

Responsive Law Enforcement Approach to Combating Child Trafficking

Nina Patricia Sison-Arroyo*

I. INTRODUCTION.....	837
II. OVERVIEW OF THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003	840
A. <i>Definition of Trafficking in Persons</i>	
B. <i>The Punishable Acts</i>	
C. <i>Human Rights Provisions</i>	
III. RELATED DOMESTIC LAWS	851
IV. RECOMMENDATIONS FOR A RESPONSIVE LAW ENFORCEMENT APPROACH TO COMBATING CHILD TRAFFICKING	852
A. <i>Investigation and Identification</i>	
B. <i>Arrest and Rescue</i>	
C. <i>Prosecution and Protection</i>	
D. <i>Punishment and Restoration of Offenders</i>	
E. <i>Recovery, Rehabilitation, and Reintegration of Victims</i>	
V. SPECIAL LEGISLATIVE ISSUES.....	866
VI. CONCLUSION.....	868

I. INTRODUCTION

Trafficking in persons is a modern-day form of slavery, a new type of global slave trade. Perpetrators prey on the most weak among us, primarily women and children, for profit and gain. They lure victims into involuntary servitude and sexual slavery. Today we are again called by conscience to end the debasement of our fellow men and women. As in the 19th century, committed abolitionists around the world have come together in a global movement to confront this repulsive crime.

- Secretary Condoleezza Rice¹

* '97 J.D., Ateneo de Manila University School of Law. The author is the Executive Director of the International Justice Mission's (IJM) Field Office in Manila. IJM is a human rights agency that secures justice for victims of slavery, sexual exploitation, and other forms of violent oppression. She is also a member of the Board of Trustees of the Philippine Children Ministries Network. In 2006, she was awarded the Ninoy Aquino Fellowship Award for Public Service by the Embassy of the United States of America and was a grantee of the International Visitor Leadership Program in recognition of her efforts to combat trafficking in persons and bring perpetrators to account.

Cite as 52 ATENEO L.J. 837 (2008).

A U.S. government-sponsored research completed in 2006, estimated that around 800,000 people are trafficked annually across national borders. Approximately 80 percent of which are women and girls and up to 50 percent are minors. The majority of the victims are females trafficked into commercial sexual exploitation. These figures do not include the millions of men, women, and children trafficked within their own countries.²

On 29 September 2003, in recognition by the United Nations member states of the seriousness of the problem, the Convention against Transnational Organized Crime³ was entered into force. It is the main international instrument in the fight against transnational organized crime. The Convention is supplemented by three protocols, which target specific areas of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;⁴ the Protocol against the Smuggling of Migrants by Land, Sea and Air;⁵ and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.⁶

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol) is the first

-
1. Letter from Secretary Condoleezza Rice, Trafficking in Persons Report 2007, released by the Office to Monitor and Combat Trafficking in Persons on June 12, 2007, *available at* <http://www.state.gov/g/tip/rls/tiprpt/2007/82799.htm> (last accessed June 9, 2008).
 2. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report, June 12, 2007, *available at* <http://www.state.gov/g/tip/rls/tiprpt/2007/82799.htm> (last accessed on June 9, 2008) [hereinafter Trafficking in Persons Report of 2007].
 3. Convention against Transnational Organized Crime, 40 ILM 335 (2001); U.N. Doc. A/55/383 at 25 (2000); U.N. Doc. A/RES/55/25 at 4 (2001), *entered into force* Sep. 29, 2003.
 4. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, U.N. Doc. A/55/383 at 25 (2000); U.N. Doc. A/RES/55/25 at 4 (2001); 40 ILM 335 (2001), *entered into force* Dec. 25, 2003 [hereinafter Trafficking Protocol].
 5. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Crime, G.A. res. 55/25, annex III, U.N. GAOR, 55th Sess., Supp. No. 49, at 65, U.N. Doc. A/45/49 (Vol. I) (2001); 40 ILM 384 (2001), *entered into force* Jan. 28, 2004.
 6. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, U.N. Doc. A/55/255/Annex, *entered into force* July 7, 2005.

international instrument with an agreed definition on trafficking in persons.⁷ This Protocol has the following purposes:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.⁸

The internationally accepted definition of trafficking in persons is stated in article 3 (a) of the Trafficking Protocol as illustrated in the table below:⁹

ACTS OF	BY MEANS OF	FOR THE PURPOSE OF EXPLOITATION	
Recruitment	Threat or use of force or other forms of coercion	Including the exploitation of the prostitution of others	T
Transportation	Abduction	Other forms of sexual	R
Transfer			A
			F

7. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was the only international instrument dealing with trafficking and prostitution until the adoption of the Protocol.
8. Trafficking Protocol, *supra* note 4, art. 2.
9. *Id.* art. 3.

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;

(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;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) ‘Child’ shall mean any person under eighteen years of age.

Harbouring Receipt of persons	Fraud	exploitation	F
	Deception	Forced labor or services	I
	Abuse of power	Slavery or practices similar to slavery	C
	Abuse of position of vulnerability		K
	Giving or receiving of benefits to achieve the consent of a person having control of another	Servitude	I
		Removal of organs	N
		G	

The Philippines is one of 111 governments who are parties to the Trafficking Protocol.¹⁰ In compliance with its obligation under the Protocol, on 26 May 2003, it enacted its domestic law to address the issue of trafficking — Republic Act No. 9208, or the Anti-Trafficking in Persons Act of 2003.¹¹

Since it is relatively new, there is no jurisprudence yet dealing with this Act; thus, interpretation of some of its provisions remains debatable. Questions have also been raised as to how best to implement the law given the many complexities of trafficking in persons, especially when the victims are children. This Article seeks to resolve these issues in favor of the trafficked persons, especially children, to promote their human dignity, ensure their recovery, rehabilitation and reintegration, and eliminate trafficking in persons.

II. OVERVIEW OF THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003

A. Definition of Trafficking in Persons

Philippine law defines “trafficking in persons” in section 3 (a) of the Act, which is reiterated in article II, section 5 (c) of its Implementing Rules and Regulations (IRR), as follows:

Sec. 3. Definition of Terms. — As used in this Act:

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

10. See, Trafficking Protocol, *supra* note 4.

11. An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes [Anti-Trafficking in Persons Act of 2003], Republic Act No. 9208 (2003).

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 be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding paragraph.¹²

An understanding of the key concepts in the definition of “trafficking in persons” under the Act, which is essentially an adaptation of the Protocol definition, will help create a more robust approach to combat trafficking.

First, the definition enumerates the punishable acts. The definition punishes the acts of recruitment, transportation, transfer, harboring, or receipt of persons. This enumeration, however, is not exclusive because other sections of the Act punish certain acts not included in the definition. Section 4 (b) punishes the act of introducing or matching for marriage; section 4 (c) the act of offering or contracting marriage; section 4 (d) the act of organizing tours and travel plans; section 4 (e) the act of maintaining or hiring; and section 4 (f) the act of adopting or facilitating adoption for varied forms of exploitation.

Another key aspect of the definition is that consent or knowledge is irrelevant in determining whether there is trafficking. Section 3 (a), paragraph 1, of the Act states that trafficking may occur “with or without the victim’s consent or knowledge.”¹³ This is reinforced by section 17 of the Act which states that trafficked persons “shall be recognized as victims of the act or acts of trafficking” and the “consent of a trafficked person to the intended exploitation set forth in the Act shall be irrelevant.”¹⁴ In cases where the trafficked person is an adult, however, while consent or knowledge is irrelevant, it is necessary to show that there was 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. This interpretation is consistent with article 3 (b) of the U.N. Protocol, which states that the consent of a victim of trafficking in persons to the intended exploitation becomes irrelevant where any of the means are present.

