

Using Legal and other International Instruments to Combat the Trafficking in Women and Children within the Asia-Pacific Region

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I. INTRODUCTION

The trafficking of persons has been discussed in various local and international fora. Whether the focus of the problem is on women or children, or within or across national borders, it can be presumed that more and more people have acquired a better understanding of this phenomenon and the important issues related to it. There has also been a definite consensus that it should be treated

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Cite as 46 ATENELO L.J. 684 (2001).

and addressed as a global problem. Its exact definition, however, remains unresolved. To a certain extent, this has raised concerns and has further amplified the complexity of the trafficking phenomenon.

In the 1994 United Nations General Assembly, trafficking was defined as:

[t]he illicit and clandestine movements of persons across national borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labor, false marriages, clandestine employment and false adoption.¹

In December 2000, several countries signed the Convention Against Transnational Organized Crime² and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.³ Although neither instrument has entered into force, the Convention was signed by about 124 countries, while the Protocol by almost 80 countries.⁴

In the Protocol, trafficking is defined as:

[r]ecruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵

Under Section 3(c) of this protocol, trafficking in children exists notwithstanding the absence of any and all means enumerated in the definition.

This latter definition recognizes the reality that force and falsity are not the only modes to effect trafficking. It also states that when the targets of trafficking are children, the modes or means employed are immaterial.

1. UNIFEM East and South East Asia, *Trafficking in Women and Children, Mekong Sub-Region*, available at <http://www.unifem-eseasia.org/Resources/Traffick2.html> [hereinafter UNIFEM Trafficking].
2. Convention Against Transnational Organized Crime, Nov. 2, 2000, U.N. Doc. A/AC.254/4/Add.3/Rev.6, available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf [hereinafter Transnational Organized Crime].
3. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, G.A. Res. 55/25, annex II, 55 U.N. GAOR Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf [hereinafter Trafficking].
4. U.N. Press Release L/T/4359, United Nations (Dec. 15 2000), available at <http://www.un.org/News/Press/docs/2000/20001215.lt4359.doc.html>.
5. Trafficking, *supra* note 3, art. 3(a).

The differences in definition, however, have not prevented some countries, intergovernmental bodies, international and local non-governmental organizations (NGOs), and other concerned groups from documenting and conducting research on trafficking. Thus, there exists literature on its magnitude (estimates of the number of trafficked women and children), its nature, modes, and the current and proposed responses to the problem.

I. COMMON CONCERNS

A. Push and Pull Factors⁶

Whether trafficking occurs within or across national borders, and whether the subject of the traffic is women or children, there are common reasons why this problem occurs and why it persists.

First, a major reason why women and children are trafficked and suffered to work in the most dehumanizing conditions is poverty. While it is true that lack of resources is a major obstacle, the more serious problem is the government's lack of political will in effecting changes to bring about equal distribution of opportunities and resources. Thus, good governance has been recognized as a necessary element in addressing poverty alleviation.⁷

Second, the lack of employment and educational opportunities is also a problem common to countries where trafficking thrives. Most children, for instance, are not sent to school, or are pulled out from school every time an extra hand is needed in the farms, or whenever there is an opportunity for them to earn money. For women, it is the need to find jobs or better-paying ones that push them to migrate, whether within or outside the country.

Third, economic disparities push people to move. With the pervasiveness of poverty and the dearth of economic opportunities in the sending localities, migration from the rural to the urban areas, or to foreign countries, becomes inevitable. As stated in one study,⁸ these economic conditions stem from demographic and structural factors in the economy. On one hand, rapid population growth in the sending country creates an expanding labor force that results in a surplus of labor when combined with slow economic growth. On the other hand, the receiving country may not be able to keep pace with its rapid economic growth which leads to a high demand for labor. Rising income in the receiving country may also make some occupations inferior for local workers, creating a gap for foreign workers to fill. The demand for labor

6. Classification based on UNIFEM Trafficking, *supra* note 1.

7. See EMMA PORIO, *URBAN GOVERNANCE & POVERTY ALLEVIATION IN SOUTHEAST ASIA: TRENDS & PROSPECTS* 3 (1997).

8. ATENEO HUMAN RIGHTS CENTER, *THE PHILIPPINE-BELGIAN PILOT PROJECT AGAINST TRAFFICKING IN WOMEN* 72 (1999) [hereinafter AHRC TRAFFICKING PROJECT].

in certain sectors, specifically domestic work or sex services, creates the pull factor for workers from poorer areas. In addition, the restrictive policies of receiving countries on foreign migrant workers spawn more creative modes of entry, with trafficking being disguised in various forms. As long as there is a demand for work which local residents cannot or will not supply, this demand will be filled in by foreign workers, whether legally or otherwise. Trafficking will flourish, especially if there is no possibility of meeting this demand legally.⁹

Fourth, gender socialization and the erosion of family values also contribute to the supply and demand factors in trafficking. Children are socialized to help the family and contribute economically. Thus, it is unsurprising for education to come only second to work. There is also cultural acceptance of migration for work, which facilitates the clandestine entry of children into the workforce and workplace.¹⁰ In some cultures, socio-economic factors make it acceptable for young women to be sold according to customs and traditions.¹¹ In addition, the perception of women and girl-children as the "weaker sex" having the "lower status," and the overwhelmingly patriarchal societies in Asia guarantee the dominant role of men as heads of the family, breadwinners, leaders, and decision makers. Thus, men are associated with productive work, while women are relegated to keepers of the house, doing domestic chores. Since there is a large demand for domestic or care-giving work and sexual services, women and children are naturally targeted to supply these demands both for local and international "markets."

