



The Uniting Church in Australia
Synod of Victoria and Tasmania
Justice and International Mission Unit

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20 February 2004

The Secretary
Joint Standing Committee on Treaties
Parliament House
Canberra, ACT, 2600

Dear Secretary,

I am writing to make a submission on behalf of the Justice and International Mission Unit (JIM), Synod of Victoria and Tasmania, in relation to Australia ratifying the *United Nations 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).

The Justice and International Mission Unit (JIM) supports Australia ratifying the Protocol although we have a number of recommendations which we believe need to be implemented in order for Australia to fully comply.

Yours sincerely,

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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)

Submitted by:

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Supported by:

Christian World Service, National Council of Churches in Australia



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1. INTRODUCTION

The Justice and International Mission Unit (JIM), Synod of Victoria and Tasmania, supports Australia ratifying the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.

The Justice and International Mission Unit is strongly supportive of any action to eliminate incidents of exploitation of persons in Australia and overseas. This Protocol will assist in eliminating the global problem of the trafficking of people, which is tied up with the violation of the human rights of the people being trafficked.

In the 1977 'Statement to the Nation' the Inaugural Assembly of the Uniting Church committed the Church to upholding "the importance of every human being....personal dignity, and a concern for the welfare of the whole human race." The Statement pledged the Uniting Church to "seek the correction of injustices wherever they occur." In 1997 the National Assembly of the Uniting Church in Australia issued an 'Invitation to the Nation' committing the Uniting Church to build "our nation as one which stands firmly for human rights, even at cost to itself, as a responsible member of the international community."

The Justice and International Mission Unit welcomes the recent announcement by the Federal Government that it will ratify the Trafficking Protocol, once all domestic requirements are in place. It is these domestic requirements in relation to a range of the Articles of the Protocol which we wish to address.

2. SPECIFIC CONCERNS

2.1. Article 5 – Criminalisation

Establishing as criminal offences the attempt, participation or direction of trafficking of persons, as outlined in Article 5, will enable Australia to better address criminal acts relating to trafficking of persons. However, reform of the Commonwealth Criminal Code, so that relevant offences better reflect the definition of trafficking, needs to be undertaken in order for the Protocol to be implemented. Included in this reform should be a clear acknowledgment that the trafficking of persons can occur with or without the consent of the victim and therefore includes as a criminal act trafficking as defined by '...the abuse of power or of a position of vulnerability.'

We support the recent announcement by the Federal Government that improvements to legislation to comprehensively criminalise trafficking activity will be undertaken before ratification of the Protocol.

2.2. Article 6 - Assistance to and protection of victims of trafficking in persons

We acknowledge and welcome the announcement for 'A Commonwealth Action Plan to Eradicate Trafficking in Persons' which identifies key areas for increase in support and action. We encourage the Federal Government to continue their plans for implementing this

package and providing detail on how such measures will be structured, implemented and assessed.

We applaud the principle that trafficked persons, especially women and children engaged in prostitution or labour exploitation are recognised as victims of crime rather than accessories or perpetrators of crime. Furthermore, that the Protocol considers the consent of the victim to trafficking is irrelevant, enabling an acknowledgment of the wider context within which people find themselves in a trafficked situation. Contributing factors such as poverty, debt or vulnerability can be recognised as part of the journey of a trafficked person.

However, we note that current domestic legislation does not uphold these principles and needs to be changed in order to comply with the protocol. Key areas for change include increased communication and co-operation between NGO's, community organisations, local, state and federal government authorities; implementation of support services upon detection of a trafficked person; protection in the form of access to temporary or permanent stay; changes to current detention and removal arrangements; and other areas which are addressed below.

The Justice and International Mission Unit is pleased to see that the recent federal government tender document "Support for Victims of People Trafficking Programme" includes intensive and ongoing support, involving a case management system with access to housing, financial, counselling, legal, language, medical, material and social support. The Justice and International Mission Unit supports the focus on working collaboratively with the Australian Federal Police (AFP), government, non-government agencies and other organisations.

However, the Justice and International Mission Unit is concerned that the Program is limited to providing support services to clients who are of interest to the AFP or assisting with criminal investigations and prosecutions in Australia. We recognise the benefits of the link between a more compassionate stance toward the victims of trafficking and the increase in positive criminal prosecution outcomes such as the research undertaken in the UK.¹ However, to comply with the Protocol we believe the provision of services for the victims of trafficking Australia should have a view to protection of a trafficked person and not just prosecution of the traffickers.

