

# Revisiting the Element of Exploitation in the Definition of Trafficking in Persons in Republic Act No. 9208

Ryan Jeremiah D. Quan\*

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## I. INTRODUCTION

Trafficking in Persons (TIP) is a global concern<sup>1</sup> and is considered to be a multifaceted and complex phenomenon.<sup>2</sup> While it is a cross-border problem, it is often viewed differently depending on the stake of the state involved. States where trafficking victims are sent, often referred to as destination countries, usually consider the problem of trafficking in relation to illegal migration or human smuggling and see it as a security issue,<sup>3</sup> the entry of

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\* '08 J.D., Ateneo de Manila University School of Law. The Author is the Internship Director of the Ateneo Human Rights Center. He teaches Fundamentals of Thesis and International Human Rights Law at the Ateneo de Manila University School of Law. He is also an Assistant Professorial Lecturer at the De La Salle University-Manila.

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1. United Nations Office on Drugs and Crime (UNODC), A Comprehensive Strategy to Combat Trafficking in Persons and Smuggling of Migrants (Part of the Thematic Programme on Action Against Transnational Organized Crime and Illicit Trafficking for 2011-2013) 3, available at [http://www.unodc.org/documents/human-trafficking/UNODC\\_Strategy\\_on\\_Human\\_Trafficking\\_and\\_Migrant\\_Smuggling.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Strategy_on_Human_Trafficking_and_Migrant_Smuggling.pdf) (last accessed Sep. 6, 2012).
2. *Id.* at 8 & 22.
3. See Ann Jordan, *Trafficking in Human Beings: The Slavery that Surrounds Us*, GLOBAL ISSUES, August 2001, at 15-16 & Jennifer K. Lobasz, *Beyond Border Security: Feminist Approaches to Human Trafficking*, 18 SECURITY STUD. 319, 320 & 326 (2009).

undocumented aliens into their territory being potential threats to the security of their citizens. On the other hand, states from which trafficking victims are recruited, referred to as source countries, view the problem of trafficking as a human rights concern. To these states, the trafficked persons, mostly their own citizens, are victims who need means of redress for the violations of their human rights.<sup>4</sup>

The Philippines is considered both a source and destination country.<sup>5</sup> In 2004, the United States (U.S.) TIP Report classified the Philippines as a source country of TIP victims, “trafficked for the purposes of sexual exploitation and forced labor.”<sup>6</sup> On the other hand, the report of the Commission on Filipinos Overseas in 2009 stated that the Philippines is also a destination country where a small number of trafficked victims from China, South Korea, Japan, and Russia are brought for sexual exploitation.<sup>7</sup>

Global responses in the legal realm have seen a string of treaties and conventions which sought to eliminate TIP. The earlier trafficking-related conventions mostly addressed slavery and its various forms. The year 1949 saw the consolidation of slavery and trafficking agreements into the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,<sup>8</sup> which limited the term *trafficking* to activities aimed at prostitution.<sup>9</sup> Particular human rights conventions have also explicitly addressed trafficking. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in Article 6, mandates State Parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of

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4. See generally April R. Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 232 (2007).
  5. United States (U.S.) Department of State, Trafficking in Persons Report 2012: Country Narratives N through Z, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> (last accessed Sep. 6, 2012).
  6. U.S. Department of State, Trafficking in Persons Report: Country Narratives 2004 East Asia and the Pacific, available at <http://www.state.gov/j/tip/rls/tiprpt/2004/33191.htm> (last accessed Sep. 6, 2012).
  7. ATENEO HUMAN RIGHTS CENTER, TRAFFICKING IN WOMEN AND CHILDREN IN ZAMBOANGA, BASILAN, SULU, AND TAWI-TAWI 8 (Amparita Sta. Maria, et al. eds., 2012).
  8. Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 271 (entered into force July 25, 1951).
  9. ANNE T. GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 58-59 (2010).

women.”<sup>10</sup> Similarly, Article 35 of the Convention of the Rights of the Child (CRC) obliges State Parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”<sup>11</sup> Articles 32 and 34 of the CRC also mandate the protection of children from economic exploitation, sexual exploitation, and sexual abuse.<sup>12</sup> Furthermore, the CRC has an Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.<sup>13</sup> The Philippines has signed and ratified all the above-mentioned conventions.<sup>14</sup>

The 1990s saw “an important shift in the international legal framework around trafficking”<sup>15</sup> as the issue started gaining prominence in discourses outside human rights.<sup>16</sup> As mentioned earlier, other than being a human rights issue, trafficking is also seen as a security issue, linking it to illegal migration, migrant smuggling, and transnational organized crime.<sup>17</sup> This paved the way for the adoption of the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) in 2000. The Philippines signed and ratified both the convention and the protocol.<sup>18</sup>

The enactment of Republic Act No. 9208,<sup>19</sup> also known as the Anti-Trafficking in Persons Act of 2003, was the Philippines’ response to the

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10. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. Res. 34, art. 6, U.N. Doc. A/RES/34/180 (Dec. 18, 1979).

11. Convention on the Rights of the Child (CRC), art. 35, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.

12. *Id.* arts. 32 & 34.

13. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, U.N. Doc. A/RES/54/263 (May 25, 2000).

14. The Philippines ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others on Sep. 19, 1952; the CEDAW on Aug. 5, 1981; and the CRC on Aug. 21, 1990.

15. GALLAGHER, *supra* note 9, at 68.

16. *Id.*

17. *Id.*

18. See United Nations, Status: A Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Covenant against Transnational Organized Crime, *available at* [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVII I-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVII I-12-a&chapter=18&lang=en) (last accessed Sep. 6, 2012).