12. Anti-Trafficking in Persons Act of 2003, § 3 (a).

13. *Id.*

14. *Id.* § 17.

When the victim is a child, the child's consent or knowledge is irrelevant, regardless of the means employed. The Act defines a child as a "person below 18 years of age or one who is over 18 but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition."¹⁵ Thus, even without employing force, threat, deception, or other similar means to gain control over a child, the recruitment, transportation, transfer, harboring, receipt, maintaining, or hiring of a child for the purpose of exploitation shall be considered as trafficking in persons.¹⁶

An equally important aspect is that the purpose of trafficking is exploitation of persons. Exploitation may be in the form of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude, or debt bondage, as enumerated in section 3 (a) of the Act. The definition, however, states that it is not limited to only those purposes. Other sections of the Act punish trafficking for purposes in addition to those mentioned in the definition. Section 4 (g) refers to trafficking for the removal or sale of organs and section 4 (h) to trafficking of children for armed activities.

Additionally, it should also be emphasized that while trafficking may occur within or across national borders, movement is not an element of trafficking. It is a common misconception that trafficking in persons involves the movement or physical transfer of a person from one place to another. Neither the Act nor the Protocol requires that movement takes place. Movement may be part of one form of trafficking where a person is transferred or transported for the purpose of exploitation, but not all forms of trafficking require the movement of a person from one country to another or from one location to another within national borders. What is essential is the use of force, threat, coercion, or similar means for the purpose of exploiting others.

B. The Punishable Acts

Section 3 (a) is not to be used by itself as a basis for prosecuting a criminal case for violation of the Act. On its own, it merely serves as a conceptual framework of what "trafficking in persons" is. In order to support a criminal case, it is necessary to prove any of the punishable acts, which are "Acts of Trafficking,"¹⁷ "Acts that Promote Trafficking,"¹⁸ "Qualified Trafficking,"¹⁹ violation of "Confidentiality,"²⁰ or "Use of Trafficked Persons."²¹

15. Anti-Trafficking in Persons Act of 2003, § 3 (b); Rules and Regulations Implementing Republic Act No. 9208, otherwise known as the Anti-Trafficking Persons Act of 2003 [IRR], § 5 (d) (2003).

16. *Id.* § 3 (a), ¶ 2.

17. *Id.* §§ 3 (a) & 4.

Section 4 enumerates eight modes of committing “Acts of Trafficking in Person.” These modes are as follows:

- (a) Sex trafficking or trafficking for forced labor through recruiting, transporting, transferring, harboring, providing, and receiving of persons;
- (b) Sex trafficking or trafficking for forced labor by introducing or matching for marriage;
- (c) Sex trafficking or trafficking for forced labor by offering or contracting marriage;
- (d) Sex trafficking through tours and travel plans;
- (e) Trafficking by maintaining or hiring for prostitution or pornography;
- (f) Sex trafficking or trafficking for forced labor through adoption;
- (g) Trafficking for the removal or sale of organs; and
- (h) Trafficking of children for armed activities.²²

The above enumeration may be classified into four broad categories: (1) sex trafficking; (2) trafficking for forced labor; (3) trafficking for the removal or sale of organs; and (4) trafficking of children for armed activities

Sex trafficking may be in the form of sexual exploitation, prostitution, or pornography.

Sexual exploitation refers to “participations by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through taking advantage of a victim’s vulnerability.”²³

Prostitution refers to “any act, transaction, scheme, or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit, or any other consideration.”²⁴ The definition of prostitution under the Act should not be confused with the definition of prostitution under article 202 of the Revised Penal Code.²⁵ Article 202

18. *Id.* § 5.

19. *Id.* § 6.

20. *Id.* § 7.

21. Anti-Trafficking in Persons Act of 2003, § 11.

22. *Id.* § 4 (a) – (h).

23. IRR, art. 2, § 5 (h).

24. Anti-Trafficking in Persons Act of 2003, § 3 (c); IRR, art. II, § 5 (e).

25. An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [The Anti-Rape Law of 1997], Republic Act No. 8353 (1997).

defines prostitution as “women, who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.”²⁶ If the case being prosecuted or investigated is a trafficking case, the definition under the Act should be used and article 202 should not be applied.

Pornography refers to “any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person primarily for sexual purposes.”²⁷

Forced labor and slavery have the same definition under the Act, as both refer to the “extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage, or deception.”²⁸

Debt bondage is a form of forced labor and slavery. It refers to the:

pledging by the debtor of his/her personal services or labor or those of a person under his or her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the values of the services as reasonably assessed is not applied toward the liquidation of the debt.²⁹

Involuntary servitude is not defined under the Act. However, section 5 (k) of the IRR states that the term refers to a

condition of enforced, compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or other forms of abuse or physical restraint, or the abuse or threatened abuse of the legal process.³⁰

The focus of both sections 4 (b) and (c) is marriage. The purpose of the punishable acts under both sections is acquiring, buying, offering, selling, or trading a person to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude, or debt bondage. Section 4 (b) punishes the act of introducing or matching any person for marriage or a woman to a foreign national for marriage, referring to the law on mail-order brides.³¹ Section 4 (c), on the other hand, punishes the act of offering or

26. The Anti-Rape Law of 1997, art. 202.

27. Anti-Trafficking in Persons Act of 2003, § 3 (h); IRR, art. II, § 5 (j).

28. Anti-Trafficking in Persons Act of 2003, § 3 (d); IRR, art. II, § 5 (f).

29. Anti-Trafficking in Persons Act of 2003, § 3 (g); IRR, art. II, § 5 (i).

30. IRR, art. II, § 5 (k).

31. An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail Order Basis and other Similar

contracting marriage. The offender under section 4 (b) is a person who introduces or matches another person to someone else, or is a person who is not one of the contracting parties to a marriage. The offender under section 4 (c) is the one who offers to be married or who actually marries another, for the purpose of exploiting the other. He or she is or may be a party to the marriage. Section 4 (b) involves a consideration for the act, which may be in the form of money, profit, material, economic, or other consideration. Section 4 (c) punishes the act even if there is no consideration for offering or contracting marriage.³²

Section 5 enumerates seven modes of committing “Acts that Promote Trafficking in Persons.” These are activities that are not considered “Acts of Trafficking” but such activities help proliferate and facilitate trafficking in persons.

- (1) Lease, sublease, use, or allow to be used a house, building, or establishment;
- (2) Production, printing, issuance, or distribution of unissued, tampered, or fake documents;
- (3) Promoting trafficking through propaganda material;
- (4) Misrepresentation or fraud in facilitating the acquisition of clearances and exit documents;
- (5) Facilitating the exit and entry of persons with unissued, tampered, or fraudulent travel documents;
- (6) Preventing trafficked persons from leaving the country or seeking redress;
- (7) Benefiting from or making use of persons held under involuntary servitude or forced labor.³³

“Qualified Trafficking” is not a separate or independent offense from “Acts of Trafficking in Persons.” Section 6 does not provide an enumeration of the elements of “Qualified Trafficking.” What it does provide are circumstances under which “Acts of Trafficking,” punishable under section 4, become “Qualified Trafficking.”³⁴ If any of the circumstances enumerated

Practices, Including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers and other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefore, Republic Act No. 6955 (1990).

32. See, Anti-Trafficking in Persons Act of 2003, § 4 (b) & (c).

33. *Id.* § 5 (a) – (g).