Violence against women and children, as well as dysfunctional families, also appear to be significant factors. Even children who are exploited sometimes find it difficult to return to their families, or refuse to do so because of the violence they have experienced.¹²

Furthermore, materialism and consumerism fuel the desire of poor families to send their children and women to migrate and work. Advertising and the media glamorize the consumption patterns and lifestyles of the small elite. Thus, respectability and social acceptance of the self and the family are sometimes hinged on a decent house, high education, and the acquisition of appliances, furniture, clothes, and other material trappings. Working abroad, a "status" in itself, and sending dollar remittances and gifts are the most effective ways for

9. *Id.* at 108.

10. Amparita Sta. Maria, et al., *Internal Trafficking in Children for the Worst Forms of Child Labor: Final Report* (2001) (unpublished manuscript, on file with Ateneo Human Rights Center) [hereinafter Sta. Maria].

11. ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC OF THE UNITED NATIONS, *WOMEN IN ASIA AND THE PACIFIC: HIGH LEVEL INTERGOVERNMENTAL MEETING TO REVIEW REGIONAL IMPLEMENTATION OF THE BEIJING PLATFORM FOR ACTION*, 26-29 OCTOBER 1999, PROCEEDINGS 65 (2000).

12. Sta. Maria, *supra* note 10.

the family to acquire the desired material goods, and in the process, gain respectability and social acceptance.¹³

Fifth, while international migration and globalization have opened the borders between countries, they have also provided more opportunities for traffickers to move people without much scrutiny. Trafficking, both internally and externally, continues to grow and develop into a low-risk, high-profit "industry," especially in Asia.

Sixth, development policies and an expanding commercial sex industry complement each other. While the less developed and developing countries promote tourism, the more developed countries and urbanized towns and cities present themselves as the hub of modern convenience and material goods. For one, it is presumed that employment opportunities in developing countries are better. Also, working abroad or in key cities in the country is considered a status in itself. Hence, more and more people prefer to migrate to these places for work. However, it is also these places which create the demand for domestic work and sexual services, where traffickers naturally bring the women and children.

Seventh, weak law enforcement provides very little incentive for women, children, or their families to come out in the open and prosecute against their traffickers. They are also re-victimized by abuse and lack of sensitivity on the part of the law enforcement officers, further aggravated by the corrupt and slow criminal justice system. This situation serves to embolden the traffickers in becoming more aggressive in their recruitment.

B. Working Conditions¹⁴

Trafficked women and children have to endure sub-human conditions of work; they are often ill treated and subjected to violence in prison-like environments. The physical facilities of the places where they live and work are often below acceptable standards. They endure practices akin to slavery: physical and sexual abuse, exposure to hazardous work, long hours of work, little time for rest or recreation, and low or no wages. This is aggravated by the fact that their earnings are kept secret from them and are withheld by traffickers or employers. They are also burdened with prolonged indebtedness to traffickers, employers, and brothel owners. Moreover, access to health and medical facilities is almost non-existent.

13. AHRC TRAFFICKING PROJECT, *supra* note 8, at 91.

14. UNIFEM Trafficking, *supra* note 1.

C. Risks¹⁵

Together with the deplorable working environment come the risks and hazards to which women and children are eventually exposed. They are prone to drug addiction, and the risk getting pregnant and contracting sexually transmitted diseases such as HIV/AIDS. There is also the threat to their security: fear for their physical safety because of unscrupulous agents and employers, the danger of reprisals from traffickers, and the fear of apprehension, detention, prosecution, and deportation by authorities.

D. Responses

As far as responses to the problem of trafficking are concerned, programs for both women and children have been broadly categorized into prevention, protection, and reintegration/rehabilitation measures. However, the approaches have often been different, in recognition of the fact that the framework for action for children is quite distinct from that of women. While the vulnerability and special needs of children (as distinguished from adults) must be specifically addressed, there is also a strong concern for women to be treated as adults having equal rights and opportunities. This should be recognized as an important component in programs addressing trafficking.

II. TREATIES AND OTHER INSTRUMENTS ON TRAFFICKING IN WOMEN AND CHILDREN IN THE ASIA-PACIFIC REGION

A. International Legal Instruments

International legal instruments have always been regarded as tools that prescribe international norms to be followed by States. Human rights treaties, in particular, set the standard for the minimum treatment of human beings. These also provide the framework by which countries can agree and cooperate in order to address important issues deserving of international concern and attention. Aside from their norm-creating character, international instruments can also establish mechanisms to ensure State compliance with its treaty obligations. Consequently, these instruments shape how States respond to issues of international concern. Treaties, therefore, may serve as instruments of change.

Trafficking in women and children was recognized as an issue of grave international concern even before the United Nations (UN) came into existence. The 1904 Agreement for the Suppression of White Slave Traffic¹⁶

15. *Id.*

16. Agreement for the Suppression of White Slave Traffic, May 18, 1904, U.K.T.S. 24, Cd. 2689, available at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/vii_boo/vii_8.html.

and the subsequent 1910 Convention for the Suppression of White Slave Traffic¹⁷ addressed the problem of procuring women and girls for immoral purposes. The 1910 Convention, which took effect in 1912, not only engaged State-parties to enact laws to make "white slave traffic" a crime, but also specifically provided that such offense be punishable even if "various acts [thereof] . . . may have been committed in different countries."¹⁸ Furthermore, it provided for the inclusion of trafficking as an extraditable offense between States having an extradition treaty.¹⁹

This convention was further elaborated upon in the International Convention for the Suppression of the Traffic in Women and Children,²⁰ which entered into force in 1922. This instrument, which is the first treaty to actually have the phrase "traffic in women and children" in its title, extended the application of the offenses mentioned in the 1910 Convention to children of both sexes.²¹

In 1927, the Slavery Convention²² came into force. The concern was to put an end to slavery and the slave trade, and also to prevent compulsory or forced labor from developing into conditions analogous to slavery.²³ In the meantime, the International Labour Organization (ILO) placed the issue of forced labor before the international arena when it adopted ILO Convention 29²⁴ in 1930. This took effect in 1932, and was subsequently supplemented by the Abolition of Forced Labour Convention²⁵ in 1957, which took effect in 1959.