19. An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for

growing problem of human trafficking. The same was also done in compliance with the Philippines' obligation to criminalize trafficking under the Trafficking Protocol supplementing the Convention on Transnational Organized Crime.<sup>20</sup> R.A. 9208 is one of the first laws enacted in the Southeast Asian region addressing and penalizing TIP.<sup>21</sup> The Act was a consolidation of Senate Bill No. 2444<sup>22</sup> and House Bill No. 4432,<sup>23</sup> and was approved on May 26, 2003.<sup>24</sup>

Prior to the enactment of R.A. 9208, Philippine law contained no definition of trafficking in persons. Due to the absence of a comprehensive law defining and penalizing trafficking, its component acts were dealt with using the provisions of existing Philippine laws. The Revised Penal Code<sup>25</sup> for example, contains provisions covering acts constitutive of, or related to, the act of trafficking. These include the display of obscene publications and indecent shows,<sup>26</sup> kidnapping and serious illegal detention,<sup>27</sup> slight illegal detention,<sup>28</sup> kidnapping and failure to return a minor,<sup>29</sup> inducing a minor to leave his home,<sup>30</sup> slavery,<sup>31</sup> exploitation of child labor,<sup>32</sup> services rendered under compulsion in payment of debt,<sup>33</sup> corruption of minors,<sup>34</sup> white slave trade,<sup>35</sup> rape,<sup>36</sup> acts of lasciviousness,<sup>37</sup> and consented abduction.<sup>38</sup> A number

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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).

20. G.A. Res. 55/25, art. 5, U.N. Doc. A/RES/55.25 (Nov. 15, 2000).
21. See International LABOUR ORGANIZATION (ILO), COACHING RETURNED VICTIM/SURVIVORS OF TRAFFICKING TOWARDS GAINFUL CAREERS: A MANUAL FOR COACHES 15 (2009).
22. See Anti-Trafficking in Persons Act of 2003.
23. *Id.*
24. *Id.*
25. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).
26. *Id.* art. 201.
27. *Id.* art. 267.
28. *Id.* art. 268.
29. *Id.* art. 270.
30. *Id.* art. 271.
31. REVISED PENAL CODE, art. 272.
32. *Id.* art. 273.
33. *Id.* art. 274.
34. *Id.* art. 340.
35. *Id.* art. 341.
36. *Id.* art. 266-A.

of special penal laws have also been used to prosecute acts considered as trafficking before R.A. 9208 was enacted. These laws include the Anti-Mail Order Bride Act,<sup>39</sup> the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,<sup>40</sup> the Anti-Sexual Harassment Law,<sup>41</sup> the Migrant Workers Act of 1995,<sup>42</sup> and the Philippine Passport Act of 1996.<sup>43</sup> Despite the enactment of these laws, they covered only isolated acts and were not enough “to capture the phenomenon of trafficking in its entirety.”<sup>44</sup> The existence and implementation of these laws were not sufficient compliance with our state obligation to criminalize trafficking. Hence the enactment of R.A. 9208, which set out the legal parameters of trafficking in domestic law, defining trafficking, the acts punishable, and providing penalties for violation of the law.

Subsequent to the passage of R.A. 9208, other laws similarly covering trafficking were passed. These include the law on the elimination of the worst forms of child labor, which was an amendment to the previously mentioned R.A. 7610,<sup>45</sup> the Anti-Violence Against Women and their Children Act of 2004,<sup>46</sup> and the Magna Carta of Women.<sup>47</sup>

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37. REVISED PENAL CODE, art. 366.

38. *Id.* art. 343.

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

40. An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation, and Discrimination Act], Republic Act No. 7610 (1992).

41. An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995).

42. An Act to Institute 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).

43. The Philippine Passport Act of 1996 [Philippine Passport Act of 1996], Republic Act No. 8239 (1996).

44. Amparita S. Sta. Maria, *The Anti-Trafficking in Persons Act of 2003: Reflections and Challenges*, 49 ATENEO L.J. 59, 67 (2004).

45. 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

Despite the passage of all these laws, the problem of TIP in the Philippines remains prevalent and its total elimination, elusive. In 2009 and 2010, the US State Department TIP Report included the Philippines under the “Tier 2 Watch List” classification.<sup>48</sup> Such classification was for countries

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[W]hose governments do not fully comply with the TVPA’s (Trafficking Victims’ Protection Act) minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.<sup>49</sup>

The given classification was mainly due to the low number of convictions achieved in trafficking cases.<sup>50</sup>

The years 2011 and 2012 saw better conviction rates for trafficking cases in the Philippines, leading to the “elevation” of the country’s status to “Tier 2” in the TIP Report of the US State Department for such years.<sup>51</sup> This classification meant that while the Philippine government “do[es] not fully

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Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” Republic Act No. 9231 (2003).