34. See generally, Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 244 and House Bill No. 4432, 24-34 (May 7, 2003). These bills are the precursors of the Anti-Trafficking in Persons Act of 2003. [hereinafter Bicameral Conference Committee on the Disagreeing Provisions].

under section 6 are attendant to the commission of “Acts of Trafficking,” the latter becomes qualified and its penalty is increased from 20 years imprisonment and a fine of not less than ₱ 1,000,000.00 but not more than ₱ 2,000,000.00 to life imprisonment and a fine of not less than ₱ 2,000,000.00 but not more than ₱ 5,000,000.00.³⁵

Section 6 provides as follows:

Sec. 6. *Qualified Trafficking in Persons.* – The following are considered as qualified trafficking:

When the trafficked person is a child;

- (a) When the adoption is effected through Republic Act No. 8043, otherwise known as the “Inter-Country Adoption Act of 1995” and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (b) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three or more persons, individually or as a group;
- (c) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
- (d) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- (e) When the offender is a member of the military or law enforcement agencies; and
- (f) When the reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

“Use of Trafficked Persons” is committed by any person who buys or engages the services of trafficked persons for prostitution.³⁶ It refers only to persons trafficked for prostitution and not other forms of exploitation.

“Confidentiality” in section 6 of the Act provides that:

[a]t any stage of the investigation, prosecution and trial of an offense under the Act, law enforcement officers, prosecutors, judges, court personnel, and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the trafficked person and the accused. ... [L]aw enforcement

35. Anti-Trafficking in Persons Act of 2003, § 10 (a) & (c).

36. *Id.* § 11.

officers, prosecutors, and judges to whom the complaint has been referred may order a closed-door investigation, prosecution, or trial. The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public.

In cases when prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, and reporter or columnist in the case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or information technology to cause publicity of any case of trafficking in persons.³⁷

Does the prohibition on public disclosure of the name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information, apply only when there is an order for a closed-door investigation, prosecution, or trial? The prohibition does not apply only when there is an order for a closed-door investigation, prosecution or trial. Even without an order for closed-door proceedings, the prohibition applies in recognition of the right to privacy of the trafficked person and the accused. The deliberations of the Bicameral Conference Committee on the Disagreeing Provisions of the proposed bills on trafficking in persons are instructive:

REP. ANTONINO-CUSTODIO: No, but I think the intention of the confidentiality clause, at least, in our version is that, whether it is close or not, you are not allowed to publish the name and the circumstances of the trafficked person so that his or her identity can be exposed to the public. It is immaterial whether the judge has ordered a closed-door investigation or trial or not. No, it cannot. Those circumstances...

REP. ANGARA-CASTILLO: ... Those circumstances cannot be divulged even if there is no closed-door investigation.

REP. LAGMAN-LUISTRO: *Kung ang kaso* trafficking, automatic close?

REP. ANGARA-CASTILLO: No, no. Sometimes *hindi, eh*.

REP. ANDAYA-ILUSTRE: 'Yong name is protected.

REP. ANGARA-CASTILLO: Yeah. Otherwise the confidentiality will have no meaning at all.

SEN. JAWORSKI: You know, I just don't know how you can do that with an open court hearing. Because everybody will be there. It's open. So, somebody can just sneak out and spread the word around. So, that's the same.

...

37. Anti-Trafficking in Persons Act of 2003, § 6.

SEN. JAWORSKI: Well I think, we have seen it happen many times. There will be a John Doe or an alias but the whole story will be there.

REP. ANGARA-CASTILLO: Yeah. But then if you have this kind of provision and you penalize the violation, then it might prevent these people from doing that.³⁸

The penalties³⁹ for the offenses under the Act are tabulated below:

PENALTIES UNDER ANTI-TRAFFICKING IN PERSONS ACT OF 2003		
UNLAWFUL ACTS	IMPRISONMENT	FINE / OTHERS
QUALIFIED TRAFFICKING	Life Imprisonment	Not less than Two Million Pesos but not more than Five Million Pesos
ACTS OF TRAFFICKING	20 years	Not less than One Million Pesos but not more than Two Million Pesos
ACTS THAT PROMOTE TRAFFICKING	15 years	not less than Five Hundred Thousand Pesos but not more than One Million Pesos
VIOLATIONS ON CONFIDENTIALITY	6 years	Not less than ₱ 500,000.00 but not more than One Million Pesos
USE OF TRAFFICKED PERSONS		
FIRST OFFENSE	None	Six months community service and a fine of ₱ 50,000.00
SECOND & SUBSEQUENT OFFENSE	1 year	Fine of ₱ 100,000.00

In addition to imprisonment and fine, the Act also provides for the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act.⁴⁰ Additionally, the registration with the Securities and Exchange Commission and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner, or

38. Bicameral Conference Committee on the Disagreeing Provisions, *supra* note 34, 55-60.

39. Anti-Trafficking in Persons Act of 2003, § 10.

40. *Id.* § 14, ¶ 1.

manager thereof shall not be allowed to operate similar establishments in a different name.⁴¹ If the offender is a foreigner, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country.⁴²

Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individual or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under the Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His or her retirement and other benefits shall likewise be forfeited.⁴³

If the trafficker is the adoptive parent of the trafficked person, conviction by final judgment of the adopter for any offense under the Act shall result in the immediate rescission of the decree of adoption.⁴⁴

C. Human Rights Provisions

The Act leans towards the human rights approach to law enforcement by focusing not only on the prosecution of offenders but also on the provision of protection and assistance to victims to ensure their recovery, rehabilitation, and reintegration into the mainstream of society.⁴⁵ The following are the salient features of the Act that demonstrate this approach:

- (1) *Legal Protection to Trafficked Persons.* The Act provides that trafficked persons are not criminals. They shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in the Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation shall be irrelevant.⁴⁶ For instance, if a person is trafficked for prostitution, the trafficked person cannot be arrested, prosecuted, or penalized for vagrancy under article 202 of the Revised Penal Code, because prostitution is a crime directly related to the trafficking. Likewise, if a

41. *Id.* § 10 (f).

42. *Id.* § 10 (g).

43. *Id.* § 10 (h).

44. *Id.* § 10 (i).

45. Anti-Trafficking in Persons Act of 2003, § 2.

46. *Id.* § 17.

trafficked person presents a fake passport to the immigration officer in obedience to the order of the trafficker, the trafficked person shall not be arrested, prosecuted, or penalized for violation of the Passport Act.⁴⁷

- (2) *Confidentiality*. The provision on confidentiality protects the right to privacy of the victims.⁴⁸
- (3) *Preferential Entitlement under the Witness Protection Program*. Any trafficked person shall be entitled to the witness protection program provided by Republic Act No. 6981, or the Witness Protection, Security, and Benefit Act.⁴⁹
- (4) *Mandatory Services to Trafficked Persons*. To ensure recovery, rehabilitation, and reintegration into the mainstream of society, concerned government agencies shall make available to trafficked persons emergency shelter or appropriate housing; counseling; free legal services, which shall include information about the victims' rights and the procedure for filing complaints, claiming compensation, and such other legal remedies available to them, in a language understood by the trafficked person; medical or psychological services; livelihood and skills training; and educational assistance.⁵⁰
- (5) *Legal Assistance*. Trafficked persons shall be considered under the category "Overseas Filipino in Distress" and may avail of the legal assistance created by Republic Act No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995, subject to the guidelines as provided by law.⁵¹
- (6) *Overseas Filipino Resource Centers*. The services available to overseas Filipinos as provided for by Republic Act No. 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.⁵²
- (7) *Repatriation of Trafficked Persons*. The Department of Foreign Affairs, in coordination with the Department of Labor and Employment and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented. If, however, the repatriation of the

47. Philippine Passport Act of 1996, Republic Act No. 8239 (1996).

48. Anti-Trafficking in Persons Act of 2003, § 7. This section also protects the right to privacy of the accused consistent with the constitutional right of the accused to be presumed innocent before proven guilty.