Providing services to victims of trafficking with a view to protection as well as prosecution would enable all victims of trafficking to receive support services upon detection regardless of their potential to be involved in criminal proceedings. This care should include protection against risks which are reasonably foreseeable (such as complaint/witness protection or protection from harm upon return) as well as delivery of a standard of care which is reasonable within the circumstances of a particular case. Provision of care within this context would comply with provision 3 of Article 6 and would be implemented in the short term as intensive support (beyond prosecution needs) and in the long term following assessment for more permanent care or protection in Australia (see status conditions for trafficked persons in section 2.3 outlined below).

¹ This research indicates that in those countries where the delivery of non-government specialist services to trafficked women is supported, up to 50 per cent of women contribute positively to the process of laying criminal charges. Services include safe accommodation, counselling, some form of income support, advocacy, and where possible education and training. Kelly and Regan p 32. Kelly and Regan *Journeys of Jeopardy* (2003), page 32

Furthermore, the Justice and International Mission Unit believes a time limit of 30 days for intensive support, as proposed in the “Support for Victims of People Trafficking Programme”, is an inappropriate timeframe for rehabilitation and support within the context of trafficked persons. Victims of trafficking should be independently assessed on a case by case basis in relation to ongoing trauma and support needs and permanent or temporary stay provisions allocated accordingly (see section 2.3 for further detail).

The federal government recognises the vulnerability of trafficked persons in the tender document for “Support for Victims of People Trafficking Programme” acknowledging that some victims of trafficking will have experienced emotional and physical trauma, need a high level of medical and counselling support, are vulnerable and come from highly disadvantaged socio-economic backgrounds and may not have access to basic material needs.

The current practice of detaining trafficked women who have been denied access to their valid visa documents or who have been denied information relating to their immigration status is a highly inappropriate response to a victim of trafficking as defined in the Trafficking Protocol. An alternative to detaining trafficked victims in immigration reception, processing and detention centres should be implemented together with access to intensive support services. We are pleased to see that the “Support for Victims of People Trafficking Programme” includes provisions for housing and that housing will need to be accessible as soon as a client is identified by the AFP. The Justice and International Mission Unit believes this is an important element in complying with the Protocol.

The Justice and International Mission Unit requests that all victims of trafficking be eligible for a standard of care, that can be accessed within the context of secure housing, within a timeframe which is reasonable for the circumstances of a particular case. This should be applied regardless of whether trafficked person is of interest to the AFP or assisting with criminal investigations and prosecutions in Australia.

2.3. Article 7 - Status of victims of trafficking in persons

We are concerned that Australian Immigration Law does not currently include avenues to guarantee compliance with the Protocol in relation to the status of victims of trafficking. We recognise that current visa options exist such as a Bridging Visa E, Criminal Justice Visa or Protection Visa. However, we do not believe these options are sufficient to comply with Article 6 or 7 of the Protocol. We welcome announcements that the Federal Government has included new visa arrangements for potentially trafficked persons in ‘*A Commonwealth Action Plan to Eradicate Trafficking in Persons*’. However, we are concerned about the details of such arrangements.

As mentioned above, complying with the Protocol means there needs to be a focus on the protection of trafficked persons and not just on the prosecution of the traffickers. The conditions surrounding trafficked persons do not necessarily apply to other Migration or Protection applications. Neither a Protection Visa nor Criminal Justice Visa, the two most common avenues for trafficked persons to remain in Australia, are sufficient to implement temporary or permanent stay provision.

Where it is necessary for victims of trafficking to remain in Australia, either temporarily or permanently, a form of protection complimentary to the current protection criteria for Class XC visas (either temporary or permanent) or a special visa category for trafficked persons (either temporary or permanent) should be accessible to avoid short or long term detention arrangements and for access to appropriate services. These arrangements should be able to

take into consideration the range of circumstances within which a victim of trafficking may need to remain in Australia. These should include:

- Cooperation with the process of prosecuting criminals involved in trafficking
- Fear of harm from traffickers including being targeted for re-trafficking upon return
- Rehabilitation and support
- Protection or humanitarian considerations
- Safety or fear of safety upon return to country of origin

If repatriation is necessary and in order to apply appropriate consideration to humanitarian and compassionate factors (provision 2 of Article 7) trafficked persons should be able to remain in Australia to access services and support before being returned to their country of origin (as indicated in Article 6 of the Protocol). This would not only assist victims of trafficking to address trauma but contribute to the prevention of further trafficking through education and support.

The Justice and International Mission Unit asks that the changes required to comply with the Protocol in this area be implemented in order to comprehensively support and provide for the wellbeing of trafficked persons.