46. An Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefore, and for Other Purposes [Anti-Violence Against Women and their Children Act of 2004], Republic Act No. 9262 (2004).
47. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009).
48. U.S. Department of State, Trafficking in Persons Report 2009: Country Narratives L Through P, *available at* <http://www.state.gov/j/tip/rls/tiprpt/2009/123137.htm> (last accessed Sep. 6, 2012) & U.S. Department of State, 2010 Trafficking in Persons Report, *available at* <http://www.state.gov/j/tip/rls/tiprpt/2010/142761.htm> (last accessed Sep. 6, 2012).
49. U.S. Department of State, Trafficking in Persons Report 2012: Tier Placements, *available at* <http://www.state.gov/j/tip/rls/tiprpt/2012/192363.htm> (last accessed Sep. 6, 2012) [hereinafter U.S. Department of State Tier Placements].
50. ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 20.
51. U.S. Department of State, 2011 Trafficking in Persons Report, *available at* <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm> (last accessed Sep. 6, 2012) & U.S. Department of State, 2012 Trafficking in Persons Report, *available at* <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> (last accessed Sep. 6, 2012).

comply with the TVPA's minimum standards, [it is] making significant efforts to bring [itself] into compliance with those standards."<sup>52</sup>

While this classification means that the country has better records compared to 2009 and 2010, the problems of combating trafficking on the ground abound. Among the many problems in enforcing R.A. 9208 and securing convictions under the said law is the difficulty in proving the element of exploitation, especially at the early stages of the trafficking process. This is the main focus of this Article.

## II. THE LEGAL DEFINITION OF TRAFFICKING IN PERSONS

The lack of a universally accepted understanding of TIP has led to difficulty in the inclusion of a rather complete definition of trafficking in the Trafficking Protocol. The discussions on the definition "proved to be most difficult and perhaps the most controversial aspect of the [Trafficking Protocol's] negotiation process."<sup>53</sup> The contemporary definition of TIP, as contained in the Trafficking Protocol, traces its roots to several instruments that started in the early 1900s.<sup>54</sup> A look into the history of how the definition of trafficking started, how it evolved, and how it was later adopted into our domestic law would be helpful in understanding the element of exploitation.

The definition of trafficking evolved from white slavery, as stated in the 1904 International Agreement for the Suppression of White Slave Traffic.<sup>55</sup> From the 1904 Agreement, it is clear that white slave traffic concerned itself more with an "immoral life" rather than the wider notion of trafficking we have today. Specifically, it states that —

Each of the Governments [who are parties to the treaty] undertakes to have a watch kept, especially in railway stations, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life. With this object instructions shall be given to the officials, and all other qualified persons, to obtain, within legal limits, all information likely to lead to the detection of criminal traffic.<sup>56</sup>

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52. *Id.*

53. GALLAGHER, *supra* note 9, at 25.

54. ELAINE PEARSON, HUMAN RIGHTS TRAFFICKING IN PERSONS: A HANDBOOK 20 (2000).

55. 1904 International Agreement for the Suppression of the White Slave Traffic, *signed* May 18, 1904, 92 U.N.T.S. 19.

56. *Id.* art. 6.

The 1910 International Convention for the Suppression of White Slavery<sup>57</sup> contributed further to this definition. Aside from the element of leading a woman or girl to an immoral life, the 1910 Convention specified the means by which criminal traffic is accomplished. Article two states that

Whoever, in order to gratify the passions of another person, has, by fraud or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes.<sup>58</sup>

The term white slavery later gave way to the term “trafficking,” since white slavery did not “[reflect] the nature and scope of the problem.”<sup>59</sup> In the 1921 International Convention for the Suppression of the Traffic in Women and Children,<sup>60</sup> “white slave traffic” was understood to be “trafficking” in general.<sup>61</sup> In this Convention, traffic under the 1904 International Agreement and the 1910 Convention was specified or secured by identifying it with the suppression of the traffic in women and children.<sup>62</sup> However, while it distinguished itself from the non-use of the term “white slave trafficking,” it reiterated the definition of white slave traffic from previous agreements as sufficient for the definition of trafficking.

The definition of trafficking was further expanded under the International Convention for the Suppression of the Traffic in Women and Children,<sup>63</sup> in 1933. Article one of the said convention states that —

Whoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.<sup>64</sup>

It is notable that consent is considered immaterial. Thus, the 1933 Convention recognizes that trafficking comes in all forms, and the consent of

57. International Convention for the Suppression of the White Slave Traffic, *signed* May 4, 1910, 98 U.N.T.S. 101.

58. *Id.* art. 2.

59. GALLAGHER, *supra* note 9, at 14.

60. International Convention for the Suppression of the Traffic in Women and Children, *registered* June 15, 1922, 9 L.N.T.S. 415.

61. *See* International Convention for the Suppression of the Traffic in Women and Children, *supra* note 60, art. 2.

62. *Id.* pmbl.

63. International Convention for the Suppression of the Traffic in Women of Full Age, *entered into force* Apr. 24, 1950, 53 U.N.T.S. 49.

64. *Id.* art 1.



the victim does not detract from the criminal nature of the act. It must also be noted that this convention expanded the scope of trafficking to cover not just prostitution, but also all sexual and immoral acts.<sup>65</sup>

The different means of trafficking and the consequence of consent are carried forward to the 1949 Convention for the Suppression of the Traffic in Person and of the Exploitation of Prostitution of Others, which came into force in 1951. The Convention recognized that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”<sup>66</sup> It also reaffirmed the 1904 International Agreement, 1910 International Convention, the 1921 International Convention, and the 1933 International Convention.<sup>67</sup>

Trafficking was also conceived in relation to “gratifying the passions of another.”<sup>68</sup> It also recognized that there is a punishable act even if there is consent from the prostituted victim.<sup>69</sup> It is worth noting that that 1949 Convention adopted an abolitionist stance as regards prostitution, and as previously mentioned, declares trafficking and prostitution as contrary to the principles of human dignity and worth of the human being. It is to be noted that in a 2000 report of the United Nations (U.N.) Special Rapporteur on Violence Against Women, the 1949 Convention was said to be “ineffective in protecting the rights of trafficked women and combating trafficking ... [and it] does not take a human rights approach.”<sup>70</sup> Thus, calls for review and strengthening of the Convention were made during the Fourth World Conference on Women.<sup>71</sup>

The contemporary definition of trafficking is found in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and

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65. See GALLAGHER, *supra* note 9, at 14.

66. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317, at pmb1., U.N. Doc. A/RES/317 (Dec. 2, 1949).

67. See Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, A/RES/317 (1949).

68. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 67, at art. 1.

69. *Id.* art.1 ¶ (2).

70. See GALLAGHER, *supra* note 9, at 61 (citing Special Rapporteur on Violence Against Women, its Causes and Consequences, ¶ 22, 56th Session of the Commission on Human Rights, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000) (by Radhika Coomaraswamy)).

71. GALLAGHER, *supra* note 9, at 62 (citing The Beijing Declaration and Platform of Action, ¶ 122, endorsed by G.A. Res. 50/203 (Oct. 27, 1995)).

Children.<sup>72</sup> The Protocol supplements the Convention Against Transnational Organized Crime. The Trafficking Protocol contains the following definition of TIP:

- (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.<sup>73</sup>

It can be observed that the definition echoes some of the principles or elements set forth in the previous conventions. Trafficking by means of the threat or use of force, and the like, as earlier stipulated in the 1904 Convention, is also in the Protocol.<sup>74</sup> It is, however, enhanced by the inclusion of factors that contribute to vulnerability.<sup>75</sup> Consent is also maintained as irrelevant for determining the means of trafficking.<sup>76</sup> Also, while the Trafficking Protocol still emphasized on the vulnerability of

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72. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *adopted* Nov. 15, 2000, U.N. Doc. A/RES/55/25, 2237 U.N.T.S. 319 [hereinafter Protocol to Prevent, Suppress, and Punish Trafficking in Persons].

73. *Id.* art. 3.

74. *Id.* art. 3 ¶ (a).

75. *Id.*

76. *Id.* ¶ (b).

women and children to trafficking, the broad definition also recognized that men can also be victims of trafficking.<sup>77</sup>

The United Nations Office on Drugs and Crime (UNODC) breaks down the elements of human trafficking into three: (a) the act,<sup>78</sup> (b) the means,<sup>79</sup> and (c) the purpose.<sup>80</sup> The act may either be the “[r]ecruitment, transportation, transfer, harbouring, or receipt of persons.”<sup>81</sup> The means indicate how trafficking is done, either by “[t]hreat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.”<sup>82</sup> The purpose may cover “exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.”<sup>83</sup> To constitute trafficking, all these elements must be present, the only exception being the trafficking of children.<sup>84</sup> For children, it is not necessary that the means element be present because they are seen as incapable of consenting to any form of work or exploitation, whether or not fraud, deception, brute force, or other means are in fact employed.<sup>85</sup>

The Philippines, through R.A. 9208, has adopted the definition of TIP in its domestic law. R.A. 9208 provides —

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 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.<sup>86</sup>

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77. The terminology of Article 3 of the Protocol does not use the word “woman,” instead it uses “person.” See Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 72, art. 3.

78. UNODC, What is Human Trafficking?, available at <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last accessed Sep. 6, 2012)

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. See GALLAGHER, *supra* note 9, at 31.

85. *Id.*

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

The definition of TIP in Section 3 (a), as quoted above, is almost the same as the definition provided for in the Trafficking Protocol. The very same definition in R.A. 9208 is replicated in the Rules and Regulations Implementing R.A. 9208.<sup>87</sup>

The evolution of the definition of trafficking in persons shows that exploitation was first understood in the context of slavery. Subsequently, exploitation came to include sexual exploitation, mostly equated with prostitution and immoral purposes. However, there exists a divide in the debate as to whether prostitution should be considered trafficking. The debate is divided between those who do not consider consensual adult prostitution as trafficking on one hand, and those who believe that prostitution, whether consented to or not, is against human dignity and human rights, on the other.<sup>88</sup> Because of this, the Trafficking Protocol uses “exploitation of the prostitution of others” rather than just “prostitution” when referring to it in relation to trafficking. Much later, the concept of exploitation was enlarged by the Trafficking Protocol by maintaining sexual exploitation and slavery as forms of exploitation, and also including the removal of organs. With such expanded notion of trafficking in persons, it has come to be known as “modern day slavery.”<sup>89</sup>

### III. A CLOSER LOOK AT THE ELEMENT OF EXPLOITATION

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87. Section 5 (c) of the Implementing Rules and Regulations of R.A. 9208 states —

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

Rules and Regulations Implementing the Anti-Trafficking in Persons Act of 2003, Republic Act No. 9208, § 5 (c) (2003) (emphasis supplied).

88. It is worth noting that while the 1949 Convention takes on an abolitionist stance on prostitution, both the Trafficking Protocol and CEDAW take on a different stance with the use of the phrases “exploitation of the prostitution of others” and “exploitation of the prostitution of women.”

89. See GALLAGHER, *supra* note 9, at 189-90.

After discussing the history of how the legal definition of trafficking has evolved, this Section will provide a more detailed examination of the element of exploitation and its necessity. This will be useful in later identifying challenges in the enforcement of the law.