49. *Id.* § 18.

50. *Id.* § 23.

51. *Id.* § 24 (a).

52. *Id.* § 24 (b).

trafficked persons shall expose the victims to greater risks, the Department of Foreign Affairs shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.⁵³

- (8) *Assistance to foreign nationals.* Trafficked persons in the Philippines who are nationals of a foreign country shall also be entitled to appropriate protection, assistance and services available to trafficked persons under the Act. They shall be permitted continued presence in the Philippines for a length of time prescribed by the Inter-Agency Council against Trafficking as may be necessary to effect the prosecution of offenders.

III. RELATED DOMESTIC LAWS

Prior to the enactment of Republic Act No. 9208, the Philippines already had laws that punish acts that are related or similar to trafficking in persons. The Act distinguishes itself from previous laws by defining trafficking in persons, emphasizing on the means used and the exploitative purposes of the punishable acts, imposing a stiff penalty of up to life imprisonment, and introducing a human rights approach to law enforcement.

An understanding of the related laws vis-à-vis the Act will place one in a better position to look beneath the surface⁵⁴ when one comes across reports of crimes, such as rape, physical injuries, or kidnapping, or even civil complaints, such as collection of a sum of money. On the surface, the report or complaint may appear to be a simple criminal case or civil matter, but a thorough inquiry may reveal that it actually constitutes the more serious offense of trafficking in persons.

Among the related laws are several provisions of the Revised Penal Code, the Special Protection of Children against Abuse, Exploitation and Discrimination Act,⁵⁵ as amended by the Act against the Worst Forms of Child Labor,⁵⁶ the Mail Order Bride Law,⁵⁷ and the law on illegal

53. *Id.* § 25.

54. “Look Beneath the Surface” is the slogan used by The Campaign to Rescue and Restore Victims of Human Trafficking of the U.S. Department of Health and Human Services, Administration for Children and Families.

55. An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes, Republic Act No. 7610 (1992).

56. An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as Amended [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act], Republic Act No. 9231 (2003).

57. Republic Act No. 6955, *supra* note 31.

recruitment.⁵⁸ The Act did not repeal any of these laws.⁵⁹ Consequently, whenever applicable, suspected traffickers should be charged with violations of other laws in addition to the Act in order to strengthen the case and increase the chances of successful prosecution and conviction of the accused.

Among the Revised Penal Code provisions related to the Act are the articles on Obscene Publications and Indecent Shows;⁶⁰ Kidnapping and Serious Illegal Detention;⁶¹ Slight Illegal Detention⁶² Inducing a Minor to Abandon his Home;⁶³ Exploitation of Child Labor;⁶⁴ Services Rendered under Compulsion in Payment of Debt;⁶⁵ Slavery,⁶⁶ Corruption of Minors,⁶⁷ White Slave Trade;⁶⁸ Rape;⁶⁹ Acts of Lasciviousness;⁷⁰ and Vagrancy.⁷¹ The crime of trafficking in persons, being defined and punished under a special penal law, does not absorb the crimes under the Revised Penal Code nor can it be complexed with these crimes. The rule is that when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed in its maximum period,⁷² however, when two crimes are punished by different statutes there is no complex crime.⁷³

IV. RECOMMENDATIONS FOR A RESPONSIVE LAW ENFORCEMENT APPROACH TO COMBATING CHILD TRAFFICKING

Responsive law enforcement is necessary in combating child trafficking effectively. If the law is consistently implemented, traffickers are prosecuted

58. An Act to Institutes the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042 (1995)

59. Anti-Trafficking in Persons Act of 2003, § 32.

60. REVISED PENAL CODE, art. 201.

61. *Id.* art. 267.

62. *Id.* art. 268.

63. *Id.* art. 271.

64. *Id.* art. 273.

65. *Id.* art. 274.

66. REVISED PENAL CODE, art. 272.

67. *Id.* art. 340.

68. *Id.* art. 341.

69. *Id.* art. 266-A.

70. *Id.* art. 336.

71. *Id.* art. 202.

72. REVISED PENAL CODE, art. 48.

73. *People v. Araneta*, 49 Phil. 650 (1926).

and convicted swiftly, and victims are protected and assisted efficiently, it sends a clear signal that the State will hold offenders accountable and the State can be relied upon to obtain justice for the victims. People will respect the rule of law and learn to trust in the administration of justice, which will consequently help reduce the number of offenders and trafficked persons. But for law enforcement to be responsive, it should involve not only the apprehension and prosecution of traffickers but also the protection and rehabilitation of trafficked persons. The objective of the former is to hold the perpetrator accountable and to deter the perpetrator and others from committing the same crime. The aim of the latter is to restore the dignity and wholeness of the trafficked person and prevent the person from being re-victimized. The responsive law enforcement framework would require that the trafficker be first investigated, then arrested, prosecuted for his actions and be given punishment or restoration, as the case may be. As for the trafficked victims, it is but proper that they be properly identified, rescued, be given adequate protection and finally, be given the avenue for recovery, rehabilitation and reintegration. This approach veers away from the traditional law enforcement model that focuses only on the prosecution of offenders.

A. Investigation and Identification

Effective investigation of suspected cases of child trafficking leads to the identification of offenders and determination of their participation, as well as identification of the trafficked persons. Effective investigation is the foundation of effective prosecution of offenders and rescue of trafficked persons.

In order to investigate trafficking cases successfully, what is crucial is the will and tenacity of the law enforcer to investigate for the purpose of holding offenders accountable and of rescuing and protecting the trafficked persons. For most law enforcers, trafficking is only one of a hundred other crimes and offenses that they must investigate. Traditional law enforcers tend to view trafficking for prostitution as a common crime and persons trafficked for prostitution as criminals. Such a mindset is influenced, among others, by the provision in the Revised Penal Code that punishes prostitutes as vagrants.⁷⁴ The investigator should be reminded that trafficked persons, including those trafficked for prostitution, are victims, not criminals.⁷⁵

Another equally important requisite is the mastery of the elements of trafficking and its related offenses and crimes. Armed with a mastery of the elements, the law enforcer should be able to develop the skill to recognize the elements as they unfold in the course of the investigation and gather the

74. REVISED PENAL CODE, art. 202, ¶ 5.

75. Anti-Trafficking in Persons Act of 2003, § 17.

evidence necessary to prove each element. A thorough investigation should be able to support charges for prosecution of violations of the Act as well as all other applicable laws.

For instance, the elements of child trafficking for prostitution under section 4 (a) or section 4 (e) of the Act and the corresponding evidence to prove the offense are as follows:

1. First element: The trafficked person is a child.

Most children trafficked for prostitution will not disclose their real age. Establishments that employ minors for prostitution, especially those that had been raided in the past, usually orient the minors on what to say and what not to say when dealing with customers; and instruct the children to use aliases and say that they are 18 years of age or older. Thus, the investigator should not rely only on a person's representation as to his or her age. Some individuals are obviously children from their very appearance, particularly if they are within the age range of 10 to 13 years old, or younger. Others may be fully developed and may appear to be adults, which is common in teenagers bordering 18 years old. In the latter case, it is helpful to study the manner of speech, actions, habits, and attitudes of the person, which may reveal hints that the person is a child.