2.4. Article 8 - Repatriation of victims of trafficking in persons

The Australian Government needs to ensure the conditions under which victims of trafficking are returned uphold provision 2 or Article 8 in that the return of victims of trafficking preferably be voluntary.

Any removal of trafficked persons must follow access to a just and fair protection determination or humanitarian assessment process. This process should include a risk assessment of harm upon return as outlined in the discussion below.

Where there are no outstanding claims including refugee, humanitarian, family, medical or any other grounds for remaining in Australia, a victim of trafficking should be adequately prepared for return. This preparation should include provision of counselling and support services. The Justice and International Mission Unit is opposed to the return of trafficked persons when a person is experiencing ongoing trauma and where there are inadequate support services available in the country to which a person is returning.

In the process of removal the Justice and International Mission Unit opposes chemical sedation, unnecessary use of restraints and intimidation. With any removal there also needs to be proper consultation and notification with both the deportee and the relevant bodies/individuals including government and non-government bodies in Australia and the country of origin of the person being returned.

The Justice and International Mission Unit welcomes the announcement of the development of a reintegration assistance project for trafficking victims who are returned to key source countries in South East Asia. However, we also encourage the government to ensure further conditions to protect the safe return of victims of trafficking. This includes the following actions:

- Amending the Migration Act to abolish the liability of victims of trafficking for their detention costs as per Section 209 of the Migration Act
- Amending the Migration Act to abolish the liability of victims of trafficking for their removal costs from Australia as per Section 210 of the Migration Act

- Implementing the principle of non-refoulement² where it has been established a person has been trafficked (Article 14)
- Developing comprehensive guidelines for assessing a country for 'safe return' which includes consideration of the following reports:
 - Independent reports by Australian human rights agencies and other non-government organisations (NGO's) specialising in trafficking of persons.
 - Independent reports by international human rights agencies specialising in trafficking of persons.
 - Reports of the Australian Government
 - Reports of other Governments
- Adopting avenues for complimentary protection or special visa category for victims of trafficking where it is established safe return to the country of origin is not possible for a victim of trafficking in persons.

2.5. Article 9 - Prevention of trafficking in persons

We commend the Federal Government on the recent announcement that a new community awareness campaign to raise awareness of trafficking issues within Australia will be implemented. We support the move and are interested in exploring ways to assist in this area.

In particular, the Justice and International Mission Unit is concerned that discouraging the demand that fosters all forms of exploitation of persons that leads to trafficking (provision 5 of Article 10) be included in this campaign. In Australia women are commonly trafficked for the purposes of prostitution. The demand for prostitutes in Australia, especially prostitution involving violence, non-compliance (through coercion or force) or exploitation must be addressed within both an educational and a legislative context. As a destination country Australia must acknowledge the responsibility and contribution we play through the demand for trafficked persons.

3. SUMMARY OF RECOMMENDATIONS

The Justice and International Mission Unit recommends:

- Changes to the Commonwealth Criminal Code to comprehensively criminalise trafficking activity so that relevant offences better reflect the definition of trafficking in the Protocol.
- Adoption by Government of a view to protection of a trafficked person and not just prosecution of traffickers.
- Support services for the victims of trafficking be provided regardless of a victims interest to the Australia Federal Police (AFP)
- Provision of care to the trafficked person not be subject to a thirty day limit. Rather a standard of care, be provided within a timeframe reasonable for the circumstances of a particular case.
- Trafficked persons not be detained upon detection but provided with secure housing.
- New visa arrangements, providing for temporary or permanent stay provision for trafficked persons be implemented.

² Prohibition of expulsion or return where a person's life or freedom would be threatened on account of a persons' race, religion, nationality, membership of a particular social group (applied as 'trafficked person') or political opinion. Article 33 of United Nations Convention and Protocol relating to the status of refugees.

- Assessment of trafficked persons for temporary or permanent stay provision take into account a range of humanitarian and compassionate factors, including the physical, mental and emotional well-being of the person.
- Any removal of trafficked persons be subject to a just and fair protection determination or humanitarian assessment process.
- A trafficked person not be removed from Australia when that person is experiencing ongoing trauma and where there are inadequate support services available in the country of return.
- That there not be intimidation or unnecessary use of restraints in the process of removal.
- That re-integration include assessment of the country of return as safe and able to provide support services.
- That the Migration Act be amended to remove liability of victims of trafficking for detention and removal costs
- That community awareness campaigns acknowledge the responsibility and contribution Australia plays in the demand for trafficked persons.