As mentioned earlier, the Trafficking Protocol's definition of TIP includes the purpose of the crime as an element. Article 3 (a) of the protocol states that —

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.<sup>90</sup>

It can be gleaned from the above provision that the Trafficking Protocol does not contain an explicit definition of exploitation. Instead, the Protocol provides a seemingly non-exclusive list of acts that are considered exploitative. The phrase “at a minimum” was used in order to cover other forms of exploitation that may have been otherwise excluded by implication.<sup>91</sup>

It is worth mentioning that in the definition of TIP in the Protocol, the words “for the purpose of exploitation” were used.<sup>92</sup> Exploitation is the end result of trafficking. But what is the import of the use of the words “for the purpose?” Gallagher opines that “[t]rafficking will occur if the implicated individual or entity *intended* the action ... that would lead to one of the specified end results.”<sup>93</sup> It can be said therefore that for trafficking to exist, the end result need not happen. It would be enough that there exists the intention to exploit another person. This is further supported by the classification by the UNODC of trafficking as a crime of specific or special intent.<sup>94</sup> Gallagher went on to explain that it is not required that the intended outcome be actually achieved in order for the crime of trafficking

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90. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 72, art. 3 (a).

91. See GALLAGHER, *supra* note 9, at 34-35 (citing UNODC, *Travaux Préparatoires for the Organized Crime Convention and Protocols* (An E-book of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, 343 n.22 & 344 n.30 available at [http://www.unodc.org/pdf/ctocccop\\_2006/04-60074\\_ebook-e.pdf](http://www.unodc.org/pdf/ctocccop_2006/04-60074_ebook-e.pdf) (last accessed Sep. 6, 2012)).

92. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, *supra* note 71, art. 3 (a).

93. GALLAGHER, *supra* note 8, at 34 (emphasis supplied).

94. *Id.*

to arise.<sup>95</sup> It suffices that the conduct of the perpetrator be for the purpose of exploitation.<sup>96</sup>

The above interpretation appears to be liberal, and would be helpful when translated to domestic law. This seeming liberal interpretation would supposedly make the prosecution of trafficking cases at the domestic level easier because the exploitation need not occur for the crime to be committed. However, this is not true in all cases, especially where the purpose of the acts done, *i.e.* to exploit, is not yet very apparent. Intent is usually easier to prove when the perpetrator is close to the situation of exploitation,<sup>97</sup> such as when the trafficker is in the act of procuring women to be brought to a brothel known for prostitution. But when the perpetrator is still remotely situated from the situation of exploitation, the intent to exploit, being a state of mind, becomes harder to prove.<sup>98</sup> In the latter situation, it is very easy for the perpetrator to simply deny the purpose of the act.<sup>99</sup>

It was mentioned earlier that the definition of TIP in R.A. 9208 was lifted almost verbatim from the Trafficking Protocol. As such, the part of the definition pertaining to the purpose is similar to that part in the protocol. R.A. 9208 also uses the phrase “for the purpose” to introduce in the definition the end result of trafficking — exploitation. Similar to the Trafficking Protocol, R.A. 9208 also has an open-ended list of the forms of exploitation that would form part of the crime of trafficking.<sup>100</sup> It can also be said that such list does not discount the possibility of having new forms of exploitation that may possibly not have been conceived of at the time of the enactment of the law.

As previously mentioned in the discussion of exploitation in the context of the Trafficking Protocol, the exploitation need not occur in order for the crime of trafficking to exist. The same can be said of our domestic law, R.A. 9208. A look into the congressional deliberations may shed light on the matter. When the definition of trafficking of persons to be included in the law was being discussed, Senator Franklin M. Drilon proposed the following amendment —

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95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. GALLAGHER, *supra* note 9, at 34.

100. The law states that exploitation “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.” Anti-Trafficking in Persons Act of 2003, § 3 (a).

Senator Drilon: The amended Section 3 (a) therefore, Mr. President, will read as follows, if accepted by the sponsor:

‘(a) *Trafficking in Persons* — refer[s] to the recruitment, transportation, transfer, provision, harboring, receipt or deployment of a person for the purpose of exploitation, pornography, forced labor, slavery, sexual exploitation, involuntary servitude, debt bondage, physical or other forms of abuse, removal or sale of organs or involvement in armed activities or other similar act.’

Mr. President, this is one of the most difficult provisions in this bill, and we thought that what is critical is Section 4 which punishes acts of trafficking in persons. The definition of ‘trafficking in persons’ was made more concise to avoid any confusion and most significant.

*We have proposed the deletion of the phrase ‘resulting in’* because we believe that with this phraseology, it can result in a person completely innocent being jailed for life. Because even if the recruitment was for a perfectly legal purpose, if the recruited person, on her own, become a prostitute, then the recruiter, who is completely innocent, is penalized and is imprisoned for life. Because the recruitment, which was legal from the very start, resulted in prostitution upon the complete volition of the recruited person.

That is the significance of deleting the phrase ‘resulting in,’ so that now it will just refer to recruitment for the purpose of prostitution, *et cetera*.

We hope that the good sponsor can consider the amendment, Mr. President.

The Senate President Pro Tempore: What does the sponsor say?

Senator Ejercito Estrada: It is accepted, Mr. President.

The Senate President Pro Tempore: Is there any objection? [*Silence*] There being none, the amendment is approved.<sup>101</sup>

It can be gleaned from the above discussion that with the deletion of the phrase “resulting in” from the definition in the proposed bill, the legislators wanted to put a premium on the intent of the perpetrator. In the example of Senator Drilon on the proposed amendment, it can be seen that the legislators did not intend to punish the recruiter who did not have any intent to exploit another person. The gravamen of the offense, then, is the intent to exploit. Conversely, it can also be said that the exploitation does not have to happen for the crime of trafficking to be consummated. The mere existence of the intent to exploit suffices.

