

**Parliamentary Joint Committee on the
Australian Crime Commission**

**Inquiry into trafficking in women for
sexual servitude**

Submission No:8

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The Hon Elizabeth Evatt

on behalf of David Bitel, Secretary-

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Submission by
The Australian Section of the International Commission of Jurists
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to

**Joint Statutory Committee on the Australian Crime Commission
(formerly the Joint Committee on the National Crime Authority)**

Trafficking in Women - Sexual Servitude

Terms of Reference: That, in accordance with paragraph 55(1)(a) and (d) of the *Australian Crime Commission Act 2002*, the Parliamentary Joint Committee on the Australian Crime Commission inquire into and report on the Australian Crime Commission's response to the emerging trend of trafficking in women for sexual servitude with particular reference to:

- (1) the Australian Crime Commission's work in establishing the extent of people trafficking in Australia for the purposes of sexual servitude;
- (2) the Australian Crime Commission's relationship with the relevant State and other Commonwealth agencies; and
- (3) the adequacy of the current legislative framework.

this submission

1. This submission examines mainly the third item of the terms of reference, namely, the adequacy of the legislative framework for addressing the problem of trafficking for sexual servitude. It also considers the response of Australia to trafficking in the light of current international standards and the practice of some comparable countries. It asks whether Australian laws and procedures are effective in combating sex trafficking, and how Australia compares with countries such as the United States, Netherlands, the European Union and Israel.

the Protocol

2. The most recent international standard is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.¹ (Not yet in force).
3. The Protocol requires that States criminalise trafficking and assist the victims. It provides that the victims of trafficking should be permitted to stay in the State temporarily or permanently and that the repatriation of victims should preferably be voluntary. States accepting the Protocol undertake to establish comprehensive programs to prevent trafficking and to protect victims, including public education.
4. The Protocol is somewhat weakened by its language. It calls for certain obligations to be met "in appropriate cases",² and it asks States "to consider"³ rather than to adopt certain measures.
5. The Australian Government's position is that no further legislation is needed to meet Australia's obligations under the Protocol.⁴ It asserts that programs are being developed to implement the Protocol.

¹ NY, 15 November 2000, Accepted by Australia 11 Dec 2002, not yet in force. (referred to as "Protocol").

² arts 6, 9 (3).

³ arts 6 (3), 7 (1).

law and practice in other countries

6. While the Protocol sets minimum international standards, reference should also be made to the laws and policies being implemented to deal with the problem of sex trafficking in countries which are comparable with Australia. It is submitted that law and practice in Australia falls short of the law and practice which has developed in countries, such as the United States, the Netherlands and Israel and which has been set for the European Union.

The problem of trafficking

causes of vulnerability

7. To deal effectively with the problem of trafficking it is necessary to understand the underlying causes, the most important of which are poverty and lack of education. The Protocol identifies poverty, underdevelopment and lack of equal opportunity as factors making persons, especially women and children, vulnerable to trafficking.⁵ The UN Special Rapporteur on Violence against Women also identifies poverty as a major factor leading to trafficking.⁶ Other factors identified by the Special Rapporteur include traditional attitudes towards women and girls, the practice of selling girls, social discrimination and exclusion, child marriage, etc. The US Trafficking Victims Protection Act of 2000,⁷ identifies as primary targets of trafficking “women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin”.

human rights issues

8. These factors make it clear that sex trafficking is a human rights issue.⁸ It brings into issue such international human rights instruments as the International Covenant on Civil and Political Rights, article 8, and the Convention on the Elimination of All Forms of Discrimination Against Women, article 6. The fact that some victims may be children also brings into issue the standards established in the Convention on the Rights of the Child against sexual exploitation, abduction and trafficking.⁹

9. It is submitted that law, policy and practice in this area should be based on recognition that women and girls in developing countries are vulnerable to offers of

⁴ Report of Questions taken on Notice at Additional Estimates hearing on 11 February 2003. Responses to questions asked by Senator Sherry of the Immigration and Multicultural and Indigenous Affairs Portfolio on the Enforcement of Immigration Law. Question 6 deals with whether new laws are needed to address the situation of victims. Question 8 with other aspects of government response to the Protocol.

⁵ Protocol, Art 9 (4).

⁶ *Report of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Radhika Coomaraswamy, (CHR resolution 2000/45), *Addendum: Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls* (28 October-15 November 2000)* E/CN.4/2001/73/Add.2, 6 February 2001, Paragraph 20

⁷ H. R. 3244, s 102 (4). Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

⁸ The Special Rapporteur on Violence Against Women has observed that trafficking is not an immigration issue, but a human rights issue. *Report of the Special Rapporteur*, p 11, para 25]

⁹ Articles 34 and 35.

employment in affluent countries and of the reasons for their vulnerability. The Protocol calls for comprehensive policies, programmes and other measures to alleviate the factors making persons vulnerable to trafficking, to prevent trafficking and to protect victims, especially women and children, from revictimization.¹⁰ All such measures should be based on sensitivity towards the situation and needs of the victims for protection.

willing participants or deception and fraud?