For purposes of inquest, preliminary investigation, and trial, the best evidence of the date of birth and age of the child is the birth certificate. In the absence of a birth certificate, the sworn statement of a child as to his or her age has been recognized by the Department of Justice as sufficient proof of minority for purposes of inquest and preliminary investigation.⁷⁶ Other proofs of age include dental aging; bone aging; baptismal certificate; school records; and documents such as diary, journal, bible, and contracts, containing dates of birth or age, provided that the entries were made prior to the rescue or filing of the complaint.

The Department of Labor and Employment (DOLE) should be more pro-active in exercising its visitorial and enforcement powers to aid the detection and investigation of trafficking in persons, particularly the identification of minors. DOLE is vested with the power to exercise visitorial and enforcement functions, which is an underutilized tool to detect and investigate trafficking in persons. Unlike regular law enforcement agencies, DOLE does not need to apply for a search warrant or conduct entrapment operations to have access to employer's records and premises; copy the records; or question any employee and investigate any fact,

76. During trial, the prosecutor must first prove the absence or unavailability of the birth certificate before other evidence can be presented to prove minority.

condition or matter which may be necessary to determine violations of any labor law, wage order, or rules and regulations.⁷⁷

2. Second element: The child was recruited, transported, transferred, harbored, provided, received (section 4 (a)), maintained or hired (section 4 (e)) by another person.

If the trafficked child is cooperative, the child's sworn statement is sufficient to prove the acts of recruiting, transporting, harboring, transferring, providing, receiving, maintaining, or hiring. But the law enforcer should investigate a trafficking case with the intention of gathering evidence apart from the testimony of the trafficked child to ease or spare the child completely of the burden of testifying and to avoid the situation where the case falls apart if the child is unable or unwilling to testify. This may be achieved by placing the suspect under surveillance from the moment of recruitment up to the time that there is sufficient evidence gathered to prove prostitution. Evidence gathered from this type of surveillance may be documented in the form of a sworn statement executed by the investigator.

The act of providing is evident in the transaction or actual purchase of the child wherein the pimp or other suspect hands over the child to the customer. The acts of transporting or transferring may be proved through passenger manifests, passports, and boat or plane tickets, among others. The acts of maintaining or hiring may be evident in documents like employment contracts, logbooks, and payrolls.

A bar or brothel usually keeps some kind of record detailing the number of ladies drink ordered for the minor by the customer, the number of times she had been taken to a private room (often referred to as VIP room) or taken out of the bar or brothel. The record may be kept in a log book, note pad, or loose pieces of paper. It is used by the management as the basis for computing the trafficked person's share of the earnings, if any. The investigator should take hold of this record by any means possible without violating the Constitutional prohibitions against illegal searches and seizures.

3. Third element: For the purpose of prostitution, that is, an act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or other consideration

Actual sexual intercourse between a person and the trafficked victim is not necessary to prove trafficking for the purpose of prostitution. The definition

77. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 128 (1974).

of prostitution does not cover only the actual act of sexual intercourse or lascivious conduct in exchange for money, profit, or any other consideration. It also includes any transaction, scheme, or design for sexual intercourse or lascivious conduct.

A transaction is the act or an instance of conducting business or other dealings.⁷⁸ A scheme is a systematic plan; an artful plot or plan, usually to deceive others.⁷⁹ A design is a purpose or intention combined with a plan.⁸⁰ To prove a “transaction, scheme or design,” it is necessary to show that there is a business deal, plan, or proposal whereby one person will engage in sexual intercourse or acts of lasciviousness with another, for money, profit or other consideration. Some of the evidences that may be used to prove the transaction, scheme, or design are the sworn statement of the investigator describing how the sexual services of a child were offered to the investigator in exchange for money; marked money handed to and received by the suspect; and condoms, drugs, locks, handcuffs, or pornographic materials found in plain view or recovered from the suspects.

B. Arrest and Rescue

The arrest of suspected traffickers is not effective if the trafficked victims are not rescued. Conversely, the rescue of victims will not make a substantial impact on putting a stop to trafficking if the perpetrators are not arrested and held to account.

1. Warrantless Arrest

One of the most effective methods of conducting an arrest and rescue is through an undercover surveillance operation leading to an entrapment operation. The value of an entrapment operation is the suspect can be arrested even without a warrant while the suspect is committing the offense or has just committed the offense in the presence of the investigator.⁸¹ It dispenses with the requirement of having to first go through preliminary investigation before a prosecutor, waiting for the information to be filed in court, and waiting again for the issuance of the warrant of arrest before a suspect can be lawfully arrested. More often than not, when a warrant of arrest is issued, the suspects go in hiding to avoid arrest and prosecution. If the suspect has not been arraigned, this may result in the case being archived and eventually dismissed by the court.

The law enforcer conducting an entrapment operation should not be too eager to announce the raid and the arrest, without ensuring that all the

78. BLACK'S LAW DICTIONARY 1503 (7d ed. 1999).

79. *Id.* at 1346.

80. *Id.* at 457.

81. *See*, 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 5.

elements of the offense are present. Otherwise, the arrest is unlawful and the case against the suspect will be dismissed. If the case survives the scrutiny of the fiscal during inquest, the likelihood that it will pass the scrutiny of the court is nil. A warrantless arrest cannot be conducted lawfully when the suspect is only attempting to commit trafficking, unless the actions of the suspect constitute another crime or offense, because the Act does not punish attempts to commit trafficking.

If the suspect is arrested during an entrapment operation in a case where qualifying circumstances are present, such as the trafficked victim is a child, the trafficking is in large scale (three or more persons are trafficked), or the offense is committed by a syndicate (three or more persons conspiring or confederating with each other), the suspect will be detained and cannot post bail unless he or she files a petition for bail and the prosecution fails to prove that the evidence of guilt is strong. When bail is denied, there is an immediate consequence to the suspected actions of the accused who must suffer detention while the case is being heard.

2. Rescue Operation

The primary objectives of a rescue operation are to move the trafficked children from a place of danger to a safe place, protect their rights and uphold their best interest, and provide immediate assistance. To achieve this, the following procedures should be observed, which mainly reflect the guidelines for the protection of the rights of trafficked children being drafted by the Inter-Agency Council against Trafficking, in coordination with selected survivors of trafficking and non-government organizations that advocate against trafficking:

a. During the rescue operation

- Law enforcers should not engage in the sexual use of the trafficked children.
- A representative of the Department of Social Welfare and Development should accompany the rescue team to receive the trafficked children immediately after the latter are rescued.
- If possible, a lawyer should be present from the start of the operation to ensure that the rights of the trafficked children are protected.
- Do not allow the presence of media. If media is unavoidable, ensure that the trafficked children are kept away from the cameras.
- Cover nude or exposed bodies.

- Personal belongings of the trafficked children, such as mobile phones, identification cards, passports, address books, clothes, and bags inside the establishment should be retrieved. Personal belongings kept in another place should also be recovered, but care should be observed in retrieving the personal belongings of the minor at a place other than the raided establishment as this could be in an environment that could pose a serious threat to the victims and the law enforcer.
 - Ensure that the trafficked persons are not being arrested and that they are informed of this. Explain to the trafficked children what is happening, where will they be taken, and why.
- b. Immediately after the rescue operation
- Turn over personal belongings of the trafficked children to a representative of the Department of Social Welfare and Development (DSWD) to ensure that the items are returned to the owners.
 - Ensure that the trafficked children and the suspects are separated when transported from the scene of the crime to the police station or other designated place.
 - Bring the trafficked children to a safe, secure, and non-intimidating place (away from the place where the suspects are detained) for protection, emergency medical assistance, interview, and taking of their sworn statements. Trafficked children should never be held in a detention facility.
 - Assess what immediate services the trafficked children need and what procedures they have to undergo, including immediate medical assistance for those suffering injuries, physical examination, genital examination, pregnancy test, drug test, and neuro-psychological examination.
 - Provide trafficked children with food, water, and basic supplies.
 - Explain to the trafficked children why the raid was conducted and why they were rescued. Explain to them what to expect within the next few hours. Explain what trafficking is. Provide the contact information of organizations that they can run to, in case they need help in the future.
 - Separate the minors from the adults. Dental aging is the quickest way to obtain a preliminary determination of age. Have a dentist on standby who can conduct the examination as soon as possible.