Again, while this seems to facilitate the prosecution of trafficking cases, proving the purpose element in the crime of trafficking continue to pose as a challenge. This can be better understood by an illustration. Part of a typical

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101. CONG. REC. Vol. III. No. 70, at 1079, 12th Cong., 2d Reg. Sess. (Mar. 19. 2003) (emphasis supplied).

trafficking cycle as documented by the Ateneo Human Rights Center consists in the recruitment of the victim by the recruiter.<sup>102</sup> The recruiter, usually a relative, friend, or an acquaintance of the would-be victim, provides the latter with everything that he or she needs, such as travel expenses and pocket money.<sup>103</sup> Instructions as to where to go and how to act are also given.<sup>104</sup> In R.A. 9208, recruitment in itself may constitute trafficking and can be punished as such.<sup>105</sup> However, proving recruitment would not be enough to convict a perpetrator under the law. Two other elements must be established, one of which is the purpose. It must be proven that the act of recruitment was for the purpose of exploitation. This goes back to the problem of proving the purpose. At the earlier stages of trafficking cycle, in the recruitment phase for instance, the intent to exploit is usually hard to detect. As mentioned earlier, the end purpose of the act can easily be denied.

The rather sophisticated methods of trafficking operations also contribute to the difficulty in proving the purpose of the acts related to trafficking. The traffickers and illegal recruiters are usually supervised by a “core group” that manages the operations of the syndicate.<sup>106</sup> The operations are done by “cells,” each cell being in charge only of particular tasks.<sup>107</sup> For example, Cell One is in charge of bringing the victim from Point A to Point B. Cell Two will then bring the victim from Point B to Point C, and so on and so forth. The supervision of each cell as regards the victim usually lasts while the latter is with them — this can last for a few hours, a few weeks or a few months.<sup>108</sup> It is also possible that the members of these cells do not actually know each other, and just receive particular instructions from the core group of the syndicate.<sup>109</sup> This set up makes it harder for law enforcement agencies to capture the syndicate. Even assuming that the cell members are caught, the purpose of the acts (recruitment, receipt, transport, etc.) is still difficult to prove. A least two scenarios can be seen, one is that the perpetrator can simply deny the purpose, and the other is that the perpetrator really does not know the end goal of the act, given that he or she simply receives particular instructions to be carried out.

As discussed earlier, the more remotely situated the perpetrator is to the situation of exploitation, the harder it becomes to prove the intent to exploit

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102. ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 52.

103. *Id.*

104. *See* ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 52.

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

106. ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 49.

107. *Id.*

108. *See* ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 49.

109. ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 49



on the part of such perpetrator. The Philippine experience is replete with these situations, especially with the rapid development in technology and its increased use in facilitating the trafficking process. For instance, “e-tickets” for transportation are now sent to the would-be victim through mail accounts maintained through the internet, and instructions as to where to go are relayed through short message services, more commonly known as text messages.<sup>110</sup> As such, the face-to-face interactions of the victim and the perpetrator are considerably lessened. This lends better protection to the perpetrator. Also, even if these perpetrators are caught, the same problem intimated above exists. The purpose of the recruitment or other acts done by the traffickers is hard to prove using short and often equivocal instructions sent through text messaging.

#### IV. DISPUTABLE PRESUMPTIONS: A POSSIBLE SOLUTION

The difficulty in proving the element of exploitation is one of the problems causing the low number of convictions in trafficking cases. While the legislature has deleted the phrase “resulting in” and has instead made use of the words “for the purpose of” in defining TIP, theoretically providing for an easier way to prove the crime of trafficking, the problem of proving that intent, which usually exists in the mind of the perpetrator, still poses a problem.

Studies tackling trafficking in persons in the Philippines have identified several weaknesses in R.A. 9208.<sup>111</sup> It has been a common recommendation that the attempted and frustrated stages of trafficking be made punishable, in the same way that crimes at different stages are punishable by the Revised Penal Code. The reason behind this recommendation is usually because the

presence of exploitation or the intent to exploit is not always apparent and often difficult to prove if the intervention or rescue of trafficked victims occurs at an early stage where the acts committed do not yet clearly indicate that the purpose of such act is to exploit the victim for labor, sex, removal or sale of organs, or engaging children in armed activities.<sup>112</sup>

It must be noted that trafficking in persons, being defined and penalized by a special law, must be consummated in order for the crime to exist.<sup>113</sup> This, of course, does not prevent the legislature from including the crimes of attempted trafficking and frustrated trafficking in the law, which the existing R.A. 9208 does not punish. Such stages in trafficking, should they later on

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110. See ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 51.

111. See generally ATENEO HUMAN RIGHTS CENTER, *supra* note 7.

112. ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 83.

113. See *Pecho v. Sandiganbayan*, 238 SCRA 116, 122 (1994). “[T]he provisions of the Revised Penal Code on attempted or frustrated felonies do not apply to offenses penalized by special laws[.]” *Id.*

be included as punishable acts, would have to be defined and its elements set forth in the amendments.

To help envision what frustrated and attempted trafficking could possibly be like, the definition of frustrated and attempted felonies in the Revised Penal Code may be of assistance. Article 6 states —

A felony ... is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.<sup>114</sup>

Following the above definitions, the purpose of the crime, which is exploitation in the case of trafficking in persons, still needs to be proven. It may be true that penalizing the attempted and frustrated stages of trafficking may increase the number of convictions in trafficking cases. Yet, the possible increase in convictions does not necessarily imply that trafficking, and in particular, its purpose, will become easier to prove.