10. To the extent that the women and girls are active participants in their trafficking, in that they agree to come to Australia (or to go to another country), the abuse is harder to detect and control. Nevertheless, the particular vulnerability of women and girls in developing countries to offers of employment in rich countries like Australia means that agreements to procure their services in the entertainment or sex industry can seldom be considered as agreements entered into by equals. Rather, they are frequently the result of coercion or deception, or even of sheer desperation. Most victims lack information about migration procedures, passport or visa requirements of the country of destination. Often, the arrangements for documentation are done for them by or on behalf of the traffickers. The women and girls may not know that they are engaging in an illegal activity, or that this may be a serious breach of law.

11. The Special Rapporteur has pointed out that most women are trafficked as a result of deception and false promises.¹¹ The US Act also recognises these elements of deception and false promise:¹²

1 (4) Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models.

why victims do not report traffickers to the police

12. Another problem in dealing effectively with sex trafficking is that the victims are often unwilling to come forward and report offences. They may fear retribution or be intimidated by the traffickers, they may have little knowledge or understanding of the laws and policies of the receiving State and may be fearful that the authorities would punish rather than help them. The Protocol recognises these difficulties, and calls for measures to protect victims and to ensure counselling and information about their legal rights, protection of their physical safety, etc.¹³

13. The US Act has described the situation in these terms.

s 102 (20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report

¹⁰ Article 9(1).

¹¹ *Report of the Special Rapporteur*, Para 19.

¹² Section 102 (4)

¹³ Article 6. The Protocol recognises that co-operation with NGOs could be an appropriate way to provide these services.

the crimes committed against them or to assist in the investigation and prosecution of such crimes.

the question of demand

14. The Protocol recognises that the demand for sexual services is an important factor contributing to the illegal trafficking of women. It calls for measures to discourage demand:

article 9 (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.

legal status of prostitution

15. The legal status of prostitution in the countries of destination can affect the operations of international sex traffickers. Some take the view that the decriminalisation of prostitution not only makes it easier to operate the commercial sex industry but also helps to promote and support international trafficking. NGOs in the US have emphasised the need to avoid legitimizing the sex industry and to provide real employment alternatives for women rather than making the industry safe and legal.¹⁴

16. Other groups have called for countries to develop innovative approaches, combining decriminalisation of prostitution, workplace regulation, workers benefits, to reduce the problems which often arise when prostitution is illegal.¹⁵ This view, if adopted, might lead to uniform national licensing systems for the operation of brothels, with stringent occupational and health standards, work cover and other employment terms and conditions to protect employees. This would be coupled with a system of fines for operating unlicensed brothels. and for more serious penalties if minors were found in such premises. Co-operation between federal and state authorities could then operate to identify situations of sexual servitude arising from trafficking or otherwise.

17. This submission notes that while the decriminalisation of prostitution is not a direct cause of trafficking, it does appear that the relaxation of legal prohibitions may enable exploitation of trafficked women to occur, without undue interference by the legal authorities. Whatever views are held on that issue, it is clear that if any means could be found to reduce the demand for prostitution that would help to reduce trafficking.

Reviewing Australian law and Practice:

Commonwealth Slavery and Sex Trafficking law [1999]:

18. The Commonwealth Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 inserts Division 270 into the Commonwealth Criminal Code. In

¹⁴ Equality Now, a NY based NGO.

¹⁵ *Combating Traffic in Persons*, Proceedings of the Conference on Trafficking, November 1994, SIM (Netherlands Institute of Human Rights) Special No 17, Utrecht 1995 p 172.

this Division, slavery is defined and offences related to the practice of slavery, and slave trading are codified.¹⁶

19. The 1999 Act also introduces offences related to sexual servitude, which is defined in s 270 (4) (1) as the condition of a person who provides sexual services and who, because of the use of force or threats, is not free to cease to do so or to leave the place or area where the person provides such services. Sexual service means “the commercial use or display of the body of the person providing the service for the sexual gratification of others”. Threat is defined.