In 1948, the Universal Declaration of Human Rights (UDHR)²⁶ was adopted. This instrument, although not a treaty in itself, has arguably acquired the status of customary international law, serving as the framework for

17. Convention for the Suppression of White Slave Traffic, May 4, 1910, 92 U.N.T.S. 19, available at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/vii_boo/vii_10.html.

18. *Id.* arts. 1 & 2.

19. *Id.* art. 5.

20. International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 10 A.T.S., available at http://www.un.org/Dept./Treaty/final/ts2/newfiles/part_boo/vii_boo/vii_3.html.

21. *Id.* art. 2.

22. Slavery Convention, Mar. 9, 1927, 60 L.N.T.S. 253.

23. *Id.* arts. 4 & 5.

24. Forced Labour Convention, May 1, 1932, 39 U.N.T.S. 55, available at <http://www.hri.ca/uninfo/treaties/31.shtml>.

25. Abolition of Forced Labour Convention (ILO No. 105), Jan. 17, 1959, 320 U.N.T.S. 291, available at <http://www.umn.edu/humanrts/instree/n2il0105.html>.

26. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., Part I, at 71, U.N. Doc. A/Res/217A (1948) [hereinafter *Declaration*].

subsequent major human rights treaties. Together with the International Covenant on Civil and Political Rights (ICCPR),²⁷ the International Covenant on Economic Social and Cultural Rights (ICESCR),²⁸ and the First and Second Protocol to the ICCPR, the five documents have been referred to as the International Bill of Human Rights.

Three years later, the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others²⁹ entered into force. It consolidated the earlier treaties on trafficking, and declared that prostitution and the traffic in persons for this purpose are incompatible with the dignity and worth of the human person.³⁰

Aside from emphasizing the inherent dignity of all human beings, the UDHR also articulated the prohibition against slavery, involuntary servitude, and the slave trade.³¹ Thus, in 1953, the UN adopted the Protocol amending the Slavery Convention,³² and in 1957, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery³³ took effect. Notably, this latter treaty not only reiterated the abolition of the slave trade, but also identified debt bondage and serfdom as institutions similar to slavery. Also to be abolished according to this convention were the following practices: the giving of a woman in marriage for a consideration, the "transfer" of a woman by her husband for value received, inheriting a woman by another person upon the death of her husband, and the delivery of a child to another by his or her parent(s) or guardian for exploitation or labor.³⁴ Notably, this convention has gained wider support than the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, with a total ratification of 119 States, as compared to the latter with only 73 States ratifying it.

27. International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, G.A. Res. 2200A (XXI), U.N. GAOR, U.N. Doc. A/RES/2200A (1966) [hereinafter ICCPR].

28. International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, G.A. Res. 2200A (XXI), U.N. GAOR, U.N. Doc. A/RES/2200A (1966).

29. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, March 21, 1950, 96 U.N.T.S. 271, available at <http://www.unhcr.ch/html/menu3/b/treaty4.htm> and <http://www.unhcr.ch/html/menu3/b/treaty11a.html>.

30. *Id.* pmb1.

31. *Declaration*, *supra* note 26, art. 4.

32. Protocol amending the Slavery Convention, Oct. 23, 1953, 182 U.N.T.S. 51, available at <http://www.unhcr.ch/html/menu3/b/f2psc.html>.

33. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 226 U.N.T.S. 3, available at <http://www1.umn.edu/humanrts/instree/f3scas.html>.

34. *Id.* art. 1.

A similar provision against slavery, servitude and compulsory or forced labor is found in ICCPR.³⁵ The ICCPR, one of the earliest human rights treaties to be widely ratified by States,³⁶ provides for a reporting mechanism to oversee State compliance with the convention. In addition, the ICCPR also has a complaints procedure in its Optional Protocol No. 1, whereby an individual may lodge a complaint against a State, alleging violation of his or her right under the said convention. Basically, however, a State's obligation under the ICCPR is limited to non-State interference, or mere reasonable regulation in order to protect and guarantee the exercise of the individual's rights and freedoms.

The Convention on the Elimination of All Forms of Discrimination Against Women³⁷ (CEDAW) entered into force in 1981. It imposed the obligation to refrain from any act or practice which is discriminatory against women.³⁸ It also required the State to address said discrimination at the institutional and societal levels. Thus, a State should not only adopt appropriate legislation to suppress all forms of traffic in women,³⁹ it must also modify the social and cultural patterns in the conduct of its people so as to eliminate practices based on the idea of gender inequality.⁴⁰ Moreover, under the Convention, a State was tasked to adopt temporary special measures to address the *de facto* inequality of men and women.⁴¹ The State's obligations, therefore, assumed a pro-active stance under CEDAW, which meant that it can be accused of violating the convention for the sole reason that it did nothing to correct gender inequality already existing at the legal, institutional or societal level.

With the adoption and entry into force of the Optional Protocol to the CEDAW⁴² in December 2000, individuals or groups of individuals can now submit an inquiry or communication (complaint) to the committee tasked to do so for violations committed by member States under the convention.⁴³

35. ICCPR, *supra* note 27, art. 8.

36. As of October 22, 2001, 189 member states of the U.N. and four (4) non-member states have ratified the ICCPR, available at <http://www.unhchr.ch/paf/report.pdf>.