One possible solution to the problem of proving exploitation or the intent to exploit is to create disputable presumptions in law. These presumptions, if inserted into the law, would mean that once certain acts or factual circumstances are established, such would be considered *prima facie* evidence of the intent to exploit, or even of exploitation itself. Such acts or circumstances are more easily proved in evidence than intent, which as discussed earlier, is a state of mind of the perpetrator.

In creating these disputable presumptions, it would be helpful to review trafficking cases which were previously dismissed, in order to determine if there is a pattern or trend in the reasons for dismissal. This pattern or trend may be helpful in identifying the common situations or scenarios that characterize trafficking, and may become the basis for the disputable presumptions.

The use of disputable presumptions in the Philippine legal system is widely recognized to be constitutional.<sup>115</sup> A disputable (sometimes called rebuttable) presumption is generally described as a device in the rules of

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114. REVISED PENAL CODE, art. 6.

115. See *Vallarta v. Court of Appeals*, 150 SCRA 336, (1987) (citing *People v. Mingo*, 92 Phil. 856, 858-59 (1953)); *Dizon-Pamintuan v. People*, 234 SCRA 63, 74 (1994) (citing *U.S. v. Luling*, 34 Phil. 725, 728 (1916)); & *Wa-acon v. People*, 510 SCRA 429, 439 (2006) (citing *Bautista v. Sarmiento*, 138 SCRA 587, 592 (1985)).

evidence that the fact-finder can use to assume the existence of a fact based on the existence of another.<sup>116</sup>

The disputable presumption<sup>117</sup> is one of two kinds of presumptions that the Revised Rules of Evidence contain, the other kind being the conclusive presumption.<sup>118</sup> Edgardo J. Francisco defines a disputable presumption as “a species of evidence that may be accepted and acted on when no other evidence to uphold the contention for which it stands [is available]; one which may be overcome by other evidence.”<sup>119</sup> In other words, contrary evidence when satisfactorily proven will have the effect of overturning the disputable presumption. Conversely, in the absence of such satisfactory evidence, the presumption stands.

One reason why disputable presumptions are valid is the fact that it does not have the effect of shifting the burden of proof.<sup>120</sup> It is established that the burden of proof can never shift from the prosecution to the defense, purely on the existence of a presumption in law alone.<sup>121</sup> It is still incumbent upon the party who asserts the affirmative of the issue to prove the same. The burden of proof remains with such party all throughout the case.<sup>122</sup> In disputable presumptions, what is shifted is the “burden of going forward with the evidence” or simply, the “burden of evidence.” This, unlike the burden of proof, may shift from one party to the other. When one party has sufficiently established a fact through evidence, the burden of evidence is shifted to the other party to introduce evidence to the contrary.<sup>123</sup>

As an illustration, the use of disputable presumptions in a criminal case does not shift the burden of proof to the accused to prove his innocence. This keeps the use of disputable presumptions in line with the constitutional right to be presumed innocent. What is merely shifted to the accused is the

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116. See Presumptions and Inferences, § 5.02, available at <http://www.lexisnexus.com/lawschool/study/outlines/html/evid/evid05.htm> (last accessed Sep. 6, 2012) & Restituto S. Mendoza, Unravelling the Nature and Complexity of Presumptions: The Constitutionality of Statutory Criminal Presumptions and its Role in Future Legislation, at 13 (unpublished J.D. Thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing Edmund M. Morgan, *Some Observations Concerning Presumptions*, 44 HARV. L. REV. 906, 906 (1931)).

117. REVISED RULES ON EVIDENCE, rule 131, § 3.

118. *Id.* § 2.

119. RICARDO J. FRANCISCO, *THE REVISED RULES OF COURT OF THE PHILIPPINES* 42 (1997 ed.).

120. See *Mabunga v. People*, 439 SCRA 510, 522 (2004).

121. *Id.*

122. See FRANCISCO, *supra* note 119, at 4.

123. *Id.*

burden of evidence to overcome the disputable presumption should it arise. It is still, however, incumbent upon the state to prove the guilt of the accused. It must be borne in mind that a conclusive presumption against an accused in a criminal case is unconstitutional because of a clear violation of one's right to due process.<sup>124</sup>

Jurisprudence in the U.S. has evolved standards in testing the constitutionality of rebuttable statutory presumptions. A brief discussion of these standards would be helpful in drafting the disputable presumptions that would pass the test of constitutionality. In a Note, the Columbia Law Review provides a discussion of the Rational Connection Test and the Comparative Convenience Test.<sup>125</sup>

In discussing the Rational Connection Test, the Note cites *Mobile, J. & K.C. R.R. v. Turnispeed*.<sup>126</sup> The U.S. Supreme Court in that case held that for the presumption to be in line with the due process clause and equal protection clause, there should be a "rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate."<sup>127</sup> On the other hand, the Comparative Convenience Test "allow[s] the burden of proof to be transferred to the defendant if the inconvenience to the defendant is less than the benefit to the prosecution"<sup>128</sup> In the decision in *Morrison v. California*,<sup>129</sup> Justice Cardozo noted that the Comparative Convenience Test becomes proper when "upon a balancing of convenience or of the opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression."<sup>130</sup> In regard to the use of the Comparative Convenience Test, *Morrison* held that the same is usually applied side by side the Rational Connection Test.<sup>131</sup> Further, in *Tot v. United States*,<sup>132</sup> the U.S. Supreme Court further stated that the Rational Connection Test is controlling since the Comparative Convenience Test could not save a presumption if such

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124. Mendoza, *supra* note 116, at 33.