20. The offences created by the Act in relation to sexual servitude include causing a person to enter into or remain in sexual servitude intentionally or recklessly, or conducting a business involving the sexual servitude of others knowingly or recklessly.¹⁷ Deceptive recruiting is also an offence.¹⁸ Jurisdiction can be exercised if either the conduct is engaged in within Australia or the sexual services are provided within Australia, or the alleged offender is a resident or citizen of Australia.¹⁹ Aggravated offences occur if the person against whom the offence was committed is under 18.²⁰ The consent of the Attorney-General is required for prosecution in some cases.²¹

21. The Commonwealth Criminal Code,²² provides for offences related to people smuggling and smuggling with intent that the person be exploited, ie where:

- (a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; (b) the exploiter's conduct causes an organ of the victim to be removed,

22. The legislation does not expressly cover recruitment, transportation and transfer, which the Protocol includes in the definition of “trafficking”,²³ though the combination of the offences of sexual servitude and smuggling associated with exploitation creates a degree of overlap with the Protocol. Offences involving “attempts” and accomplices, required by art 5 (2) of the Protocol, appear to be covered by the general provisions of s. 11 of the Criminal Code.

23. Under a National Action plan, foreshadowed by the Government in July 2003, all jurisdictions are to review current operational arrangements with the Department of Immigration and Multicultural and Indigenous Affairs to ensure that victims of trafficking and sexual servitude are identified as victims of crime.²⁴

24. The Australian situation can be contrasted with that in some other countries. In the Netherlands, for example, the offence of “trafficking in persons” is similar to the Australian definition, in that it involves forcing another person into prostitution by means of violence, threats, compulsion, abuse or deception. However, under investigative guidelines, if a prostitute is found in an exploitive situation (which

¹⁶ s 270 (3).

¹⁷ s 270 (6); sexual servitude and slavery have the same meanings as in s 270.

¹⁸ s 270 (7).

¹⁹ s 270 (5). For the other offences there are no jurisdictional limits.

²⁰ s 270 (8).

²¹ s 270 (11)

²² s 73.2; the Migration Act 1958, s 233 creates offences of bringing non-citizens into Australia in contravention of the Act or harbouring illegal entrants.

²³ Article 3.

²⁴ Announcement by the Minister for Justice and Customs on 3 July 2003, following a meeting of the Australasian Police Ministers' Council (APMC).

appears to mean a situation not equal to that of prostitutes in the Netherlands who operate independently) misuse of authority or influence is assumed to have occurred, and there is a reasonable suspicion of a contravention of the Code.²⁵

25. Israel has made it an offence to cause another person to leave the country in which he or she resides, in order to engage that person in prostitution. The Supreme Court has ruled that this offence is complete whether or not the victim consents, if the elements of trafficking are present.²⁶ An inter-ministerial committee has recommended taking legal action against traffickers for income tax and money laundering crimes and giving the courts jurisdiction to order forfeiture of the profits of such crimes.

26. Under the Australian legislation, “fraudulent” or “deceptive” conduct at the time of recruitment are covered to the extent that the victim was unaware that she/he would have to provide sexual services.²⁷ It does not appear to cover deception as to the conditions of work which apply to the victim unless this can be considered as conduct causing a person to enter into sexual servitude. This is an important issue, as some women are deceived about the circumstances in which they would have to work in Australia. It is significant to note that in speaking of the matter, the Minister distinguished “those who come willingly to Australia to work in the sex industry after agreeing to pay organisers”.²⁸ He did not appear to acknowledge the extent of deception which might be involved in recruiting, ie, that some women may understand that they are to work in the sex industry, but be seriously deceived as to the conditions which they would find. Nor did he distinguish those who have agreed to make payments from their earnings, and who then find they are compelled to continue working in adverse conditions to repay the debt. There is also the question of whether the women have any degree of free choice in the circumstances in which they find themselves.

proposal

27. The Commonwealth law should follow more closely the Netherlands model, in that serious deception as to the conditions in which a prostitute would be required to work in the sex industry should give rise to an offence and that the existence of an exploitive situation should be evidence of deception or inducement.

protection of privacy of victim, assistance in court

28. Article 6 (1) of the Protocol requires that in appropriate cases and to the extent possible, States are to protect the privacy and identity of the victim of trafficking by making the legal proceedings confidential. Victims are to be provided, in appropriate cases, with information on the court proceedings and assistance to enable their views to be presented in a manner not prejudicial to the defence.²⁹ The Protocol calls for measures to protect the physical safety of victims and to ensure that they have access to counselling and information about their legal rights in a language they understand.³⁰

²⁵ Netherlands, 3rd report under the ICCPR, 2000, CCPR/C/NET/99/3, para 39.

²⁶ Israel, Second Report under the ICCPR, CCPR/C/ISR/2001/2, 4 December 2001.

²⁷ s 270 (7).

²⁸ 1 April 2003, MPS 20/2003.