- Contact the parents or nearest relatives of the trafficked minors to inform the former of the condition of the trafficked minors. This should be done by the representative of the DSWD who should communicate with tact and avoid judgmental statements regarding the nature of employment of the trafficked children. If the safety of the trafficked person, as well as the rescue team, will be compromised, the exact location of the trafficked children should not be disclosed.
- c. During inquest preparation and inquest proper
- Give trafficked children time to rest before they are interviewed, taking into consideration the 36-hour limit if the case is for inquest.⁸² The purpose of the interview should be explained to them before the interview is conducted.
 - The interview with the trafficked person should be child-friendly and gender-sensitive; conducted in the presence of a DSWD representative preferably by a law enforcer of the same sex as the trafficked person.
 - Avoid multiple interviews by using a standard intake sheet that will document all the information needed by the law enforcer, DSWD representative, and other concerned agencies; or by conducting an audio-video in-depth investigation with the consent of the trafficked children.
 - Explain the purpose and implications of a sworn statement to the trafficked children before they agree to execute a sworn statement. The explanation should be done preferably by the DSWD representative.
 - When a child executes a sworn statement, the sworn statement should be taken in the presence of a DSWD representative if the parents or guardians are not available or cannot be found, or if there is reasonable ground to suspect that they are in connivance with or under the influence of the traffickers. The DSWD representative should sign as a witness to ensure that the minor was properly advised and guided when the statement was taken, as well as to ensure that the minor was not coerced, threatened, or forced to execute the statement.

82. A suspect who is arrested should be turned over to the proper judicial authorities within 36 hours for crimes punishable by capital or afflictive penalties or their equivalent, such as death penalty, life imprisonment or imprisonment of six years and one day or longer. *See*, REVISED PENAL CODE, art. 125.

- Ensure that the law enforcers do not hold the trafficked children more than the time needed in giving their statements and in attending the inquest. Sample forms or templates for sworn statements, affidavit of arrest, laboratory requests, turnover letter to the DSWD and other forms needed in preparation for inquest should be installed in computers to speed up the processing of documents in preparation for inquest.
- Assistance to trafficked children should be extended regardless of whether they cooperate in the investigation and prosecution.

d. After inquest

- Make the necessary referral for temporary shelter for trafficked minors.
- Trafficked children should be escorted by law enforcers and a DSWD representative to the shelter.
- Ensure that mandatory services to trafficked children are provided.

C. Prosecution and Protection

Traffickers should be prosecuted against aggressively and swiftly. While the State should pull all the stops to perpetrator accountability, however, it should at the same time be mindful of the rights and needs of the trafficked victims, especially minors who testify in court.

i. Prosecution

The phrase “child-friendly criminal procedure” is, strictly speaking, a contradiction in terms because a child who is entangled in a criminal case enters a hostile and alien environment, no matter what safeguards are provided to protect the child’s best interest. The best interests of the child dictate that the child be kept out of the criminal justice system. There are instances, however, when the testimony of the child is indispensable. In those instances, the Rule on Examination of a Child Witness⁸³ helps create a less hostile environment for children who testify in court.

If the child trafficked for prostitution is willing to testify, the prosecutor should invoke the applicable provisions of the Rule on Examination of a Child Witness, including the allowance of leading questions during the direct examination of the child;⁸⁴ exclusion of the public when the child

83. RULE ON EXAMINATION OF A CHILD WITNESS, A.M. No. 00-4-07-SC, Dec. 15, 2000.

84. *Id.* § 20.

testifies;⁸⁵ taking of the testimony of the child outside the courtroom and televised to the courtroom by live-link television;⁸⁶ use of screens, one-way mirrors and other devices to shield the child from the accused;⁸⁷ use of videotaped deposition;⁸⁸ hearsay exception;⁸⁹ admissibility of videotaped and audiotaped in-depth investigative or disclosure interviews;⁹⁰ and sexual abuse shield rule — evidence to prove that the child engaged in other sexual behavior or to prove the sexual predisposition of the child is inadmissible.⁹¹

The Child Protection Unit of the Philippine General Hospital runs a regular Kid's Court Program where child witnesses visit a real courtroom and a judge spends time with them to explain courtroom procedures. This helps puts the child at ease and helps boost the confidence of the trafficked child to testify in court.

Service providers, non-government organizations, or concerned citizens should consider volunteering to be trained as court appointed special advocates or guardians *ad litem* in order that they may assist in upholding the rights of the child in court, even if they are not lawyers.

If the civil complaint is tried with the criminal case, whenever possible, the child should be represented by a private counsel of his or her choice in order to ensure that the child's rights are fully protected. Private prosecutors should help ensure that the witnesses are ready and available, evidence is secure, hearings are attended, and delays are avoided. More importantly, they should ensure that the rights of the child as a private complainant are upheld, the child's interests are safeguarded, and legal services are more accessible and personalized.

The private prosecutor should endeavor to obtain a written authority to prosecute. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the Chief of the Prosecution Office may authorize, in writing, a private prosecutor to prosecute the criminal case subject to the approval of the court. The written authorization allows private counsels to prosecute the case even in the absence of a public prosecutor to avoid delays in litigation.

The prosecutor should review the Information to ensure that the correct offense is charged. As discussed previously, section 3 (a) should not be used by itself as a basis for prosecuting a criminal case for violation of the Act. In

85. *Id.* § 23.

86. *Id.* § 25.

87. *Id.* § 26.

88. *Id.* § 27.

89. RULE ON EXAMINATION OF A CHILD WITNESS, § 28.

90. *Id.* § 29.

91. *Id.* § 30.

order to support a criminal case, it is necessary to establish that the elements of section 4 (Acts of Trafficking), section 5 (Acts that Promote Trafficking), section 6 (Qualified Trafficking), section 7 (Confidentiality), or section 11 (Use of Trafficked Persons) are present.

A qualifying circumstance should be alleged in the Information otherwise, it cannot be considered against the accused even if such circumstance is proven during trial.⁹² Hence, in child trafficking cases, the Information should state that the trafficked person is a minor. Without this allegation, the penalty will not be increased to life imprisonment if the accused is convicted, absent any other qualifying circumstances alleged in the Information.

In cases where there are several accused, the State should explore the possibility of having one of the accused turn state witness. This will strengthen the case and will keep the prosecution from relying heavily or solely on the testimony of the trafficked person.

