking for elements of transport and receipt, this would, certainly, result to small number of indictments. If judges think this way, too, then this could result to acquittal of the defendant. Prosecutors and judges alike must be trained so that they can effectively interpret and apply RA 9208.

Recently, Justice Undersecretary Ricardo R. Blancaflor, the Acting Chair of IACAT also displayed his lack of understanding of the dynamics of trafficking. He urged lawmakers to amend Section 7 of RA 9298 which prohibits the disclosure of the identities of the victims and suspects of human trafficking cases. He said that because of Section 7, the Royal Malaysian Police beat the Philippines in the arrest of a Singaporean suspect in the illegal recruitment and human trafficking of two overseas Filipino workers (OFWs) in Malaysia on November 4, 2008.⁶⁵ Usec. Blancaflor's statement runs counter to Part II, Article 6, Section 1 of the Trafficking Protocol.⁶⁶ Rather than considering it as an opening for future inter-county cooperation, Undersecretary Blancaflor saw it as a race match with Malaysia.

⁶⁵ See Balita-dot-ph, "Blancaflor calls for amendment to R.A. 9208," available at <http://balita.ph/2008/11/05/blancaflor-calls-for-amendment-to-ra-9208/>

⁶⁶ It reads: "Assistance to and protection of victims of trafficking in persons: 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."

Worse, he failed to understand that maintaining the confidentiality of the identities of trafficked persons does not only protect their privacy but also keep them from safe from threats and retaliation from their traffickers.

C. LOW LEVEL OF SENSITIVITY

There are still police stations where investigation of trafficked persons is conducted in harsh manner and within earshot of other people in the police station. The complainant's full cooperation is also demanded in exchange for assistance in the case. In one case, a repatriated trafficked minor from Kotakinabalu, Malaysia was whisked by the government social worker from the airport to the police station. There, her statement was taken by the police. But rather than placing her in a shelter, they made the kept the child in the police station where her recruiter was also held in detention. After several days of being 'kept safe' there, the child escaped and sought help from Batis Center for Women and Visayan Forum. The police and government social worker were fuming mad. They refused to release the child's statement and other travel documents necessary for court case filing. Apparently, they were keeping the child there in preparation for a major event which was to present the rescued trafficked minor to the City Mayor with full media coverage and fanfare.

In courts, gender and child-insensitive proceedings still occur. While most family court judges and personnel have been trained on this area, many courts still

conduct their proceedings where badgering, sexist language, victim blaming, and the like are happening. As if they were the defendants, trafficked women and children are subjected to rigorous direct and cross-examination and clarificatory questions from the bench. Hence, it is very common that a re-traumatized complainant would no longer come back to resume her testimony. Without a completed oral testimony of the key witness, the prosecutors hardly explore other ways to still prove the guilt of the trafficker, hence resulting either to case dismissal or acquittal.

Trafficked persons should not be viewed as mere prosecution witnesses. They are crucial in the fight against trafficking. If consulted and given a space to participate, they can give practical and effective policy reform and alternative livelihood program recommendations. In the event they refuse to appear and testify in court, prosecutors must not give up the case but explore other ways to still prove the guilt of the defendant.

D. COURT DELAY

There are also trafficked persons who do not wish to file a case, or pursue one that had been filed, because of court delay. They get tired and frustrated with the protracted litigation process. There are no existing data on how long it takes for a court to decide trafficking case. But a 2005 study showed that it takes 18 to

25.4 months for a rape case to reach final decision.⁶⁷ While a rape case normally deals with a lone accused, the same is not true in trafficking cases that usually involve more than one accused. Hence, the likelihood of longer court delay is even higher because there are more people at the defendants' table wanting to present their defenses.

A classic example involved a minor trafficked to Japan. With the assistance of Batis Center for Women, she filed both administrative and criminal complaints against the recruitment agencies. The Philippine Overseas Employment Office already decided the administrative case and revoked the agencies' license to operate. Almost two (2) years from date of filing had lapsed, yet the criminal complaint has not gone beyond the preliminary investigation stage. The DOJ prosecutor has not released the resolution. This happened despite the mandatory 60-day period, from date of filing, within which to resolve a case. Incidentally, the concerned prosecutor is one of the anti-trafficking prosecutors at DOJ. Preoccupied with attending international and local conferences and seminars on trafficking, she hardly finds time to sit down and resolve the cases pending before her office.

One-day hearing or marathon trial should be employed in trafficking cases. Bearing multiple tasks, women complainants do not have the luxury of time to be entangled in a long trial. The longer the case takes, the more exposed and unsafe

⁶⁷ The defendants were family court judges and prosecutors. See Feliciano, Myrna, *et. al.* (2005) "*Gender Sensitivity in the Family Courts*, UP Center for Women's Studies." page 69.

they feel. Thus, the less likelihood they will stay on and help prosecute the defendant.

E. FAMILY PRESSURE AND FEAR OF RETALIATION

Poverty is a major push and pull factor in trafficking. Sent back to the community without proper reintegration program and alternative source of livelihood, their family often pressures them to take the defendant's offer of settlement money in exchange for case withdrawal. The family's financial needs is put first, thus, the trafficked woman or child either files an affidavit of desistance or simply disappears.