²⁹ Protocol, article 6 (2).

³⁰ Article 6. The Protocol recognises that co-operation with NGOs could be an appropriate way to provide these services.

29. Under s 107 of the US Trafficking Victims Protection Act, regulations are to provide for the protection of victims of severe forms of trafficking while in custody, and to ensure they have access to information about their rights. Regulations under section 107(c) of the Act require the relevant Departments to identify and appropriately address the particular needs of victims of severe forms of trafficking and to provide them with access to information about their rights and translation services.³¹

30. Section 15Y of the Commonwealth Crimes Act provides for protection of the privacy of victims under 18, and applies expressly to sex slavery offences. It does not expressly cover protection of the privacy of adults.

31. Women who are victims of trafficking have been severely traumatized. They are usually poor and uneducated and need considerable support. Adequate confidentiality and protection of privacy is an important element in ensuring that victims feel safe to co-operate with police in identifying and giving evidence against traffickers.

32. A victim who may have been subjected to intimidation or threats needs to be given appropriate information and advice about the confidentiality of any information she provides to the authorities, protection from further threat for herself (and her family), and an assurance that she will not be summarily deported but will be allowed to stay in the country at least during the period required for the prosecution of the offender, and any further period required to ensure her protection.

proposal

33. Commonwealth legislation should ensure the effective protection of the privacy of victims of trafficking and the confidentiality of the information they provide to the authorities. To make this protection effective, victims should be given access to legal advice from a women's legal centre, or from an NGO with knowledge and experience in the area before deciding on whether to co-operate in prosecuting alleged offenders. Interpreters should be provided, preferably female. (The next section deals with permitting the victim to remain in Australia.)

allowing victims to remain in Australia

34. Under article 7 of the Protocol, States are to "consider" measures to permit victims to remain in their territory, temporarily or permanently, in "appropriate cases". States should give appropriate consideration to humanitarian and compassionate factors.³² These provisions recognise that victims of sex trafficking are often unwilling to return home, or may be at risk if they do so. This is because they may experience shame, ostracism and stigmatisation because of their involvement in prostitution.

35. The EU Commission has proposed that victims of trafficking to be allowed to stay for a limited period if they are prepared to co-operate in investigations and proceedings against their exploiters.³³ In the Netherlands, victims who report a trafficking crime may be eligible for a residence permit. In any case they will be

³¹ The interim regulation went into effect on March 4, 2002.

³² SIM recommended in 1995 that persons trafficked should be permitted to stay in the country and to work during the trial against the accuse traffickers; and that permanent resident permits should be granted on humanitarian grounds to persons who cannot return to their own countries for fear of persecution or reprisals by traffickers, authorities or families [SIM 172]

³³ 11 February 2002

allowed to remain in the Netherlands during the investigation and the court hearing.³⁴ In Israel victims who choose to testify are given police protection and they are not prosecuted for crimes relating to their illegal entry into Israel; this is a matter of policy.

36. In the United States regulations under section 107(c) of the Trafficking Victims Protection Act authorise the immigration authorities to arrange for the "continued presence" of victims in the United States while law enforcement is investigating or prosecuting trafficking crimes. A non-immigrant "T" visa has been made available for victims of severe forms of trafficking.³⁵

37. In Australia an unlawful non-citizen can remain temporarily if required for the administration of criminal justice. First, a Criminal Justice certificate has to be issued by the Commonwealth or State A-G (or other defined authority). A Criminal Justice Visa could then be issued under the Migration Act 1958 to keep the witness lawfully in the country, and to enable a person who is to give evidence in court to be released from detention.

38. The Minister has referred to the possibility of a bridging visa and to the fact that the AFP could put a person in the Witness Protection Program where there is a genuine concern for their safety. The Minister has asserted that no new measures, or additional visa classes are required to align existing procedures with the UN Protocol.³⁶

39. Victims of trafficking should be encouraged to give evidence against those involved in the trafficking offence and be granted immunity from prosecution for any offence arising from their having engaged in work for working here without an appropriate work visa, subject to conditions. It appears, however, that little use has been made of criminal justice visas in Australia, and that any such visa is likely to be withdrawn if the investigation of offences does not proceed.³⁷

40. Whether or not victims of trafficking have co-operated in the prosecution of offenders, there could be other valid humanitarian reasons why they should be granted a protection visa and be allowed to stay in Australia for a period. Victims may fear persecution should they return to their own countries. The people responsible for trafficking are often part of organised crime groups, such as triads, and have even have connections with government. They have sufficient power and influence to enable them to operate with impunity. If they consider that there is a debt still owing, or if it is known or suspected that a victim has co-operated with the authorities, they may take retaliatory action. The risk of persecution of this kind may not come to light in the course of discussion of the alleged trafficking offences and reinforces the need for victims to have access to information and advice about their rights and their status.
proposals

41. Victims of trafficking should be given access to legal information and advice about applications for protection visas where they have legitimate fears of persecution or intimidation; they should be assisted by interpreters.