125. Columbia Law Review, *Constitutionality of Rebuttable Statutory Presumptions*, 55 COLUM. L. REV. 527, 527 (1955).

126. *Id.* (citing *Mobile, Jackson & Kansas City Railroad Co. v. Turnispeed*, 219 U.S. 35, 43-44 (1910)).

127. Mendoza, *supra* note 116, at 33 (citing *Turnispeed*, 219 U.S. at 43-44).

128. Aimee Fukuchi, *A Balance of Convenience: Burden-Shifting Devices in Criminal Cyberharassment Law*, 52, B.C.L. REV. 289, 314 (2011).

129. *Morrison v. California*, 291 U.S. 82 (1934).

130. Fukuchi, *supra* note 136, at 314. (citing *Morrison*, 291 U.S. at 88-89).

131. Columbia Law Review, *supra* note 125, at 535 (citing *Morrison*, 291 U.S. at 88-89).

132. *Tot v. United States*, 319 U.S. 463 (1943).

presumption suffers infirmity resulting from a lack of connection between the fact presumed and the fact proved.<sup>133</sup>

The Philippine Supreme Court has used both tests in *People v. Mingoa*. Since our Supreme Court referred to U.S. legislation and jurisprudence in applying both tests,<sup>134</sup> it may safely be concluded that the ratiocination of the U.S. Supreme Court in *Tot* holding that the Comparative Convenience Test is controlling also applies in the Philippine jurisdiction. As such, the disputable presumptions to be developed must demonstrate the rational connection between the facts constituting the presumption and the fact to be proved.

The use of disputable presumptions in trafficking cases can be justified by state policy.<sup>135</sup> One of the reasons for creating presumptions is to implement social policy, where “the law sometimes allocates the burden of persuasion to implement social policy by favoring certain contentions over others.”<sup>136</sup> Such assistance to victims of trafficking can be justified by the constitutional policy valuing human dignity and respecting human rights.<sup>137</sup> This is reiterated in the Declaration of Policy in R.A. 9208.<sup>138</sup>

## V. CONCLUSION

The Anti-Trafficking in Persons Act of 2003 is a piece of landmark legislation. It provided a legal definition to trafficking in persons — a

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133. Mendoza, *supra* note 116, at 39 (citing *Tot*, 319 U.S. at 468).

134. See *People v. Mingoa*, 92 Phil. 856, 859 (1953).

135. See Presumptions and Inferences, §5.03, available at <http://www.lexisnexis.com/lawschool/study/outlines/html/evid/evid05.htm> (last accessed Sep. 6, 2012).

136. Christine T. Ng, *Presumption of Innocence Truly Presumed: The Unconstitutionality of the Presumption that a Person Intends the Ordinary Consequence of his Voluntary Acts*, at 13 (unpublished J.D. Thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing 1 Jones on Evidence 308 (7th ed. 1992)).

137. PHIL CONST. art. II, §11.

138. Section 2 of the law states that —

It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

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

phenomenon which was already happening, but was previously undefined in the legal realm, thereby solidifying trafficking as a punishable crime in the Philippine jurisdiction, in the hopes of eliminating the practice from the country.

Our trafficking law however, is far from perfect. More than nine years have passed since the law was enacted, and yet traffickers continue to operate and many men, women, and children become hapless victims to this phenomenon, which many consider to be “modern day slavery.”<sup>139</sup> Problems regarding its implementation abound. Studies have identified corruption and slow judicial processes as among the problems in implementing the law.<sup>140</sup> Implementation however, is not the sole problem. The law itself should be strengthened if it is to become an effective tool in combating trafficking in persons.

Establishing the element of purpose in trafficking, *i.e.* the purpose of exploitation, has proved to be difficult. Going through the evolution of the definition of trafficking in laws, both at the international and domestic planes, reveal that exploitation is established by proving the intent of the perpetrator. The problem is that intent, being a state of mind, is rather difficult to prove. Recommendations for strengthening the law include penalizing not only trafficking in the consummated stage, but also trafficking in the attempted and frustrated stages. However, this may not be the exact solution to the problems relating to the difficulty found in proving the intent to exploit as an element of the crime.

The creation of disputable or rebuttable presumptions may be useful in facilitating the establishment of exploitation, or at least the intent to exploit. The creation of these presumptions should, however, be within the constitutional limits, in order to respect the rights of the suspected perpetrator. The most important consideration in crafting the disputable presumptions is the rational connection between the circumstances or situations provided and the fact of exploitation or the intent to exploit. The pattern or trend in dismissed trafficking cases may be valuable in identifying the possible situations where disputable presumptions may arise. Again, these situations must pass the Rational Connection Test.

An additional aid in proving the purpose of the acts done in pursuit of trafficking is ultimately intended to ease the difficulty in prosecuting the crime of trafficking. The creation of disputable presumptions can be seen as such aid. So long as constitutional rights are not trampled upon, these disputable presumptions can help in the fight to eradicate trafficking in persons. Towards the end, they can contribute to ensuring that state policies to value human dignity and to respect human rights are upheld.

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139. See GALLAGHER, *supra* note 9, at 179.

140. See ATENEO HUMAN RIGHTS CENTER, *supra* note 7, at 74.