37. Convention on the Elimination of all Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR, U.N. Doc. A/RES/34/180 (1979), reprinted in 19 I.L.M. 33 (1979).

38. *Id.* art. 2[d].

39. *Id.* art. 6.

40. *Id.* art. 5[a].

41. *Id.* art. 4[e].

42. Optional Protocol to CEDAW, Oct. 6, 1999, available at <http://www.hre.co.n2/declarations/cedaw/cedawoptionalprotocol.html>.

43. *Id.* arts. 2 & 8.

The Convention on the Rights of the Child (CRC),⁴⁴ which entered into force in 1990, remains the most ratified human rights instrument to date. It mandated State parties to take measures to combat the illicit transfer and non-return of children abroad.⁴⁵ It also enjoined States to take all appropriate national, bilateral, and multilateral measures to prevent the abduction, sale, or traffic in children, for any purpose or in any form.⁴⁶ Notably, the convention classified and articulated four broad categories of children's rights, namely: survival, protection, development, and participation rights.⁴⁷ Like the other major human rights treaties, State compliance to the CRC is through country reports.

In May 2000, two optional protocols to the CRC were adopted by the United Nations General Assembly, one of which was the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁴⁸ This optional protocol gave special emphasis to the criminalization of serious violations of children's rights, namely, sale of children, illegal adoption, child prostitution, and pornography. In its Preamble, the protocol aired grave concern "at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography."⁴⁹ It also expressed the belief that the elimination of the sale of children, child prostitution and child pornography would be facilitated by adopting a holistic approach, addressing their contributing factors, including, among others, trafficking in children.

In the same year, ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour⁵⁰ entered into force. It enumerated the worst forms of child labor, the first of which is all forms of slavery or similar practices, such as the sale and trafficking of children, debt bondage, serfdom, and forced or compulsory labor, including the forced or compulsory recruitment of children for use in armed conflict. This convention required States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor.

44. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, U.N. Doc. A/RES/44/25 (1989) reprinted in 28 I.L.M. 1448 (1989).

45. *Id.* art. 11.

46. *Id.* art. 35.

47. See ADHIKAIN PARA SA KARAPATANG PAMBATA, THE CONVENTION ON THE RIGHTS OF THE CHILD AND THE PHILIPPINE LEGAL SYSTEM xii-xv (Sedfrey Candelaria ed., 1997).

48. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, available at <http://www.umn.edu/humanrts/instree/childprotsale.html>.

49. *Id.* pmbl.

50. Prohibition and Immediate action for the Elimination of Worst Forms of Child Labour (ILO No. 182), Nov. 19, 2000, 38 I.L.M. 1207, available at <http://www1.umn.edu/humanrts/instree/ilo182.html>.

In December 2000, several countries signed the Convention Against Transnational Organized Crime⁵¹ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.⁵² In the protocol, trafficking was defined to include the means of recruitment or transport other than through falsity or force. It also provided that the means employed in trafficking become irrelevant when children are involved.

From the foregoing international instruments, it is evident that the concept of trafficking in women and children, which in the beginning/considered sexual exploitation as the only inherent element, has expanded, and now includes other forms of exploitation, such as trafficking for cheap labor or debt bondage. While trying to cover the contemporary forms of slavery, later treaties have also acknowledged that a comprehensive international approach is necessary to address the problem. This entails, at the very least, cooperation and coordination between and among the countries of origin, transit and destination. The latest convention and protocol underscored the need for broader cooperation, including extradition and mutual legal assistance,⁵³ and other more specific measures, such as law-enforcement cooperation and collection and exchange of information.⁵⁴ Some regional instruments, on the other hand, have opted for a mechanism or body to assist or facilitate the implementation of programs to combat trafficking in women and children on a regional level.

B. Declarations

Declarations express the consensus among States that, in principle, they agree on certain issues. Nonetheless, these instruments are not obligatory, as States are not ready to bind themselves legally until the issues agreed upon have been articulated in a manner that is acceptable to all.

The 1993 Vienna Declaration and Programme of Action⁵⁵ recognized that the human rights of women and the girl-child are inalienable, integral, and indivisible. It also declared that gender-based violence, including those resulting from international trafficking, is incompatible with the dignity and worth of the human person. The declaration recommended that the elimination of such violence be achieved through legal measures, national action, and international cooperation.⁵⁶ These pronouncements were reiterated

51. Transnational Organized Crime, *supra* note 2.

52. Trafficking, *supra* note 3. See *supra* note 4 and accompanying text.

53. Transnational Organized Crime, *supra* note 2, art. 16 & 18.

54. A summary of the United Nations Convention Against Transnational Organized Crime may be found at <http://www.odccp.org/palermo/convmain.html>.

55. Vienna Declaration & Programme of Action on Human Rights, 1-1 I.H.R.R. 240, U.N. Doc. A/CONF.157/24 (1993).

56. *Id.* par. 18.

in the Beijing Declaration and Platform for Action⁵⁷ in 1995, where one of the strategic objectives adopted under "Violence Against Women" was to eliminate trafficking in women and assist victims of violence. In order to dismantle national, regional, and international networks in trafficking, it advocated the ratification and enforcement of international conventions on trafficking, the strengthening of laws for the greater protection of women and girl-children, and greater cooperation and concerted action among law enforcement authorities.⁵⁸

The significance of the above-mentioned treaties and declarations can better be seen in the table below:

INTERNATIONAL INSTRUMENTS			
TITLE	YEAR ADOPTED	NATURE/FEATURE	SIGNIFICANCE
CONVENTION FOR THE SUPPRESSION OF WHITE SLAVE TRAFFIC	1910 1912 <i>entered into force</i>	Treaty	<ul style="list-style-type: none"> Sought to address the problem of procuring women and girls for immoral purposes (Art. 1) Engaged State parties to enact laws and make "white slave traffic" punishable Provided that an offense is committed even if various acts may have been carried out in different countries (Arts. 2 & 3) Provided for the inclusion of trafficking as an extraditable offense between States having an extradition treaty (Art. 5)
INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN WOMEN AND CHILDREN	1921 1922	Treaty	<ul style="list-style-type: none"> Extended application of the offense mentioned in the 1910 Convention to children of both sexes (Art. 2)
SLAVERY CONVENTION	1927	Treaty	<ul style="list-style-type: none"> Sought to put an end to slavery and slave trade and also to prevent compulsory or forced labor from developing into conditions analogous to slavery (Arts. 4 & 5)
ILO CONVENTION 29 OR FORCED LABOR CONVENTION	1930 1932	Treaty	<ul style="list-style-type: none"> Sought to suppress the use of forced or compulsory labor in all its forms within the shortest possible time — exception in Art. 2(2)
ABOLITION OF FORCED LABOR CONVENTION	1957 1959	Treaty	<ul style="list-style-type: none"> Supplemented ILO 29

57. Beijing Declaration & Platform for Action, Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) and U.N. Doc. A/CONF.177/20/Add.1 (1995), available at <http://www1.umn.edu/humanrts/instreet/e5dplw.html>.

58. See *Id.*

UNIVERSAL DECLARATION OF HUMAN RIGHTS	1948	Declaration	<ul style="list-style-type: none"> Emphasized the inherent dignity of all human beings Prohibited slavery, servitude and slave trade (Art. 4)
UN CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS	1950 1951	Treaty	<ul style="list-style-type: none"> Consolidated the earlier treaties on trafficking and declared prostitution and traffic of persons as incompatible with the dignity and worth of the human person
SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY	1956 1957	Treaty	<ul style="list-style-type: none"> Reiterated the abolition of slave trade. Identified debt bondage and serfdom as institutions similar to slavery which shall also be abolished Sought the abolition of the practice of giving a woman in marriage for a consideration; the "transfer" of a woman by her husband for value received; inheriting a woman by another person upon the death of her husband and the delivery of a child to another by his or her parents or guardian for exploitation or labor (Art. 1)
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	1966 1976	Treaty	<ul style="list-style-type: none"> Contained similar provisions against slavery, servitude and compulsory or forced labor (Art. 8) Provided for a reporting mechanism to monitor State compliance to the convention It has a complaints procedure in its Optional Protocol no. 1 whereby an individual may lodge a complaint against a State, alleging violation of his or her right under the said convention.
CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)	1979 1981	Treaty	<ul style="list-style-type: none"> It imposed obligation on a State to refrain from any act or practice which is discriminatory against women. (Art. 2[d]) It mandated the State to address said discrimination at the institutional and societal levels; adopt legislation to suppress trafficking and exploitation of prostitution of women (Art. 6); modify social and cultural patterns of conduct of people to eliminate practice based on "inferiority of women." (Art. 5[a]) It tasked the State to adopt temporary special measures to address the <i>de facto</i> inequality of men and women. (Art. 4[z])

OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN	1999 2000	Treaty	<ul style="list-style-type: none"> It has complaints and inquiry procedures in its Optional Protocol for violations committed by States under the convention. (Arts. 2 & 8)
CONVENTION ON THE RIGHTS OF THE CHILD	1989 1990	Treaty	<ul style="list-style-type: none"> It mandated State parties to take measures to combat the illicit transfer and non-return of children abroad. (Art. 11)
OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY	Adopted & opened for sign., ratific. & accession by G.A. resol. A/RES/54/263 of 25 May 2000		<ul style="list-style-type: none"> It enjoined 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. (Art. 35) It gave special emphasis to the criminalization of serious violations of children's rights: sale, illegal adoption, child prostitution and pornography.
ILO CONVENTION NO. 182 OR THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOR	2000	Treaty	<ul style="list-style-type: none"> It enumerated the worst forms of child labor, the first of which is all forms of slavery or practices, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including the forced or compulsory recruitment of children for use in armed conflict. (Art. 3 [a]) It required States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor. (Art. 1)
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN	2000	Treaty	<ul style="list-style-type: none"> It defined trafficking to include means of recruitment or transport, other than through falsity or force; and that when children are involved, the means employed become irrelevant. Underscored need for broader cooperation including extradition and mutual legal assistance (Arts. 16 & 18)
VIENNA DECLARATION AND PROGRAMME OF ACTION (ADOPTED BY REPRESENTATIVES OF 171 STATES)	1993	Declaration	<ul style="list-style-type: none"> It recognized the human rights of women and the girl-child as inalienable, integral and indivisible. It declared that gender-based violence, including those resulting from international trafficking, are incompatible with the dignity and worth of the human person. It recommended the elimination of violence through legal measures, national action and international cooperation.
BEIJING DECLARATION AND PLATFORM FOR ACTION	1995	Declaration	<ul style="list-style-type: none"> It reiterated the pronouncements of the Vienna Declaration. It recommended the elimination of

(ENDORSED BY 189
COUNTRIES AND
PARTICIPATED IN BY
2,600 NGO'S)

trafficking in women and assistance be given to victims of violence due to prostitution and trafficking. (Strategic Objective D.3)

- It advocated for the ratification and enforcement of international conventions on trafficking, strengthening of laws for the greater protection of women and girl-children and more cooperation and concerted action among law enforcement authorities with a view of dismantling national, regional and international networks in trafficking.

C. Regional Instruments

All members of the Association of Southeast Asian Nations (ASEAN) are now parties to the CRC, and, except for Brunei, to the CEDAW. In July 1988, the foreign ministers of these countries signed the Declaration of the Advancement of Women. In 1993, it adopted the ASEAN Plan of Action for Children, where it outlined, among others, the need to address the issues of child abuse, neglect, exploitation, and trafficking.