³⁴ Report to HRC, para 41

³⁵ The interim regulation went into effect on March 4, 2002. Five thousand T visas will be available annually. See 67 Fed. Reg. 4783 (January 31, 2002).

³⁶ Response to Questions, referred to above.

³⁷ The *Weekend Australian* reported, 6-7 September 2003 that a criminal justice visa granted to "Wing", who alerted police to a trafficking racket, had been withdrawn as the investigation of offences had come to nothing. It was said to be the first such visa.

42. Consideration should be given to establishing a particular procedure under which victims of trafficking could apply for a class of visa which would enable them to stay in this country pending the prosecution of criminal or civil action, or where there are humanitarian or compassionate reasons. Data should be collected and published on the number of criminal justice visas, protection, bridging or other visas which have been given to victims of trafficking.

43. The above proposal should be implemented together with a strong law enforcement policy against traffickers. As there may be consequences for the victim's family, who may be subjected to threats or intimidation, provision should be made to monitor the situation of the family of a victim who is permitted to stay in Australia to assist in the prosecution of trafficking offences.

Support services and role of NGOs

44. Under article 6 (3) etc of the Protocol, States are to consider implementing measures of support and rehabilitation of the victims, including housing, counselling, medical services, employment, education and training. Age, gender and special needs are to be considered.³⁸ States should "endeavour" to provide for the physical safety of victims.³⁹ These provisions recognise that victims of sex trafficking have often been traumatised, and that they could be at risk if returned home. They are not readily able to function effectively in the unfamiliar environment of the receiving country, as they lack education and language skills. They need considerable support to enable them to achieve a level of independence and security.

45. EU policy calls for support services, including safe reception and rehabilitation centres to protect the victims of sex trafficking against their exploiters, confidential medical, social and psychological care and legal assistance. It recognises the need for further support, in terms of education, job training and repatriation to the home countries of the victims. Victims who are residing illegally in the Netherlands and who report a trafficking crime are eligible for medical and legal assistance. They may also be eligible for a residence permit.

46. In Israel, victims of trafficking who choose to testify are housed in hotels or hostels, at the expense of the police, under police protection. As a matter of policy, the Israeli police does not prosecute these women for crimes relating to their illegal entry into Israel. An inter-ministerial committee held hearings on the issue and recommended – the founding of a shelter for victims, financing legal representation for the victims, running awareness campaigns in order to alert potential victims etc.

47. Under US law,⁴⁰ victims of severe forms of trafficking are eligible for federal assistance on the same basis as refugees, if they are under 18 or (in certain circumstances) have been certified as: willing to assist in investigation and prosecution of offences. Those falling within the established guidelines are entitled to benefits, regardless of their immigration status.

48. The need to involve non-governmental organisations in supporting victims and combating trafficking is recognised in the Protocol. It calls on States to co-operate with NGOs in providing support services to victims, and in establishing preventive programs.⁴¹

³⁸ art 6.4.

³⁹ art 6.5.

⁴⁰ Trafficking Victims Protection Act of 2000, s 107 (b).

⁴¹ Protocol art 6.3, 9 (3).

49. The EU calls for support for NGOs which have demonstrated the ability to devise innovative ways of reaching and supporting victims of sexual exploitation. In the Netherlands, the Ministry of Health, Welfare and Sport subsidises the Hague-based Organization against Trafficking in Women. This organization provides women who have been victims of this crime with help, shelter and counselling. In the United States, qualified victims of severe trafficking, who hold a T visa must be referred to an NGO for advice, and are permitted to undertake employment.⁴² Grants can be made to community organisations to provide services and support to victims.⁴³

50. The Special Rapporteur on Violence Against Women has also recognised that a partnership between Government and NGOs working in this field is essential to deal effectively with the problem of trafficking in the South Asian region. The Report recommends that governments should give extensive support to NGOs working in this field, especially those working with the victims of trafficking.⁴⁴ NGOs could, for example, manage accommodation for victims of trafficking, with government monitoring and supervision.

51. The Australian Minister for Immigration has said that support services are available to all unlawful non-citizens in detention, through Government and charitable organisations. He stated that DIMIA makes grants under the Community Settlement Services Scheme and through core funding of Migrant Resource Centres and Migrant Service Agencies. The Minister has said that DIMIA is reviewing its operational methods and its training requirements, to ensure that the obligations under the Protocol are understood.