The trafficked person and her family's safety is another hindering factor in effective prosecution of traffickers. They drop the case for fear that their recruiters and traffickers would make good of their promise of retaliation. In a case encountered early this year, a woman trafficked to Sandakan, Malaysia refused to further cooperate with investigation. After being repatriated, she could not come home to her family due to security threats. She and two other Filipinas escaped from a brothel. Their escape followed a crackdown of their Malaysian employer's flesh trade business. She eventually decided not to proceed with the criminal complaint against her local traffickers who reside in the same neighborhood where her family lives. She decided that her safety and that of her family far outweigh the criminal case against her perpetrators.

Courts should not entertain affidavits of desistance. Trafficking is a public crime. With or without the court oral testimony of the trafficked person, the prosecution must push through with the case for it can still be proven through other means.

F. STIGMATIZATION

Community's negative perception of trafficked persons also impacts on the latter's lives and readiness to come out in the open. Society's attitude towards them varies from pity to indifference, blame, or condemnation.

A 19-year old client committed suicide when her family and neighbors discovered that she ended up in a brothel in Japan. Promised with work as waitress, she found herself as sex slave along with other Filipinas in a brothel managed by a Filipina *mama san*.⁶⁸

A 16-year old graduating high school student refused to go out of their house after the entire neighborhood watched her sex video in youtube. Her classmates tricked her to go with them to a nearby city. There, they forced her to drink alcohol. She passed out and one of the boys sexually assaulted her. A video was taken and uploaded in youtube. One of the neighbors learned about the video; downloaded it; and called the neighbors to watch it with him. The same video was circulated in school. Graduating with honors, she refused to participate

⁶⁸ Also known as madame. Filipina *mama sans* are either married to or a lover of a Japanese citizen who owns the brothel. Through promise of a better life, they lure minors and young women to work in Japan. Recruitment is done with the help of their relatives in the Philippines.

in the commencement exercises to avoid public humiliation. The school management refused to investigate the incidents claiming that it was an alleged incident that happened outside school premises and involved students who already graduated.

A prostituted Filipino woman justified her work as pimp. She was trafficked first from a rural area to Manila where she worked in dirt-floor beerhouse. Eventually, a customer discovered and recruited her to work in Japan. There she ended up in a prostitution den. When she came home to the Philippines, she could not find employers willing to give her decent work. So she went back to nightclub work. When her old body could no longer sustain her, she shifted to pimping. She said “[A]ng puta, mamatay na puta.”⁶⁹

It is not only the attitude and action of state actors that affect the lives of trafficked persons. The acts of non-state actors also greatly affect the safety of women and children. It is incumbent upon the Philippine government to pass a law that criminalizes cyber sex. A law should also be passed making internet service providers solidarily liable for the actions of their subscribers. Likewise,

⁶⁹ “A prostitute will die a prostitute.” This statement reflects prostituted persons sense of hopelessness. In a society that abhors them and never sees them as people with human rights, they can’t see a way out of prostitution. The Philippine government, on the other hand, criminalizes vagrants and prostitutes. Under Article 202 of the Revised Penal Code, prostitutes are “women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.” This is a provision that is discriminatory to women and girl-children. Criminalizing them, the government, however, legalizes their ‘occupation’ by requiring workers of night clubs, *videoke* bars, and massage parlor to periodically secure pink IDs. A pink ID is a sanitary permit that certifies a commercial sex worker to be “clean.” Issuance of pink ID is revenue generating for the government.

training of the five pillars of justice must be made alongside community awareness efforts. Trafficking happens in the community. Educating the people about trafficking will help them recognize and avoid it. But if they still get trafficked, they have to return to the same community. It is crucial that they could return to a community where acceptance and healing are possible.

V. CONCLUSION

Effective prosecution of traffickers can only be achieved with the cooperation of trafficked persons. But increased number of indictments and high number of conviction do not necessarily mean successful prosecution. Trafficked persons need to be reassured that the court is a place where they can be safe, heard, understood, and accepted – not a place of persecution and condemnation.

The government prosecutes in the name of the *People of the Philippines*. It is precisely referred to as 'criminal case' because the decision will not only affect the private complainant but the entire community. Yet, seeking justice is often an arduous, lone personal journey for private complainants.

For trafficked persons, they bear the responsibility of convincing the court that they were exploited. If they win, their triumph impacts on the entire community. If they abandon the legal process, their decision also negatively

impacts on the entire community. Such decision, in fact, allows traffickers to continue lurking in the streets and preying on unsuspecting individuals.

Philippine government's continued ignorance or low level of understanding of the trafficking and the dynamics of trafficked persons, will not only affect trafficked persons morale and degree of willingness to cooperate. It will also lead them to further stigmatization and potentially, self-destruction.

Trafficked persons do not care whether the Philippines get a Tier 2 or Tier 1 country assessment. They care about their families. They care about their lives. They care about their daily subsistence. They care about justice that will help them rebuild their self-image and allow them to have a life that is decent, safe, and healthy. They go to court to seek justice, not to be persecuted.