In order to hasten the disposition of the case, the prosecutor should invoke Philippine laws and rules of procedure which provide for periods within which cases should be acted upon. Among these is the Speedy Trial Act of 1998, or Republic Act No. 8493,⁹³ which imposes time limits at every stage of the criminal case: 180 days for trial;⁹⁴ 30 days between arraignment and filing of the information or date the accused appears before the judge;⁹⁵ 30 days from arraignment to commencement of trial;⁹⁶ and 30 days from finality of order for a new trial and commencement of the new trial.⁹⁷ Another is the 2000 Revised Rules of Criminal Procedure which provide that the investigating officer shall determine within 10 days after the preliminary investigation whether there is sufficient ground to hold the respondent for trial; forward the record of the case to the reviewing prosecutor within five days from resolution; and the resolution should be acted upon within 10 days from receipt thereof.⁹⁸ If a witness testifies while

92. 2000 REVISED RULES ON CRIMINAL PROCEDURE, rule 110, § 9; *People v. Suela*, 373 SCRA 163 (2002).

93. An Act to Ensure a Speedy Trial of All Criminal Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, Appropriating Funds Therefor, and for Other Purposes, Republic Act No. 8493 (1998).

94. *Id.* § 6.

95. *Id.* § 7.

96. *Id.*

97. *Id.* § 8.

98. *See*, 2000 REVISED RULES ON CRIMINAL PROCEDURE, rule 112, § 3.

under the Witness Protection Program, the Witness Protection Act⁹⁹ provides that the judicial, quasi-judicial, or investigating authority shall endeavor to finish the proceeding within three months from the filing of the case.¹⁰⁰

Further, the Act providing for the elimination of the worst forms of child labor, or Republic Act No. 9231, included trafficking and prostitution of children among the worst forms of child labor.¹⁰¹ It provides that preliminary investigation of cases filed under the said law shall be terminated within 30 days, trial concluded within 90 days from filing of the information, and decision rendered within 15 days from the date of submission.¹⁰² While this law states that cases involving child trafficking and prostitution shall be filed under Republic Act No. 9208, the prescribed periods should also apply in trafficking cases because these are filed under the latter statute in accordance with the provisions of Republic Act No. 9231.

2. Protection

Trafficked children face the risk of reprisal when they report the offense and file charges against traffickers. The traffickers know where the children live, who their families are, and how to hunt them down. The Act provides trafficked persons preferential entitlement under The Witness Protection, Security and Benefit Act so that any trafficked person is entitled to the benefits of the Witness Protection Program.¹⁰³ The prosecutors should ensure that an application to the program is immediately filed with the Department of Justice (DOJ). They should also inform trafficked persons that they are entitled to the program.

The benefits and rights under the Witness Protection Program include speedy hearing or trial; secure housing facility; assistance in obtaining a means of livelihood; protection from demotion in or removal from work on account of absences due to attendance at hearings; reasonable traveling expenses; free medical treatment, hospitalization and medicines for any injury suffered because of witness duty; if the witness is killed because of participation in the program, his or her heirs shall be entitled to a burial

99. An Act Providing for a Witness Protection, Security and Benefit Program and for Other Purposes [Witness Protection, Security, and Benefit Act], Republic Act No. 6981 (1991).

100. *Id.* § 9.

101. An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for This Purpose Republic Act No. 7610, as Amended, Otherwise Known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 9231, § 3 (2003).

102. *Id.* § 9.

103. *See*, Witness Protection, Security, and Benefit Act, § 3.

benefit of not less than ₱ 10,000.00; and in case of death or permanent incapacity, minor or dependent children shall be entitled to free education, from primary to college level, in any state or private school, college or university as may be determined by the DOJ, as long as the children are qualified to study in the educational institution.

The trafficked person may apply for victim compensation in the maximum amount of ₱ 10,000.00 with the Board of Claims of the DOJ. The application must be filed with the Board within six months from the date the person suffered damage or injury. To qualify for the compensation, the person must show that he or she is a victim of a violent crime. Violent crimes include rape; offenses committed with malice which resulted in death, serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma; or offenses committed with torture, cruelty, or barbarity.¹⁰⁴

Unpaid wages, benefits, and other labor claims should be filed before DOLE. During rescue and entrapment operations, law enforcers should coordinate with the said agency so that it can send labor inspectors to join the raiding team. Labor inspectors have access to employer's records and premises at any time of the day or night whenever work is being undertaken in the establishment, and the right to copy records, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations of labor legislations.¹⁰⁵ If in the course of inspection, the labor inspector finds any violation of labor legislation, including non-payment of wages and other monetary benefits, DOLE can issue compliance orders for the owner or employer to pay the trafficked person, even if it the latter did not file any money claims with DOLE.

The prosecutor, social worker, community worker, or service provider should exhaust all possible remedies to obtain compensation for damages suffered by the trafficked person, as well as other money claims. Claims for civil damages arising from trafficking are automatically instituted with the criminal complaint unless the trafficked person waives the claims, reserves the right to file the complaint for damages separately from the criminal case or files the civil action before the criminal case is filed.¹⁰⁶ When the trafficked person institutes a separate civil action, he or she shall be exempt from the payment of filing fees.¹⁰⁷

D. Punishment and Restoration of Offenders

104. An Act Creating a Board of Claims, Republic Act No. 7309, § 3 (d) (1992).

105. LABOR CODE, arts. 128 & 129.

106. ANTI-TRAFFICKING IN PERSONS ACT OF 2003, IRR, § 39.

107. Anti-Trafficking in Persons Act of 2003, § 13.

Effective punishment must be sufficient and proportional. The penalty imposed by law for child trafficking is sufficient to punish the act of trafficking as severely as other serious crimes and it is proportional to the nature of the crime. The penalty for use of trafficked persons, however, is neither sufficient nor proportional. Imprisonment of six months community service for the first offense and one year imprisonment for the second and succeeding offenses¹⁰⁸ are mere slaps on the wrist. Those who use persons trafficked for prostitution, such as customers of prostituted children, should be punished more severely to effectively deter the commission of the offense and address the demand side of trafficking.

Instead of prosecuting customers of prostituted children under the Act, prosecutors should file charges for Child Prostitution and Other Sexual Abuse or Attempt to Commit Prostitution punishable under Republic Act No. 7610,¹⁰⁹ when applicable, which impose higher penalties of up to 40 years imprisonment.

Prosecutors should not agree to a plea bargaining where the suspect is charged with use of trafficked persons instead of acts of trafficking, especially if there is strong evidence to prove the latter. A sentence of six months community service or one year imprisonment is not sufficient to punish the acts of trafficking; neither is it proportional to the offense of acts of trafficking.

It is not only the individuals who commit the offense who suffer the consequences of their acts. Establishments found to have trafficked minors should also be sanctioned. The administrative sanctions that DOLE shall impose on establishments found to have engaged or employed a child for prostitution are immediate and permanent closure of the establishment. Additionally, the establishment shall be ordered to pay the transportation cost of the child from the place of work to the DSWD-accredited halfway house and to the child's residence; total actual cost of medical management, recovery and reintegration of the child, or in case of death, the child's funeral expenses; and separation pay and other monetary benefits to the child.¹¹⁰

The greater challenge is for the restoration of the offender back into the community when they have paid the price for their crime. A progressive approach to law enforcement should not only work to repair the damage caused but should also help the offenders lead a productive life upon their eventual return to society.

E. Recovery, Rehabilitation, and Reintegration of Victims

108. *Id.* § 11.

109. *See*, Republic Act No. 7610, §§ 5 & 6.