52. The support services mentioned by the Minister appear to be aimed mainly at general re-settlement issues, rather than the particular needs of women who are victims of trafficking. There appear to be no programs designed specifically for their support.

53. In addition to protection and an opportunity to remain in this country, whether or not they are able to assist in the prosecution of traffickers, victims of trafficking need appropriately designed support services, so that they can be placed in a non-threatening environment and informed of their rights and of the options which are available to them in terms of pursuing criminal or civil remedies. They should have access to advice and counselling before deciding what action to take and before making important decisions about co-operating with police or other authorities. Their needs include safe accommodation, income support through social security, education, including English language, access to health services, including detox and rehab counselling if they are addicted to opiates. Income is important to ensure they are not forced to return to prostitution before being able to pursue other options. The availability of such support may encourage them to report offences under the legislation.

54. The government should encourage and support NGOs who are working in the field and can provide accommodation and other backup and support services for the victims of trafficking, such as counselling, education and interpreting services. There is a need for a sensitive, co-ordinated approach by government to the provision of these services.

proposals

⁴² US s 107: (c)

⁴³ s 107 (2).

⁴⁴ SR 158, 159.

55. The Australian government should involve NGOs in providing support for victims of trafficking in Australia and in developing preventive programs here and overseas. The gap in support services for victims of trafficking should be filled, inter alia,

by establishing a recognised status for such victims,

by providing or adapting services to their particular needs,

by ensuring appropriate income support, access to education and health services, and

by supporting NGOs who are already working in this field and who are in a position to provide assistance to the victims of trafficking, including safe accommodation, advice on legal rights, counselling.

The Australian government should ensure that advice and counselling are made available to women before they decide whether to co-operate with the police in prosecuting offences. This should be in their own language. Interpreting services should be available for any dealings with the authorities.

compensation of victims

56. Under the Protocol, States are to ensure that domestic laws offer victims the possibility of obtaining compensation for damage they have suffered as a result of being victims of trafficking.⁴⁵

57. No particular provision is made under Australian law for victims to claim compensation. There may be a legal right to claim victim compensation in some cases, or other remedies, but any such remedy would be difficult to access unless the victim was permitted to stay in Australia, was eligible for legal aid, and had access to employment or other sources of support during the period that the proceedings were pending.

58. The right of victims of trafficking to claim compensation or other legal remedy against the traffickers should be clarified in law, and measures should be implemented to enable women to access such remedies. In particular, victims of trafficking in Australia should be entitled to counselling and advice about their right to claim compensation, and should be eligible for legal aid and to support during the period that the proceedings are pending. {Being permitted to stay in Australia is also a necessary element in this}.

facilitating voluntary return

59. The Protocol provides that the State of nationality or permanent residence of the victim should facilitate the return of that victim without unreasonable delay; any such return shall have regard to the safety of the victim, the status of any proceedings, and shall preferably be voluntary.⁴⁶ The Protocol provides for the verification of status, and the issuing of travel documents, etc, without prejudice to any rights victims have in receiving State.⁴⁷

60. The US Act, s 107, recognises the role of non governmental organizations in regard to resettlement and reintegration of victims in their countries of origin.

⁴⁵ Art 6.6. SIM made a proposal in 1995 that persons trafficked should have access to judicial remedies; and be able to institute civil proceedings for compensation against the traffickers (SIM, p 172).

⁴⁶ Article 7 (1) (2).

⁴⁷ Article 7 (3-5).

61. No information is available on what steps are taken by Australia and countries of origin to ensure that return is voluntary, and that the safety of the victim is assured. The Report of the UN Special Rapporteur indicates also that many women who had been trafficked do not want to return home because of the stigma attached to them. It is likely that some may fear retribution from the traffickers for the reasons outlined earlier.

proposal

62. Australia should establish bilateral agreements with countries of origin to ensure that return is voluntary, and that the safety of the victim is assured. The Australian Government should be asked to report on how it ensures that return is voluntary, and on the arrangements it has entered into with the States of nationality to ensure the safety of returning victims and their families. The Australian government should ensure that appropriate travel documents are provided to victims. The implementation of these arrangements should also be the subject of report.

international cooperation in prevention and penal measures

63. There is wide recognition of the need for international co-operation to deal with the problem of sex trafficking. This is expressly mentioned in the Protocol.⁴⁸ The Report of the Special Rapporteur on Violence Against Women called on countries in the Asian region to collect comprehensive data, and to establish an inter-governmental task force to plan and implement a strategy.⁴⁹ The EU has recognised the need to co-operate with the States of origin to prevent the abuse of trafficking, and to provide information to potential victims.