The ASEAN has recognized the need for close collaboration between its members and for dialogue with partners and the international community in order to combat trafficking in women and children.⁵⁹ Thus, at the 2ND Informal Summit Meeting in 1997, the heads of States called on ASEAN to take firm and stern measures to combat transnational crime, including trafficking in women and children. They also adopted the ASEAN Vision 2020 where the member-States envisioned the "evolution in Southeast Asia of agreed rules of behaviour and cooperative measures to deal with problems that can be met only on a regional scale, including . . . trafficking in women and children, and other transnational crimes." In the succeeding year, the Hanoi Plan of Action was adopted to implement the ASEAN Vision 2020. It emphasized the strengthening of ASEAN collaboration in combating trafficking in, and crimes of violence against, women and children.

The ASEAN Ministerial Meeting on Transnational Crime (AMMTC), established in 1997, also adopted the ASEAN Declaration on Transnational Crime in its inaugural meeting. This Declaration underscored the need for a comprehensive approach and greater regional and international cooperation toward the fight against transnational crime.⁶⁰ In its second meeting in 1999, the AMMTC also agreed, in principle, to the establishment of the ASEAN

59. S. Pushpanathan, *Fighting Trafficking in Women and Children in ASEAN*, Address before the 7TH ACPF World Conference on Crime Prevention & Criminal Justice (Nov. 23-26, 1999), available at http://www.aseansec.org/newasean/secgen/articles/sp_twc.html.

60. *Id.*

Centre for Combating Transnational Crime (ACTC). This body was envisioned to promote data resource sharing, assist in the implementation of the plan of action and serve as a repository of laws and measures of individual countries. To this end, the ASEAN Chiefs of National Police (ASEANAPOL) also meets every two years to review the work undertaken by various ASEAN bodies on transnational crimes, and set the direction for regional collaboration against trafficking.⁶¹

In South Asia, the South Asian Association for Regional Cooperation (SAARC) drafted in 1998, the SAARC Convention on Preventing and Combating Trafficking in Women and Children in Prostitution. In its Preamble, it recognized the importance of establishing effective regional cooperation for the investigation, detection, prosecution and punishment of those responsible for trafficking. It also emphasized the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking.

Furthermore, the draft convention enjoins all member countries to make trafficking an offense under their respective criminal laws,⁶² to grant to member countries the widest measure of mutual legal assistance in respect to investigations, inquiries, trial or other proceedings,⁶³ to make trafficking an extraditable offense,⁶⁴ and, in case the national of a member country cannot be extradited, to prosecute that person in his or her own country.⁶⁵

In 1999, the ministers and representatives of various governments in Asia and the Pacific adopted the Bangkok Declaration on Irregular Migration,⁶⁶ aimed at providing a framework for regional cooperation in combating irregular migration and trafficking. Among its recommendations were the establishment of a regional migration arrangement that would provide technical assistance, capacity building and policy support, and to serve as an information bank on migration issues; the implementation of national and regional measures to combat irregular migration and trafficking, including comprehensive research and analysis of causes and consequences of irregular

61. Joint Communique of the 2nd AMMTC, par. 14, June 23, 1999, available at http://www.aseansec.org/press_release.html.

62. SAARC Convention on Preventing and Combating Trafficking in Women and Children in Prostitution, art. 3.1, Aug. 3, 2001, available at <http://www.unescap.org/wid/04widresources/05pubreport/series7.pdf>.

63. *Id.* art. 6.1.

64. *Id.* art. 7.

65. *Id.* art. 7.

66. Bangkok Declaration on Irregular Migration, Apr. 23, 1999, available at <http://www.unescap.org/wid/04widresources/5pubreport/series7.pdf>.

migration; and the promulgation and improvement of national laws, public awareness-raising, and exchange of information.⁶⁷

In 2000, the Asian Regional Initiative Against Trafficking in Women and Children (ARIAT) was held in Manila, where a Regional Plan of Action was likewise discussed.

Workshop outputs during the 3-day meeting included several initiatives which can be undertaken at the regional level. Furthermore, preventive strategies were explored in the fields of information and education, both very powerful tools in the crusade. One of the projects proposed was a regional symposia to share the best practices concerning anti-trafficking.

A Regional Cooperative Center/Network for Asia Pacific (RECAP) was put forward with a goal towards coordinated regional action against trafficking. Aside from launching RECAP, cooperation with the various government agencies was also proposed, so as to encourage the development of facilities for the regional exchange of information on trafficking, including the best practices, national legislation and other relevant policies and programs.

Since trafficking admittedly has a regional face, it was proposed that the ASEAN Center on Combating Transnational Crime should be expanded to include non-ASEAN ARIAT members.

Finally, other fields where regional initiatives may be studied included legislation, the repatriation and reintegration of those trafficked victims and the role of civil society.

The significance of the above-mentioned treaty and declarations can better be seen in the table below:

REGIONAL INSTRUMENTS			
TITLE	YEAR ADOPTED <i>entered into force</i>	NATURE/ FEATURE	SIGNIFICANCE
ASEAN DECLARATION OF THE ADVANCEMENT OF WOMEN	1988	Declaration	▪ Endeavored to promote the equitable and effective participation of women in the political, economic, social and cultural life at the national, regional and international levels
ASEAN PLAN OF ACTION FOR CHILDREN	1993	Declaration	▪ It outlined the need to address the issues of child abuse, neglect and exploitation including child trafficking.