110. ANTI-TRAFFICKING IN PERSONS ACT OF 2003, IRR, § 24

An effective recovery, rehabilitation, and reintegration program for trafficked victims necessitate an acute understanding of the devastating effects of human trafficking. To date, there is scant literature on the human costs of trafficking but documented cases have clearly shown that victims of human trafficking pay an immeasurable price. One author notes: “The physical, emotional, and social costs of trafficking have a cascading effect on families, their futures, and their quality of life, and the compounding effects of accommodating to a life without hope. It is difficult to imagine how these ‘hostages’ or ‘slaves’ manage to survive each day.”¹¹¹ In particular, the trafficking of children for commercial sexual exploitation has devastating consequences on the minors. The effects may include long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possibly death.¹¹²

Because of the compounding effects of trafficking, which includes public health implications, the road to recovery for a trafficked person goes beyond the minimum emergency care that should be given immediately after rescue. It may require considerable aftercare on several levels, which includes any or all of the following: housing, food, clothing, medical care, legal assistance, language training, vocational or educational training, livelihood training, life skills training, counseling and therapy.

V. SPECIAL LEGISLATIVE ISSUES

Apart from the provisions of the Act that have been subjected to varying interpretations, now that the Act is already in its fifth year of implementation, several gaps which cannot be addressed sufficiently by a judicial interpretation have also been identified. Among these, the Act does not have a provision on immunity from suit for persons who report trafficking cases. The Implementing Rules and Regulations of Republic Act No. 7610 provides that a person reporting a child abuse case shall be free from any civil or administrative liability therefrom and shall be presumed to have acted in good faith.¹¹³ The State should grant the same immunity for those who report trafficking cases.

The penalty for use of persons trafficked for prostitution is too low. It has created an odd and unjust scale of penalties. On one hand, the person

111. Barbara A. Moynihan, *The High Cost of Human Trafficking*, JOURNAL OF FORENSIC NURSING, Summer 2006, available at http://findarticles.com/p/articles/mi_m0SHK/is_2_2/ai_n17213953 (last accessed June 9, 2008).

112. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report, June 12, 2006, available at <http://www.state.gov/g/tip/rls/tiprpt/2007/82809.htm> (last accessed June 9, 2008).

113. RULES AND REGULATIONS ON THE REPORTING AND INVESTIGATION OF CHILD ABUSE CASES, § 7 (1992).

who uses a trafficked person for prostitution is penalized with only six months community service to one year imprisonment. On the other hand, someone who violates the confidentiality provision is penalized with six years imprisonment, or a penalty six times more afflictive; and one who uses a person trafficked for forced labor is penalized with 15 years. The law is saying that in the scheme of things, spreading information about the personal circumstances of a trafficked person or trafficker, or news about a trafficking case is a far greater offense than using a trafficked person for prostitution. It is also pronouncing that using a trafficked person for forced labor is far more reproachful than using a person trafficked for prostitution. The State should increase to 15 years the penalty for use of persons trafficked for prostitution because it is in the nature of acts that promote trafficking. There is no reasonable or logical basis for treating it otherwise.

Finally, the Act is unclear with respect to the State's stand on whether all forms of adult prostitution, including voluntary or non-coercive prostitution, are considered trafficking in persons. This subject was one of the most controversial issues during the negotiations in the drafting of the U.N. Protocol definition of trafficking in persons. One lobbying bloc advocated that voluntary, non-coercive prostitution or other sex work is not trafficking. The opposing bloc took the stand that all prostitution is forced, is inherently a violation of human rights and should be included in the definition of trafficking.¹¹⁴ To overcome the impasse on this issue, the Protocol used the phrase "the exploitation of the prostitution of others or other forms of sexual exploitation" in the definition, with a U.N. interpretative note, reading:

The travaux préparatoires should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms 'exploitation of the prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.¹¹⁵

The Philippines defined the term "prostitution" under section 3 (c) of the Act as "any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration."¹¹⁶ When the participation of

114. Melissa Ditmore & Marjan Withers, *The Negotiations on the UN Protocol on Trafficking in Persons*, available at <http://www.nswp.org/pdf/NEMESIS.PDF> (last accessed June 9, 2008).

115. Trafficking Protocol, *supra* note 4, interpretative note 63.

116. Anti-Trafficking in Persons Act of 2003, § 3 (c).

a person in prostitution is a result of threat, deception, abduction, coercion, force or other similar means, it is considered “sexual exploitation.”¹¹⁷

The definitions of prostitution and sexual exploitation in the Act create confusion. In several sub-paragraphs of section 4 of the Act, prostitution is one of the purposes of trafficking and sexual exploitation is another, but the distinction is erased by the definition of trafficking in persons in section 3 (a). To demonstrate, under section 4 (e), if a person is maintained or hired for prostitution, it is an act of trafficking. Section 4 (e) does not state that there should be force, threat, deception or other similar means. It is clear from section 4 (e) that non-coercive prostitution is trafficking. But clarity is lost when the definition of trafficking in persons under section 3 (a) comes to the fore. Under section 3 (a), there should be an element of force, threat, deception or other similar means for there to be trafficking in adults. The means should then be read into section 4 (e) to be consistent with the definition of trafficking in persons under section 3 (a). If one makes force, threat or other similar means as an additional element of section 4 (e), however, it erases the distinction between prostitution and sexual exploitation. If this was the intention of the legislators, then they should not have defined prostitution and sexual exploitation separately and differently because forced prostitution is sexual exploitation.

The solution to this conundrum is a Supreme Court decision resolving this particular issue; but what are the chances of having an actual case brought all the way up to the Supreme Court to establish jurisprudence on the matter? The other solution, which is now being pursued by some non-government organization, is to advocate for an entirely separate legislation to deal with all aspects of prostitution.

VI. CONCLUSION

In 2003, 7,992 prosecutions were initiated, 2,815 convictions were obtained, and 24 new or amended legislation were enacted. In 2004, 6,885 prosecutions were initiated, 3,025 convictions were obtained, and 39 new or amended legislation were enacted. In 2005, 6,618 prosecutions were initiated, 4,766 convictions were obtained, and 41 new or amended legislation were enacted. In 2006, 5,808 prosecutions were initiated, 3,160 convictions were obtained, and 21 new or amended legislation were enacted.¹¹⁸ These numbers reflect the global efforts to eliminate trafficking in

117. *Id.* § 3 (f).

118. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, June 5, 2006, available at <http://www.state.gov/g/tip/rls/tiprpt/2006/65984.htm> (last accessed June 9, 2008).

persons. While the cumulative figures are impressive, they pale in comparison to the magnitude of the problem.

According to the Trafficking in Persons Report of 2007, “the Philippine government demonstrated increased efforts to protect victims of trafficking in 2006, though it continued to rely heavily on NGOs and international organizations to provide services to victims.”¹¹⁹ The report acknowledged the efforts of the government to actively encourage victims to assist in the investigation and prosecution of trafficking and related crimes. The report also stated that the “Philippine government showed some improvement in arresting, prosecuting, and convicting traffickers.”¹²⁰ In 2006, of the 107 prosecutions of trafficking crimes in the Philippines, 23 were filed and prosecuted with the assistance of a non-government organization.¹²¹

But despite the concerted efforts of government agencies and non-government organizations, the Philippines still remains to be “a source, transit, and destination country for men, women, and children trafficked for the purposes of sexual exploitation and forced labor.”¹²² There are many ways to make the State more responsive and effective in combating human trafficking, especially the trafficking of children, as demonstrated in this Article. In the final analysis, however, the tipping point is our ability as a nation to express public indignation for the atrocities of human trafficking that continues to destroy hundreds of thousands of Filipinos and millions of innocent lives worldwide.

119. Trafficking in Persons Report of 2007, *supra* note 2.

120. *Id.*

121. The 23 cases were prosecuted by lawyers of International Justice Mission in their capacity as private prosecutors under the direction and control of the public prosecutor.

122. Trafficking in Persons Report of 2007, *supra* note 2.