64. The US Trafficking Victims Protection Act recognises the need for “concerted and vigorous action by countries of origin, transit or destination, and by international organizations”.⁵⁰ The Act requires the Department of State to report on the issue of trafficking in its annual report on human rights practices. In addition, the report on foreign assistance must, in respect of each country, assess the efforts made by that country to combat trafficking, and whether the country is itself engaged in the practice.⁵¹

65. The US legislation requires the President to take international initiatives to enhance economic opportunities for potential victims, including training, micro credit, etc; to promote women’s participation in decision making; education programs for girls, and for victims; grants to NGOs to advance interests of women. There is also a requirement to promote public awareness and to consult with community organisations.⁵² The role of non governmental organizations with respect to the establishment and conduct of preventive programs is recognised in the same provision.

66. Australia has allocated funds to anti-trafficking programs in the South East Asian region. In 2001-2002, AusAID had four projects in the Mekong region to prevent trafficking in women and children. These projects include training law

⁴⁸ Protocol, article 9.

⁴⁹ Recommendation 151, 154; see also SIM p 172: There is a need for developing joint policies with countries of origin to support trafficked persons.

⁵⁰ s 102 (21), also (24)

⁵¹ TVPAct s 104.

⁵² S 106.

enforcement officers; and improved recovery and reintegration of victims. On 19 June 2003, the Minister for Foreign Affairs announced that \$8.5 million was allocated to the Asia Regional Cooperation to Prevent People Trafficking project to help combat the trafficking of women and children in South East Asia. The project, delivered by AusAID in co-operation with ASEAN partners, is under way in Cambodia, Laos, Burma and Thailand. The Minister estimated that up to 225,000 women and children are being trafficked annually for sexual and labour exploitation in the region. He said that Australia and partner governments were developing cross-country prevention and prosecution mechanisms to deal with people traffickers.

comment and proposal

67. These programs of prevention are welcome, but they do not address the problems of women who are trafficked into Australia from those or other countries or with the sanctions applied here against traffickers. Australia should monitor carefully the programs it supports in those countries where sex trafficking originates in order to ensure that any aid it gives to such countries is effectively accounted for. It should also support global measures taken by the UN and its agencies in this area to combat trafficking and to eliminate its causes.

other Protocol provisions

68. Other provisions of the Protocol not considered in detail here include: Article 10: information exchange and training; Article 11: border measures; Article 12: Security and control of documents; and Article 13: Legitimacy and validity of documents.

Assessing Australian policies and programs

69. Under Article 9 (2) of the Protocol, 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. It is implicit in this provision that there should be some means of assessing the effectiveness of the programs adopted.

70. The Report of the Special Rapporteur calls for each country in the region to have a national plan of action to combat trafficking.⁵³ It recommends that a nodal agency be entrusted with implementing the plan, to “give the world a sense that the countries take this issue seriously and that there is political will to eradicate trafficking.” The Special Rapporteur also recommended that there should be a monitoring mechanism involving Governments, NGOs and international agencies. The US has established the inter agency Task Force to Monitor and Combat Trafficking. Its members are appointed by the President and include the Secretary of State and Secretaries of Labor and Health and Human Services and the Attorney-General.⁵⁴

71. Until recently, Australian law and policy in this area has focussed on the investigation of immigration offences. Women found working in the sex industry without proper immigration status have been detained for deportation. While there is now a legal framework under which they can be interviewed for evidence of coercion

⁵³ Paras 155, 156.

⁵⁴ S 105. It is supported by an Office established in the Department of State.

or deception which could be passed on to the police authorities,⁵⁵ it is not clear how widely this is done, or how effective it is. Until recently there were no prosecutions under the Sexual Servitude legislation. There is no official report on the extent of the problem or on the government action which has been taken in this area which would enable any assessment to be made of the effectiveness of the legislation or of the programs and policies mentioned in ministerial and departmental statements.

72. A National Action plan for Australia was announced in June 2003. Under this plan, the Australian Crimes Commission is gathering intelligence on the issue of trafficking of women, so that it can provide an assessment to the Australian Crimes Commission Board and a recommendation for further action. The States and Territories have been conducting their own studies to determine the extent of the problem in their own jurisdictions.

73. In view of the size of the problem and the relatively few enforcement actions which have been taken, there appears to be a need for an on-going review mechanism to make sure that the law is being enforced, that investigations continue and that the emphasis switches to shutting down the illegal operations of the traffickers, while protecting victims.

proposals

74. It is important to ensure that the activities of the relevant State and Federal agencies are effectively co-ordinated by an inter-agency unit, made up of specially trained officers, and with the ability to share data bases. An integrated approach is needed to the problem of sex trafficking which may have connections with other national problems, such as drug trafficking, money laundering etc. Such a unit should be able to make more effective global and national action against trafficking of women and children for sexual servitude or exploitation.