67. ANNERSKA DERKS, COMBATING TRAFFICKING IN SOUTH-EAST ASIA: A REVIEW OF POLICY AND PROGRAMME RESPONSES 19 (2000) [hereinafter DERKS].

ASEAN VISION 2020	1997	Declaration	▪ It envisioned the evolution in SE Asia of agreed rules of behavior and cooperative measures to deal with problems that can be met only on a regional scale including trafficking in women and children and other transnational crimes.
HANOI PLAN OF ACTION	1998	Declaration	▪ It implemented ASEAN Vision 2020. ▪ It emphasized the strengthening of ASEAN collaboration in combating trafficking in, and crimes of violence against, women and children.
ASEAN DECLARATION ON TRANSNATIONAL CRIME	1997	Declaration	▪ It underscored the need for a comprehensive approach and greater regional and international cooperation toward the fight against transnational crime. ▪ Agreed in principle the establishment of ACTC to promote data sharing and serve as repository of laws
SAARC CONVENTION ON PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN IN PROSTITUTION	1998	Draft Treaty	▪ It recognized the importance of establishing effective regional cooperation for investigation, detection, prosecution and punishment of those responsible for trafficking. (Preamble) ▪ It emphasized the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking. (Preamble) ▪ It enjoined all member countries to make trafficking an offense under their respective criminal laws (Art. 3.1), grant to member countries the widest measure of mutual legal assistance in respect to investigations, inquiries, trial or other proceedings (Art. 6.1), make trafficking an extraditable offense (Art. 7) and in case the member country's national cannot be extradited, prosecute that person in his or her own country. (Art. 7)
BANGKOK DECLARATION ON IRREGULAR MIGRATION (ADOPTED BY THE MINISTERS AND REPRESENTATIVES OF ASIA-PACIFIC COUNTRIES)	1999	Declaration	▪ It aimed towards providing a framework for regional cooperation in combating irregular migration and trafficking ▪ It recommended the establishment of a regional migration arrangement to provide technical assistance, capacity building and policy support as well as to serve as an information bank on migration issues and the implementation of national and regional measures to combat irregular migration and trafficking, including comprehensive research and analysis of causes and consequences of irregular migration, promulgation/

		improvement of national laws, public awareness-raising and exchange of information.	
ASIAN REGIONAL INITIATIVE AGAINST TRAFFICKING IN WOMEN AND CHILDREN REGIONAL PLAN OF ACTION (ARIAT)	2000	Declaration	<ul style="list-style-type: none"> ▪ Preventive strategies were explored in information and education. ▪ RECAP proposed for coordinated regional action against trafficking ▪ Expansion of ACTC to include non-ASEAN ARIAT members

D. Bilateral Agreements

Bilateral agreements or arrangements are also vital in forging cooperation between sending and receiving countries. Most of the receiving countries, though, are quite hesitant in entering into these kinds of agreements especially if they do not want to be pressured into concluding similar arrangements with other countries. This is particularly true in the context of migration for work. Malaysia has entered into an agreement with Indonesia in 1984, in order to regulate Indonesian migrant workers specifically in the plantation and domestic services. It also signed a Memorandum of Understanding with Cambodia, whereby one company exporting labor has been assigned to process the export of domestic workers from Cambodia to Malaysia. The Philippines and Malaysia have also entered into a Memorandum of Agreement with respect to the exchange of police liaison officers.⁶⁸

The significance of the above-mentioned agreements is better seen in the table below:

BILATERAL AGREEMENTS			
TITLE	YEAR ADOPTED	NATURE/FEATURE	SIGNIFICANCE
MALAYSIA AND INDONESIA AGREEMENT	1984	Bilateral Agreement	<ul style="list-style-type: none"> ▪ Aimed at regulating Indonesian migrant workers specifically in the plantation and domestic services
MALAYSIA MEMORANDUM OF AGREEMENT WITH CAMBODIA		Bilateral Agreement	<ul style="list-style-type: none"> ▪ It assigned one company to process the export of domestic workers from Cambodia to Malaysia.
MALAYSIA MEMORANDUM OF AGREEMENT WITH THE PHILIPPINES		Bilateral Agreement	<ul style="list-style-type: none"> ▪ Purpose was the exchange of police liaison officers

68. *Id.* at 27-28.

E. National Laws

As stated earlier, international and regional treaties create a mandate for States to comply with their obligations. Human rights treaties, in particular, have provided mechanisms in order to monitor State compliance to said treaties. Even non-binding instruments, such as declarations and joint statements, have, in some ways, created pressure on countries to commit to the pronouncements or statements made therein especially if these come with a plan of action that has to be implemented.

A common call found in both international and regional treaties, as well as in other non-binding instruments, is the articulation of trafficking laws and mechanisms in the States' legal system. Should a legal framework already be in place, the call is for the strengthening of its implementation and enforcement mechanisms. Some obligations created by treaties require enabling laws in order for them to be realized on the national level. For instance, the proscription against discrimination found in both the CEDAW and CRC would be reflected on changes in the family laws of a country.

The importance of trafficking laws at the national level cannot be overemphasized. First, by having a law against trafficking, the State acknowledges and recognizes that trafficking is a problem. Second, its definition will set the parameters for data gathering and research. Documenting trafficking is already difficult in itself because of its covert nature. However, this difficulty is further compounded when no clear definition of the problem exists, making the statistics dependent on the working definition of whoever is documenting it. Data gathering and research are vital in assessing the nature and magnitude of trafficking. A better understanding of its nature and magnitude, in turn, ensures that the law and policies issued to address trafficking, are adequate and responsive. Furthermore, the policy statement of the law can help determine the direction of the programs designed for the prevention and protection against trafficking and also give focus to the manner of collecting data. For instance, the recognition of the need to enact laws to combat trafficking in women and children means that it is necessary to come up with sex-disaggregated and age-disaggregated data respectively, or a combination of both.

