

Non-consensual Submission in Trafficking in Women: Legal Implications in the Philippine Context

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This Note starts with a history of trafficking of persons, focusing on the UN Convention Against Transnational Organized Crime and its supplementary protocol, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Protocol), and their binding weight in the international community. In the Philippines, the Anti-Trafficking of Persons Act of 2003 or Republic Act (R.A.) No. 9208 is the law on trafficking in persons and adopts the definition of trafficking in the Protocol — that trafficking may happen regardless of the presence of the victim's consent.

The Author then asks the following questions: a) if consent may be validly given by a trafficked Filipina in such a situation; b) if submission is equivalent to consent, would such consent still be determinative of the crime; c) would such consent be considered as an exempting or mitigating circumstance; and d) would the trafficked woman herself be criminally liable for giving such consent.

The different factors that give rise to trafficking are then discussed, such as the lack of economic opportunities, marriage, gender socialization and patriarchal values, and globalization, together with an outline of how traffickers operate and a profile of the victims of trafficking. Legal developments, both locally and internationally, on the problem of trafficking in women are also summarized in this Note. Next, the Author delves into an analysis of the formation of the protocol's definition of trafficking in persons, focusing on the relevance of consent and citing divergent views on the matter. She also looks at consent from the point of view of Philippine Criminal Law, Civil Law, and jurisprudence. In her analysis of consent in trafficking in women, she proposes that what is given by trafficked women is non-consensual submission and such cannot be considered consent, that there is a need to refocus the problem on the offense itself and that consent should be ultimately irrelevant in trafficking. She also presents an analysis of the liability of the parties (i.e., trafficked women and traffickers) in cases where the issue of consent is material and where it is not.

In conclusion, proposed amendments to R.A. No. 9208 are enumerated. Further recommendations are also given on an amended definition of trafficking and penalties and liabilities of the trafficker in situations involving non-consensual submission.