75. Australian governments should also establish a permanent monitoring mechanism, involving key Commonwealth and state agencies, to make sure that the law is being enforced, that investigations continue and that greater emphasis is given to protecting and supporting victims, as well as shutting down the illegal operations of the traffickers. There should be an annual report on action taken in respect of Australia's obligations under the Protocol and in implementation of its laws and policies on sex trafficking.

Summary of proposals

76. The proposals made in the text are summarised here:

deceptive recruiting

(i) The Commonwealth law should follow more closely the Netherlands model, in that serious deception as to the conditions in which a prostitute would be required to work in the sex industry should give rise to an offence and that the existence of an exploitive situation should be evidence of deception or inducement. (para 27)

confidentiality and protection of privacy

(ii) Commonwealth legislation should ensure the effective protection of the privacy of victims of trafficking and the confidentiality of the information they provide to the authorities. To make this protection effective, victims should be given access to legal advice from a women's legal centre, or from an NGO with knowledge

⁵⁵ The AFP is responsible for 1999 Act; DIMIA has a Memorandum of Understanding (MoU) with the NSW Police in relation to criminal investigations.

and experience in the area before deciding on whether to co-operate in prosecuting alleged offenders. Interpreters should be provided, preferably female. (para 33).

allowing victims to remain in Australia

(iii) Victims of trafficking should be given access to legal information and advice about applications for protection visas where they have legitimate fears of persecution or intimidation; they should be assisted by interpreters. (para 41)

(iv) Consideration should be given to establishing a particular procedure which would enable a victim of trafficking to initiate an application for a class of visa which would enable the victim to stay in this country pending the prosecution of criminal or civil action, or where there are humanitarian or compassionate reasons. (para 42)

(v) Data should be collected and published on the number of criminal justice visas, protection, bridging or other visas which have been given to victims of trafficking. (para 37)

(vi) Provision should be made to monitor the situation of the family of a victim who is permitted to stay in Australia to assist in the prosecution of trafficking offences. (para 43)

support services and role of NGOs

(vii) The Australian government should involve NGOs in providing support for victims of trafficking in Australia and in developing preventive programs here and overseas. The gap in support services for victims of trafficking should be filled, inter alia,

by establishing a recognised status for such victims,

by providing or adapting services to their particular needs,

by ensuring appropriate income support, access to education and health services, and

by supporting NGOs who are already working in this field and who are in a position to provide assistance to the victims of trafficking, including safe accommodation, advice on legal rights, counselling.

(para 55)

(viii) The Australian government should ensure that advice and counselling are made available to women before they decide whether to co-operate with the police in prosecuting offences. This should be in their own language. (para 55)

compensation of victims

(ix) The right of victims of trafficking to claim compensation or other legal remedy against the traffickers should be clarified in law, and measures should be implemented to enable women to access such remedies. In particular, victims of trafficking in Australia should be entitled to counselling and advice about their right to claim compensation, and should be eligible for legal aid and to support during the period that the proceedings are pending. Being permitted to stay in Australia is also a necessary element in this. (para 58)

facilitating voluntary return

(x) Australia should establish bilateral agreements with countries of origin to ensure that return is voluntary, and that the safety of the victim is assured. The Australian Government should be asked to report on how it ensures that return is voluntary, and on the arrangements it has entered into with the States of nationality to ensure the safety of returning victims and their families. The Australian government

should ensure that appropriate travel documents are provided to victims. The implementation of these arrangements should also be the subject of report. (para 62)

international co-operation

(xi) Australia should monitor carefully the programs it supports in those countries where sex trafficking originates in order to ensure that any aid it gives to such countries is effectively accounted for. It should also support global measures taken by the UN and its agencies in this area to combat trafficking and to eliminate its causes. (para 67)

national monitoring agency

(xii) Australian governments should establish an inter-agency unit, made up of specially trained officers, and with the ability to share data bases to strengthen the fight against trafficking of women and children for sexual servitude or exploitation. (para 74)

(xiii). Australian governments should establish a permanent review mechanism, involving key Commonwealth and state agencies, to make sure that the law is being enforced, that investigations continue and that greater emphasis is given to protecting and supporting victims, as well as shutting down the illegal operations of the traffickers. (para 75)

(xiv) There should be an annual report on action taken in respect of Australia's obligations under the Protocol and in implementation of its laws and policies on sex trafficking. (para 75)

END

Trafficking References

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