Much of the studies on trafficking reveal that there is very poor awareness of the phenomenon, which somehow accounts for the relative ease by which the traffickers are able to operate. Thus, including trafficking within the legal framework is one step towards instilling in the consciousness of the people, especially those who are most vulnerable, that there is a problem with trafficking, and that the State penalizes its perpetuation. A law also gives rise to enforceable rights against the traffickers, and at the same time, may impose an obligation to the State to provide protection, prevention or rehabilitation services to victims. Thus, together with awareness of the laws, people need to be informed about the remedies and services available that the State is

mandated to provide. To reiterate, a comprehensive approach to trafficking entails the enactment of a law. Only when such law is in place can any program seeking to address this problem be effective.

III. PROBLEM AREAS

The problem does not end with the enactment of a trafficking law. A law might exist but the same might not be enforced because of poor wording, or vagueness in the manner of its application. For instance, the forcible taking of a woman within the context of trafficking is considered kidnapping in the Philippines, because there is yet no existing trafficking law. In Indonesia, there is a trafficking provision, but this is unused because trafficking in women is often related to, or perceived to be associated with prostitution, where there are laws addressing the latter. In the end, the act of forcible taking is not appreciated within the context of the trafficking problem. Rather, it is viewed in isolation. Thus, trafficking as the underlying problem behind the act is not taken into account by the State.

Cambodia's trafficking law is entitled "Law on the Suppression of the Kidnapping and Trafficking/Sales of Human Persons and Exploitation of Human Persons."⁶⁹ It subjects anyone who lures a human person for the purpose of trafficking, sale, or prostitution to 15-20 years of imprisonment. However, it also states that a sub-decree will provide detailed instructions of how to apply the law. Since a sub-decree has not been issued, many members of the judiciary assume that they cannot use the law. Other members are not even aware that such a law exists. To date, there has been no in-depth study on whether the trafficking law is actually being used, whether all the members of the judiciary have a copy of such law, or whether they understand its purpose. Further aggravating the situation is the fact that this lack of knowledge is not limited to the judiciary. Many members of the police force do not know that sexual trafficking is against the law; neither do they understand that a contract to sell a woman or child is illegal. In Cambodia, a written contract, regardless of the subject matter, is given the weight of law. Hence, the police do not intervene in contracts to sell a woman or a child because they are worried that if they assist the trafficked woman, they would be breaking the law by violating a written contract. It can then be said that, although adequate laws exist in Cambodia, the government lacks the political will to educate its citizens about the existence of these laws and ensure their enforcement.⁷⁰

69. LAW ON THE SUPPRESSION OF THE KIDNAPPING AND TRAFFICKING/SALES OF HUMAN PERSONS AND EXPLOITATION OF HUMAN PERSONS, available at <http://www.ilo.org/public/english/region/sro/bangkok/child/trafficking/downloads/cambodia1996.doc>.

70. Chanthol Oung, *Situational Analysis on the Trafficking in Women and Children, Political Will to Combat the Issue and CWCC's Intervention, Trafficking in Women*, in ECONOMIC AND

The lack of political will has far more serious implications than the mere failure to raise awareness in order to make the law more familiar and popular. It can greatly affect good governance and the realization of well-implemented laws and enforcement mechanisms. A case in point is that of Thailand, which amended and improved on the "Trafficking in Women and Girls Act,"⁷¹ effective on November 17, 1997. The amendment extended the coverage of the law to both sexes under 18 years of age, allowed officials to inspect and search various public areas, such as airports and seaports, in order to facilitate the prevention, suppression and assistance to those victimized.

Moreover, pursuant to The Penal Code Amendment Act (No. 14),⁷² Thai law enforcement officers are entitled to prosecute every offender who procures, lures, or traffics an adult or a child of either sex for an indecent sexual act, or for sexual gratification of another person, no matter where the offence is committed and whatever the offender's nationality.⁷³ However, it was been reported that police corruption is the toughest obstacle in solving the problem of forced prostitution in Thailand.⁷⁴ Not only are the police paid to ignore and protect the brothels, but often, police officials themselves own prostitution houses.⁷⁵

The same is true for Bangladesh. Bangladesh has a law denominated as the "Oppression Against Women and Children Act (Special Provision) of 1995,"⁷⁶ where emphasis is put on rape, trafficking, kidnapping, the taking and giving of dowry, and violence related with exemplary punishment. The penalty imposed against offenders is life imprisonment to death.⁷⁷ However, the implementation of the law remains weak. Accordingly, law enforcement authorities are, themselves, involved in trafficking. Trafficking is also reportedly carried out by well-organized regional gangs who have links with the various law

SOCIAL COMMISSION FOR ASIA AND THE PACIFIC (ESCAP) REPORT (1999) [hereinafter ESCAP REPORT].

71. B.E. 2471 (1928).

72. B.E. 2540 (1997).

73. THAILAND FOR ASIAN REGIONAL INITIATIVE AGAINST TRAFFICKING IN WOMEN AND CHILDREN (ARIAT), COUNTRY REPORT (2000).

74. Youngik Yoon, *International Sexual Slavery*, 6 TOURO INT'L. L. REV. 417 (1995), available at <http://www.tourolaw.edu/Publications/internationalwrev/vol6/part7.html>, citing Gayle Reaves, *Trading Away Youth; Impoverished Thai Parents Sell into Prostitution*, Dallas Morning News, Mar. 21, 1993, at 1A.

75. *Id.*

76. Act No. 18 (1995).

77. Jayenti Sannal, *Trafficking in Women Report*, in ESCAP REPORT, *supra* note 69; ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC (ESCAP) REPORT (1999).