

(REPS)

From: Ann-Mari Jordens [jamjord@cybermac.com.au]
Sent: Wednesday, 18 February 2004 2:26 PM
To: Committee, Treaties (REPS)
Cc: director@acmro.catholic.org.au
Subject: Submission on Protocol on trafficking

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Submission No:2.....



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The Secretary, Joint Standing Committee on Treaties.

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BY:.....

Please find attached a submission on the Protocol to Prevent, Suppress and Punish Trafficking in Persons..., which I have prepared on behalf of the Director of the Australian Catholic Migrant and Refugee Office, the Rev Fr John Murphy.

So far, two organisations have agreed to endorse this submission, but more may follow. I will let you know of other endorsements when they come in. I would appreciate an acknowledgement of this email.

Yours sincerely

Ann-Mari Jordens

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JOINT STANDING COMMITTEE ON TREATIES.

Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organised crime (New York, 15 November 2000) [2003] ATNF 1

Submission from:

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Ann-Mari Jordens.

Supported by:

**Christian World Service, National Council of Churches in Australia.
The YWCA of Australia.
UNAA Status of Women Committee**

Summary of Recommendations

- The Government should adopt a victim-centred, not an immigration or law-enforcement focus, in dealing with trafficked women.
- No trafficked women should be placed in detention centres.
- Trafficked women should be empowered and viewed and treated as the subject of rights, not the object of decisions taken by others.
- Protection should be linked to need. Current visa proposals objectify the victim and link the provision of help and protection to the degree of assistance provided to authorities.
- Counselling and vocational training should be provided for returning women. Funding for overseas agencies should be sufficient for both immediate and long-term reintegration. Women should not be repatriated to countries where there is no clear commitment to human rights or reintegration services.
- Assets of trafficking networks should be confiscated and used to compensate victims.
- Agencies funded to provide care and protection to trafficked women should assist them in their negotiations with authorities and should not be given a compliance role.
- Measures for discouraging the demand for the services of trafficked women should enlist peak sex-industry bodies to target consumers.
- The Australian government should monitor and report on the reintegration of repatriated women.

1. The Australian Catholic Migrant and Refugee Office (ACMRO) **supports the Government's decision to ratify the Protocol** to prevent, suppress and punish trafficking in persons. ACMRO is an agency of the Australian Catholic Bishops Conference, which deals with matters relating to migrants and refugees.
2. We urge the government to adopt a **victim-centred focus** in implementing the Whole-of-Government measures to combat people trafficking announced on 13 October by the Minister for Justice and Customs, Senator Ellison. Item 5 of the National Interest Analysis states that:

The government hereby declares that nothing in the Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders persons in respect of whom Australia would not otherwise have an obligation to admit or retain within its borders.

We believe that this indicates that in thinking about the victims of one of the most serious human rights violations, the Government's main focus remains on the immigration and law-enforcement issues. This focus is contrary to the spirit of the Protocol, which urges implementing States to 'give appropriate consideration to humanitarian and compassionate factors' [Article 7 (2)].

3. No woman should be placed in an **immigration detention centre** at any stage of processing. Trafficked women have experienced imprisonment by criminals. Imprisonment in a detention centre, even for a brief period, would not be conducive to establishing the trust in authorities essential to obtaining her cooperation with investigations into her traffickers.
4. **Empowering the victim.** A trafficked woman should be viewed and treated as the subject of rights rather than as the object of decisions taken by others. She should be empowered to make unforced, unpressured and autonomous decisions about what is in her own best interest, and what will be best for the welfare and safety of her family overseas. She is the best source of information on the trafficker and the best potential witness in any prosecution. However her brutal exploitation has been designed to destroy her sense of self-worth and her ability to make even the most basic decisions about her own life. She has been objectified as a sexual object without rights and without power. This experience has given her no reason to trust those with power over her, and very good reason to fear for her life and the lives of her family if she assists Australian authorities to bring her traffickers to justice. She should be given sufficient time to deal with the immediate health, psychological and drug problems she may have as a result of her enslavement, before she is required to decide, with the assistance of her case worker, on the extent to which she should become involved in any investigation by the Australian Federal Police (AFP).
5. **Current visa proposals** objectify the victim, give all the decision-making power to immigration and other officials, and allow only 30 days during which authorities will decide on the woman's fate. As the submission by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to the Joint Parliamentary Committee on the Australian Crime Commission inquiry into trafficking in women for sexual servitude explained:

law enforcement agencies will have the opportunity to assess whether they wish to have the person remain in Australia to provide further assistance with the investigation. Support measures will be provided during this time. If the law enforcement agency assesses that they require the continued presence of the person in Australia to assist with their investigations in trafficking matters they can seek the issuance of a

criminal Justice Certificate and then a CJSV (Criminal Justice Stay Visa).

Article 7 of the Protocol does not link the provision of temporary or permanent residence to collaboration with investigations into trafficking. On the contrary, it stresses the importance of giving 'appropriate consideration to humanitarian and compassionate factors'. Protection should be linked to the degree of harm done to the trafficked woman in Australia, and the degree of danger she and her family would be placed in if she were to return to her country of usual residence. It is unclear what degree of 'assistance' the Australian government will require from a victim before it will grant her temporary or permanent protection. Victims of trafficking should be given clear information about the degree of protection they will be given in Australia, and what degree of involvement in any future criminal prosecution will be required of them, before they choose to give evidence. The appropriate Non-Government Agency (NGO) should be contacted by DIMIA or the AFP immediately a potential victim of trafficking is detected. Her case manager should be involved in negotiations with these authorities if she decides to cooperate with them, and on other options if she does not. The Italian experience is instructive. There, victims of trafficking who cooperate with the police by informing them of the identity of their traffickers and of the abuse they inflicted, are given a temporary residence visa, which is usually then extended. Although they are not required to testify in court, the Italians report that more victims than before have come forward to testify because they want to see justice done. Compulsion is not necessarily the best way to get desired results.

- 6 **Counselling and vocational training should be provided** before departure to women who choose to be repatriated. Australia should provide sufficient funds to agencies in the countries of repatriation to ensure that they can provide for the safe return of trafficked women and their immediate and long-term reintegration. Trafficked women should not be repatriated to countries where there is no clear commitment to protect their human rights, and no reintegration assistance is available.
- 7 The proposed legislative amendments should include measures aimed at **confiscating the assets of trafficking networks** for use in compensating victims and funding their support and assistance. The likelihood of financial compensation would also be an incentive for trafficked women to cooperate with the AFP.
- 8 The proposed protocol to be drawn up between the AFP and the Non-Government Agency (NGO) appointed to provide support for victims of trafficking in Australia, **should identify both the common and diverging aims and priorities**

of each organisation, and not require the NGO to have a compliance role.

Case managers should not be required transmit information obtained as a result of counselling to the AFP and DIMIA. Such a requirement would risk destroying the relationship of trust essential to their role of care and protection, as outlined in Article 6 of the protocol. The victim support package should not be used as a strategy to obtain prosecutions.

- 9 In order to **discourage demand** for the services of trafficked women [as required by Article 9 (5) of the Protocol], authorities could work through sex-industry peak bodies in Australia to disseminate information to potential clients to educate them on the human rights abuses inherent in trafficking, enable them to identify trafficked women, and encourage them to report suspected cases of trafficking to the police or an appropriate NGO, including to sex-industry bodies with links to DIMIA and the AFP. Venues where men meet, such as sporting clubs and bars, appropriate men's magazines, and publications like *Streetwise* comics could also be employed to disseminate such information.

- 10 The Australian government should **monitor and report** on the reintegration of trafficked women who are repatriated.